

Michigan. The Debtor intends to continue in possession of its property and to manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Further, to enable it to minimize the adverse effects of the chapter 11 filing on the business, the Debtor intends to request various types of relief in “first day” applications and motions (collectively, the “First Day Motions”).

4. I am advised by counsel that this Court has jurisdiction over this chapter 11 case pursuant to 28 U.S.C. §§ 157 and 1334 and venue is proper in the United States Bankruptcy Court for the Eastern District of Michigan pursuant to 28 U.S.C. §§ 1408 and 1409.

5. No request for appointment of a chapter 11 trustee or examiner has been made and, as of the date hereof, no official committee has been appointed.

6. I submit this Declaration in support of the Debtor’s chapter 11 petition and the First Day Motions. Part I of this Declaration describes the Debtor’s business and the circumstances surrounding the commencement of its chapter 11 case. Part II of this Declaration sets forth the relevant facts in support of the First Day Motions filed concurrently herewith.

PART I. BACKGROUND

Current Business Operations Of The Debtor

7. The Debtor was formed in 1981 and is the country’s leading processor and packager of honey for food manufacturers, food service companies, and retail customers.

8. The Debtor is headquartered in Onsted, Michigan. The Debtor also operates a honey processing facility in San Bernardino, California, and maintains a testing lab in Belleview, Florida.

9. The Debtor has approximately 76 full time employees, 8 contractors hired through staffing services, and 4 part time employees. Approximately 47 of the employees are

in Michigan, 25 are in California, 2 are in Georgia, and 2 are in Florida. For the fiscal year ended December 31, 2012 the Debtor had net sales from continuing operations of approximately \$137.8 million.

The Debtor' Financing Arrangements

Debt Financing

10. The Debtor is a party to that certain Credit and Security Agreement dated as of January 30, 2012 (as amended from time to time, the "Credit Agreement"), by and between the Debtor as Borrower, and Wells Fargo Bank, National Association, as the lender ("Wells"). The Credit Agreement sets forth the terms and obligations regarding an aggregate revolving commitment of a maximum of \$25,000,000.00 and a five-year term loan of \$1,120,000.00 (collectively the "Loans").

11. On September 18, 2013, HC Capital Holdings 0909A ("HC") purchased Wells' position in the Loans and became the senior secured lender with respect to the Loans (the "Lender").

12. As security for the indebtedness under the Loans, and pursuant to Section 3.1 of the Credit Agreement, the Debtor granted to Lender a security interest in various assets, including without limitation, all accounts, books, chattel paper, deposit accounts, goods, including Equipment and Fixtures, general intangibles, inventory, investment related property, negotiable collateral, supporting obligations, commercial tort claims, money, cash equivalents, any other assets which come into the Lender's possession, and all proceeds relating to or arising from them (all categories of collateral described herein and in Schedule 1.1 of the Security Agreement collectively referred to as the "Collateral").

13. On June 18, 2013, Wells issued a Notice of Default because the Debtor fell below the Average Excess Availability amount required by the Creditor Agreement as a result

of a settlement payment (the “Excess Availability Default”). As a result of the Excess Availability Default, Wells assessed default interest on the Loan at a rate of 3.0% per annum above the rate in the Credit Agreement.

14. On June 26, 2013, Wells issued a Notice of Default because the Debtor failed to maintain the Earnings Before Interest, Taxes, Depreciation, and Amortization (“EBITDA”) required by the Credit Agreement (the “EBITDA Default”). As a result of the EBITDA Default, Wells restated that the Loan would accrue interest at a rate of 3.0% per annum above the rate in the Credit Agreement.

15. On July 23, 2013 without notice, Wells unilaterally implemented a \$750,000.00 reserve against the Debtor’s available funds under the Loans (the “Reserve”). The Reserve severely impacted the Debtor’s ability to make payments to vendors, and fund its operations.

16. As a result of the Excess Availability Default and the EBITDA Default, Lender and the Debtor began to negotiate a Forbearance Agreement and Fourth Amendment to the Credit Agreement. Wells provided a draft of the Forbearance Agreement to the Debtor on July 31, 2013 (the “Draft Forbearance Agreement”).

17. On August 8, 2013, Wells rescinded the Draft Forbearance Agreement. Discussions regarding a new Forbearance Agreement continued and the parties entered into a revised Forbearance Agreement and Fourth Amendment to the Credit Agreement on August 15, 2013 (the “Forbearance Agreement”).

18. Pursuant to the Forbearance Agreement, among other things,: (1) (a) Wells agreed to consider making discretionary advances during the period of August 15, 2013 through September 6, 2013 (the “Forbearance Period”); (b) reduced the maximum revolver amount to \$17,250,000.00 as of September 6, 2013, and reduced the inventory sublimit from

\$15,000,000.00 to \$12,500,000.00; and (c) required the Debtor to release Wells from any claims against it. The Debtor also hired Conway Mackenzie to provide Wells various reports a Chapter 11 budget and a Chapter 11 restructuring strategy.

19. In addition to the Loans now owned by HC, the Debtor also has subordinated debt obligations. Three private equity funds, Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, hold \$7,000,000.00 of senior subordinated secured debt. Ernest Groeb, a former officer of the Debtor, is the shareholder representative with respect to \$1,500,000.00 of junior subordinated unsecured debt. There is also an unsecured debt obligation of approximately \$423,762.00 to the Olesanik Family Living Trust, and unsecured trade debt of approximately \$15,036,775.

The Debtor's Equity Structure

20. The Debtor also has authorized and in some cases, issued common stock, preferred stock, and warrants, as follows:

Common Stock:

- Series A Common Stock: 69,110 shares authorized but unissued
- Series B Common Stock: 9,390 shares authorized but unissued
- Series C Common Stock: 10,507 shares authorized but unissued (subject to unexercised warrants)
- Series D Common Stock: 10,864 shares authorized and issued
- Series E Common Stock: 13,134 shares authorized and issued
- Series F Common Stock: 24,201 shares authorized; 12,701 shares issued
- Series G Common Stock: 35,947 shares authorized but unissued (subject to unexercised warrants)

Preferred Stock:

- Series A 6% Convertible: 69,110 shares authorized and issued

- Series B Convertible: 9,390 shares authorized and issued
- Series C 6% Convertible: 27,271 shares authorized and issued

Warrants:

- Common Stock C Warrants: 10,507 warrants authorized, but unexercised
- Common Stock G Warrants: 9,024 warrants authorized, but unexercised

21. Outside investors hold approximately 79% of the Debtor's equity through a mix of the common and preferred stock. Some of this percentage includes amounts held by the senior subordinated debt holders through stock and warrants. The Debtor's management and former management holds approximately 15% of the Debtor's equity through a mix of the common and preferred stock. The Debtor's former directors hold the remaining approximately 6% through a mix of the common and preferred stock.

Events Leading To Chapter 11 Filing

22. In 2001, the Government imposed anti-dumping duties on honey imported from China. After the institution of these duties, the amount of Chinese imports fell, as the amount of honey exports rose from Vietnam, Malaysia, Indonesia, and other Asian countries that had not historically exported significant amounts of honey. As a result, the Government began to investigate the honey industry and the possibility that honey was being transshipped (*i.e.* shipped through a second country to conceal its origins) and/or mislabeled to avoid the anti-dumping duties. Beginning in 2007, the U.S. Department of Justice ("DOJ") brought the first of several cases in different districts alleging that U.S. honey packers had imported transshipped honey. In 2008, the Debtor received a grand jury subpoena seeking information relating to the investigation of its industry.

23. Following an extensive DOJ investigation, in February 2013, the Debtor entered into a deferred prosecution agreement (the "DPA") with the DOJ as a global resolution of the

Debtor. The agreement required the Debtor to: (1) accept and acknowledge responsibility for historical purchases of transshipped honey; (2) continue cooperating with the government's ongoing investigation for two years; (3) pay a \$2 million fine; (4) dispose of any and all Chinese-origin honey in its possession, which entered the country in contradiction to the duty requirements; and (5) cease selling any of its finished goods containing such Chinese honey. The agreement further required the Debtor to put in place a number of compliance and remediation measures. The DPA acknowledged that two former, unnamed executives had misled the Debtor's board, the Debtor's customers, and the public.

24. Both before and after execution of the DPA, the Debtor took a number of steps to remediate issues regarding potentially transshipped honey. In January 2012, the Debtor retained Foley & Lardner LLP to conduct an internal investigation. In January 2012, the Debtor also began revising its policies and procedures relating to the procurement of honey overseas. In February 2012, the Debtor named a new interim president and relieved its then-current CEO from his operating responsibilities. In June 2012, the Debtor agreed to a separation agreement with such CEO and stripped the then-current vice president of operations of all purchasing responsibility and subsequently terminated him. The Debtor hired a new full time president and CEO, Rolf Richter, effective June 27, 2012. The Debtor also licensed software to facilitate verification of container numbers and countries of origin for the honey that the Debtor purchases. The Debtor continues to carry BRC certification at all plants, which is a globally recognized food safety, quality and audit program subject to stringent audit testing by third parties. The Debtor also strengthened its supplier audit program and reinvigorated lab testing procedures at its state-of-the-art lab testing facility in Florida. In October 2012, the Debtor hired John Wolf as its Vice President of Supply Chain and Management, to further

enhance supply management and compliance. Mr. Wolf has a long history of experience in the food industry, including 24 years with Kellogg's.

25. As a result of the foregoing measures, the Debtor has robust policies and procedures in place relating to the purchase of honey to avoid international duty issues in the future. The Debtor also provides compliance training to all of its employees.

26. The Debtor had hoped that the DPA would enable the Debtor to have a fresh start with new executives and a new compliance program. However, in April 2013, just two months after the DPA was finalized, two civil putative class action lawsuits were filed against the Debtor in the United States District Court for the Northern District of Illinois by producers, packers and/or distributors of honey. In *Adee Honey Farms, et al v. Groeb Farms, et al.*, Case No. 1:13-cv-02922 (the "Adee Lawsuit"), the putative class alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and Lanham Act. In *Moore's Honey Farm, et al. v. Groeb Farms, Inc., et al.*, Case No. 1:13-cv-02905 (the "Moore Lawsuit" and collectively with the Adee Lawsuit the "Putative Class Actions"), the putative class alleges violations of RICO and common law fraud, negligent misrepresentations, conspiracy, and clandestine wrongful importation without paying the anti-dumping duties. On June 24, 2013, the Putative Class Actions were consolidated (hereinafter, the "Putative Class Action") by Order of the Court handling the Moore Lawsuit (the "Consolidation Order"). An Amended Complaint must be filed pursuant to the Consolidation Order on or before October 21, 2013. The Putative Class Action is based on the factual statements contained in the DPA and claims the class members were harmed by the Debtor and other defendants' purchases of transshipped honey. While none of the claims make a specific demand, RICO and Lanham Act cases carry a potential for treble damages and attorneys' fees.

27. As a result of the DPA, and the costs associated with it, including: (1) the \$2,000,000 fine; (2) the legal fees; (3) the costs of the compliance programs; and (4) the costs incurred in recruiting and hiring new, experienced executives, the Debtor has incurred significant unanticipated expenses.

28. Although the Debtor has significant defenses to the allegations in the Putative Class Action, the fine, the attorneys' fees and litigation and other expenses have severely strained, and would continue to severely strain, the Debtor's liquidity. In addition, despite the fact that the putative classes have not been certified, the mere existence of these lawsuits negatively affects the value of the Debtor outside of a bankruptcy proceeding and impedes potential buyers from purchasing the company at a maximized value to resolve the Debtor's financial issues.

29. In addition, increased prices in the honey market and supply shortages have had a negative impact on the Debtor. In late 2010, the Debtor had contracts with certain suppliers to purchase substantial amounts of honey at agreed-upon prices, while the honey market was experiencing significant price increases. However, these suppliers failed to deliver the product to the Debtor. As a result, the Debtor was forced to re-enter the honey market to buy replacement product at a time when, on a global basis, prices were increasing and the supply of honey was decreasing. The Debtor has initiated legal action against certain suppliers in order to receive the contracted honey. These issues have put further pressure on the Debtor's financial condition.

30. As a result of the foregoing and various other factors, the Debtor defaulted under its Credit Agreement with Wells. As a result, Wells began to exercise its rights and remedies, including without limitation: (a) imposing a \$750,000 reserve in borrowing on July

23, 2013; and (b) reducing or limiting the Debtor's available credit. These actions significantly reduced the Debtor's available cash, rendering it unable to buy necessary raw honey needed in the operation of its business.

31. On or about July 24, 2013, the Debtor hired Houlihan Lokey Capital, Inc. ("Houlihan") to assist with the assessment and implementation of strategic alternatives. Thereafter, Houlihan undertook an extensive marketing effort, including reaching out to 165 potentially interested parties, including strategic and financial buyers and capital providers. Houlihan secured Confidentiality Agreements from 75 parties and submitted a Confidential Information Memorandum to those parties. As part of the marketing process, Houlihan requested the submission of Indications of Interest ("IOIs") on or before September 18, 2013.

32. The Debtor received eight written IOIs, including a proposal from Honey Financing Company, LLC ("Honey Financing"), an affiliate of Peak Rock Capital, to restructure the obligations of the Debtor and acquire the equity of the reorganized Debtor pursuant to the chapter 11 Plan of Reorganization (the "Plan") filed contemporaneously herewith. After reviewing the IOIs, the Debtor determined that the proposal from Honey Financing was the best overall offer based on the following factors, among others: (1) the Debtor's financing needs and lending arrangements; (2) the speed and certainty of closing the transaction; and (3) the total overall value to be provided to all stakeholders as a result of the transaction. Therefore, the Debtor elected to pursue the transaction with Honey Financing. The Debtor entered into the Restructuring Support Agreement in connection with the offer (the "Honey Financing RSA"). The Honey Financing RSA is attached hereto as Exhibit A.

33. Also on September 18, 2013, HC, an affiliate of Honey Financing, purchased the Wells debt, and became the Debtor's senior secured lender.

34. In order to further bolster its restructuring efforts, the Debtor executed a Restructuring Support Agreement with certain of its senior subordinated debt holders, Argosy Investment Partners II, L.P, and Marquette Capital Fund I, LP (the “Senior Subordinated Debt RSA”). The Senior Subordinated Debt RSA is attached hereto as Exhibit B.

35. The Debtor has also engaged in negotiations with the court-appointed interim class counsel (“Interim CA Counsel”) for the Class Action Claim Holders. The Debtor and the Interim CA Counsel have reached a settlement of the Putative Class Action resulting in the execution of a Restructuring Support Agreement (the “Putative Class Action RSA”, and collectively with the Honey Finance RSA, and the Senior Subordinated Debt RSA, the “RSAs”). Pursuant to the Putative Class Action RSA, the proposed settlement (the “Class Action Settlement”) provides for the Class Action Claim Holders to receive \$1.75 million (the “Class Action Settlement Amount”) in proceeds from the Debtor’s D&O Insurance Policy. According to the Putative Class Action RSA, the Class Action Settlement would have to be approved by the insurer within twenty-four (24) days after the Petition Date, and the Bankruptcy Court and a United States District Court have both approved the Class Action Settlement on a final basis. The Putative Class Action RSA is attached hereto as Exhibit C.

36. The Debtor filed this chapter 11 case in order to affect the restructuring transaction as defined in the RSAs.

37. Under the Restructuring Agreement, HC will provide DIP financing to the Debtor, as more fully detailed in the Plan of Reorganization (the “Plan”) and Disclosure Statement filed contemporaneously herewith.

38. Upon the Effective Date of the Plan, if confirmed, HC will also provide an Exit Facility (as that term is defined in the Plan), which will be used to pay off a portion of the Loans, administrative expenses, and professional fees.

39. Based on the information I have learned from the marketing process, I believe that the Restructuring Agreement is the optimal solution for all of the Debtor's stakeholders. If the Plan is not confirmed, it is likely the Debtor will have to cease operations and liquidate its business.

PART II. FIRST DAY MOTIONS¹

40. The Debtor expects to file a number of First Day Motions and respectfully requests that the Court grant such First Day Motions. I am familiar with each of the First Day Motions and attest to the truth of the facts set forth therein. Moreover, I believe that the relief sought in each of the First Day Motions (a) is vital to enable the Debtor to make the transition to, and operate in, chapter 11 with a minimum of interruption or disruption to its business or loss of productivity or value; and (b) constitutes a critical element in preserving the value of the Debtor's estate.

A. Emergency First Day Motion Of The Debtor Pursuant To Sections 105(A), 361, 362, 363, 364, 507 And 552 Of The Bankruptcy Code And Bankruptcy Rule 4001(B) For Entry Of Interim And Final Orders (A) Authorizing Post-Petition Financing; (B) Authorizing Use Of Cash Collateral; (C) Granting Adequate Protection; And (D) Scheduling A Final Hearing On The Motion (the "Cash Collateral/DIP Financing Motion")

41. The Debtor urgently requires the use of its cash collateral and debtor-in-possession financing to fund day-to-day operations to maintain production for its customers. Continuing production of honey is necessary to preserve the Debtor's operations and is integral

¹ Capitalized terms used but not otherwise defined in the description of the various First Day Motions shall have the meanings ascribed to them in the respective First Day Motion described.

to preserving the value of the estate. Any inability to fund continuing production would result in a material, negative impact on the Debtor's business, to the detriment of its creditors, customers and employees.

42. Absent immediate use of cash collateral and DIP Financing in the amount of \$27 million for the period between the Petition Date and the Effective Date of the Plan, as more fully detailed in the Budget attached to the Cash Collateral/DIP Financing Motion, the Debtor will be unable to pay operating expenses and, therefore, unable to continue to conduct its business pending the Final Hearing on the DIP Financing Motion. Consequently, if interim relief is not obtained, the Debtor's case will be immediately and irreparably jeopardized, to the detriment of the estate, creditors and other parties in interest.

43. By the Cash Collateral/DIP Financing Motion, the Debtor seeks entry of an interim and final order authorizing the Debtor to, among other things, (i) use Cash Collateral in accordance with the terms of the Cash Collateral/DIP Financing Motion; (ii) use proceeds of the DIP Financing Facility pursuant to sections 105, 361, 363, 364, and 552 of the Bankruptcy Code on an interim basis in the amounts set forth in the Budget attached to the DIP Financing Motion; (iii) grant adequate protection pursuant to sections 361, 362, 363, 364, and 507 of the Bankruptcy Code to the pre-petition Lender; and (iv) schedule a final hearing on the Cash Collateral/DIP Financing Motion.

44. The Debtor requires the ability to immediately pay for, among other things, the purchase of raw materials, the funding of payroll obligations, the operation of the Debtor's honey processing facilities and other working capital needs. A portion of the DIP Financing will also be used to pay off the Loans in accordance with the RSAs. It is essential that the Debtor immediately stabilize its operations and resume paying for ordinary, post-petition

operating expenses, as well as the prepetition expenses requested in the First Day Motions, to maximize value for all stakeholders. Without such relief, it is unlikely the Debtor will be able to operate its business, which will significantly damage its reorganization prospects.

45. I expect that the Debtor will need the use of all of the amounts reflected in the budget attached to the DIP Financing Motion. All proceeds of the DIP Financing shall be used in accordance with this budget.

B. Debtor's First Day Motion For An Order Pursuant to Bankruptcy Code Sections 105(a), 363, 364 and 503(b)(1) Authorizing (I) Continued Maintenance of Existing Bank Accounts; (II) Continued Use of Existing Business Forms; (III) Continued Use of Existing Cash Management System; and (IV) Waiver of Certain Operating Guidelines Relating to Bank Accounts (the "Cash Management Motion")

46. By the Cash Management Motion, the Debtor seeks entry of an order (a) authorizing the continued use of its existing bank accounts, (b) authorizing the continued use of its existing business forms, and (c) authorizing the continued use of its existing cash management system.

47. The Debtor utilizes a multi-layered cash management system to collect, transfer and disburses funds generated by its operations and to record accurately all such funds, transactions as they are made, as described herein (the "Cash Management System").

48. Through the Cash Management Motion, the Debtor seeks a waiver of the U.S. Trustee's requirement that its Bank Accounts be closed and that new postpetition bank accounts be opened. If the Debtor is forced to comply with the U.S. Trustee's requirements, I believe that those requirements would cause enormous disruption in its business and would impair the estate. I believe that maintenance of the Debtor's Bank Accounts and the existing Cash Management System would greatly facilitate the Debtor's transition to post-petition

operations, avoid delays in payments to administrative creditors and Employees, and insure as smooth a transition into chapter 11 as possible.

49. The Debtor requests that it be authorized to maintain and use its Bank Accounts in the same manner and with the same account numbers, account names, styles, and document forms as those employed during the pre-petition period.

50. To protect against inadvertent payment of prepetition claims, the Debtor will immediately advise all banks maintaining the Debtor's Bank Accounts not to honor checks issued prior to the Petition Date, except as otherwise ordered by the Court.

51. The Debtor further requests, through the Cash Management Motion, that it not be required to open a bank account for the sole purpose of paying its tax obligations. I believe that the Debtor can pay its tax obligations most efficiently out of its existing Bank Accounts that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of such accounts, and that the creation of a new debtor in possession account designated solely for tax obligations would be unnecessary and inefficient.

52. The Debtor also requests, through the Cash Management Motion, that it be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, and invoices), and checks existing immediately before the Petition Date, without reference to the Debtor's status as debtor-in-possession. Parties doing business with the Debtor undoubtedly will be aware of its status as a debtor-in-possession as a result of the fact that the industry is small and thus there is likely to be publicity surrounding this case in the industry. Moreover, the Debtor's vendors will receive direct notice of the commencement of this case. I believe that changing the various business forms already in use would create a sense of disruption and potential confusion within the Debtor's organization and for its

customers and vendors. I further believe that it would be extremely costly and disruptive to cease using all existing forms and to purchase and begin using new business forms and checks.

53. In order to ensure an orderly transition into chapter 11, the Debtor also requests authority to continue to use its existing Cash Management System.

54. The Cash Management System includes accounting controls needed to enable the Debtor, as well as creditors and the Court, if necessary, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable.

55. The Debtor's Cash Management System works as follows: first, the vast majority of the Debtor's incoming cash receipts are directed to a lockbox account controlled by Wells Fargo. A small amount of the funds are sent to the Debtor's Michigan and California operations to release material for sales. Those funds are then sent to Wells. Wells then holds the funds for one day in a cash collateral account to ensure they clear. Once the funds clear, then they are applied to the Debtor's line of credit revolver balance.

56. Each day, the Debtor submits a Daily Cash Report ("DCR") to its lender, HC. The DCR reflects all cash received by the Debtor as well as all newly generated receivables for the prior day. 85% of the receivable amount is added to the Debtor's availability under its revolving line of credit. When cash is received, the receivable is liquidated, and the Debtor receives an additional 15% increase in its available credit.

57. Once a week the Debtor submits an updated inventory report to HC. The Debtor is permitted to borrow against 39% of its raw honey inventory and 59% of its finished goods inventory. Those amounts also potentially increase the Debtor's available credit.

58. The Cash Management System incorporates ordinary, usual and essential business practices similar to those used by other corporate enterprises. The Cash Management

System provides significant benefits to the Debtor, including the ability to control corporate funds centrally, ensure availability of funds when necessary, and reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate balance and presentment information. Furthermore, the Cash Management System complies with the Lender's requirements.

59. The operation of the Debtor's business requires that the Cash Management System continue during the pendency of this chapter 11 case. I believe that requiring the Debtor to adopt a new cash management system at this critical stage of this case would be expensive, would create unnecessary administrative burdens and problems (including the possibility that transactions might not be adequately documented), and would likely disrupt and adversely affect the estate. Further, I believe that requiring changes to the Cash Management System could irreparably harm the Debtor, its estate, and creditors by creating cash flow interruptions while systems are changed. Maintenance of the existing Cash Management System therefore is in the best interest of all creditors and other parties-in-interest.

C. Debtor's First Day Motion For Order Pursuant To Sections 105(a), 363(b) and 507(a) of The Bankruptcy Code Authorizing (I) Payment Of Wages, Compensation, and Employee Benefits; (II) Continuation of Employee Benefit Programs; and (III) Financial Institutions To Honor and Process Checks and Transfers Related Thereto (the "Employee Wage Motion")

60. By the Employee Wage Motion, the Debtor seeks authority to (i) pay, in its sole discretion, all prepetition obligations incurred under or related to Wage Obligations, Payroll Taxes, Expense Reimbursements, and other Employee Benefits (each as defined below, and collectively, the "Employee Amounts") and all costs incident to such obligations; (ii) pay, in its sole discretion, all service fees related to the foregoing (collectively, the "Administrative Fees" and hereafter with the Employee Amounts, the "Employee Obligations"); (iii) pay, in its sole discretion, prepetition obligations owed to brokers and purchasing groups who place the

Debtor's goods with additional customers (the "Sales Broker Obligations") and (iv) maintain and continue to honor the Employee Benefits (as defined below), including practices, plans (including vacation and holiday plans), programs, and policies, available for employees as they were in effect as of the Petition Date or as they may be modified, amended, or supplemented from time to time in the ordinary course of the Debtor's business. The Debtor also requests that the Court authorize the Debtor's banks and other financial institutions (collectively, the "Banks") to receive, honor, process, and pay any and all checks drawn on the Debtor's payroll and general disbursement accounts (collectively, the "Disbursement Accounts") and automatic payroll transfers, to the extent that the checks or transfers relate to Employee Obligations or Sales Broker Obligations.

61. As of the Petition Date, the Debtor employed approximately 76 full-time employees (the "Full-Time Employees"), approximately 4 part-time employees (the "Part-Time Employees") and approximately 8 individuals who are employed by staffing agencies (the "Contractors", and together with the Full-Time Employees and the Part-Time Employees, the "Employees"). The work of the Employees is critical to the Debtor's business. Out of the Full-Time Employees and the Part Time Employees, approximately 55 are hourly employees (the "Hourly Employees") and approximately 25 are salaried employees (the "Salaried Employees").

62. The Employees possess the institutional knowledge, experience and skills necessary to support the estate. Because of the Debtor's need for the continued commitment of its Employees, the Debtor is requesting the relief set forth in the Employee Wage Motion to minimize any hardship to the Employees resulting from the commencement of the Debtor's chapter 11 case.

Employee Obligations

Wage Obligations

63. Prior to the Petition Date and in the ordinary course of business, the Debtor typically paid obligations relating to wages, salary, and compensation for the Employees as follows: (a) employees receive compensation on a weekly basis, one week in arrears (the “Employee Wage Obligations”); and (b) Contractors are paid through staffing companies hired by the Debtor (the “Contractor Payment Obligations”); and together with the Employee Wage Obligations, the “Wage Obligations”). The Debtor pays the Wage Obligations through direct deposits into the account directed by the Employee or by check made out the Employee, or by check to the staffing companies who provide the Contractors on a net 45 day basis. To facilitate payment of the Employee Wage Obligations, the Debtor engages a payroll service, Paycor, Inc. (“Paycor”). Paycor draws the money for the relevant payroll every Thursday, and then distributes the payroll to its Employees every Friday.

64. The Debtor’s current estimated weekly gross payroll for all employees is approximately \$90,000, but may vary based on overtime, and the Contractor Payment Obligations are approximately \$14,000 per month. Prior to filing chapter 11, on September 26, 2013, in the ordinary course of its business, the Debtor paid payroll of approximately \$88,000.

65. As of the Petition Date, the Debtor has accrued approximately \$94,000 in unpaid prepetition Wage Obligations.

66. By the Employee Wage Motion, the Debtor seeks the authority to pay all its accrued and outstanding prepetition Wage Obligations in the amount of approximately \$94,000.

Payroll Taxes

67. The Debtor is required by law to withhold from its Employees' wages amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). In addition, the Debtor is required to make matching payments from its own funds on account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the "Employer Payroll Taxes" and, together with the Withholding Taxes, the "Payroll Taxes"). The Payroll Taxes are approximately \$5,200 on a weekly basis. As of the Petition Date, the Debtor has accrued approximately \$4,500 in Payroll Taxes that relate to the Employees for the period prior to the Petition Date. The Debtor requests authority through the Employee Wage Motion to pay such amounts to the extent they have not already been paid.

Expense Reimbursements

68. The Employees incur various expenses in the discharge of their ordinary duties, such as travel and meal expenses, including amounts charged on personal or business-issued credit cards. Because these expenses are incurred as part of their official duties and in furtherance of the Debtor's businesses, the Debtor directly pays or reimburses the Employees in full for these expenses (the "Expense Reimbursements"), subject to the submission of proper documentation to the appropriate accounting department. A majority of Expense Reimbursements are travel-related expenses related to sales or client development. The Debtor reimburses expenses on a rolling basis, with a time lag of up to two weeks between submission

or the request for reimbursement and payment. It is difficult to determine what Expense Reimbursements that accrued prepetition are outstanding on the Petition Date because of the lag time in the submission of such requests. However, based upon historical figures, the Debtor estimates that it has approximately \$10,000 in prepetition Expense Reimbursements outstanding as of the Petition Date. The Debtor requests authority to pay all Expense Reimbursements.

Employee Benefits

69. In the ordinary course of business, the Debtor has established various benefit plans and policies for its Employees that fall into the following categories: (i) paid time off plans, including vacation days, paid holidays, bereavement leave, and jury duty (collectively, the “PTO Plans”); (ii) medical insurance, dental insurance, prescription coverage, life insurance, and disability insurance plans and programs (collectively, the “Health and Welfare Plans”); (iii) workers’ compensation plans and programs (the “Workers’ Compensation Plans”); (iv) a 401(k) plan (the “401(k) Plan”) and (v) severance benefit packages offered to severed employees in the Debtor’s discretion prior to the Petition Date (the “Severance Benefits”), and together with the PTO Plans, Health and Welfare Plans, and the Workers’ Compensation Plans, the “Employee Benefits”). In connection with certain of the Employee Benefits, such as medical insurance and 401(k) Plan contributions, the Debtor directly deducts specified amounts from eligible Employees’ wages. The Employee Benefits are described below. The Debtor requests authority to continue and honor all of their obligations in respect of the Employee Benefits as they come due.

70. Additional information regarding the Wage Obligations and the Employee Benefits may be found in the Employee Wage Motion. I hereby verify the facts contained in the Employee Wage Motion.

71. The uninterrupted continuation of the Debtor's business is critically dependent upon a stable work force. I believe that any significant number of Employee departures or deterioration in morale at this time will immediately and substantially adversely impact the Debtor's business, resulting in immediate and irreparable harm to the estate and its creditors. There is a real, immediate risk that if the Debtor is not authorized to continue to honor its pre-petition Employee Obligations in the ordinary course, the Employees would no longer support and maintain the operations of the Debtor, thereby crippling its business operations and damaging the value of the Debtor materially. Consequently, the Debtor strongly believes that it is critical that it be permitted to pay its Employees their pre-petition wages and continue with their ordinary course personnel policies, programs and procedures that were in effect prior to the Petition Date. Similarly, the Sales Broker Obligations are essential to maintaining the Debtor's customer base. Without the services of the brokers, the Debtor will lose access to customer relationships and suffer decreased revenue. This would cause substantial harm to the Debtor's reorganization efforts and value.

72. For the foregoing reasons, the Debtor submits, and I believe, that the relief requested in the Employee Wage Motion is in the best interest of the Debtor, its estate and its creditors, and therefore should be approved.

D. Debtor's First Day Motion For Order Pursuant to Sections 105 and 366 of the Bankruptcy Code (I) Prohibiting Utilities From Altering, Refusing or Discontinuing Service to the Debtor and (II) Establishing Certain Procedures to Determine Requests for Adequate Assurance of Payment (the "Utility Motion")

73. By the Utility Motion, and to ensure continued provision of utility services (the "Utility Services") to the Debtor's various locations, the Debtor seeks entry of an order prohibiting utility companies from terminating services on account of pre-petition invoices, deeming the Utility Companies to be adequately assured of future payment, and establishing procedures to determine additional adequate assurance.

74. In connection with the operation of its business, the Debtor obtains electricity, natural gas, water, telephone, internet, and/or similar services through various utility companies (collectively, the "Utility Companies"). A detailed list of the Utility Companies and the services provided by each is attached to the Utility Motion as Exhibit 6.

75. Uninterrupted utility services are critical to the Debtor's ability to sustain its operations during the pendency of this chapter 11 case. The Debtor's facilities are dependent on electricity and gas service for lighting, manufacturing plant use and general office use. In addition, telephone and internet service is necessary to permit the Debtor to conduct sales and marketing functions and to communicate with customers, vendors, between the Debtor sites, and among other Debtor personnel. Continued water service is necessary to maintain sanitary lavatory facilities for Employees and for plant operations. Any interruption of these services would severely disrupt the Debtor's day-to-day operations.

76. In accordance with section 366(c)(1)(A) of the Bankruptcy Code, the Debtor proposes to, as necessary in accordance with the procedures detailed herein, deposit, for the benefit of the Utilities, a sum equal to approximately 50% of the Debtor's estimated cost of monthly utility consumption calculated as a historical average over the past twelve months –

\$16,536.50 – into a newly-created, segregated, interest-bearing account (the “Adequate Assurance Deposit Account”) within 30 days after the Petition Date. The Adequate Assurance Deposit Account will be increased in the event that there are any Added Utilities (as defined below), in an amount equal to the value of two weeks of services utilized by the Debtor (based on a historical average over the past twelve months) from such Added Utilities.

77. The Assurance Procedures proposed in the Utilities Motion are designed to ensure that the Utilities receive the “adequate assurance” contemplated by section 366(c) of the Bankruptcy Code by providing for a fair and orderly method for processing requests by the Utilities for additional or different Adequate Assurance or for the Utilities to object to the procedures themselves. Because the proposed Assurance Procedures will ensure that the Debtor will continue to receive Utility Services without prejudice to the Utilities, the Debtor submits, and I believe, that the relief requested in the Utilities Motion is necessary, appropriate, and in the best interests of the Debtor and its estate and creditors.

E. Debtor’s First Day Motion Pursuant to Sections 105(a), 363(b) and 364(b) of the Bankruptcy Code, for an Order Authorizing it to Pay the Prepetition Claims of Certain Potential Lienholders (the “Lienholders Motion”)

78. Through the Lienholders Motion, the Debtor seeks the authority to pay its common carriers and other shippers and warehousemen (collectively the “Lienholders”) for pre-petition amounts owed. Under state law, each of these entities may be able to assert liens, including possessory liens, on the Debtor’s property in their control, thus disrupting the Debtor’s business.

79. The Debtor and its customers rely on a smooth flow of raw materials into the Debtor’s facilities and the shipment of finished goods from those facilities. If any of the Lienholders took possession of the Debtor’s raw materials or finished goods while in transport or storage, the Debtor’s ability to conduct its business would be severely harmed.

80. Furthermore, because the amount of most of the Lienholder Claims are for less than the value of any property securing those claims, it appears that most of the Lienholders are (or will allege that they are) fully secured creditors. In general, I am advised that pursuant to section 506 of the Bankruptcy Code, fully secured creditors are entitled to receive (i) payment in full of their prepetition claims, and (ii) the post-petition interest accruing on such claims up to the value of the collateral. Consequently, payment of the Lienholder Claims now will: (a) in most cases give the Lienholders no more than they otherwise would be entitled to receive on account of their claims in the chapter 11 process; and (b) save the Debtor the cost of interest that otherwise may accrue on the Lienholder Claims.

81. The Debtor estimates that, as of the Petition Date, the aggregate amount of Lienholder Claims was approximately \$225,236.62.

82. The Debtor requests that this Court allow the Debtor to pay the pre-petition amounts owed to its Lienholders so that the free flow of the Debtor's raw materials and finished goods can continue during the Chapter 11 case. I believe that if there is a disruption in the Debtor's supply chain, its ability to fulfill its customer contracts would be imperiled, to the detriment of all of the stakeholders in this case. Therefore, I believe the relief sought in the Lienholders' Motion is in the best interests of the Debtor.

F. Debtor's First Day Motion For an Order Establishing Bar Date For Filing Proofs Of Claim, Including 503(b)(9) Claims and Approving Form and Manner of Notice Thereof ("Bar Date Motion")

83. The Restructuring Agreement contemplates a very expedited bankruptcy process. I believe that this is in the interest of the Debtor because it will minimize the disruption to the Debtor's business, its employees, its vendors and customers, and will reduce the costs associated with a bankruptcy case. In order to comply with the terms of the Restructuring Agreement, the Debtor seeks the entry of an order setting the Bar Date for non-

governmental claims, including claims pursuant to Section 503(b)(9) of the Bankruptcy Code, as November 4, 2013.

84. The Bar Date Motion also seeks to set the governmental bar date as March 31, 2014, 180 days after the Petition Date. I am advised by counsel that this comports with Section 502(b)(9) of the Bankruptcy Code.

85. I have been advised that these expedited bar dates comply with all applicable rules and requirements of the Bankruptcy Code. They will also allow the Debtor to move quickly to fulfill the terms of the Restructuring Agreement and will hasten its exit from bankruptcy, to the benefit of all stakeholders. Thus, I believe the relief sought in the Bar Date Motion is in the best interest of the Debtor.

G. Debtor's Motion For An Order (I) Approving Disclosure Statement; (II) Approving Form And Manner of Notice of Confirmation Hearing; (III) Establishing Procedures For Filing Objections To Confirmation of Debtor's Plan; (IV) Approving Balloting Agents; (V) Approving Solicitation Package And Related Procedures; (VI) Setting Voting Record Date; (VII) Approving Forms of Ballots; (VIII) Establishing Voting Deadline; (IX) Approving Procedures For Vote Tabulation; (X) Establishing Deadline And Procedures For Temporary Allowance Of Claims; And (XI) Approving Certain Other Related Matters ("The Disclosure Statement and Solicitation Motion")

86. The Debtor has filed the Plan and Disclosure Statement contemporaneously with the petition and the First Day Motions pursuant to the requirements of the Restructuring Agreement.

87. The Restructuring Agreement requires the Court enter an order approving the Disclosure Statement no later than November 6, 2013. It further requires that the Plan be confirmed by December 26, 2013. As such, the Debtor seeks a hearing regarding the Disclosure Statement and the Solicitation Procedures on or before November 6, 2013.

88. While the Debtor is pursuing an expedited timeline to complete this case, I have been advised that all of the dates and procedures set forth in the Disclosure Statement and Solicitation Motion comply with all applicable rules and requirements of the Bankruptcy Code.

89. As with the Bar Date Motion, the Debtor is seeking these approvals to fulfill the terms of the Restructuring Agreement and limit the time spent in bankruptcy and the costs associated therewith. As such, I believe the relief sought in the Disclosure Statement and Solicitation Motion is in the best interest of the Debtor.

H. Debtor's First Day Motion For Entry of an Order Pursuant To 11 U.S.C. 105(a) and 363(c) Authorizing The Debtor To Honor Prepetition Obligations To Customers and Otherwise Continue Customer Programs In The Ordinary Course of Business ("Customer Programs Motion")

90. In the Ordinary course of the Debtor's business, the Debtor offers incentive programs to certain of its customers (the "Customer Programs"). The Customer Programs are designed to encourage the Debtor's customers to purchase more supply from the Debtor, rather than its competitors, and to reward the loyalty of customers who do so.

91. A large portion of the Debtor's business involves the sale of a commodity, honey, which is available from multiple sources. In fact, many of the Debtor's customers purchase their supply from more than vendor in order to ensure they always have a ready stock of honey for use in their own businesses. The Customer Programs are designed to encourage the Debtor's customers to purchase a larger percentage of their supply from the Debtor.

92. The Customer Programs consist of various marketing initiatives with the Debtor's customers, including but not limited to rebates, allowances and volume discounts based on pre-negotiated terms. These terms are ordinary course commercial terms for customers in the food service, industrial food and retail industries. The rebate offered to certain of the Debtor's customers is based on pounds of product sold by the Debtor relative to

final selling prices paid by the customer. Allowances and discounts are based on net sales prices to the customer and are commonly included in the industry for a customer to recover marketing expenses or recognize purchasing power discounts. Historically, the Debtor estimates that the Customer Programs in total account for roughly 15% of its gross sales.

93. As of the Petition Date, the Debtor has allocated and accrued approximately \$170,000 to satisfy its obligations under the Customer Programs. However, these amounts are satisfied through credits to the customer rather than through direct cash payments. All of the Debtor's financial projections have accounted for the Customer Programs.

94. If the Debtor is not authorized to continue the Customer Programs, it risks the goodwill of its customers, most of whom can easily replace the goods supplied by Debtor. As such, I believe the relatively low cost of the Customer Programs is justified by the additional sales they allow, and the relief sought in the Customer Programs Motion is in the best interest of the Debtor.

I. Debtor's First Day Motion Pursuant To Sections 105(a), 363(b), 503(b)(1) and 503(b)(9) Of The Bankruptcy Code, For An Order (I) Authorizing But Not Obligating The Debtor To Pay 503(b)(9) Claims On An Immediate Basis and (II) Confirming Administrative Expense Priority For Goods Delivered Post-Petition (the "503(b)(9) and Administrative Expense Confirmation Motion")

95. As explained herein, The Debtor has experienced significant liquidity issues in the months leading up to this bankruptcy case. As a result, it has not been able to pay its vendors in a timely manner. The Debtor is concerned that this bankruptcy filing will further erode the vendors' confidence in the Debtor's ability to pay them, and they will choose to ship to other customers. This is particularly true of the raw honey the Debtor needs to support the majority of its operations. Honey is a fungible commodity and the Debtor competes with many other purchasers on the open market. The Debtor is particularly concerned that vendors may,

upon learning of this bankruptcy filing, direct their common carriers to halt delivery to the Debtor. If the Debtor is unable to secure the necessary honey and other raw materials to continue its operations, it will be unable to meet its customer obligations and its ability to reorganize will be threatened.

96. By the 503(b)(9) and Administrative Expense Confirmation Motion, the Debtor seeks to alleviate the concerns its vendors are likely to have once they are notified of this case. The Debtor seeks authority, but not the obligation, to pay the 503(b)(9) claims before confirmation. In exchange for the payment of the 503(b)(9) claims, the Debtor may impose trade terms on certain vendors in order to ensure a stable flow of raw materials during this case.

97. I am advised that the 503(b)(9) claims must be paid in full on the Effective Date of the Plan, which is likely to be about 105 days after the Petition Date. As such, the Debtor is only seeking to change the timing of these required payments. Doing so will provide the Debtor with a continued supply of raw materials during the case and will not be detrimental to any other parties in the case.

98. The 503(b)(9) and Administrative Expense Confirmation Motion also seeks confirmation from the Court that any goods delivered to it after the Petition Date will be considered administrative expenses. The Debtor believes that an order including such confirmation will help ensure that vendors who have goods in transit to the Debtor will not halt those shipments when they learn that the Debtor filed this bankruptcy case. This will also keep the Debtor's operation running and allow it to continue to fulfill its customer obligations. Therefore, I believe that the relief sought in the 503(b)(9) and Administrative Expense Confirmation Motion is in the best interests of the Debtor.

J. Debtor's First Day Application To Employ Foley & Lardner LLP As General Bankruptcy Counsel Pursuant To 11 U.S.C. §§ 327(A), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1, Or In The Alternative, Special Counsel Pursuant To 11 U.S.C. §§ 327(E), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1 ("The Foley Retention Application")

99. The Debtor has filed the Foley Retention Application with its First Day Pleadings. Foley & Lardner LLP ("Foley") has represented the Debtor for six years in all aspects of the Debtor's business. Foley conducted an extensive investigation of the issues raised by the DOJ related to the transshipping of honey. Foley also negotiated the DPA on behalf of the Debtor. Foley represents the Debtor with respect to the Putative Class Action and has been attempting to settle that matter efficiently and expeditiously. Most recently, Foley has been deeply involved in the Debtor's restructuring efforts, including most significantly, the negotiation of the Restructuring Agreement.

100. The Debtor believes that Foley is the best-suited law firm to represent it as general bankruptcy counsel, due to its significant involvement with the Debtor and its institutional knowledge of the Debtor's business. Furthermore, given the extremely tight deadlines in the Restructuring Agreement, the Debtor does not believe it could bring another law firm up to speed quickly enough to complete the bankruptcy process in the time allotted.

101. However, the Debtor understands that as a result of Foley's prior involvement with it, there may be certain requirements of the Bankruptcy Code that could prevent it from being approved as the Debtor's general bankruptcy counsel. Therefore, the Debtor requires certainty as to whether Foley will be able to represent it in the case as quickly as possible, and accordingly is seeking expedited consideration of the Foley Retention Application.

102. In the event Foley cannot be retained as general bankruptcy counsel, the Debtor seeks to retain it as special counsel in order to leverage its knowledge of the Debtor's business

operations and history. The Debtor hopes to retain some of the efficiencies that Foley can provide, though it does not believe such retention will be as beneficial to the estate as if it can retain Foley as general bankruptcy counsel.

103. Based on the Debtor's need to confirm its ability to retain Foley, or if necessary, secure another law firm to represent it in the case, I believe that the Foley Retention Application and the Court's expedited consideration of it would be in the best interests of the Debtor.

K. Debtor's First Day Motion for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002 Authorizing Engagement of Kurtzman Carson Consultants LLC as Claims, Noticing and Balloting Agent *Nunc Pro Tunc* to the Petition Date (the "KCC Motion").

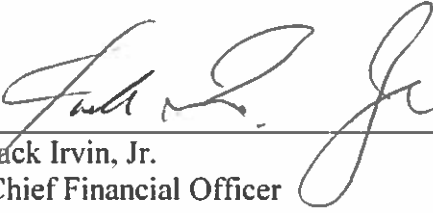
104. The Debtor has also filed the KCC Motion to be heard on an expedited basis. KCC's services are critical to the Debtor in the initial days of the case because of the volume of notices which must be sent in accordance with the timeline in the RSAs.

105. The Debtor has over 1000 creditors and would not be able to efficiently process and serve all of the required notices in this case. Furthermore, the Court's resources would likely be strained by the volume of claims processing and the balloting process required for the Debtor's case. Therefore, engaging KCC is the most reasonable and cost-effective solution to address the needs of the Debtor in this case.

106. Based on the Debtor's need to meet the timeline in the RSAs, and the impact on the Court with respect to the volume of notices, claims, and ballots which will be required in this case, I believe that the engagement of KCC is in the best interest of the Debtor.

[SIGNATURE PAGE FOLLOWS]

I SWEAR UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Jack Irvin, Jr.
Chief Financial Officer
Groeb Farms, Inc.

Dated: October 1, 2013

EXHIBIT A

Honey Financing RSA

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (together with all exhibits and attachments hereto, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this “Agreement”) is made and entered into as of September 30, 2013, by and between: (i) Groeb Farms, Inc., a Michigan corporation (the “Company” or the “Debtor”); (ii) Honey Financing Company, LLC (the “Senior Lender Affiliate”); and (iii) HC Capital Holdings 0909A, LLC (the “Senior Lender”). The Company, the Senior Lender Affiliate, and the Senior Lender are referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Plan (as defined below).

RECITALS

WHEREAS, as of the date hereof the Senior Lender is the lender under that certain Credit and Security Agreement with the Company, dated as of January 20, 2012 (as amended by the: (i) First Amendment to Credit Agreement and Waiver of Default, dated as of October 2, 2012; (ii) Second Amendment to Credit Agreement and Waiver of Default, dated as of March 12, 2013; (iii) Third Amendment to Credit and Security Agreement, dated as of April 25, 2013; (iv) Forbearance Agreement and Fourth Amendment to Credit and Security Agreement, dated as of August 15, 2013; (v) Forbearance Agreement and Fifth Amendment to Credit and Security Agreement, dated as of September 9, 2013; and (vi) Waiver Agreement and Sixth Amendment to Credit and Security Agreement, dated as of September 26, 2013, the “Senior Credit Agreement”);

WHEREAS, the Company has agreed to restructuring and recapitalization transactions (collectively, the “Restructuring Transactions”) with the Senior Lender Affiliate, the Senior Lender, the Court-appointed Interim Class Counsel (the “Interim CA Counsel”) on behalf of the named plaintiffs and the other members of the proposed class (the “Class Action Claimants”) in the consolidated class action lawsuits pending against the Company in the United States District Court for the Northern District of Illinois, captioned *In re Honey Transshipment Litigation*, Case No. 13 C 2905 (N.D. Ill.) (JBG) (the “Pending Class Action”), and holders of the 12% Senior Subordinated Debenture Notes due March 2017 (the “Senior Subordinated Noteholders”), the terms and conditions of which shall be materially consistent with those set forth in the *Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”), a copy of which is attached hereto as **Exhibit A**, and this Agreement;

WHEREAS, the Company has agreed to commence a voluntary, pre-arranged reorganization case (the “Chapter 11 Case”) 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 Michigan (the “Bankruptcy Court”) to effectuate the Restructuring Transactions;

WHEREAS, the Parties acknowledge that the Restructuring Transactions, including this Agreement and the Plan, are the product of arm’s-length, good faith negotiations between the Parties; and

WHEREAS, each Party desires to express to each other Party its support and commitment in respect of the Restructuring Transactions.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. Plan. The Plan is expressly incorporated herein and is made part of this Agreement; however, the Plan is supplemented by the terms and conditions of this Agreement. In the event of any inconsistency between the Plan and this Agreement, the Plan shall control.

Section 2. Commitments Regarding the Restructuring Transactions.

2.01. Commitments of the Company. As long as this Agreement has not been terminated pursuant to Section 4 hereof, the Company shall do all things necessary and appropriate in furtherance of the Restructuring Transactions and the Plan, including, without limitation:

(a) commencing the Chapter 11 Case on or before October 1, 2013 (the “Outside Petition Date,” and the actual commencement date, the “Petition Date”);

(b) sharing with the Senior Lender Affiliate, the Senior Lender, and its counsel the final forms of the “first day” pleadings and any other documents and pleadings intended to be filed by the Company in the Chapter 11 Case at least two (2) business days prior to the intended filing date, with such pleading(s) being in a form acceptable to the Senior Lender Affiliate prior to filing;

(c) filing on the Petition Date, the Plan and related disclosure statement (the “Disclosure Statement”), other solicitation materials in respect of the Plan (the “Solicitation Materials”), and a motion to approve the Disclosure Statement and the Solicitation Materials that seeks to hold a hearing to approve the Disclosure Statement and the Solicitation Materials no later than thirty-six (36) calendar days after the Petition Date (the “Agreed Disclosure Statement Hearing Date”);

(d) not seeking an extension of the Agreed Disclosure Statement Hearing Date, without the express written consent (including via email) of the Senior Lender Affiliate;

(e) supporting and taking all steps necessary and appropriate to implement the proposed settlement with Interim CA Counsel (the “Class Action Settlement”) pursuant to which, subject to necessary court and insurer approval, the Company shall make \$1.75 million of applicable insurance proceeds (the “Settlement Amount”) available upon emergence from chapter 11 to the Class Action Claimants on a pro rata basis in accordance with the Plan;

(f) obtaining the entry of an interim order from the Bankruptcy Court approving the DIP Financing not later than two (2) business days following the Petition Date and a final order from the Bankruptcy Court approving the DIP Financing not later than thirty-six (36) days after the Petition Date;

(g) filing a motion to approve the proposed exit fees set forth in the “Exit Facility Term Sheet” attached as **Exhibit B** hereto (the “Exit Facility Fees”), by such time that the motion may be heard at the hearing to approve the Disclosure Statement;

(h) causing the entry of an order from the Bankruptcy Court approving the Exit Facility Fees no later than three (3) business days following entry of the order approving the Disclosure Statement;

(i) commencing solicitation of votes to accept or reject the Plan no later than seven (7) calendar days after entry of the Bankruptcy Court’s order approving the Disclosure Statement and the Solicitation Materials;

(j) obtaining an order of the Bankruptcy Court, in form and substance acceptable to the Senior Lender Affiliate, confirming the Plan no later than eighty-eight (88) calendar days after the Petition Date;

(k) causing the effective date under the Plan to occur not later than fourteen (14) calendar days after the entry of an order confirming the Plan;

(l) otherwise using best efforts to prosecute the Restructuring Transactions in good faith and consistent with the terms of this Agreement;

(m) obtaining any and all required regulatory or third-party approvals (or both) for the Restructuring Transactions and the Plan, other than with respect to the Class Action Settlement; and

(n) not taking any action that is inconsistent with, or is intended or is likely to interfere with, the consummation and implementation of the Restructuring Transactions and the Plan, including, without limitation: (i) delaying, impeding, or taking any other action to interfere with acceptance or implementation of the Plan; (ii) proposing, filing, or supporting any restructuring, workout, plan of arrangement, or plan of reorganization for the Company other than the Plan; or (iii) directly or indirectly causing any entity take any action contemplated in clauses (i) and (ii) of this Section 2.01(n).

2.02. Commitments of the Senior Lender Affiliate and Senior Lender. As long as this Agreement has not been terminated pursuant to Section 4 hereof, the Senior Lender Affiliate and the Senior Lender commit to:

(a) do all things necessary and appropriate in furtherance of the Restructuring Transactions and the Plan, including, without limitation and as applicable, voting to accept the Plan by delivering a duly executed and completed ballot (or ballots) accepting the Plan on a timely basis, and not changing or withdrawing such vote;

(b) provide: (i) debtor-in-possession financing (the “DIP Financing”), the terms of which shall be consistent with the terms set forth in the “Commitment Letter,” a copy of which is attached hereto as **Exhibit C**; and (ii) the full amount of the exit facility on terms and conditions to be set forth in definitive documentation governing such facility and reflecting the terms set forth in the Exit Facility Term Sheet; and

- (c) support the Debtor in seeking entry of an order approving the Exit Facility Fees.

Section 3. *Representations and Warranties.*

3.01. Mutual Representations, Warranties, and Covenants. Each Party, severally and not jointly, represents, warrants, and covenants to each other Party, as of the date hereof, as follows (each of which is a continuing representation, warranty, and covenant):

(a) *Enforceability.* It is validly existing and in good standing under the laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable laws relating to or limiting creditor's rights generally or by equitable principles relating to enforceability.

(b) *No Consent or Approval.* Except as expressly provided in this Agreement, no consent or approval is required by any other person or entity in order for it to carry out and perform its respective obligations under the Restructuring Transactions, other than with respect to the Class Action Settlement.

(c) *Power and Authority.* Except as expressly provided in this Agreement or the Bankruptcy Code, it has all requisite power and authority to enter into this Agreement and to carry out and perform its respective obligations under the Restructuring Transactions, other than with respect to the Class Action Settlement..

(d) *Authorization.* The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action on its part.

(e) *Governmental Consents.* The execution, delivery, and performance by it of this Agreement does not and shall not require any registration or filing with consent or approval of, or notice to, or other action to, with or by, any federal, state, or other governmental authority or regulatory body, other than with respect to the Class Action Settlement.

(f) *No Conflicts.* The execution, delivery, and performance of this Agreement does not and shall not: (i) violate any provision of law, rules, or regulations applicable to it or any of its subsidiaries; (ii) violate its certificate of incorporation, bylaws, or other organizational documents or those of any of its subsidiaries; or (iii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party.

Section 4. *Termination Events.*

4.01. Senior Lender Affiliate and Senior Lender Termination Events.

(a) The Senior Lender and the Senior Lender Affiliate may terminate this Agreement upon the occurrence of any of the following events (each, a "Senior Lender Termination Event"):

(i) the failure to obtain any order of the Bankruptcy Court, or the occurrence of any event, under Section 2.01 hereof;

(ii) the breach by the Company of any of its obligations, representations, warranties, or covenants set forth in this Agreement;

(iii) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any injunction, judgment, decree, charge, ruling, or order preventing consummation of the Restructuring Transactions (collectively, a “Governmental Stay”);

(iv) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; the dismissal, termination, stay, or modification of the Chapter 11 Case; or, with respect to any of the foregoing, the Debtor’s application for, consent to, acquiescence in, or failure to oppose any such relief;

(v) the loss of plan exclusivity by the Company under section 1121 of the Bankruptcy Code;

(vi) the appointment of an interim or permanent trustee, receiver, or examiner with expanded powers to operate or manage the financial affairs, business, or reorganization of the Debtor in the Chapter 11 Case;

(vii) the material amendment or modification of, or filing of a pleading by the Company seeking to materially amend or modify the Plan, the Disclosure Statement, the Solicitation Materials, or any related documents in a manner not acceptable to the Senior Lender Affiliate;

(viii) the Debtor files any motion or pleading with the Bankruptcy Court seeking approval to use cash collateral (as defined in the Bankruptcy Code) other than on terms and conditions acceptable to the Senior Lender Affiliate;

(ix) the Debtor files any motion or pleading with the Bankruptcy Court or takes any other action that is not consistent in any material respect with this Agreement, the Plan, or any documents related to the foregoing; or

(x) a Senior Lender Termination Event (as defined in an Alternative RSA (as defined herein)) is triggered under a similar restructuring support agreement (an “Alternative RSA”) executed with Interim CA Counsel or a Senior Subordinated Noteholder.

4.02. Company Termination Events. The Company may terminate this Agreement upon five (5) business days’ prior written notice, delivered in accordance with Section 5.12 hereof, upon the breach by the Senior Lender Affiliate or the Senior Lender of any of the obligations of the Senior Lender Affiliate or the Senior Lender Affiliate set forth in this Agreement that would have a materially adverse effect on the Company or consummation of the Restructuring Transactions, that remains uncured for a period of five (5) business days after the receipt by the Senior Lender Affiliate and the Senior Lender of notice of such breach.

4.03. Mutual Termination. This Agreement and, subject to Section 4.04 hereof, the obligations of each Party hereunder, may be terminated by mutual agreement among each of the Parties.

4.04. Effect of Termination.

(a) Upon termination of this Agreement pursuant to Sections 4.01, 4.02, or 4.03, this Agreement shall be of no further force and effect and each Party hereto shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement; *provided, however*, that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder prior to the date of termination.

(b) Notwithstanding the foregoing, the Company agrees that its obligations pursuant to Section 5.17, and the provisions of Sections 5.03, 5.07, 5.09, 5.11, 5.14, and 5.15 shall survive any termination of this Agreement and shall at all times continue to be enforceable against the Company and, as applicable, the other Parties.

4.05. Termination Upon Effective Date of Plan. This Agreement shall terminate automatically without any further required action or notice on the date that the Plan becomes effective (immediately following the effectiveness of the Plan).

Section 5. *Miscellaneous.*

5.01. Collateral Protections. Notwithstanding anything to the contrary herein, nothing shall: (i) prohibit the Senior Lender or the Senior Lender Affiliate (or both) from taking any action relating to the maintenance, protection, and preservation of an interests in the Collateral (as defined in the Senior Credit Agreement); (ii) prohibit the Senior Lender or the Senior Lender Affiliate (or both) from objecting to any motion or pleading filed with the Bankruptcy Court seeking approval to use cash collateral (as defined in the Bankruptcy Code) or to obtain debtor-in-possession financing, in each case on proposed terms unacceptable to the Senior Lender or the Senior Lender Affiliate (or both); (iii) limit the Senior Lender's rights under the Senior Credit Agreement and related documents or applicable law to appear and participate as a party in interest in any matter to be adjudicated in the Chapter 11 Case; or (iv) limit the ability of the Senior Lender Affiliate to consult with the Company or any other Party.

5.02. Further Assurances. Subject to the other terms of this Agreement, each Party hereby covenants and agrees to cooperate with each other Party in good faith in connection with, and shall exercise commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the Plan and the Restructuring Transactions, as well as the negotiation, drafting, execution, and delivery of the definitive documentation relating thereto. Furthermore, subject to the terms hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, including making and filing any required regulatory filings (provided, however, that neither the Senior Lender Affiliate nor the Senior Lender shall be required to incur any material cost, expense, or liability in connection therewith), and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement.

5.03. Confidentiality; Disclosure. No Party shall, without the prior written consent of the other Parties hereto, make any public announcement or otherwise communicate with any media with respect to this Agreement, the Alternative RSAs, the Restructuring Transactions, or the Plan, other than as may be required by applicable law and regulation or by any governmental or regulatory authority. The terms of this Agreement may be disclosed by any Party to the Bankruptcy Court. No Party shall use the name of the other Parties in any press release without such other Party's prior written consent.

5.04. Complete Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, between the Parties with respect thereto. No claim of waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be made against any Party, except on the basis of a written instrument executed by or on behalf of such Party.

5.05. Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties. No rights or obligations of any Party under this Agreement may be assigned or transferred to any other person or entity absent the written consent of the other Parties hereto.

5.06. Headings. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provision hereof.

5.07. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM; WAIVER OF TRIAL BY JURY. THIS AGREEMENT IS TO BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in either the United States District Court for the Eastern District of Michigan or any Michigan State court sitting in Detroit (the "Chosen Courts"), and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts; (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts; and (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto; *provided, however*, that when the Company commences the Chapter 11 Case, then the Bankruptcy Court shall be the sole Chosen Court. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.08. Execution of Agreement. This Agreement may be executed and delivered (by facsimile, electronic mail, or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

5.09. Interpretation. This Agreement is the product of negotiations among the Parties, and in the enforcement or interpretation hereof is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

5.10. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, administrators, and representatives, other than a trustee or similar representative appointed in a bankruptcy case.

5.11. Relationship Among Parties. It is understood and agreed that neither the Senior Lender Affiliate nor the Senior Lender has a fiduciary duty or other duty of trust or confidence in any form with the Company. No prior history, pattern, or practice of sharing confidences among or between the Parties shall in any way affect or negate this understanding and agreement.

5.12. Notices. All notices hereunder shall be deemed given if in writing and delivered, if sent by telecopy, electronic mail, courier or registered or certified mail (return receipt requested) to the following addresses and telecopier numbers (or at such other addresses or telecopier numbers as shall be specified by like notice):

(a) if to the Company, to:

Groeb Farms, Inc.
8 10464 Bryan Highway
Onsted, MI 49265
Attn: Jack M. Irvin, Jr.
Facsimile No.: (517) 467-2840
Email address: (517) 467-8002

with copies (which shall not constitute notice) to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, MI 48226
Attention: Judy A. O'Neill, Esq.
Facsimile: (313) 234-2800
Email addresses: joneill@foley.com

(b) if to the Senior Lender Affiliate or the Senior Lender, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Ray C. Schrock, P.C.
Facsimile: (212) 446-4900
Email address: rschrock@kirkland.com

and

Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
Attn: Jeffrey D. Pawlitz, Esq.
Facsimile: (312) 862-2200
Email address: jpawlitz@kirkland.com

Any notice given by delivery, mail, or courier shall be effective when received. Any notice given by telecopier shall be effective upon oral or machine confirmation of transmission.

5.13. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason (other than Section 4.05 hereof), each Party fully reserves any and all of its rights and remedies.

5.14. Specific Performance. It is understood and agreed by each Party that money damages would be an insufficient remedy for any breach of this Agreement by the Parties and the non-breaching Parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring the breaching Party to comply promptly with any of its obligations hereunder.

5.15. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

5.16. No Third-Party Beneficiaries. This Agreement shall be solely for the benefit of the Parties, and no other person or entity shall be a third-party beneficiary hereof.

5.17. Expense Reimbursement. Regardless of whether the Restructuring Transactions are consummated, the Company shall promptly pay in cash upon demand any and all reasonable and documented accrued and unpaid out-of-pocket expenses incurred by the Senior Lender Affiliate and the Senior Lender (including, without limitation, all reasonable and documented fees and out-of-pocket expenses of the legal counsel to the Senior Lender Affiliate and the Senior Lender, Kirkland & Ellis LLP and Pepper Hamilton LLP), in connection with the

negotiation, documentation, and consummation of this Agreement, the Plan, the Solicitation Materials, and all other documents related to the Plan and the Restructuring Transactions.

5.18. Reservation. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each Party to protect and preserve its rights, remedies, and interests, including, without limitation, its claims against any of the other Parties (or their respective affiliates or subsidiaries).

5.19. Representation by Counsel; Adequate Information.

(a) Each Party acknowledges that it is a sophisticated party and has been represented by competent counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against any other Party based upon lack of legal counsel shall have no application and is expressly waived.

(b) The Senior Lender Affiliate and the Senior Lender acknowledge, agree, and represent to the Company that they have such knowledge and experience in financial and business matters that the Senior Lender Affiliate and the Senior Lender are capable of evaluating the merits and risks of the securities to be acquired by it pursuant to the Restructuring Transactions and understand and are able to bear any economic risks with such investment.

5.20. No Solicitation. This Agreement is not and shall not be deemed to be a solicitation for votes in favor of the Plan. The acceptance of the Parties (as applicable) with respect to the Plan will not be solicited until such Party has received the Solicitation Materials and related ballots.

5.21. Amendments. This Agreement may not be modified, amended, or supplemented except in writing signed by the Parties.

5.22. Fiduciary Duties. Notwithstanding anything to the contrary herein, nothing in this Agreement shall require the directors or officers of the Company, in such person's capacity as a director or officer, to take any action or refrain from taking any action that such person determines in good faith, after consultation with counsel, is inconsistent with such person's fiduciary obligations under applicable law; *provided, however*, that the exercise of such duties by an officer or director of the Company shall not abrogate the Senior Lender's or the Senior Lender Affiliate's rights and remedies pursuant to this Agreement.

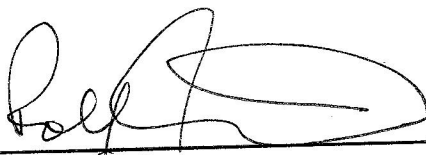
IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

[signature pages follow]

Signature Page to the Restructuring Support Agreement

GROEB FARMS, INC.

By:
Name:
Title:



ROLF RICHTER
PRESIDENT AND CEO

Signature Page to the Restructuring Support Agreement

HONEY FINANCING COMPANY, LLC

By:

Name:

Title:



ROBERT STRAUSS

MANAGING DIRECTOR

HC CAPITAL HOLDINGS 0909A, LLC

By:

Name:

Title:



ROBERT STRAUSS

MANAGING DIRECTOR

EXHIBIT A

PLAN

In re:)	Chapter 11
GROEB FARMS, INC.)	Case No. 13-(_____)
Debtor.)	Tax I.D. No. 38-2778390

Judy A. O'Neill (P32142)
John A. Simon (P61866)
Tamar N. Dolcourt (P73425)
FOLEY & LARDNER, LLP
One Detroit Center
500 Woodward Avenue, Suite 2700
Detroit, MI, 48226-3489
Telephone: (313) 234-7100
Facsimile: (313) 234-2800
*Proposed Counsel for the Debtor and
Debtor in Possession*

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INTRODUCTION

Groeb Farms, Inc. (the “Debtor”) proposes this plan of reorganization (together with the documents comprising the Plan Supplement, the “Plan”) for the resolution of outstanding Claims against, and Interests in, the Debtor. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtor’s history, business, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of the Plan. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

As used in this Plan, capitalized terms have the meanings set forth below.

1. “*Accrued Professional Compensation*” means, at any given time, all accrued, contingent, and/or unpaid fees and expenses (including success fees) for legal, financial advisory, accounting, and other services and reimbursement of expenses that are: (a) awardable and allowable under sections 328, 330, or 331 of the Bankruptcy Code or otherwise rendered allowable before the Effective Date by any retained estate Professional in the Chapter 11 Case, (b) owing to Kirkland & Ellis or Pepper Hamilton, or (c) awardable and allowable under section 503 of the Bankruptcy Code, that the Court has not otherwise denied by Final Order; all to the extent that any such fees and expenses have not been previously paid (regardless of whether a fee application has been filed for any such amount) and after applying any retainer that has been provided to such Professional. To the extent that the Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then those reduced or denied amounts shall no longer constitute Accrued Professional Compensation. For the avoidance of doubt, Accrued Professional Compensation includes unbilled fees and expenses incurred on account of services provided by Professionals that have not yet been submitted for payment, except to the extent that such fees and expenses are either denied or reduced by a Final Order by the Court or any higher court of competent jurisdiction.

2. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Debtor’s Estates pursuant to sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtor, (b) Allowed Fee Claims; (c) amounts owing pursuant to the DIP Order, and (e) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

3. “*Administrative Claims Bar Date*” means the first Business Day that is 45 days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

4. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

5. “*Allowed*” means with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim or Proof of Interest, as applicable, Filed by the applicable Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Court a Proof of Claim is or shall not be required to be Filed), (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim or Proof of Interest, as applicable, has been timely Filed, or (c) a Claim or Interest Allowed pursuant to the Plan or a Final Order of the Court; *provided, however*, that with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest, as applicable, shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Court, or such an objection is so interposed by the Debtor or the General Unsecured Claims Litigation Trustee, as applicable, and the Claim or Interest, as applicable, shall have been Allowed for voting purposes only by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

6. “*Approved*” means, with respect to the Class Action Settlement, that the Insurer has agreed to pay the Class Action Settlement Amount and the Bankruptcy Court and a United States District Court has approved the Class Action Settlement on a final basis.

7. “*Available Insurance Proceeds*” means any applicable insurance proceeds to which the Debtor is entitled under its past and present insurance policies.

8. “*Avoidance Actions*” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtor arising under chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code.

9. “*Bankruptcy Code*” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Case.

10. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Court.

11. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

12. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

13. “*Causes of Action*” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, and usury; and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any state or foreign law fraudulent transfer or similar claim; (f) any cause of action listed on the list of retained causes of action set forth in the Plan Supplement; (g) all Transshipping Claims; and (h) any cause of action described on the Debtor’s Schedules or Statement of Financial Affairs. .

14. “*Chapter 11 Case*” means the case pending for the Debtor under chapter 11 of the Bankruptcy Code in the Court.

15. “*Claim*” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.
16. “*Claims Bar Date*” means: (a) with respect to Governmental Units holding Claims that arose prior to the Petition Date, March 30, 2014, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, and (b) with respect to all General Unsecured Claims arising prior to the Petition Date, as well as Claims arising under section 503(b)(9) of the Bankruptcy Code, November 4, 2013, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, in each case as set forth in further detail in the Claims Bar Date Order.
17. “*Claims Bar Date Order*” means the an order granting the relief set forth in the *Debtor’s First Day Motion for an Order Establishing Bar Date for Filing Proofs of Claim, Including 503(b)(9) Claims and Approving the Form and Manner of Notice Thereof*.
18. “*Claims Objection Deadline*” means the deadline for objecting to a Claim, which shall be on the date that is the later of: (a) 180 days after the Effective Date, and (b) such other period of limitation as may be specifically fixed by the Debtor or the Reorganized Debtor, as applicable, or by an order of the Court for objecting to such Claims.
19. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.
20. “*Class*” means a category of holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.
21. “*Class Action*” means the prepetition uncertified class action lawsuits pending against the Debtor, captioned *Adee Honey Farms et al. v. Groeb Farms, Inc. et al.*, Case No. 13-cv-02922 (JBG), and *Moore’s Honey Farm, et al. v. Groeb Farms, Inc.*, et al., Case No. 1:13-cv-02905, which have been consolidated in the United States District Court for the Northern District of Illinois, and which shall constitute Other General Unsecured Claims unless and until the Class Action Settlement is Approved.
22. “*Class Action Claim*” means a Claim arising on account of the Class Action.
23. “*Class Action Settlement*” means a settlement pursuant to which holders of Class Action Claims shall be entitled to receive the Class Action Settlement Amount, provided that the settlement has been Approved.
24. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code, if any.
25. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.
26. “*Confirmation Date*” means the date upon which the Court enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules 5003 and 9021.
27. “*Confirmation Hearing*” means the hearing held by the Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.
28. “*Confirmation Order*” means a Final Order of the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which order shall be in form and substance acceptable to the Senior Lender Affiliate.
29. “*Consummation*” means the occurrence of the Effective Date.
30. “*Convenience Class Distribution*” means a distribution in Cash to satisfy in full the Unsecured Convenience Class Claims; *provided* that such distribution shall not exceed \$250,000.

31. “*Court*” means the United States Bankruptcy Court for the Eastern District of Michigan having jurisdiction over the Chapter 11 Case, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Eastern District of Michigan.

32. “*Cure Claim*” means a monetary Claim based upon the Debtor’s defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtor pursuant to section 365 of the Bankruptcy Code.

33. “*Cure Notice*” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include: (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith, and (c) procedures for resolution by the Court of any related disputes.

34. “*Debtor*” has the meaning set forth in the Introduction.

35. “*Deferred Prosecution Agreement*” means that certain agreement by and between the United States Attorney’s Office for the Northern District of Illinois and Groeb Farms, dated as of February 11, 2013, including all attachments thereto.

36. “*DIP Agreement*” means that certain senior secured debtor-in-possession financing agreement, dated as of October [REDACTED], 2013, by and among the Debtor and the DIP Lenders, as amended, supplemented, or otherwise modified from time to time.

37. “*DIP Facility*” means the DIP Agreement, together with related loan, security, collateral, and other documents.

38. “*DIP Facility Claims*” means those claims arising under the DIP Agreement, including any accrued but unpaid interest and fees due and owing under the DIP Agreement as of the Effective Date pursuant to the terms of the DIP Agreement, the DIP Order, and/or any related documents.

39. “*DIP Lender*” means the Senior Lender, or an affiliate thereof, including but not limited to the Senior Lender Affiliate, as well as any successors or assigns, as permitted under the DIP Facility.

40. “*DIP Order*” means the Final Order entered by the Court approving the DIP Facility and authorizing and directing the Debtor to enter into the DIP Facility.

41. “*Disallowed*” means, with respect to any Claim or Interest, a Claim or Interest or any portion thereof that: (a) has been disallowed by a Final Order, (b) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (c) is not Scheduled and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof, or (e) has been withdrawn by the holder thereof.

42. “*Disclosure Statement*” means the *Disclosure Statement for the Plan of Reorganization of Groeb Farms, Inc. Pursuant to Chapter 11 of the Bankruptcy Code*, filed on the Petition Date, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

43. “*Disputed*” means a Claim or Interest that is not yet Allowed.

44. “*Disputed Claim Amount*” means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim, (ii) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, or (iii) if a request for estimation is Filed by any party, the amount at which such Disputed Claim is estimated by the Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, (ii) the amount estimated by the Court with respect to such Disputed Claim, (iii) the amount estimated in good faith by the Debtor or Reorganized Debtor, as applicable, with respect to the Disputed Claim; or (c) zero, if the Disputed Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was Filed, or deemed to have been Filed, by the applicable Claims Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Court.

45. “*Effective Date*” means, with respect to the Plan, the date that is a Business Day selected by the Debtor and the Senior Lender Affiliate on which: (a) no stay of the Confirmation Order is in effect, (b) all conditions precedent specified in Article X.B have been satisfied or waived (in accordance with Article X.C), and (c) the Plan is declared effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

46. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

47. “*Estate*” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

48. “*Exculpated Claim*” means any Claim related to any act or omission derived from, based upon, related to, or arising from the Debtor’s in or out-of-court restructuring efforts, the Chapter 11 Case, the marketing process, formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including any term sheets related thereto), or any contract, instrument, release, or other agreement or document created or entered into in connection with the marketing process, the Disclosure Statement, the Plan, the filing of the Chapter 11 Case, the pursuit of Consummation, and the administration and implementation of the Chapter 11 Cases and the Plan, including (a) the Restructuring Support Agreement, (b) the issuance of the New Equity, (c) the execution, delivery, and performance of the Exit Facility Documents, and (d) the distribution of property under the Plan or any other agreement; *provided, however*, the foregoing shall not be deemed to release, affect, or limit any of the rights and obligations of the Exculpated Parties from, or exculpate the Exculpated Parties with respect to, any of the Exculpated Parties’ obligations or covenants arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

49. “*Exculpated Parties*” means each of the following in their capacity as such: (a) the Senior Lender, (b) the Senior Lender Affiliate, (c) the DIP Lender, (d) the Committee, (e) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date, (f) each holder of Class 5A Claims that executes a New Trade Agreement, subject to any reservations on Claims and/or Causes of Action to the extent set forth in the Plan or the Plan Supplement, (g) twith respect to the Debtor, the Reorganized Debtor, and each of the foregoing entities in clauses (a) through (g), such Person’s current equity holders, including shareholders, partnership interest holders, and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case, solely in their capacity as such);.

50. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

51. “*Existing Equity Interests*” means any equity interest in the Debtor in existence as of the Effective Date. For the avoidance of doubt, Existing Equity Interests do not include interest in New Equity.

52. “*Exit Facility*” means the new senior secured lending facility that the Reorganized Debtor will enter into on the Effective Date, the form of which shall be included in the Plan Supplement.

53. “*Exit Facility Documents*” means the documents evidencing the Exit Facility.

54. “*Exit Fees*” mean the fees payable under the Exit Facility Documents.

55. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Petition Date, compounded annually.

56. “*Fee Claim*” means a Claim for Accrued Professional Compensation; *provided, however*, that any Fee Claim for fees and expenses incurred by Kirkland & Ellis or Pepper Hamilton shall be Allowed without the Filing by such Professionals of any final request for payment.

57. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Case with the Court or, with respect to the filing of a Proof of Claim or Proof of Interest, the Notice and Claims Agent.

58. “*Final Order*” means an order or judgment of the Court (or any other court of competent jurisdiction) entered by the Clerk of the Court (or any other court) on the docket in the Chapter 11 Case (or the docket of such other court), which has not been reversed, stayed, modified, amended, or vacated, and as to which: (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or motion for new trial, stay, reargument, or rehearing shall be pending, or (b) if an appeal, writ of certiorari, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with rule 8002 of the Bankruptcy Rules; *provided, however*, that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order; *provided further*, that the Senior Lender Affiliate may agree in its sole discretion to waive the requirement that a particular order be a Final Order.

59. “*First Day Declaration*” means the *Declaration of Jack Irvin, Jr. in Support of Chapter 11 Petition and First Day Pleadings*.

60. “*General Unsecured Claim*” means any Claim against the Debtor that is not: (a) an Administrative Claim, (b) a Priority Tax Claim, (c) an Other Priority Claim, (d) an Other Secured Claim, (e) a Senior Loan Claim, (f) a Senior Subordinated Note Claim, (g) a DIP Facility Claim, or (h) a Section 510(b) Claim. General Unsecured Claims specifically include the Junior Subordinated Note Claims and the Seller Note Claims.

61. “*General Unsecured Claims Litigation Trust*” means the trust established for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the General Unsecured Claims Litigation Trust Agreement.

62. “*General Unsecured Claims Litigation Trust Agreement*” means the trust agreement that, among other things, establishes the General Unsecured Claims Litigation Trust, and describes the powers, duties, and responsibilities of the General Unsecured Claims Litigation Trustee, which trust agreement shall be substantially in the form included in the Plan Supplement, in form and substance reasonably acceptable to the Debtor and the Committee, and acceptable to the Senior Lender Affiliate.

63. “*General Unsecured Claims Litigation Trust Assets*” means the General Unsecured Claims Litigation Trust Payment, the General Unsecured Claims Litigation Trust Causes of Action, and all proceeds of the foregoing.

64. “*General Unsecured Claims Litigation Trust Beneficiaries*” means, collectively, the holders of General Unsecured Claims Litigation Trust Interests.

65. “*General Unsecured Claims Litigation Trust Causes of Action*” means any and all actual or potential Avoidance Actions and Causes of Action, exclusive of: (a) any of the foregoing that are released under the Plan; and (b) those Causes of Action (including Avoidance Actions) directly arising from or pertaining to contracts or relationships holders of Trade Claims.

66. “*General Unsecured Claims Litigation Trust Distributable Proceeds*” means all actual proceeds of the General Unsecured Claims Litigation Trust Causes of Action.

67. “*General Unsecured Claims Litigation Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Debtor or the Committee (or any designee thereof, including the General Unsecured Claims Litigation Trustee) on account of administration of the General Unsecured Claims Litigation Trust, including any reasonable administrative fees and expenses, reasonable attorney’s fees and expenses, reasonable insurance fees, taxes, and reasonable escrow expenses.

68. “*General Unsecured Claims Litigation Trust Interests*” means the non-transferable interests in the General Unsecured Claims Litigation Trust, distributions of which will be made to holders of certain Allowed General Unsecured Claims in accordance with Article III.C.5.

69. “*General Unsecured Claims Litigation Trust Payment*” means a one-time, non-refundable payment of \$50,000 in Cash to be provided by the Debtor or the Reorganized Debtor (through the Exit Facility) to the General Unsecured Claims Litigation Trust on the Effective Date, which payment shall be used either (i) to fund a distribution to holders of General Unsecured Claims Litigation Trust Interests, (ii) to provide funding in connection with the investigation and/or prosecution of the General Unsecured Claims Litigation Trust Causes of Action, and/or (iii) for such other purposes determined by the General Unsecured Claims Litigation Trustee in its sole discretion and consistent with the General Unsecured Claims Litigation Trust Agreement and applicable law.

70. “*General Unsecured Claims Litigation Trustee*” means the Person identified in the Plan Supplement to serve as the trustee of the General Unsecured Claims Litigation Trust and any successor thereto appointed pursuant to the General Unsecured Claims Litigation Trust Agreement.

71. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

72. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

73. “*Indemnification Provision*” means the Debtor’s indemnification provisions currently in place (whether in the by-laws, certificates of incorporation, board resolutions, indemnification agreements, contracts or employment contracts) for the current directors, officers, and employees of the Debtor.

74. “*Insurer*” means Chubb Group of Insurance Companies.

75. “*Intercreditor Agreement*” means (i) that certain Intercreditor Agreement, dated as of January 30, 2012, by and among Wells Fargo Bank, National Association, on one hand, and Marquette Capital Fund I, LP, Argosy Investment Partners III, L.P., and Horizon Capital Partners III, L.P., on the other hand, and the other loan parties from time to time party thereto, governing, among other things, the respective rights, remedies, and priorities of Claims and Liens held by such parties, or any similar or related agreement (and as the same may have been modified, amended, or restated), for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, (ii) that certain Subordination Agreement, dated as of January 30, 2012, by and among Ernest L. Groeb, as shareholders’ representative under the stock purchase agreement, and Wells Fargo Bank, National Association, for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, and (iii) any other applicable intercreditor agreements.

76. “*Interests*” means the common stock, limited liability company interests, and any other equity, ownership, or profits interests of the Debtor and options, warrants, rights, or other securities or agreements to acquire the common stock, limited liability company interests, or other equity, ownership, or profits interests of the Debtor (whether or not arising under or in connection with any employment agreement).

77. “*Interim Compensation Order*” means an order by the Bankruptcy Court establishing interim compensation procedures for Professionals (other than Kirkland & Ellis and Pepper Hamilton).

78. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

79. “*Junior Subordinated Notes*” means approximately \$1.5 million in issued and outstanding notes pursuant to that certain 8% junior subordinated note by and between GF Acquisition, Inc., and Ernest L. Groeb, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time).

80. “*Junior Subordinated Note Claims*” means any Claim arising under the Junior Subordinated Notes, which shall be treated as unsecured creditors under the Plan, as a result of the collateral securing such Claims having insufficient value to secure any of the Claim..

81. “*Kirkland & Ellis*” means Kirkland & Ellis LLP, counsel to the DIP Lender, the Senior Lender, and the Senior Lender Affiliate.

82. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

83. “*Management Incentive Plan*” means that certain post-Effective Date management incentive plan (acceptable to the Senior Lender Affiliate), the terms of which shall be set forth in the Plan Supplement.

84. “*New Board*” means the initial board of directors of the Reorganized Debtor, each of whom shall be acceptable to the Senior Lender Affiliate and disclosed in advance of the Confirmation Hearing in accordance with section 1129(a)(5) of the Bankruptcy Code.

85. “*New Equity*” means the equity in the Reorganized Debtor issued pursuant to the Plan, the terms of which shall be governed by the New Organizational Documents.

86. “*New Equity Distribution Calculation*” means the following calculation, which shall be utilized to determine allocation of 100% of the New Equity between DIP Facility Claims and Senior Loan Claims: holders of DIP Facility Claims shall receive a percentage of the New Equity equal to the ratio of \$7 million divided by the aggregate sum of (i) \$7 million and (ii) the Senior Loan Claims. Holders of Senior Loan Claims shall receive the remaining New Equity after taking into account the distribution of New Equity to holders of DIP Facility Claims.

87. “*New Intercreditor Agreement*” means the intercreditor agreement that will govern the relationship between the Exit Facility and the New Subordinated Notes, a form of which shall be included in the Plan Supplement, and the terms of which shall be acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

88. “*New Organizational Documents*” means the form of the certificates or articles of incorporation, bylaws, or such other applicable formation documents of the Reorganized Debtor (reasonably acceptable to the Senior Lender Affiliate), which forms shall be included in the Plan Supplement.

89. “*New Subordinated Notes*” means the notes that the Reorganized Debtor shall cause to be issued on the Effective Date to holders of Senior Subordinated Note Claims (and ancillary documents, including a security agreement), the form of which shall be set forth in the Plan Supplement, and the terms of which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

90. “*New Trade Agreement*” means a uniform trade agreement reasonably acceptable to the Debtor and the Senior Lender Affiliate, a form of which shall be included in the Plan Supplement.

91. “*New Trade Terms*” means the terms of a New Trade Agreement.

92. “*New Warrants*” means the warrants that the Reorganized Debtor shall cause to be issued on the Effective Date for 13% of New Equity of the Reorganized Debtor, subject to the terms set forth in the Plan Supplement, which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

93. “*Notice and Claims Agent*” means Kurtzman Carson Consultants, LLC.

94. “*Opt-Out Claim*” means a Class Action Claim of a holder that elects to opt-out of the Class Action Settlement in the event the Class Action is certified pursuant to Bankruptcy Rule 7023(b)(3) or Fed. R. Civ. P. 23(b)(3), as applicable.

95. “*Other General Unsecured Claims*” means General Unsecured Claims that are not Trade Claims, including, without limitation, Junior Subordinated Note Claims, Seller Note Claims, Opt-Out Claims, and, except as set forth in Article I.21 hereof, Class Action Claims.

96. “*Other Priority Claim*” means any allowed Claim against the Debtor entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim (including a DIP Facility Claim); or (b) a Priority Tax Claim, to the extent such claim has not already been paid during the Chapter 11 Case.

97. “*Other Secured Claim*” means any Secured Claim against the Debtor that is not: (a) a DIP Claim, (b) a Senior Loan Claim, or (c) a Senior Subordinated Note Claim.

98. “*Pepper Hamilton*” means Pepper Hamilton LLP.

99. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

100. “*Petition Date*” means September 30, 2013, the date on which the Debtor’s Chapter 11 Case commenced.

101. “*Plan*” has the meaning set forth in the Introduction.

102. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan (acceptable to the Senior Lender Affiliate and as amended, supplemented, or modified from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules), to be Filed seven (7) days before the Voting Deadline, and additional documents or amendments to previously Filed documents, Filed before the Effective Date as amendments to the Plan Supplement, including the following, as applicable: (a) New Organizational Documents, (b) the Exit Facility Documents, (c) Schedule of Assumed Executory Contracts and Unexpired Leases, (d) the General Unsecured Claims Litigation Trust Litigation Trust Agreement, (e) a list of retained Causes of Action, (f) the Management Incentive Plan, (g) a document listing the members of the New Boards, (h) the New Intercreditor Agreement; (i) the New Subordinated Notes, (j) the New Warrants; and (k) the New Trade Agreement. The Debtor shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date with the consent of the Senior Lender Affiliate; *provided, however*, that with respect to items (h), (i), and (j), any amendments must be reasonably satisfactory to holders of Senior Subordinated Note Claims that execute a Restructuring Support Agreement (that has not been terminated prior to the Effective Date).

103. “*Priority Claims*” means Priority Tax Claims and Other Priority Claims.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Pro Rata*” means the proportion that an Allowed Claim or Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that respective Class, or the proportion that Allowed Claims or Allowed Interests in a particular Class bear to the aggregate amount of Allowed Claims or Allowed Interests in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim or Allowed interests under the Plan.

106. “*Professional*” means an Entity: (a) employed pursuant to a Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code, or (b) Kirkland & Ellis LLP and Pepper Hamilton LLP.

107. “*Professional Fee Account*” means an interest-bearing account to hold and maintain an amount of Cash equal to the Professional Fee Amount funded by the Debtor not later than two (2) Business Days prior to the Effective Date, solely for the purpose of paying all remaining Allowed and unpaid Fee Claims. Such Cash shall remain subject to the jurisdiction of the Court.

108. “*Professional Fee Amount*” means the aggregate unpaid Fee Claims through the Effective Date as estimated in accordance with Article II.B.

109. “*Proof of Claim*” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

110. “*Proof of Interest*” means a proof of Interest Filed in the Debtor in the Chapter 11 Case.

111. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

112. “*Released Party*” means each of the following, each in their capacity as such: (a) the Senior Lender; (b) the Senior Lender Affiliate; (c) the DIP Lender; (d) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date; (e) the Committee; (f) the Exit Facility Lender; (g) with respect each of the foregoing entities in clauses (a) through (f) such person’s current and former shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case in their capacity as such); and (h) the Debtor and the Reorganized Debtor and each of their respective current shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

113. “*Reorganized Debtor*” means the Debtor on and after the Effective Date.

114. “*Restructuring Support Agreement*” means each Restructuring Support Agreement, as amended, supplemented, or otherwise modified from time to time, copies of which are attached as exhibits to the First Day Declaration.

115. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means the schedule (including any amendments or modifications thereto) of certain Executory Contracts and Unexpired Leases to be assumed by the Debtor pursuant to the Plan, as set forth in the Plan Supplement, as amended from time to time prior to the Confirmation Date.

116. “*Schedules*” means, to the extent required, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

117. “*Section 510(b) Claims*” means any Claims arising from (a) rescission of a purchase or sale of a security of the Debtor, (b) purchase or sale of such a security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim, which for the avoidance of doubt shall not include Senior Subordinated Note Claims or Junior Subordinated Note Claims.

118. “*Secured*” means when referring to a Claim, a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

119. “*Secured Tax Claims*” means any Secured Claim against the Debtor that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

120. “*Security*” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

121. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as amended, or any similar federal, state or local law.

122. “*Seller Note*” means the unsecured note in favor of the Olesanik Family Living Trust with a current outstanding balance in the approximate amount of \$423,762, which was assumed by the Debtor prior to the Petition Date.

123. “*Seller Note Claims*” means Claims arising on account of the Seller Note.¹

124. “*Senior Lender*” means HC Capital Holding 0909A, LLC.

125. “*Senior Lender Affiliate*” means Honey Financing Corporation.

126. “*Senior Loan Agreement*” means that certain Credit and Security Agreement by and between the Debtor, as borrower, and the Senior Lender, as lender and successor to Wells Fargo Bank, National Association, dated as of January 30, 2012, including payment on account of any accrued but unpaid interest (including at the default contract rate, as applicable) (as amended, restated, supplemented, or otherwise modified from time to time).

127. “*Senior Loan Claims*” means any Claim arising under the Senior Loan Agreement.

128. “*Senior Loan Facility*” means the Senior Loan Agreement, together with related loan, security, collateral, and other documents.

129. “*Senior Subordinated Notes*” means approximately \$7.0 million in issued and outstanding notes claims pursuant to those certain 12% senior subordinated debentures by and among the Debtor and Miller’s American Honey, Inc., on one hand, and Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, on the other hand, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time), plus all accrued and unpaid interest due as of the Petition Date.

130. “*Senior Subordinated Note Claims*” means any Claim arising under the Senior Subordinated Notes.

¹ 4.1.1 Cap summary chart shows \$440,000 outstanding as of 7/31/13.

131. “*Trade Claim*” means a General Unsecured Claim that arises on account of products or services provided to the Debtor on an ongoing basis with which the Debtor will continue to conduct business with during the Chapter 11 Case and after the Effective Date.

132. “*Trade Claim Distribution*” means the distribution made to holders of Trade Claims in amount equal to 40% in an Allowed amount of the Trade Claim, pursuant to a New Trade Agreement.

133. “*Transshipping Claim*” means any Claim in favor of the Debtor arising from transshipping, any Claim in favor of the Debtor arising from the facts set forth in the Deferred Prosecution Agreement, or any Claim in favor of the Debtor arising from the facts set forth in the Information filed with the Deferred Prosecution Agreement.

134. “*U.S. Trustee*” means the Office of the United States Trustee for the Eastern District of Michigan.

135. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

136. “*Unexpired Lease*” means a lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

137. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in cash.

138. “*Unsecured Convenience Class Claim*” means any Allowed General Unsecured Claim, other than Trade Claims that receive treatment pursuant to Article III.C.5(b)(i) that is \$7,500 or less.

139. “*Voting Deadline*” means [December 13], 2013 at 5:00 p.m., prevailing Eastern Time.

B. Rules of Interpretation

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under the Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Case, unless otherwise stated; (13) references to “Proofs of Claim” and “Holders of Claim” shall include “Proofs of Interest” and “Holders of Interests” as applicable; and (14) any immaterial effectuating provisions may be interpreted by the Reorganized Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further Court order.

C. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of Michigan, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate or limited liability company governance matters; *provided that* corporate or limited liability company governance matters relating to the Debtor or the Reorganized Debtor, as applicable, not incorporated or formed (as applicable) in Michigan shall be governed by the laws of the state of incorporation or formation (as applicable) of the Debtor or Reorganized Debtor.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. Reference to the Debtor or the Reorganized Debtor

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtor or the Reorganized Debtor shall mean the Debtor and the Reorganized Debtor, as applicable, to the extent the context requires.

G. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

ARTICLE II.

DIP FACILITY CLAIMS, ADMINISTRATIVE CLAIMS, AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Except with respect to Administrative Claims that are Fee Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Case or a holder of an Allowed Administrative Claim and the Debtor agree to less favorable treatment with respect to such holder's Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; *provided, however*, that Allowed Administrative Claims that arise in the ordinary course of the Debtor's businesses shall be paid in the ordinary course of business, in accordance with

the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between the holder of such Allowed Administrative Claim and the Debtor or the Reorganized Debtor, as the case may be. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order. For purposes of this Plan, all Administrative Claims arising or granted under the DIP Order shall be deemed Allowed by Final Order.

Except as otherwise provided in this Article II.A or any prior applicable Court order, and except with respect to Administrative Claims that are Fee Claims or DIP Facility Claims, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Allowed Administrative Claims by such date that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Reorganized Debtor and the requesting party no later than 30 days after the Administrative Claims Bar Date.

B. Professional Compensation

1. Applications for and Payment of Fee Claims.

In accordance with this Article II.B, on the Effective Date, the Debtor shall establish the Professional Fee Account. The Debtor shall fund the Professional Fee Account with Cash in the amount of the aggregate Professional Fee Amount (which amount, for clarity, shall include only unpaid and outstanding Fee Claims) for all Professionals. The Professional Fee Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtor's Estates except as otherwise provided in Article II.B.2 of the Plan.

To receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall provide an estimate of their Fee Claims before and as of the Effective Date and shall deliver such estimate to the Debtor and Senior Lender Affiliate no later than five (5) Business Days prior to the intended Effective Date. If a Professional does not provide an estimate, the Debtor, with the consent of the Senior Lender Affiliate, may estimate the unbilled fees and expenses of such Professional and such estimate will be used to establish the Professional Fee Amount attributable to that Professional. The total amount so estimated shall be the Professional Fee Amount.

2. Final Fee Applications and Payment of Fee Claims.

All final requests for payment of Fee Claims of Kirkland & Ellis and Pepper Hamilton shall be paid upon presentation to the Debtor or Reorganized Debtor from the Professional Fee Account without the need for Filing of any final request for payment. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Court orders, the Allowed amounts of Fee Claims for Professionals (other than the Fee Claims of Kirkland & Ellis and Pepper Hamilton) shall be determined by the Court. The amount of Fee Claims owing to Professionals shall be paid in Cash to Professionals (other than Kirkland & Ellis and Pepper Hamilton) from funds held in the Professional Fee Account when such Fee Claims are Allowed by a Final Order. To the extent that funds held in the Professional Fee Account are unable to satisfy the amount of Fee Claims owing to the Professionals, any Professional whose estimate was lower than the Allowed amount of its Fee Claims shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II. After all Allowed Fee Claims have been paid in full to the extent required by Article II.B.2, any excess amounts in the Professional Fee Account shall be returned to or transferred to the Reorganized Debtor.

3. Post-Effective Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtor or the Reorganized Debtor, as applicable, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, shall pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by the Reorganized Debtor.

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court.

C. DIP Facility Claims

Except to the extent that a holder of an Allowed DIP Facility Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed DIP Facility Claim, each such holder shall receive (i) its Pro Rata share of the New Equity based on the New Equity Distribution Calculation in satisfaction of \$7 million of DIP Facility Claims and (ii) payment in full, in Cash, on the Effective Date or as soon as reasonably practicable after the Effective Date; *provided, however*, that to the extent the Commitment Fee (as defined in the DIP Agreement) has previously been paid and included as part of the DIP Facility Claim, an amount equal to the Commitment Fee shall be waived by the DIP Lender and the Allowed DIP Facility Claim, as set forth in Article III(B) below, shall be reduced by such amount to reflect the waiver.

D. Priority Tax Claims

The legal and equitable rights of the holders of Priority Tax Claims are Unimpaired under the Plan. Unless the holder of such Claim and the Debtor agree to a different treatment, holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed, in the ordinary course of the Debtor's business, consistent with past practice; *provided, however*, that in the event the balance of any such Claim becomes due during the pendency of this Chapter 11 Case and remains unpaid as of the Effective Date, the holder of such Claim shall be paid in full in Cash on the Effective Date. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Classification of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, except for Fee Claims, Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such Claim or Interest has not been paid, released, withdrawn or otherwise settled before the Effective Date.

The categories of Claims and Interests set forth below classify all Claims against and Interests in the Debtor for all purposes of this Plan. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. The treatment with respect to each Class of Claims and Interests provided for in this Article III shall be in full and complete satisfaction, release and discharge of such Claims and Interests.

B. Summary of Classification

A creditor that holds multiple Claims against the Debtor, all of which Claims are based upon or relate to the same or similar indebtedness or obligations, whether by reason of guarantee, indemnity agreement, joint and several liability or otherwise, shall be deemed to have only one Claim against the Estate in an amount equal to the largest of all such similar Allowed Claims, solely for the purposes of distributions under the Plan. For purposes of voting on the Plan, any Creditor holding such similar Claims against the Debtor may only vote the largest of all such similar Allowed Claims; *provided, however*, that this provision shall not prohibit the bifurcation of Claims among Classes pursuant to section 506(a) of the Bankruptcy Code, nor shall this provision apply to bifurcated Claims.

The categories of Claims and Interests are classified for all purposes, including voting, confirmation, and distribution, pursuant to the Plan as follows:

Class	Claim/Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Senior Loan Claims	Impaired	Entitled to Vote
4	Senior Subordinated Note Claims	Impaired	Entitled to Vote
5A	Trade Claims	Impaired	Entitled to Vote
5B	Other General Unsecured Claims	Impaired	Entitled to Vote
5C	Unsecured Convenience Class Claim	Unimpaired	Deemed to Accept
6	Section 510(b) Claims	Impaired	Deemed to Reject
7	Existing Equity Interests	Impaired	Deemed to Reject

C. *Treatment of Claims and Interests*

1. Class 1 – Other Priority Claims

- (a) *Classification:* Class 1 consists of all Other Priority Claims.
- (b) *Treatment:* Except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Case, in full in Cash in the ordinary course of business by the Debtor or the Reorganized Debtor, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, or as soon thereafter as reasonably practicable, (ii) the date on which such Other Priority Claim against the Debtor becomes Allowed, or (iii) such other date as may be ordered by the Court.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of all Other Secured Claims.
- (b) *Treatment:* On the Effective Date, except to the extent that a holder of an Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim shall receive, at the option of the Senior Lender Affiliate: (i) payment in full in Cash, including the payment of interest allowable under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any; (ii) reinstatement pursuant to Section 1124 of the Bankruptcy Code; (iii) the collateral securing any such Allowed Other Secured Claim, or (iv) such other consideration so as to render such Allowed Other Secured Claim Unimpaired.

In the event an Allowed Other Secured Claim may also be classified as a Secured Tax Claim, such Claim shall: (i) be paid in full in Cash, including the payment of interest under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any, or (ii) retain any lien until such Claim is paid in full (it being understood that such Other Secured Claim may be paid in the ordinary course as and when it comes due, rather than on the Effective Date).

- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - Senior Loan Claims

- (a) *Classification:* Class 3 consists of all Senior Loan Claims.
- (b) *Allowance:* To the extent any such amounts have not been previously satisfied pursuant to the DIP Credit Facility, the Senior Loan Claims shall be Allowed in an aggregate amount equal to approximately \$16,570,949.08 million, plus interest and fees due and owing under the Senior Facility as of the Effective Date pursuant to the terms of the Senior Facility or related documents, including payment on account of any accrued but unpaid interest (including at the default contract rate pursuant to the terms of the Senior Facility, if applicable), which amount shall be subject to adjustment to an amount acceptable to the Senior Lender to the extent previously satisfied by the DIP Credit Facility.
- (c) *Treatment:* On the Effective Date, except to the extent that a holder of a Senior Loan Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for the Allowed Senior Loan Claim, each holder of a Senior Loan Claim shall receive (i) Cash in satisfaction of any Allowed Senior Loan Claim in excess of \$3 million and (ii) its Pro Rata share of the New Equity in the Reorganized Debtor based on the New Equity Distribution Calculation in satisfaction of all remaining Allowed Senior Loan Claims, after which, on the Effective Date the cash collateral pledged in favor of the Senior Lender to secure the Senior Loan Claims shall be released to its respective pledgers in accordance with their respective interests therein.
- (d) *Voting:* Class 3 is Impaired under the Plan. Therefore, holders of Class 3 Senior Loan Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Senior Subordinated Note Claims

- (a) *Classification:* Class 4 consists of all Senior Subordinated Note Claims.
- (b) *Allowance:* Senior Subordinated Note Claims shall be Allowed in an aggregate amount equal to \$7.0 million, plus accrued but unpaid interest as of the Petition Date.
- (c) *Treatment:* On the Effective Date, or as soon thereafter as reasonably practicable, except to the extent that a holder of a Senior Subordinated Note Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Senior Subordinated Note Claim, each holder of a Senior Subordinated Note Claim shall receive its Pro Rata share of the (i) New Subordinated Notes and (ii) New Warrants.
- (d) *Voting:* Class 4 is Impaired under the Plan. Therefore, holders of Class 4 Senior Subordinated Note Claims are entitled to vote to accept or reject the Plan.

5. Class 5A –Trade Claims

- (a) *Classification:* Class 5A consists of all Trade Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Trade Claim agrees to less favorable treatment,

in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Trade Claim, each holder of a Allowed Trade Claim shall receive either:

- (i) if such holder agrees to the New Trade Terms and such holder and the Debtor enter into a New Trade Agreement, a cash recovery equal to such holder's Trade Claim Distribution, which the Reorganized Debtor shall satisfy by paying 110% on each invoice for products ordered post-Effective Date with each holder that executes a New Trade Agreement until the Trade Claim Distribution has been paid in full; *provided, however*, that the Reorganized Company shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; or
 - (ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5A is Impaired under the Plan. Therefore, holders of Class 5A Trade Claims are entitled to vote to accept or reject the Plan.

6. Class 5B - Other General Unsecured Claims

- (a) *Classification:* Class 5B consists of all Other General Unsecured Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Other General Unsecured Claim agrees to less favorable treatment, or agrees to be an Unsecured Convenience Class Claim, in full and final satisfaction, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other General Unsecured Claim, each holder of an Allowed Other General Unsecured Claim shall receive its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5B is Impaired under the Plan. Therefore, holders of Class 5B Other General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5C - Unsecured Convenience Class Claims

- (a) *Classification:* Class 5C consists of Unsecured Convenience Class Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Unsecured Convenience Class Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Convenience Class Claim, each holder of an Allowed Unsecured Convenience Class Claim shall receive payment in full in Cash on account of such Allowed Unsecured Convenience Class Claim pursuant to the Convenience Class Distribution.
- (c) *Voting:* Class 5C is Unimpaired under the Plan. Holders of Claims in Class 5C are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 5C Unsecured Convenience Class Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 - Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims.

- (b) *Treatment:* On the Effective Date, each Allowed Section 510(b) Claim shall be cancelled without any distribution and such holders of Section 510(b) Claims will receive no recovery.
- (c) *Voting:* Class 6 is Impaired under the Plan. Holders of Claims in Class 6 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

9. Class 7 - Existing Equity Interests

- (a) *Classification:* Class 7 consists of all Existing Equity Interests.
- (b) *Treatment:* On the Effective Date, Existing Equity Interests shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution to holders of Existing Equity Interests on account of such Existing Equity Interests.
- (c) *Voting:* Class 7 is Impaired under the Plan. Therefore, holders of Claims in Class 7 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

D. *Special Provision Governing Unimpaired Claims*

Nothing under the Plan shall affect the Debtor's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

E. *Subordinated Claims*

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, including, without limitation, the Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to direct the Debtor to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV. ACCEPTANCE REQUIREMENTS

A. *Acceptance or Rejection of the Plan*

1. Voting Classes

Classes 3, 4, 5A and 5B are Impaired under the Plan and are entitled to vote to accept or reject the Plan.

2. Conclusive Presumed Acceptance of the Plan

Classes 1, 2, and 5C are Unimpaired under the Plan and therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3. Deemed Not to Accept the Plan

Classes 6 and 7 are Impaired under the Plan, and holders of Class 6 Claims and Class 7 Interests shall not receive or retain any property under the Plan on account of such Claims and Interests and are, therefore, deemed not to accept the Plan pursuant to section 1126(g) of the Bankruptcy Code.

B. Confirmation Pursuant to 1129(b) of the Bankruptcy Code

The Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Classes of Claims and Interests that vote, or are deemed, not to accept the Plan. The Debtor reserves the right to modify the Plan in accordance with Article XI.A hereof, to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE V.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Restructuring Transactions

On the Effective Date, or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (i) the execution and delivery of the Exit Facility Documents and other appropriate agreements or other documents of restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to the Bankruptcy Code or applicable state law; and (iv) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

B. Sources of Consideration for Plan Distributions

The Reorganized Debtor shall fund distributions under the Plan as follows:

1. Cash Consideration

Except to the extent otherwise set forth herein, all Cash consideration necessary for the Reorganized Debtor to make payments or distributions pursuant hereto shall be obtained from proceeds of the Exit Facility or the Debtor's other Cash on hand, including Cash derived from business operations. Further, the Debtor and the Reorganized Debtor will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtor to satisfy their obligations under the Plan.

2. Issuance and Distribution of New Equity

On the Effective Date, the Reorganized Debtor shall issue the New Equity for distribution to holders of DIP Facility Claims and Senior Loan Claims in accordance with Article II.C and Article III herein. The issuance of the New Equity shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

All of the shares of New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the New Organizational Documents and the other instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

Notwithstanding anything to the contrary herein, in no event shall more than \$10 million of DIP Facility Claims and Senior Loan Claims in the aggregate be satisfied with the New Equity.

3. Exit Facility

On the Effective Date the Reorganized Debtor shall enter into the Exit Facility. Confirmation shall be deemed approval of the Exit Facility to the extent not approved by the Court previously (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtor or the Reorganized Debtor in connection therewith), and the Reorganized Debtor is authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Reorganized Debtor and the Senior Lender Affiliate may deem to be necessary to consummate the Exit Facility. Proceeds of the Exit Facility shall be used to satisfy obligations outstanding under the DIP Credit Facility and to provide necessary working capital for the Reorganized Debtor.

C. *New Subordinated Notes and New Warrants*

On the Effective Date, the Reorganized Debtor shall issue the New Subordinated Notes and the New Warrants, the terms of which shall be set forth in the Plan Supplement, for distribution to holders of Senior Subordinated Note Claims in accordance with Article III herein; *provided, however*, that the aggregate amount of the New Subordinated Notes shall not exceed \$3 million and the aggregate amount of the New Warrants shall not exceed 13% of the New Equity, subject to the terms set forth in the Plan Supplement. The issuance of the New Subordinated Notes and the New Warrants shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

Each distribution and issuance of the New Subordinated Notes and the New Warrants under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

As set forth in the New Subordinated Notes and the New Intercreditor Agreement, the New Subordinated Notes shall have a security interest in the same assets of the Reorganized Debtor as granted under the Exit Facility Documents, provided that such security interest shall be junior to the security interest granted pursuant to the Exit Facility Documents.

D. *General Unsecured Claims Litigation Trust*

1. Creation and Governance of the General Unsecured Claims Litigation Trust.

On the Effective Date, the Debtor shall transfer to the General Unsecured Claims Litigation Trust the General Unsecured Claims Litigation Trust Assets and Avoidance Actions. The Debtor and the General Unsecured Claims Litigation Trustee shall execute the General Unsecured Claims Litigation Trust Agreement and shall take all steps necessary to establish the General Unsecured Claims Litigation Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries. In the event of any conflict between the terms of the Plan and the terms of the General Unsecured Claims Litigation Trust Agreement, the terms of the Plan shall govern. Additionally, on the Effective Date the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the General Unsecured Claims Litigation Trust all of its rights, title, and interest in and to all of the General Unsecured Claims Litigation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the General Unsecured Claims Litigation Trust Assets shall automatically vest in the General Unsecured Claims Litigation Trust free and clear of all Claims, liens, encumbrances, or interests subject only to: (a) General Unsecured Claims Litigation Trust Interests, and (b) the expenses of the General Unsecured Claims Litigation Trust, as provided for in the General Unsecured Claims Litigation Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The General Unsecured Claims Litigation Trustee shall

be the exclusive trustee of the assets of the General Unsecured Claims Litigation Trust for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representatives of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The General Unsecured Claims Litigation Trust shall be governed by the General Unsecured Claims Litigation Trust Agreement and administered by the General Unsecured Claims Litigation Trustee. The powers, rights, and responsibilities of the General Unsecured Claims Litigation Trustee shall be specified in the General Unsecured Claims Litigation Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this Article V.D. The General Unsecured Claims Litigation Trustee shall hold and distribute the General Unsecured Claims Litigation Trust Assets in accordance with the provisions of the Plan and the General Unsecured Claims Litigation Trust Agreement. Other rights and duties of the General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust Beneficiaries shall be as set forth in the General Unsecured Claims Litigation Trust Agreement. After the Effective Date, the Debtor and the Reorganized Debtor shall have no interest in the General Unsecured Claims Litigation Trust Assets except as set forth in the General Unsecured Claims Litigation Trust Agreement. In connection with the vesting and transfer of the General Unsecured Claims Litigation Trust Assets (including any General Unsecured Claims Litigation Trust Causes of Action) to the General Unsecured Claims Litigation Trust, any attorney-client, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) expressly transferred to the General Unsecured Claims Litigation Trust shall vest in the General Unsecured Claims Litigation Trust. The Debtor and the General Unsecured Claims Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections, and immunities, to the extent the Debtor so desires.

2. Purpose of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trust shall be established for the purpose of pursuing or liquidating the General Unsecured Claims Litigation Trust Assets, distributing the General Unsecured Claims Litigation Trust Distributable Proceeds, if any, reconciling (and, if agreed to by the Debtor or the Reorganized Debtor, objecting to) General Unsecured Claims as provided for in the Plan and, if, as, and to the extent determined by the General Unsecured Claims Litigation Trustee pursuant to the General Unsecured Claims Litigation Trust Agreement, distributing the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

3. General Unsecured Claims Litigation Trustee and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trust Agreement generally will provide for, among other things: (a) the payment of the General Unsecured Claims Litigation Trust Expenses, (b) the payment of other reasonable expenses of the General Unsecured Claims Litigation Trust, including the cost of pursuing the General Unsecured Claims Litigation Trust Causes of Action, (c) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation, (d) the investment of Cash by the General Unsecured Claims Litigation Trustee within certain limitations, including those specified in the Plan, (e) the orderly liquidation of the General Unsecured Claims Litigation Trust Assets, and (f) litigation of any General Unsecured Claims Litigation Trust Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such General Unsecured Claims Litigation Trust Causes of Action.

Except as otherwise ordered by the Bankruptcy Court, the General Unsecured Claims Litigation Trust Expenses shall be paid from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, may employ, without further order of the Bankruptcy Court, professionals (including Professionals previously retained by the Creditors' Committee) to assist in carrying out its duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that the General Unsecured Claims Litigation Trustee shall provide ten Business Days' notice to the Reorganized Debtor before the payment of any such professional fees and expenses.

The General Unsecured Claims Litigation Trust Agreement may include reasonable and customary provisions that allow for indemnification by the General Unsecured Claims Litigation Trust. Any such indemnification shall be the sole responsibility of the General Unsecured Claims Litigation Trust and payable solely from the General Unsecured Claims Litigation Trust Assets.

In furtherance of and consistent with the purpose of the General Unsecured Claims Litigation Trust and the Plan, the General Unsecured Claims Litigation Trustee, for the benefit of the General Unsecured Claims Litigation Trust, shall: (a) hold the General Unsecured Claims Litigation Trust Assets for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries, (b) make distributions of General Unsecured Claims Litigation Trust Distributable Proceeds as provided herein and in the General Unsecured Claims Litigation Trust Agreement, and (c) have the power and authority to prosecute and resolve any General Unsecured Claims Litigation Trust Causes of Action, without approval of the Bankruptcy Court. The General Unsecured Claims Litigation Trustee shall be responsible for all decisions and duties with respect to the General Unsecured Claims Litigation Trust and the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement. In all circumstances, the General Unsecured Claims Litigation Trustee shall act in the best interests of the General Unsecured Claims Litigation Trust Beneficiaries and with the same fiduciary duties as a Chapter 7 trustee.

4. Compensation and Duties of the General Unsecured Claims Litigation Trustee.

The salient terms of the General Unsecured Claims Litigation Trustee's employment, including the General Unsecured Claims Litigation Trustee's duties and compensation shall be set forth in the General Unsecured Claims Litigation Trust Agreement. The General Unsecured Claims Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

5. Cooperation of Reorganized Debtor.

The Reorganized Debtor, upon reasonable notice, shall be required to provide information and access to pertinent documents, to the extent the Reorganized Debtor has such information and/or documents, to the General Unsecured Claims Litigation Trustee sufficient to enable the General Unsecured Claims Litigation Trustee to perform its duties hereunder. The Reorganized Debtor shall reasonably cooperate with the General Unsecured Claims Litigation Trustee in the administration of the General Unsecured Claims Litigation Trust, including, in providing documentation, witness testimony, and other evidence in support of the prosecution of the General Unsecured Claims Litigation Trust Causes of Action, at no cost or expense of the General Unsecured Claims Litigation Trust other than out of pocket expenses for copying or similar expenses; provided however, that such cooperation shall not involve violation of an attorney client privilege, unless agreed to by the Reorganized Debtor.

6. United States Federal Income Tax Treatment of the General Unsecured Claims Litigation Trust.

For all United States federal income tax purposes, the parties shall treat the transfer of the General Unsecured Claims Litigation Trust Assets to the General Unsecured Claims Litigation Trust as: (a) a transfer of the General Unsecured Claims Litigation Trust Assets directly to the applicable holders of Allowed General Unsecured Claims, followed by (b) the transfer by the holders of such Allowed General Unsecured Claims to the General Unsecured Claims Litigation Trust of such General Unsecured Claims Litigation Trust Assets in exchange for the General Unsecured Claims Litigation Trust Interests; *provided, however*, that the General Unsecured Claims Litigation Trust Assets will be subject to any post-Effective Date obligations incurred by the General Unsecured Claims Litigation Trust relating to the pursuit of General Unsecured Claims Litigation Trust Assets. Accordingly, the General Unsecured Claims Litigation Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the General Unsecured Claims Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

7. Tax Reporting.

- (a) The General Unsecured Claims Litigation Trustee shall file tax returns for the General Unsecured Claims Litigation Trust treating the General Unsecured Claims Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

- (b) Except to the extent definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee) indicates that such valuation is not necessary to maintain the treatment of the General Unsecured Claims Litigation Trust as a liquidating trust for purposes of the Internal Revenue Code and applicable Treasury Regulations, as soon as reasonably practicable after the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, the General Unsecured Claims Litigation Trust Assets. Such valuation shall be made available from time to time to all parties to the General Unsecured Claims Litigation Trust Agreement, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.
- (c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee), allocations of General Unsecured Claims Litigation Trust taxable income or loss shall be allocated by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining General Unsecured Claims Litigation Trust Assets. The tax book value of the General Unsecured Claims Litigation Trust Assets for purpose of this paragraph shall equal their fair market value on the date the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.
- (d) The General Unsecured Claims Litigation Trustee shall be responsible for payment, out of the General Unsecured Claims Litigation Trust Assets, of any taxes imposed on the General Unsecured Claims Litigation Trust or its assets.
- (e) The General Unsecured Claims Litigation Trustee shall distribute such notices to the General Unsecured Claims Litigation Trust Beneficiaries as the General Unsecured Claims Litigation Trustee determines are necessary or desirable.

8. General Unsecured Claims Litigation Trust Assets.

The General Unsecured Claims Litigation Trustee shall, in consultation with the Reorganized Debtor, have the exclusive right on behalf of the General Unsecured Claims Litigation Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all General Unsecured Claims Litigation Trust Causes of Action without any further order of the Bankruptcy Court, except as otherwise provided herein or in the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that such consultation shall be subject to the execution and delivery of one or more joint interest, common interest, or other similar agreements in form and substance reasonably acceptable to the General Unsecured Claims Litigation Trustee and the Reorganized Debtor. From and after the Effective Date, the General Unsecured Claims Litigation Trustee, in accordance with section 1123(b)(3) of the Bankruptcy Code, and on behalf of the General Unsecured Claims Litigation Trust, shall serve as a representative of the Estates and shall, in consultation with the Reorganized Debtor, retain and possess the right to commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action constituting General Unsecured Claims Litigation Trust Causes of Action in any court or other tribunal. The General Unsecured Claims Litigation Trustee shall provide the Reorganized Debtor with periodic reporting relating to the status of the General Unsecured Claims Litigation Trust Causes of Action.

For the avoidance of doubt, the General Unsecured Litigation Trust Assets shall not include any Claim or Cause of Action against a Released Party. Also for the avoidance of doubt, any proceeds of the General Unsecured Claims Litigation Trust shall be distributed Pro Rata to holders of Allowed Class 5B Claims and holders of Allowed Class 5A Claims that do not enter into a New Trade Agreement with the Debtor.

9. General Unsecured Claims Litigation Trust Fees and Expenses.

From and after the Effective Date, the General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the General Unsecured Claims Litigation Trust and any professionals retained by the General Unsecured Claims Litigation Trust from the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement.

10. Distribution of Unrestricted Cash.

The General Unsecured Claims Litigation Trustee shall distribute to the General Unsecured Claims Litigation Trust Beneficiaries on account of their interests in the General Unsecured Claims Litigation Trust, at least annually, its net income plus all net proceeds from the sale of assets, except that the General Unsecured Claims Litigation Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the General Unsecured Claims Litigation Trust Assets or to satisfy Claims and contingent liabilities or pay anticipated fees and expenses.

11. General Unsecured Claims Litigation Trust Funding.

The funding by the Debtor of the General Unsecured Claims Litigation Trust Payment shall be authorized and approved, as of the Effective Date, in all respects, without need for the consent of or notice to any Person, notwithstanding any contrary provision in any financing and/or other agreement between the Debtor or the Reorganized Debtor and any other Person, and any such contrary provision shall be deemed null and void to the extent necessary to permit such funding.

12. Distributions to General Unsecured Claims Litigation Trust Beneficiaries.

The General Unsecured Claims Litigation Trustee may, in its discretion, distribute any portion of the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries at any time and/or use such funds, provided that such distribution or use is for any purpose permitted under the Plan, the General Unsecured Claims Litigation Trust Agreement, and applicable law.

13. Cash Investments.

The General Unsecured Claims Litigation Trustee may invest Cash (including any earnings thereon or proceeds therefrom); *provided, however*, that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the General Unsecured Claims Litigation Trustee determines that the pursuit of additional General Unsecured Claims Litigation Trust Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, and (b) all distributions of General Unsecured Claims Litigation Trust Distributable Proceeds required to be made by the General Unsecured Claims Litigation Trustee to the General Unsecured Claims Litigation Trust Beneficiaries under the Plan have been made, but in no event shall the General Unsecured Claims Litigation Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such

third anniversary (and, in the event of further extension by agreement of the Reorganized Debtor and the General Unsecured Claims Litigation Trustee, at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the General Unsecured Claims Litigation Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the General Unsecured Claims Litigation Trust Assets. Upon dissolution of the General Unsecured Claims Litigation Trust, any remaining General Unsecured Claims Litigation Trust Assets shall be distributed first to all General Unsecured Claims Litigation Trust Beneficiaries in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement as appropriate; *provided, however*, that if the General Unsecured Claims Litigation Trustee reasonably determines that such remaining General Unsecured Claims Litigation Trust Assets are insufficient to render a further distribution practicable, or exceed the amounts required to be paid under the Plan, the General Unsecured Claims Litigation Trustee may transfer such remaining funds to a charitable institution qualified as a not-for-profit corporation under applicable federal and state laws selected by the General Unsecured Claims Litigation Trustee.

E. Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, the Debtor, as the Reorganized Debtor, shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other analogous formation documents) are amended by the Plan, replaced by the New Organizational Documents, or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

F. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date all property in the Estate, all Causes of Action, and any property acquired by the Debtor pursuant to the Plan shall vest in the Reorganized Debtor, free and clear of all liens, Claims, charges, or other encumbrances, except for Liens securing the Exit Facility, if applicable. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

G. Cancellation of Existing Securities

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtor under the DIP Agreement, the Senior Loan Agreement, the Senior Subordinated Notes, the Seller Notes, and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of or ownership interest in the Debtor giving rise to any Claim or Interest shall be cancelled solely as to the Debtor, and the Reorganized Debtor shall not have any continuing obligations thereunder; and (2) the obligations of the Debtor pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged; *provided, however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of enabling holders of Allowed Claims and Allowed Interests to receive distributions under the Plan as provided herein; *provided further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to the Reorganized Debtor, except to

the extent set forth in or provided for under the Plan. On and after the Effective Date, all duties and responsibilities of the DIP Lender under the DIP Facility and the Senior Lender under the Senior Loan Facility shall be discharged unless otherwise specifically set forth in or provided for under the Plan.

H. Corporate Action

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, as applicable: (1) the issuance of the New Equity; (2) selection of the directors and officers for the Reorganized Debtor; (3) execution and delivery of the Exit Facility Documents; (4) adoption of the Management Incentive Plan; (5) implementation of the restructuring transactions contemplated by this Plan; and (6) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtor, and any corporate action required by the Debtor or the Reorganized Debtor in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of the Debtor or the Reorganized Debtor. On or (as applicable) before the Effective Date, the appropriate officers of the Debtor or the Reorganized Debtor shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtor. The authorizations and approvals contemplated by this Article V.H shall be effective notwithstanding any requirements under nonbankruptcy law.

I. New Management Incentive Plan

Subject to the terms of the New Management Incentive Plan, a form of which shall be included in the Plan Supplement, as soon as reasonably practicable after the Effective Date, the new board of directors of Reorganized Debtor shall be authorized to adopt the New Management Incentive Plan pursuant to which options, warrants, or another form of consideration to acquire up to 10% of the New Equity of the Reorganized Debtor shall be allocable at the discretion of the New Board of the Reorganized Debtor.

To the extent required under the Plan or applicable nonbankruptcy law, the Reorganized Debtor will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in the state, province, or country of incorporation in accordance with applicable corporate laws. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents of the Reorganized Debtor will prohibit the issuance of non-voting equity securities and provide for the other restrictions required therein. After the Effective Date, the Reorganized Debtor may amend and restate its New Organizational Documents and other constituent documents as permitted by applicable corporate laws and the New Organizational Documents.

J. Directors and Officers of the Reorganized Debtor

As of the Effective Date, the term of the current members of the board of directors of the Debtor shall expire, and the initial boards of directors, including the New Board, as well as the officers of the Reorganized Debtor, shall be appointed in accordance with the New Organizational Documents and other constituent documents of the Reorganized Debtor.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the initial Reorganized Debtor Board, as well as those Persons that will serve as an officer of the Reorganized Debtor. To the extent any such director or officer is an "insider" under the Bankruptcy Code, the nature of any compensation to be paid to such director or officer will also be disclosed. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtor.

K. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtor, and the officers and members of the New Board, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, including the New Equity, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorization, or consents except those expressly required pursuant to the Plan. In furtherance of the foregoing, any New Organizational Documents which is contractual in nature (such as a stockholders agreement or limited liability company agreement) shall, upon the Effective Date, be deemed to become valid, binding and enforceable in accordance with its terms as to all Persons intended to be bound thereby.

L. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.²

M. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article IX and Article V.E hereof, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and such rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtor. **To the fullest extent permitted by applicable law, no Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against it. The Debtor or the Reorganized Debtor, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Debtor or Reorganized Debtor, as applicable, expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise set forth herein, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtor. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, except to the extent transferred to the General Unsecured Claims Litigation Trust hereunder. Subject to Article V.D, hereof, the Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Court.

² Foley note: Consider deleting this due to 6th Circuit law.

N. Release of Avoidance Actions

On the Effective Date, except as otherwise set forth herein, in the Plan Supplement, or in the Confirmation Order, the Debtor shall release any and all Avoidance Actions against the Released Parties, the Debtor and the Reorganized Debtor, and any of their successors or assigns and any Entity acting on behalf of the Debtor or the Reorganized Debtor shall be deemed to have waived the right to pursue any and all Avoidance Actions.

**ARTICLE VI.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected, other than those that are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases or are the subject of pending motions to assume on the Effective Date.

Entry of the Confirmation Order shall constitute a Court order approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan or the Schedule of Assumed Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or set forth in a motion or order relating to the same, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Court authorizing and providing for its assumption under applicable federal law. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Court within thirty (30) days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection; *provided, however*, that any such Rejection Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be subject to the cap on rejection damages imposed by section 502(b) of the Bankruptcy Code. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Reorganized Debtor, the Estate, or property of the foregoing parties, without the need for any objection by the Debtor or the Reorganized Debtor, as applicable, or further notice to, or action, order, or approval of the Court. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as Other General Unsecured Claims and shall be treated in accordance with Article III.C.5 of the Plan, as applicable.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any Cure Claims under an Executory Contract and Unexpired Lease, as reflected on the Cure Notice shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the such Cure Claim in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any Cure Claims, (2) the ability of the Reorganized Debtor or any assignee, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, payments on Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

At least fourteen (14) days before the Confirmation Hearing, the Debtor shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be Filed, served and actually received by the Debtor at least three (3) Business Days before the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or amount of the Cure Claim in the Cure Notice will be deemed to have assented to such assumption or amount of the Cure Claim. Notwithstanding anything herein to the contrary, in the event that any Executory Contract or Unexpired Lease is removed from the Schedule of Rejected Executory Contracts and Unexpired Leases after such 14-day deadline, a Cure Notice of proposed assumption and proposed amounts of Cure Claims with respect to such Executory Contract or Unexpired Lease will be sent promptly to the counterparty thereof and a noticed hearing set to consider whether such Executory Contract or Unexpired Lease can be assumed.

In any case, if the Court determines that the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the applicable Cure Notice, the Debtor or the Reorganized Debtor, at the direction of the Senior Lender Affiliate, will have the right to add such Executory Contract or Unexpired Lease to the Schedule of Assumed Executory Contracts and Unexpired Leases, in which case such Executory Contract or Unexpired Lease will be deemed rejected as the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and for which the Cure Claim has been paid shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Court.

D. Insurance Policies

All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, unless otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, the Debtor shall be deemed to have rejected all insurance policies and any agreements, documents, and instruments related thereto.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan, or subject to a motion to reject such agreement.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

F. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor, or, after the Effective Date, the

Reorganized Debtor shall have twenty-eight (28) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

G. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

H. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Deferred Prosecution Agreement

Nothing herein, in the Confirmation Order, or in any other document or order in this Chapter 11 Case shall affect the respective rights and obligations of the United States and the Debtor under the Deferred Prosecution Agreement. In accordance with the requirement set forth in section 17 of the Deferred Prosecution Agreement, the Debtor obligations under the Deferred Prosecution Agreement shall be binding upon the Reorganized Debtor and the rights and benefits of the Debtor under the Deferred Prosecution Agreement shall bestow to the benefit of the Reorganized Debtor.

**ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim (or such holder's Affiliate) shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII of the Plan. Except as otherwise provided in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Debtor shall have no obligation to recognize any transfer of Claims occurring on or after the Effective Date.

B. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions

(a) Delivery of Distributions to DIP Lender

Except as otherwise provided in the Plan, all distributions to holders of Allowed DIP Facility Claims shall be governed by the DIP Agreement and shall be deemed completed when made to the DIP Lender.

(a) Delivery of Distributions to Senior Lender

Except as otherwise provided in the Plan, all distributions to holders of Senior Loan Claims shall be governed by the Senior Loan Agreement and shall be deemed completed when made to the Senior Lender.

(b) Delivery of Distributions in General

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims (other than holders of DIP Facility Claims and Senior Loan Claims) shall be made to: (1) to the signatory set forth on any of the Proofs of Claim Filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (2) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtor after the date of any related Proof of Claim; (3) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Reorganized Debtor has not received a written notice of a change of address; or (4) on any counsel that has appeared in the Chapter 11 Case on the holder's behalf. Subject to this Article VII, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor, the Reorganized Debtor and the General Unsecured Claims Litigation Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtor has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date; *provided further* that undeliverable distributions to holders of General Unsecured Claims Litigation Trust Beneficiaries shall revert back to the General Unsecured Claims Litigation Trust. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VII.B.2, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property or Interest in property shall be discharged and forever barred.

C. *Securities Registration Exemption*

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of securities, including the New Equity, as contemplated by Article III.B of the Plan, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. In addition, under section 1145 of the Bankruptcy Code, such New Equity will be freely tradable in the U.S. by the recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, any applicable terms and limitations set forth in the New Organizational Documents and the New Warrants, and compliance with applicable securities laws and any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any transfer of such Securities or instruments.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the General Unsecured Claims Litigation Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made from the General Unsecured Claims Litigation Trust under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of

information necessary to facilitate such distributions or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtor and the General Unsecured Claims Litigation Trustee reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

E. Allocations

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed herein.

F. No Postpetition Interest on Claims

Unless otherwise specifically provided for in the DIP Order, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

G. Setoffs and Recoupment

The Debtor or the Reorganized Debtor may (with the Senior Lender Affiliate's consent), but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtor or the Reorganized Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such Claim it may have against the holder of such Claim.

H. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

The Debtor or the Reorganized Debtor, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the Reorganized Debtor to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such holder to timely repay or return such distribution shall result in the holder owing the Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers

under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VIII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims or Interests

After the Effective Date, the Debtor or the Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Case allowing such Claim. Any Claim or Interest that is subject to the Claims Bar Date and as of the Claims Bar Date has been listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

Notwithstanding anything to the contrary herein, a Class Action Claim shall not be an Allowed Class Action Claim at any time prior to a final determination as to Approval of the Class Action Settlement. If the Class Action Settlement is denied on a final basis, the Debtor, the General Unsecured Claims Litigation Trustee, or the Reorganized Debtor, as applicable, shall have thirty (30) days following the date upon which the Class Action Settlement was denied on a final basis to object to any Proofs of Claim filed in respect to Class Action Claims.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Reorganized Debtor, by order of the Court, shall have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court.

C. Estimation of Claims.

Before or after the Effective Date, the Debtor or the Reorganized Debtor may (but are not required to) at any time request that the Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Court has ruled on any such objection, and the Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Court. In the event that the Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), absent an objection to the same by the Claim holder prior to the Voting Deadline, and the Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims or Interests without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Reorganized Debtor without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Deadline.

F. Disallowance of Claims or Interests

Any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor, the Reorganized Debtor or the General Unsecured Claims Litigation Trustee, as applicable. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Court.

Except as provided herein or otherwise agreed, any and all Proofs of Claim or Proofs of Interest filed after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Court, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests, unless on or before the Confirmation Hearing such late Filed Claim or Interest has been deemed timely Filed by a Final Order.

G. Amendments to Claims or Interests

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Interest may not be Filed or amended without the prior authorization of the Court and the Reorganized Debtor and any such new or amended Claim or Interest Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Court.

H. No Distributions Pending Allowance

If an objection to a Claim Interest or portion thereof is Filed as set forth in Article VIII no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Court allowing any Disputed Claim becomes a Final Order, the Reorganized Debtor shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in Article III.C.

**ARTICLE IX.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that

a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, the Estate, and holders of Claims and Interests, and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtor may compromise and settle Claims against them and Causes of Action against other Persons.

B. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action that arose prior to the Effective Date of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan (including the Plan Supplement documents), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns. In addition, the DIP Lender and the Senior Lender shall execute and deliver all documents reasonably requested by the administrative agent(s) for the Exit Facility to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Reorganized Debtor to file UCC-3 termination statements (to the extent applicable) with respect thereto.

D. Debtor Release

To the fullest extent permitted by applicable law and pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtor, the Reorganized Debtor, and the Estate from any and all claims, obligations, rights, suits, damages, Causes of Action (including Avoidance Actions), remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of the Debtor and/or the Reorganized Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities law, or otherwise, that the Debtor, the Reorganized Debtor, or their Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any

Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the other restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

E. Third Party Release

As of the Effective Date, to the fullest extent permitted by applicable law, each Released Party and each holder of a Claim against or an Interest in the Debtor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all claims, equity interests, obligations, debts, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of a debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, existing or hereafter arising, in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of claims and equity interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing; *provided, however*, that the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

F. Exculpation

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any (1) Exculpated Claim and (2) any obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Securities pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

G. Injunction

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE VIII HEREOF, ALL ENTITIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VIII HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO ARTICLE VIII.D OR ARTICLE VIII.E HEREOF, DISCHARGED PURSUANT TO ARTICLE VIII.B HEREOF, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIII.F HEREOF, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE RELEASED PARTIES OR THE EXCULPATED PARTIES: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SUBROGATION, SETOFF, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE INTERESTS, PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR EXCULPATED PURSUANT TO THE PLAN.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR OR ANY OF THEIR ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTOR'S LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE ESTATE, THE REORGANIZED DEBTOR, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS

BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

H. Subordination Rights

Any distributions under the Plan to holders shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**ARTICLE X.
CONDITIONS PRECEDENT TO CONFIRMATION
AND CONSUMMATION OF THE PLAN**

A. Conditions Precedent to the Confirmation Date

It shall be a condition to Confirmation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have been approved by the Court in form and substance reasonably acceptable to the Senior Lender Affiliate;
2. The Court shall have found that adequate information and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan have been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017, 9019 and 3020(b);
3. There shall be no pending defaults under the DIP Facility; and
4. The Plan and the Plan Supplement, including any exhibits, schedules, amendments, modifications, or supplements thereto, each in form and substance reasonably acceptable to the Senior Lender Affiliate, shall have been Filed subject to the terms hereof.

B. Conditions Precedent to the Effective Date

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
2. There shall be no pending defaults under the DIP Facility;
3. The Exit Facility Documents shall be in full force and effect;
4. The Plan, including any amendments, modifications, or supplements thereto, and inclusive of any amendments, modifications, or supplements made after the Confirmation Date but prior to the Effective Date, shall be in form and substance reasonably acceptable to the Debtor and the Senior Lender Affiliate and made in accordance with Article X.A of the Plan;

5. The Exit Facility Documents shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation of the Exit Facility, other than the occurrence of the Effective Date of the Plan, shall have been waived or satisfied in accordance with the terms thereof;

6. The General Unsecured Claims Litigation Trust shall have been established pursuant to the General Unsecured Claims Litigation Trust Agreement.

7. All governmental and material third party approvals and consents, including Court approval, necessary in connection with the transactions contemplated by this Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

8. All documents and agreements necessary to implement this Plan shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. All conditions precedent to the issuance of the New Equity, other than any conditions related to the occurrence of the Effective Date, shall have occurred;

10. The Professional Fee Account shall have been funded; and

11. The Effective Date shall have occurred on or before December 31, 2013.

C. Waiver of Conditions

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in this Article X may be waived only by written consent of the Debtor and the Senior Lender Affiliate (except to the extent a condition requires only Senior Lender Affiliate approval, in which case only written consent of the Senior Lender Affiliate shall be required); *provided, however*, that the Debtor may not waive entry of the Order approving the Disclosure Statement and the Confirmation Order.

D. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any holders of a Claim or Interest or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any holders, or any other Entity in any respect.

**ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modification and Amendments

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves the rights to alter, amend, or modify materially the Plan (provided that such alterations, amendments, or modifications are in form and substance acceptable to the Senior Lender Affiliate) with respect to the Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtor (with the consent of the Senior Lender Affiliate) reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtor or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XII.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Case and all matters, arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Claims pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) the Reorganized Debtor amending, modifying, or supplementing, after the Confirmation Date, pursuant to Article VI hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired;
4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
6. adjudicate, decide, or resolve any and all matters related to Causes of Action, including, without limitation, any of the Transshipping Claims;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII.H.1 hereof;

13. resolve any cases, controversies, suits, disputes related to the General Unsecured Claims Litigation Trust, including the General Unsecured Claims Litigation Trust Assets;

14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Chapter 11 Case, the Plan, the Disclosure Statement, the Confirmation Order;

16. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

17. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20. hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

21. enforce all orders previously entered by the Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;

23. enter an order concluding or closing the Chapter 11 Case; and

24. enforce the injunction, release, and exculpation provisions set forth in Article IX hereof.

**ARTICLE XIII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Subject to Article X.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtor may File with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtor (prior to or on the Effective Date) or the Reorganized Debtor (after the Effective Date) for each quarter (including any fraction thereof) until the Chapter 11 Case are converted, dismissed, or closed, whichever occurs first.

D. Dissolution of the Committee

On the Effective Date, the Committee (if any) shall dissolve and all members, employees, or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Case.

E. Indemnification Provisions

The Indemnification Provisions shall not be discharged or impaired by Confirmation, shall survive Confirmation and shall remain unaffected thereby after the Effective Date; *provided, however*, that, notwithstanding the foregoing, the right of an indemnified Person to receive any indemnities, reimbursements, advancements, payments, or other amounts arising out of, relating to, or in connection with the Indemnification Provisions shall be limited to, and an indemnified Person's sole and exclusive remedy to receive any of the foregoing shall be exclusively from, the director and officer insurance policies of the Debtor in effect on the Effective Date, and no indemnified Person shall seek, or be entitled to receive, any of the foregoing from (directly or indirectly) the Reorganized Debtor. Entry of the Confirmation Order will constitute the Court's approval of the Debtor's foregoing assumption of each of the Indemnification Provisions.

F. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

G. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtor or Reorganized Debtor shall be served on:

the Debtor:

Groeb Farms, Inc.:
10464 Bryan Highway
Onsted, Michigan 492657313
Attn.: Rolf Richter

with copies to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, Michigan 48226-3489
Attn: Judy A. O'Neill

the Senior Lender Affiliate:

c/o Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Ray Schrock, P.C.

and

c/o Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Jeffrey D. Pawlitz

I. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

J. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, the Plan Supplement, and the Exit Facility Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

K. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Court to be invalid, void, or unenforceable, the 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 original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's consent; and (3) nonseverable and mutually dependent.

Respectfully submitted, as of the date first set forth above,

GROEB FARMS, INC.

By: /s/ DRAFT

Name: Rolf Richter

Title: President and CEO of Groeb Farms, Inc.

EXHIBIT B
EXIT COMMITMENT TERM SHEET

CONFIDENTIAL

Groeb Farms Exit Facility
\$25 Million Revolving Credit Facility
\$5 Million Term Loan Facility
Indicative Summary of Principal Terms and Conditions

This Summary of Principal Terms and Conditions (the "Term Sheet") outlines certain key terms of a proposed exit credit facility by and among the Borrower and the Lender (in each case, as defined herein).

Structure:

Groeb Farms, Inc. ("Groeb") (a) is party to that certain Credit and Security Agreement, dated as of January 30, 2012, as amended (the "Prepetition Credit Agreement") among Groeb as the borrower (the "Borrower") and HC Capital Holdings 0909A, LLC ("HC") as the lender (the "Lender") and (b) anticipates closing on, and becoming a party to, that certain Senior Secured Superpriority Priming Debtor-In-Possession Credit and Security Agreement, dated as a date to be determined, among the Borrower and the Lender (the "DIP Credit Agreement").

Upon emergence from a Chapter 11 proceeding anticipated by the reorganized Borrower to occur, the reorganized Borrower will borrow a term loan and revolving credit loans for the purposes of, among other things, refinancing the then-outstanding loans and other obligations under the Prepetition Credit Agreement (if any) and the DIP Credit Agreement (collectively, to the extent outstanding on the date of emergence, the "Existing Loans"), repaying certain other outstanding indebtedness in amounts to be agreed, and for working capital and general corporate purposes.

Conditions to Effectiveness:

Usual and customary for transactions of this type, including (a) payment of the commitment fee in an amount equal to 3.75% of the committed amount; and (b) confirmation and substantial consummation of a reorganization plan substantially in the form attached to the Restructuring Support Agreement, dated as of October 1, 2013 or acceptable in form and substance to the Lender, in its sole discretion (each such plan being an "Acceptable Plan"), which plan shall result in the Lender (or one or more of the Lender's affiliates) owning, directly or indirectly, 100% of the equity of the reorganized Borrower (subject to an acceptable management incentive plan).

Lender:

HC and one or more of its affiliates or assignees.

Closing Date: Substantially simultaneously with the consummation of the Acceptable Plan and emergence of the reorganized Borrower from its case under Chapter 11 (the "Closing Date").

Documentation: The revolving credit loans (the "Revolving Loans") and the term loans (the "Term Loans", together with the Revolving Loans, the "Credit Facilities") shall be documented pursuant to a credit agreement (the "Credit Agreement") and related loan documents (the "Loan Documents") customary for transactions of this type and substantially in the form of the Prepetition Credit Agreement.

Revolving Loans: Up to \$25 million to be made available to the reorganized Borrower from time to time, subject to a borrowing base to be mutually agreed. An agreed upon amount of commitment to provide Revolving Loans may be utilized for cash collateralization to support the issuance of letters of credit by the Lender or a third party provider, for the account of the reorganized Borrower. Revolving Loans that are repaid may be reborrowed and repaid.

Term Loans: Up to \$5 million to be made available to the reorganized Borrower in a single draw on the Closing Date. Term Loans repaid may not be reborrowed.

Interest Rates: Revolving Loans: L+3%, subject to a LIBOR floor to be agreed, and subject to increases based upon a fixed charge coverage ratio test and borrowing base compliance.

Term Loans: L+4.50%, subject to a LIBOR floor to be agreed, and subject to increases based upon exceeding a fixed charge coverage ratio.

Maturity and Amortization: The Term Loans (and the obligations related thereto) will mature on the 4th anniversary of the Closing Date, and will amortize commencing in the fiscal quarter following the Closing Date in amounts to be mutually agreed, with the balance payable at maturity.

The Revolving Loans (and the obligations and commitments related thereto) will mature on the 3rd anniversary of the Closing Date.

Security: The obligations arising under the Credit Facilities, will be secured on a first priority basis by (a) a perfected pledge of the equity interests of the reorganized Borrower and each direct, wholly-owned U.S. direct or indirect (other than U.S. subsidiaries of the non-U.S. Subsidiaries) restricted subsidiary of the reorganized Borrower and (b) perfected security interests in, and mortgages on,

substantially all tangible and intangible assets of the reorganized Borrower (including accounts receivable, inventory, equipment, investment property, intellectual property, other general intangibles, real property, motor vehicles and proceeds of all of the foregoing) (the foregoing collateral, the "Collateral").

Mandatory Prepayments: The Term Loans shall be subject to mandatory prepayments to be mutually agreed, but including the net cash proceeds of all non-ordinary course asset sales or other dispositions of property by the reorganized Borrower, including, without limitation, insurance and condemnation proceeds, the net cash proceeds of issuance of debt obligations of the reorganized Borrower (other than permitted debt) and excess cash flow. The Revolving Loans shall be subject to mandatory prepayments usual and customary for asset based revolving loans.

Representations and Warranties: Representations and warranties applicable to the reorganized Borrower to be usual and customary for transaction of this type, giving due regard to the representations and warranties set forth in the Existing Credit Agreement.

Affirmative Covenants: Affirmative covenants applicable to the reorganized Borrower that are usual and customary for transactions of this type for this reorganized Borrower, giving due regard to the affirmative covenants set forth in the Existing Credit Agreement and taking into account the new capital structure of the reorganized Borrower on and after the Closing Date.

Negative Covenants: Negative covenants applicable to the reorganized Borrower with exceptions that are usual and customary for transactions of this type for this reorganized Borrower, giving due regard to the exceptions to the negative covenants set forth in the Existing Credit Agreement and taking into account the new capital structure of the reorganized Borrower on and after the Closing Date.

Financial Covenants: To be mutually agreed.

Events of Default: Events of default that are usual and customary for transactions of this type for this reorganized Borrower, giving due regard to the exceptions to the negative covenants set forth in the Existing Credit Agreement and taking into account the new capital structure of the reorganized Borrower on and after the Closing Date.

Voting: To be determined by the Lender.

EXHIBIT C
DIP COMMITMENT LETTER

HC Capital Holdings 0909A, LLC

Groeb Farms, Inc.
10464 Bryan Highway
Onsted, Michigan 49265
Attention: Chief Financial Officer

Commitment Letter

Ladies and Gentlemen:

You have advised HC Capital Holdings 0909A, LLC (“HC”, “us” or “we”) that Groeb Farms, Inc. (the “Company” or “you”) is considering filing a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). In connection therewith, the Company has requested that we agree to commit to provide a debtor-in-possession revolving credit (the “DIP Facility”) in an aggregate principal amount of \$27 million (the “DIP Amount”).

Capitalized definitional terms used but not defined herein are used with the meanings assigned to them on Exhibit A attached hereto (the “Form of DIP Agreement”). This letter, and the attached Form of DIP Agreement, together, shall be referred to as the “Commitment Letter”. As used herein, the term “Transactions” means, collectively, the entering into and funding of the DIP Facility, the refinancing of the Prepetition Credit Facility and all other related transactions, including the payment of fees and expenses in connection therewith. The date on which the initial funding under the DIP Facility occurs is referred to as the “Closing Date,” and the date on which you file a voluntary petition under Chapter 11 of the Bankruptcy Code is referred to as the “Petition Date.”

1. Commitments

In connection with the Transactions, HC is pleased to advise you of its commitment, and hereby commits to provide, 100% of the aggregate amount of the DIP Facility upon the terms and conditions set forth in this Commitment Letter and the Form of DIP Agreement (as may be modified as mutually agreed).

2. Titles and Roles

It is agreed that (i) HC will act as sole lead arranger and sole bookrunner for the DIP Facility and (ii) HC will act as sole administrative agent for the DIP Facility.

You agree that no other agents, co-agents, arrangers, co-arrangers, bookrunners, co-bookrunners, managers or co-managers will be appointed, no other titles will be awarded and no compensation (other than that expressly contemplated by this Commitment Letter) will be paid in connection with the DIP Facility unless you and we shall so reasonably agree.

3. Information

You hereby represent and warrant to HC on the date hereof that (a) all information concerning you or any of your subsidiaries, other than any Projections (as defined below), forward looking information and information of a general economic or industry specific nature (the “Information”), that has been or will be made available to us by you or any of your representatives concerning you or your subsidiaries in connection with the Transactions contemplated hereby, when taken as a whole, does not or will not, when furnished to us, contain any untrue statement of a material fact or omit to state a material

fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (giving effect to all supplements thereto) and (b) the financial and/or business projections, budgets, estimates and other forward-looking information (the “Projections”) that have been or will be made available to us by you or any of your representatives in connection with the Transactions contemplated hereby have been or will be prepared in good faith based upon assumptions believed by you to be reasonable at the time prepared (it being recognized by HC that such Projections are not to be viewed as facts and that actual results during the period or periods covered by such Projections may differ from the projected results, and such differences may be material). You agree that if, at any time prior to the Closing Date, you become aware that any of the representations in the preceding sentence is incorrect in any material respect then you will promptly supplement the Information and the Projections so that such representations are correct in all material respects under those circumstances. You understand that in arranging and syndicating the DIP Facility we may use and rely on the Information and Projections without independent verification thereof, it being understood that Projections by their nature are inherently uncertain and are subject to significant contingencies, many of which are beyond your control and no assurances are being given that the results in the Projections will be achieved.

4. Fees

As consideration for the commitments and agreements of the HC hereunder, you agree to pay or cause to be paid: (x) a commitment fee (the “Commitment Fee”) in the aggregate amount equal to 3.0% of the DIP Amount; and (y) the nonrefundable fees described in the Form of DIP Agreement on the terms and subject to the conditions set forth therein. The Commitment Fee is fully earned as of the date hereof, and is payable in cash as follows: 50% thereof payable on the date of entry by the Bankruptcy Court of the Interim Order and 50% thereof payable on the date of entry by the Bankruptcy Court of the Final Order.

5. Conditions

HC’s commitments and agreements hereunder are subject to the conditions set forth in this Section 5 and in Section 4 of the Form of DIP Agreement.

HC’s commitments and agreements hereunder are further subject to (a) since the date hereof, there not having been any change, development or event that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company, other than as a result of events leading up to and following the commencement of the Case, (b) HC’s not becoming aware after the date hereof of any information (other than publicly available information or information with respect to general economic or industry conditions) not previously provided to HC affecting the Company or the Transactions that is inconsistent in a material and adverse manner with any such information (taken as a whole) disclosed (through public filings or private disclosure) to HC prior to the date hereof, (c) there being no competing offering, placement, arrangement or syndication of any debt securities or bank financing (other than the DIP Facility by or on behalf of you or your subsidiaries and indebtedness not prohibited by the terms of the definitive documentation relating to the DIP Facility) without the prior written consent of HC, (d) your performance of (i) all your obligations hereunder to provide information and (ii) all your obligations hereunder and under the Form of DIP Agreement and (e) your payment and reimbursement in full in cash of all fees, costs and expenses to the extent due and payable on or prior to the Closing Date.

6. Indemnification and Expenses

You agree (a) to indemnify and hold harmless HC, its affiliates and directors, officers, employees, advisors, agents and other representatives (each, an “Indemnified Person”) from and against any and all actual losses, claims, damages and liabilities to which any such Indemnified Person may become subject arising out of or in connection with this Commitment Letter, the DIP Facility, the use of the proceeds thereof or the Transactions or any claim, litigation, investigation or proceeding (a “Proceeding”) relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto, whether or not such Proceedings are brought by you, your equity holders, affiliates, creditors or any other person, and to reimburse each Indemnified Person upon demand for any reasonable legal expenses of one legal counsel for all Indemnified Persons or other out-of-pocket expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final nonappealable judgment of a court of competent jurisdiction to arise from the willful misconduct, bad faith, breach of the obligation, if any, to fund loans in accordance with the terms of the DIP Facility by an Indemnified Person or any of its Related Parties (defined below) or gross negligence of any Indemnified Person or its affiliates, directors, officers, employees, advisors, agents or other representatives (collectively, the “Related Parties”) and (b) regardless of whether the Closing Date occurs, to reimburse on demand HC and its affiliates for all reasonable and documented out-of-pocket expenses (including reasonable fees and reasonable documented out-of-pocket due diligence expenses, syndication expenses, travel expenses, reasonable fees and reasonable documented out-of-pocket expenses of professionals engaged in field examinations, collateral reviews, appraisals and environmental reviews, and reasonable fees, charges and disbursements of one primary counsel (and (i) appropriate local counsel in applicable foreign and local jurisdictions, but limited to one local counsel in each such jurisdiction and (ii) and, solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnified Persons similarly situated)) incurred in connection with the DIP Facility and any related documentation (including this Commitment Letter and the definitive financing documentation) or the administration, amendment, modification or waiver thereof. It is further agreed that HC shall only have liability to you (as opposed to any other person). No Indemnified Person shall be, liable for any damages arising primarily from the use by others of Information or other materials obtained through electronic, telecommunications or other information transmission systems, except to the extent any such damages are found by a final judgment of a court of competent jurisdiction to arise from the gross negligence, bad faith, the obligation, if any, to fund loans in accordance with the terms of the DIP Facility by an Indemnified Person or any of its Related Parties or willful misconduct of such Indemnified Person (or any of its Related Parties). None of the Indemnified Persons or you, or any of your affiliates or the respective directors, officers, employees, advisors, and agents of the foregoing shall be liable for any indirect, special, punitive or consequential damages in connection with this Commitment Letter, the DIP Facility or the transactions contemplated hereby, provided that nothing contained in this sentence shall limit your indemnity obligations to the extent set forth in this Section 6.

7. Sharing of Information, Absence of Fiduciary Relationship, Affiliate Activities

You acknowledge that HC is a full service firm and may from time to time effect transactions, for its own or its affiliates’ account, and hold positions in loans, securities or options on loans or securities of you, or your affiliates. In addition, HC and its affiliates will not use confidential information obtained from you or your affiliates or on your or their behalf by virtue of the transactions contemplated hereby in connection with the performance by HC and its affiliates of services in connection with other companies. You also acknowledge that HC and its affiliates have no obligation to use in connection with the transactions contemplated hereby, or to furnish to you, confidential information obtained from other companies or persons. HC shall continue to comply with the confidentiality provisions set forth in Section 17.8 of the Prepetition Credit Facility taking into account the exceptions thereto. You further

acknowledge and agree that (a) no fiduciary, advisory or agency relationship between you and HC is intended to be or has been created in respect of any of the transactions contemplated by the DIP Facility, (b) HC, on the one hand, and you, on the other hand, have an arm's length business relationship that does not directly or indirectly give rise to, nor do you rely on, any fiduciary duty to you or your affiliates on the part of HC with respect to the DIP Facility, (c) you are capable of evaluating and understanding, and you understand and accept, the terms, risks and conditions of the transactions contemplated by this Commitment Letter, (d) you have been advised that HC is engaged in a broad range of transactions that may involve interests that differ from your interests and that HC has no obligation to disclose such interests and transactions to you, (e) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate and (f) HC does not have any obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein or in any other express writing executed and delivered by HC and you or any such affiliate.

8. Miscellaneous

This Commitment Letter shall not be assignable by you without the prior written consent of HC or by HC without your prior written consent (and in each case any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and the Indemnified Persons and is not intended to and does not confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and the Indemnified Persons to the extent expressly set forth herein. HC reserves the right to employ the services of its affiliates in providing services contemplated hereby. This Commitment Letter may not be amended or waived except by an instrument in writing signed by you and HC. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by facsimile or electronic transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter is the only agreement that has been entered into among us and you with respect to the DIP Facility and sets forth the entire understanding of the parties with respect thereto. This Commitment Letter shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

You and we hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the bankruptcy court having jurisdiction over the chapter 11 case of the Company or, if such court denies jurisdiction or the Company elects not to file a case under the Bankruptcy Code, then any state or Federal court sitting in the Borough of Manhattan in the City of New York over any suit, action or proceeding arising out of or relating to the Transactions or the other transactions contemplated hereby, this Commitment Letter or the performance of services hereunder or thereunder. You and we agree that service of any process, summons, notice or document by registered mail addressed to you or us shall be effective service of process for any suit, action or proceeding brought in any such court. You and we hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding has been brought in any inconvenient forum. You and we hereby irrevocably agree to waive trial by jury in any suit, action, proceeding, claim or counterclaim brought by or on behalf of any party related to or arising out of the Transactions, this Commitment Letter or the performance of services hereunder or thereunder.

HC hereby notifies you that, pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "PATRIOT Act"), it is required to obtain, verify and record information that identifies each Borrower and each Guarantor, which information includes names, addresses, tax identification numbers and other information that will allow such Lender to identify the Company and each Guarantor in accordance with the PATRIOT Act.

The indemnification, fee, expense, jurisdiction and confidentiality provisions contained herein shall remain in full force and effect regardless of whether definitive financing documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or the commitments hereunder; provided that your obligations under this Commitment Letter shall automatically terminate and be superseded by the provisions of the loan documents governing the DIP Facility upon the initial funding thereunder, and you shall automatically be released from all liability in connection therewith at such time; provided further that HC's confidentiality obligations in Section 7 of this Commitment Letter shall automatically terminate and be superseded by the provisions of the definitive loan documents governing the DIP Facility.

You may terminate this Commitment Letter subject to the survival provisions set forth in the foregoing paragraph at any time upon notice to HC.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms of this Commitment Letter by returning to us an executed counterpart of this Commitment Letter, not later than the time immediately prior to the filing by the Company of its petition or petitions under Chapter 11 of the Bankruptcy Code. This offer will automatically expire at such time if we have not received such executed counterparts. In the event that the initial Advance under the DIP Facility does not occur on or before October 4, 2013 then this Commitment Letter and the commitments hereunder shall automatically terminate unless you request an extension and we shall, in our discretion, agree to such an extension. In addition, this Commitment Letter and the commitments hereunder shall expire at (a) 5:00 p.m. Central standard time, on October 1, 2013, unless the Company shall have theretofore filed its voluntary petition under Chapter 11 of the Bankruptcy Code in the Court and (b) if such petitions have been filed by such time, at 5:00 p.m. (New York City time) on the date that is 3 days after such filing, unless, prior to that time, the Court shall have entered the Interim Order, you shall have paid to HC the fees that are specified herein and in the DIP Facility to be due upon such entry and you shall have entered into definitive documentation with respect to the DIP Facility. In the further event that the Interim Order is entered, this Commitment Letter and the commitments hereunder shall expire 36 days after the entry of the Interim Order unless the Final Order shall have been entered prior to the expiration of such 36-day period.

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

HC Capital Holdings 0909A, LLC

By:



Name: Robert M. Strauss

Title: Managing Director

Accepted and agreed to as of the date first written above:

Groeb Farms, Inc.

By:

Name:

Title:

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

HC Capital Holdings 0909A, LLC

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above:

Groeb Farms, Inc.

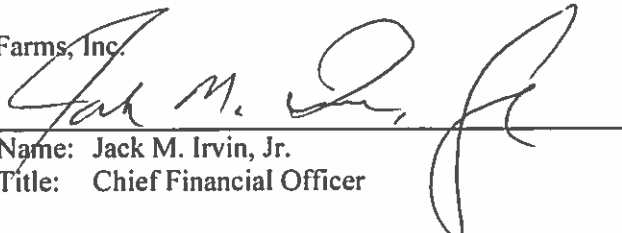
By: 
Name: Jack M. Irvin, Jr.
Title: Chief Financial Officer

Exhibit A

(Attached)

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION

CREDIT AND SECURITY AGREEMENT

by and between

GROEB FARMS, INC.

as Borrower,

and

HC CAPITAL HOLDINGS 0909A, LLC,

as Lender

Dated as of October [__], 2013

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SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this "Agreement"), is entered into as of October [___], 2013, by and between **HC CAPITAL HOLDINGS 0909A, LLC** ("Lender") and **GROEB FARMS, INC.**, a Michigan corporation ("Borrower").

WHEREAS, on October 1, 2013 (the "Petition Date"), Borrower filed a voluntary petition with the Bankruptcy Court initiating a case under Chapter 11 of the Bankruptcy Code and has continued in the possession of its assets and in the management of its businesses pursuant to Section 1107 and 1108 of the Bankruptcy Code.

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions, Code Terms, Accounting Terms and Construction.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1. Additionally, matters of (i) interpretation of terms defined in the Code, (ii) interpretation of accounting terms and (iii) construction are set forth in Schedule 1.1.

2. LOANS AND TERMS OF PAYMENT.

2.1 **Revolving Loan Advances.**

(a) Subject to the terms and conditions of this Agreement, and prior to the Termination Date, Lender agrees to make advances of the revolving loans ("Advances") to Borrower in an amount at any one time outstanding not to exceed the Maximum Revolver Amount plus \$3,000,000 of Prepetition Advances (to the extent that such amount remains outstanding under the Prepetition Credit Facility and is not subject to challenge), less the amount of Prepetition Advances and Prepetition Term Loans outstanding at such time; provided, however, that the Aggregate Maximum Loan Balance shall not exceed, and shall be deemed to be reduced to, the lesser of (x) \$30,000,000 and (y) the Borrowing Base plus the Permitted Overadvance Amount at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued and unpaid thereon, shall be due and payable on the Termination Date. Lender has no obligation to (i) make an Advance at any time following the occurrence and during the continuance of a Default or an Event of Default and (ii) make an Advance in an amount that would, when added to all other Advances, exceed the amount permitted pursuant to Section 2.1(a).

2.2 **[RESERVED]**

2.3 **Borrowing Procedures.**

(a) **Procedure for Borrowing.** Each Borrowing shall be made by delivery to Lender of a Borrowing Request by an Authorized Person. Such written request must be received by Lender no later than noon (Central time) one (1) Business Day before the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day. In lieu of delivering the above-described written request, any Authorized Person may give Lender telephonic notice of such request by the required time, followed promptly by such a written request. Lender is authorized to make the Advances based upon telephonic or other instructions received from anyone purporting to be an Authorized Person;

(b) **Making of Loans.** Promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Lender shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such amount to the Designated Account; provided, however, that, (i) Lender shall not have the obligation to make any Advance if (1) one or more of the applicable conditions precedent set forth in Section 4 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived by Lender, or (2) the requested Borrowing would exceed the Availability on such Funding Date and (ii) proceeds of the Borrowing shall be made available to Borrower by transferring immediately available funds equal to such amount to the Designated Account.

(c) **[Reserved]**

(d) **Protective Advances.** Lender may make an Advance for any reason at any time in its sole discretion, without Borrower's compliance with any of the conditions of this Agreement, and (i) disburse the proceeds directly to third Persons in order to protect Lender's interest in the Collateral or to perform any obligation of Borrower under this Agreement or any other Loan Document or otherwise to enhance the likelihood of repayment of the Obligations, or (ii) apply the proceeds to outstanding Obligations then due and payable to Lender (such Advance, a "Protective Advance").

2.4 **Payments; Prepayments.**

(a) **Payments by Borrower.** Except as otherwise expressly provided herein, all payments by Borrower shall be made to the Collection Account or as otherwise specified in the applicable Cash Management Documents.

(b) **Payments by Account Debtors.** Promptly (and in any event within 5 Business Days) prior to the opening of any new Lockbox, Borrower shall instruct the Account Debtors of Borrower to make payments directly to the Lockbox for deposit by Lender to the Collection Account, or Borrower shall instruct them to deliver such payments to Lender by wire transfer, ACH, or other means as Lender may direct for deposit to the Lockbox or Collection Account or for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. To the extent that any Account Debtors of Borrower make payments directly to any lockbox other than a Lockbox, Borrower shall cooperate with Lender in causing all such funds to be wired directly to Lender on a daily basis for deposit to the Lockbox or Collection Account or for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. If Borrower receives a payment or the Proceeds of Collateral directly, Borrower will promptly deposit the payment or Proceeds into the Collection Account. Until so deposited, Borrower will hold all such payments and Proceeds in trust for Lender without commingling with other funds or property.

(c) **Crediting Payments.** For purposes of calculating Availability and the accrual of interest on outstanding Obligations, unless otherwise provided in the applicable Cash Management Documents, each payment shall be applied to the Obligations on the first Business Day following the Business Day of deposit to the Collection Account or other receipt by Lender provided such payment is received in accordance with Lender's usual and customary practices. Any payment received by Lender that is not a transfer of immediately available funds shall be considered provisional until the item or items representing such payment have been finally paid under Applicable Law. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment, and that portion of outstanding Obligations corresponding to the amount of such dishonored payment item shall be deemed to bear interest as if the dishonored payment item had never been received by Lender. Each reduction in outstanding Advances resulting from the application of such payment to the outstanding Advances shall be accompanied by an equal reduction in the amount of outstanding Accounts.

(d) **Application of Payments.**

(i) All Collections and all Proceeds of Collateral received by Lender, shall be applied (subject to clause (ii) below), *first* to reduce the outstanding Prepetition Term Loans until such Prepetition Term Loans are Paid in Full, *second* to reduce the Prepetition Advances until the principal balance thereof equals \$3,000,000, *third* to reduce the Obligations in such manner as Lender shall determine in its sole discretion. Following the occurrence and during the continuance of an Event of Default, Proceeds of Collateral and Collateral shall be applied by Lender in such manner as Lender shall determine in its discretion including on account of obligations under the Prepetition Credit Facility. After payment in full in cash of all Obligations and termination of any commitment to provide Advances, any remaining balance shall be transferred to the Designated Account or otherwise to such other Person entitled thereto under Applicable Law.

(ii) (A) Each prepayment pursuant to Section 2.4(f)(i) shall be applied in the manner set forth in Section 10.5.

(e) **[Reserved]**

(f) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, the Revolver Usage plus Prepetition Advances plus Prepetition Term Loans, in each case outstanding at such time, exceeds (any such excess amount being referred to as the "Overadvance Amount") the Borrowing Base plus the Permitted Overadvance Amount, then, at such time, the Borrower shall immediately pay the Obligations in an aggregate amount equal to the Overadvance Amount. If Payment in Full of the outstanding revolving loans is insufficient to eliminate the Overadvance Amount, Borrower shall prepay such amount of the outstanding Obligations in an amount at least equal to such excess. Lender shall not be obligated to provide any Advances during any period that an Overadvance Amount is outstanding.

2.5 **[Reserved]**

2.6 **Interest Rates: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(b), the principal amount of all Obligations (except for Bank Products) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to the Interest Rate plus the applicable Interest Rate Margin, provided, that an amount equal to the Commitment Fee (as defined in that certain Commitment Letter dated as of October 1, 2013 by and between Borrower and Lender) to the extent paid by Borrower and added to the principal balance of the Obligations, shall not bear any interest pursuant to this Section 2.6(a) prior to the Termination Date (unless on such date, such principal amount is repaid in full in cash).

(b) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at any time following the Termination Date, the principal amount of all Obligations (except for Bank Products) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to 3 percentage points above the per annum rate otherwise applicable hereunder.

(c) **Payment.** Except to the extent provided to the contrary in Section 2.12, all interest, all fees payable hereunder or under any of the other Loan Documents, all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Expenses shall be due and payable, in arrears, on the first day of each month and on the Termination Date. Borrower hereby authorizes Lender, from time to time without prior notice to Borrower, to charge all interest, all fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs and expenses payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all Lender Expenses (as and when due and payable), and all fees and costs provided for in Section 2.12 (as and when due and payable), and all other payment obligations as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to any Bank Product Provider in respect of Bank Products) to the Loan Account, which amounts shall thereupon constitute Advances hereunder and, shall accrue interest at the rate then applicable to Advances. Any interest, fees, costs, expenses, Lender Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement that are charged to the Loan Account shall thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Interest Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Interest Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Interest Rate.

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under Applicable Law, then, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 **Designated Account.** Borrower agrees to establish and maintain one or more Designated Accounts, each in the name of Borrower, for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Lender hereunder. Unless otherwise agreed by Lender and Borrower, any Advance requested by Borrower and made by Lender hereunder shall be made to the applicable Designated Account.

2.8 **Maintenance of Loan Account; Statements of Obligations.** Lender shall maintain an account on its books in the name of Borrower (the "Loan Account") in which will be recorded, all Advances made by Lender to Borrower or for Borrower's account and all other payment Obligations hereunder or under the other Loan Documents, including accrued interest, fees and expenses, and Lender Expenses. In accordance with Section 2.4, the Loan Account will be credited with all payments received by Lender from Borrower or for Borrower's account. All monthly statements delivered by Lender to Borrower regarding the Loan Account, including with respect to principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Expenses owing, shall be subject to subsequent adjustment by Lender but shall, absent demonstrable error, be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and

Lender unless, within 30 days after receipt thereof by Borrower, Borrower shall deliver to Lender written objection thereto describing the error or errors contained in any such statements.

2.9 **Maturity Date; Termination Date.** Lender's obligations under this Agreement shall continue in full force and effect for a term ending on the earliest of (i) 110 days following the Petition Date (the "**Maturity Date**"), (ii) (x) three (3) days following the Petition Date unless, on or prior to such date, the Interim Order shall have been entered and be in full force and effect and not stayed and (y) the date that is 36 days following the Petition Date unless, on or prior to such 36th day, the Final Order shall have been entered and be in full force and effect and not stayed, (iii) the date Borrower terminates the Revolving Credit Facility, and (iv) the date the Revolving Credit Facility terminates pursuant to Section 10.1 or Section 10.2 following an Event of Default (the earliest of these dates, the "**Termination Date**"). The foregoing notwithstanding, Lender shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses, including Lender Expenses) in full on the Termination Date (other than the Hedge Obligations, which shall be paid in accordance with the applicable Hedge Agreement).

2.10 **Effect of Maturity.** On the Termination Date, all obligations of Lender to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations which shall be terminated in accordance with the applicable Hedge Agreement) shall immediately become due and payable in full in cash without notice or demand and Borrower shall immediately repay all of such Obligations in full. No termination of the obligations of Lender (other than cash payment in full of the Obligations and termination of the obligations of Lender to provide additional credit hereunder) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Lender's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full in cash and Lender's obligations to provide additional credit hereunder shall have been terminated. Provided that there are no suits, actions, proceedings or claims pending or threatened against any Indemnified Person under this Agreement with respect to any Indemnified Liabilities, Lender shall, at Borrower's expense, release or terminate (or authorize Borrower or its designee to release or terminate) any filings or other agreements that perfect the Security Interest, upon Lender's receipt of each of the following, in form and content satisfactory to Lender: (i) cash payment in full of all Obligations and completed performance by Borrower with respect to its other obligations under this Agreement, (ii) evidence that any obligation of Lender to make Advances to Borrower or provide any further credit to Borrower has been terminated, and (iii) an agreement by Borrower and each other Loan Party to indemnify Lender and its Affiliates for any payments received by Lender or its Affiliates that are applied to the Obligations as a final payoff that may subsequently be returned or otherwise not paid for any reason. With respect to any outstanding Hedge Obligations which are not so paid in full, the Bank Product Provider may require Borrower to cash collateralize the then existing Hedge Obligations in an amount acceptable to Lender prior to releasing or terminating any filings or other agreements that perfect the Security Interest.

2.11 **Termination or Reduction by Borrower.** Borrower may terminate the Credit Facility or reduce the Maximum Revolver Amount in whole or in part at any time prior to the Maturity Date, if Borrower (i) delivers a notice to Lender of its intentions at least five (5) Business Days prior to the proposed action and (ii) pays the Obligations (other than the outstanding Hedge Obligations, which shall be paid in accordance with the applicable Hedge Agreement) in full or down to the reduced Maximum Revolver Amount, as applicable. Any reduction in the Maximum Revolver Amount shall be in multiples of \$500,000, with a minimum reduction of at least \$1,000,000. Each such termination, reduction or prepayment shall be irrevocable. Once reduced, the Maximum Revolver Amount may not be increased.

2.12 **Fees.** Borrower shall pay to Lender the fees set forth on Schedule 2.12 attached hereto.

2.13 **[Reserved]**

2.14 **Illegality; Impracticability; Increased Costs.** In the event that, in each case after the date hereof, (i) any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof make it unlawful or impractical for Lender to fund or maintain extensions of credit with interest based upon Daily Three Month LIBOR or to continue such funding or maintaining, or to determine or charge interest rates based upon Daily Three Month LIBOR, (ii) Lender determines that by reasons affecting the London interbank Eurodollar market, adequate and reasonable means do not exist for ascertaining Daily Three Month LIBOR, or (iii) Lender determines that the interest rate based on the Daily Three Month LIBOR will not adequately and fairly reflect the cost to Lender of maintaining or funding Advances at the interest rate based upon Daily Three Month LIBOR, Lender shall give notice of such changed circumstances to Borrower and (i) interest on the principal amount of such extensions of credit thereafter shall accrue interest at a rate equal to the Prime Rate plus the applicable Interest Rate Margin, and (ii) Borrower shall not be entitled to elect Daily Three Month LIBOR until Lender determines that it would no longer be unlawful or impractical to do so or that such increased costs would no longer be applicable (and Lender agrees to promptly notify Borrower at any time such changed circumstances no longer apply; provided, however, Lender shall have no liability to Borrower for failing to provide such notice).

2.15 **Capital Requirements.** If, after the date hereof, Lender determines that (i) the adoption after the date hereof of or change after the date hereof in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change after the date hereof in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, including those changes resulting from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III, regardless of the date enacted, adopted or issued, or (ii) compliance by Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law) issued after the date hereof has the effect of reducing the return on Lender's or such holding company's capital as a consequence of Lender's loan commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by Lender to be material, then Lender may notify Borrower thereof. Following receipt of such notice, Borrower agrees to pay Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Lender of a statement in the amount and setting forth in reasonable detail Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent demonstrable error). In determining such amount, Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation; provided that Borrower shall not be required to compensate Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Lender demands compensation from Borrower in respect of such law, rule, regulation or guideline giving rise to such reductions; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.16 **Priority and Liens Applicable to Borrower.** Borrower hereby covenants, represents and warrants that, upon the execution of this Agreement subject to the entry of the Interim Order (and when applicable, the Final Order), the Obligations of Borrower:

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute a Superpriority Claim in the Case;

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a perfected first priority Lien on all real, personal, tangible and intangible property of Borrower's estate in the Case (including, without limitation, all of the outstanding shares of capital stock of Subsidiaries of Borrower (limited, in the case of voting capital stock of Foreign Subsidiaries, to 65% of the voting capital stock of first tier Foreign Subsidiaries to the extent a pledge of a greater percentage of such stock could reasonably be expected to result in material adverse tax consequences to Borrower or any of its Subsidiaries as reasonably determined by Borrower) that is not subject to valid, perfected and non-avoidable liens as of the Petition Date);

(c) pursuant to Section 364(d) of the Bankruptcy Code, shall at all times be secured by a perfected first priority priming lien on all real, personal, tangible and intangible property of Borrower subject to an existing lien securing outstanding debt under the Prepetition Credit Facility and the Prepetition Subordinated Debt.

(d) pursuant to each Subordination Agreement (as defined in the Prepetition Credit Facility) and to the extent applicable, Section 364(d) of the Bankruptcy Code, shall be secured by a perfected first priority priming Lien on all real, personal, tangible and intangible property of Borrower subject to a Lien securing the Prepetition Credit Facility and the Prepetition Subordinated Debt; and

(e) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by a perfected junior Lien upon all real, personal, tangible and intangible property of Borrower's estate in the Case that is subject to valid, perfected and non-avoidable Liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, in each case other than the Liens securing the Prepetition Credit Facility and the Prepetition Subordinated Debt, subject in the case of each of the preceding paragraphs, only to the Carve-Out, and, in each case, as set forth in the Orders.

2.17 **No Discharge; Survival of Claims.** Borrower agrees that (a) its obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives such discharge) and (b) the Superpriority Claim granted to Lender pursuant to the Orders and described in Section 2.16(a) and the Liens granted to Lender pursuant to the Orders and described in Sections 2.16(b), (c), (d) and (e) shall not be affected in any manner by the entry of an order confirming a Reorganization Plan other than the discharge and release of such Liens and upon the Payment in Full of the Obligations as provided herein.

3. SECURITY INTEREST.

3.1 **Grant of Security Interest.** Subject to the Orders, as applicable, Borrower hereby unconditionally grants, assigns, and pledges to Lender for the benefit of Lender and each Bank Product Provider that is a Lender, to secure payment and performance of the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of its pre-Petition Date and post-Petition Date right, title, and interest in and to the Collateral. Following request by Lender, Borrower shall grant Lender a Lien and security interest in all Commercial Tort Claims that it may have against any Person. The Security Interest created hereby secures the payment and performance of the Obligations, whether now existing or arising hereafter.

3.2 **Borrower Remains Liable.** Anything herein to the contrary notwithstanding, (a) Borrower shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Lender of any of the rights hereunder shall not release Borrower from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

3.3 **Assignment of Insurance.** As additional security for the Obligations, Borrower hereby assigns as security to Lender for the benefit of Lender and each Bank Product Provider that is a Lender all rights of Borrower under every policy of insurance covering the Collateral and all other assets and property of Borrower (including, without limitation, business interruption insurance and proceeds thereof) and all business records and other documents relating to it, and all monies (including proceeds and refunds) that may be payable under any policy, and Borrower and each other Loan Party hereby directs the issuer of each policy to pay all such monies directly and solely to Lender. If an Event of Default shall have occurred and be continuing, Lender may (but need not), in Lender's or Borrower's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment of the policy of insurance, and adjust, litigate, compromise or release claims against the issuer of any policy. Any monies received under any insurance policy assigned as security to Lender, other than liability insurance policies, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Lender and, as determined by Lender in its sole discretion, either be applied to prepayment of the Obligations or disbursed to Borrower under payment terms reasonably satisfactory to Lender for application to the cost of repairs, replacements, or restorations of the affected Collateral which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.4 **Financing Statements.** Subject to the Orders, as applicable, Borrower authorizes Lender to file financing statements describing Collateral to evidence the perfection of Lender's Security Interest in the Collateral, and Lender may describe the Collateral as "all personal property" or "all assets" or describe specific items of Collateral including without limitation any Commercial Tort Claims. All financing statements filed before the date of this Agreement to perfect the Security Interest were authorized by Borrower and each other Loan Party and are hereby ratified.

4. CONDITIONS.

4.1 **Conditions Precedent to the Initial Extension of Credit.** The obligation of Lender to make the initial extension of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Lender, of each of the conditions precedent set forth on Exhibit B.

4.2 **Conditions Precedent to all Extensions of Credit.** The obligation of Lender to make any Advances hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Loan Party and its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall continue to be true and correct as of such earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and

(c) the Interim Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified and, following 36 days after the Petition Date, the Final Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified.

Any request for an extension of credit shall be deemed to be a representation by each Loan Party that the statements set forth in this Section 4.2 are correct as of the time of such request and (ii) if such extension of credit is a request for an Advance, sufficient Availability exists for such Advance pursuant to Section 2.1.

4.3 **Conditions Subsequent.** The obligation of Lender to continue to make Advances (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Exhibit C (the failure by Borrower or any other Loan Party to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof, shall constitute an Event of Default).

5. REPRESENTATIONS AND WARRANTIES.

In order to induce Lender to enter into this Agreement, Borrower, and each other Loan Party makes the representations and warranties to Lender set forth on Exhibit D. Each of such representations and warranties shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Advance or other extension of credit made thereafter, as though made on and as of the date of such Advance or other extension of credit (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall continue to be true and correct as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement.

6. AFFIRMATIVE COVENANTS.

Borrower and each other Loan Party covenants and agrees that until Payment in Full of the Obligations, Borrower and each other Loan Party shall, and shall cause each of its Subsidiaries to, comply with each of the following:

6.1 **Financial Statements, Reports, Certificates.** Deliver to Lender copies of each of the financial statements, reports, and other items set forth on Schedule 6.1 no later than the times specified therein. In addition, Borrower and each other Loan Party agree that no Subsidiary of Borrower or any other Loan Party will have a fiscal year different from that of Borrower. Borrower and each other Loan Party agree to maintain a system of accounting that enables it to produce financial statements in accordance with GAAP. Borrower and each other Loan Party shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to the sales of such Loan Party and its Subsidiaries, and (b) maintain its billing systems/practices substantially as in effect as of the Closing Date and shall only make material modifications following prior notice to Lender.

6.2 **Collateral Reporting.** Provide Lender with each of the reports set forth on Schedule 6.2 at the times specified therein. In addition, Borrower agrees to use commercially reasonable efforts in cooperation with Lender to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

6.3 **Existence.** Except as otherwise permitted under Section 7.3 or Section 7.4, at all times maintain and preserve in full force and effect (a) its existence (including being in good standing in its jurisdiction of organization) and (b) all rights and franchises, licenses and permits material to its business; provided, however, that no Loan Party nor any of its Subsidiaries shall be required to preserve any such right or franchise, licenses or permits if the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lender; provided that Borrower delivers at least ten (10) days prior written notice to Lender of the election of such Loan Party or such Subsidiary not to preserve any such right or franchise, license or permit.

6.4 **Maintenance of Properties.** Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty excepted and Permitted Dispositions excepted (and except where the failure to so maintain and preserve such assets could not reasonably be expected to result in a Material Adverse Change), and comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

6.5 **Taxes.**

(a) Cause all assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall

be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, (i) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, and (ii) any such other Lien is at all times subordinate to Lender's Liens.

(b) Make timely payment or deposit of all tax payments and withholding taxes required of it and them by Applicable Laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof reasonably satisfactory to Lender indicating that such Loan Party and its Subsidiaries have made such payments or deposits.

6.6 **Insurance.** At Borrower's expense, maintain insurance with respect to the assets of each Loan Party and each of its Subsidiaries, wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain, with respect to each Loan Party and each of its Subsidiaries, business interruption insurance, general liability insurance, flood insurance for Collateral located in a flood plain, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies acceptable to Lender and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Lender. All property insurance policies covering the Collateral are to be made payable to Lender for the benefit of Lender, as its interests may appear, in case of loss, pursuant to a lender loss payable endorsement reasonably acceptable to Lender and are to contain such other provisions as Lender may reasonably require to fully protect the Lender's interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Lender, with the lender loss payable (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage) in favor of Lender and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Lender of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Lender may arrange for such insurance, but at Borrower's expense and without any responsibility on Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Lender prompt notice of any loss exceeding \$100,000 covered by such casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right (but no obligation) to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

6.7 **Inspections, Exams, Audits and Appraisals.** Permit Lender and each of Lender's duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct inspections, exams, audits and appraisals of the Collateral, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

6.8 **Account Verification.** Permit Lender, in Lender's name or in the name of a nominee of Lender, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or otherwise. Further, at the request of Lender, Borrower shall send requests for verification of Accounts or send notices of assignment of Accounts to Account Debtors and other obligors.

6.9 **Compliance with Laws.** Comply with the requirements of all Applicable Laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

6.10 **Environmental.**

(a) Keep any property either owned or operated by any Loan Party or any of its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances satisfactory to Lender and in an amount sufficient to satisfy the obligations or liability evidenced by such Environmental Liens;

(b) Comply, in all material respects, with Environmental Laws and provide to Lender documentation of such compliance which Lender reasonably requests, other than Environmental Laws the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change;

(c) Promptly notify Lender of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or any of its Subsidiaries and take

any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law related to such release; and

(d) Promptly, but in any event within 5 Business Days of its receipt thereof, provide Lender with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of any Loan Party or any of its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority regarding any Environmental Law.

6.11 **Disclosure Updates.**

(a) Promptly and in no event later than 5 Business Days after an officer of Borrower obtains knowledge thereof, notify Lender:

(i) if any written information, exhibit, or report furnished to Lender contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. Any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto;

(ii) of all actions, suits, or proceedings brought by or against any Loan Party or any of its Subsidiaries before any court or Governmental Authority which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, provided that, in any event, such notification shall not be later than 5 days after service of process with respect thereto on any Loan Party or any of its Subsidiaries;

(iii) of (A) any disputes or claims by Borrower's customers exceeding \$100,000 individually or \$250,000 in the aggregate during any Fiscal Year; or (B) Goods returned to or recovered by Borrower outside of the ordinary course of business exceeding \$100,000 individually or \$250,000 in the aggregate during any Fiscal Year;

(iv) of any material loss or damage to any Collateral or any substantial adverse change in the Collateral;

(v) of a violation of any law, rule or regulation, the non-compliance with which reasonably could be expected to result in a Material Adverse Change;

(vi) of the occurrence of any ERISA Event; or

(vii) the filing or commencement of any material action, suit or proceeding with respect to any Lease.

(b) Promptly and in no event later than 5 Business Days after an officer of Borrower obtains knowledge thereof, notify Lender of any event or condition which constitutes a Default or an Event of Default and provide a statement of the action that Borrower proposes to take with respect to such Default or Event of Default.

(c) (i) Promptly in advance of filing with the Bankruptcy Court or delivering to the Creditor's Committee or to the U.S. Trustee, as the case may be, deliver to Lender all proposed orders and pleadings related to the Obligations and the Loan Documents, any Reorganization Plan and/or any disclosure statement related thereto and (ii) substantially simultaneously with the filing with the Bankruptcy Court or delivering to the Creditor's Committee or to the U.S. Trustee, as the case may be, deliver to Lender all other notices, filings, motions, pleadings or other information concerning the financial condition of Borrower or any of its Subsidiaries or other Indebtedness of Borrower or other the Loan Parties. Notwithstanding the foregoing, Borrower is not required to provide to Lender the information and/or documents that are delivered to the Creditor's Committee that directly relate to the process of marketing for sale in whole or in part Borrower's business and/or assets.

Upon request of Lender, each Loan Party shall deliver to Lender any other materials, reports, records or information reasonably requested relating to the operations, business affairs or financial condition of any Loan Party or any of its Subsidiaries or any Collateral or the Case.

6.12 **Collateral Covenants.** Comply with each of the following covenants.

(a) **Possession of Collateral.** In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, Borrower shall promptly (and in any event within 5 Business Days after receipt thereof), notify Lender thereof, and if and to the extent that perfection or priority of Lender's Security Interest is dependent on or enhanced by possession, the applicable Loan Party, promptly (and in any event within 5 Business Days) after request by Lender, shall execute such other documents and instruments as shall be requested by Lender or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to Lender, together with such undated powers (or other relevant document of assignment or transfer acceptable to Lender) endorsed in blank as shall be requested by Lender, and shall do such other acts or things deemed necessary or desirable by Lender to enhance, perfect and protect Lender's Security Interest therein;

(b) **Chattel Paper.**

(i) Promptly (and in any event within 5 Business Days) after request by Lender, each Loan Party shall take all steps reasonably necessary to grant Lender control of all electronic Chattel Paper of Borrower and any other Loan Party in accordance with the Code and all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction;

(ii) If any Loan Party retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby), promptly upon the request of Lender, such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interest of HC Capital Holdings 0909A, LLC as Lender";

(c) **Control Agreements.**

(i) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement, from each bank (other than Lender) maintaining a Deposit Account for such Loan Party; except that no Control Agreement shall be required for up to two (2) petty cash accounts maintained with banks (other than Lender) so long as such petty cash accounts do not at any time contain more than \$5,000 in the aggregate at any one time.

(ii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement, from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for any Loan Party; and

(iii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall cause Lender to obtain "control", as such term is defined in the Code, with respect to all of the investment property of any Loan Party;

(iii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall at all times cause all cash and Cash Equivalents of such Loan Party (including proceeds of any Collateral) to be immediately deposited in Deposit Accounts subject to a Control Agreement in favor of Lender;

(d) **Letter-of-Credit Rights.** If any Loan Party is or becomes the beneficiary of letters of credit, then such Loan Party shall promptly (and in any event within 5 Business Days after becoming a beneficiary), notify Lender thereof and, promptly (and in any event within 2 Business Days) after request by Lender, enter into a tri-party agreement with Lender and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Lender and directing all payments thereunder to the Collection Account, all in form and substance reasonably satisfactory to Lender;

(e) **Commercial Tort Claims.** If any Loan Party or Loan Parties obtain Commercial Tort Claims, then the applicable Loan Party or Loan Parties shall promptly (and in any event within 5 Business Days of obtaining such Commercial Tort Claim), notify Lender upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within 2 Business Days) after request by Lender, amend Schedule 5.6(d) to the Information Certificate to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to Lender, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by Lender to give Lender a first priority, perfected security interest in any such Commercial Tort Claim, which Commercial Tort Claim shall not be subject to any other Liens (other than junior Permitted Liens in favor of the Institutional Subordinated Creditors);

(f) **Government Contracts.** If any Account or Chattel Paper of any Loan Party arises out of a contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof, Loan Parties shall promptly (and in any event within 5 Business Days of the creation thereof) notify Lender thereof and, promptly (and in any event within 2 Business Days) after request by Lender, execute any instruments or take any steps reasonably required by Lender in order that all moneys due or to become due under such contract or contracts shall be assigned for security purposes to Lender, for the benefit of Lender and each Bank Product Provider, and shall provide written notice thereof under the Assignment of Claims Act or other Applicable Law;

(g) **Intellectual Property.**

(i) Upon the request of Lender, in order to facilitate filings with the PTO and the United States Copyright Office, subject to the Orders, as applicable, each Loan Party shall execute and deliver to Lender one or more Copyright Security Agreements, Patent Security Agreements or Trademark Security Agreements to further evidence Lender's Lien on such Loan Party's Patents, Trademarks, or Copyrights, and the General Intangibles of such Loan Party relating thereto or represented thereby;

(ii) Each Loan Party shall have the duty, with respect to Intellectual Property that is material and necessary in the conduct of such Loan Party's business, to protect and diligently enforce and defend at such Loan Party's expense such Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter, (C) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter, (D) to take all reasonable and necessary action to preserve and maintain all of such Loan Party's Trademarks, Patents, Copyrights, Intellectual Property Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of each Loan Party who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment to such Loan Party of Intellectual Property rights created or developed and obligations of confidentiality. No Loan Party shall abandon any Intellectual Property or Intellectual Property License that is material and necessary in the conduct of such Loan Party's business. Each Loan Party shall take the steps described in this Section 6.12(g)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is material and necessary in the conduct of such Loan Party's business;

(iii) Each Loan Party acknowledges and agrees that Lender shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of any Loan Party. Without limiting the generality of this Section 6.12(g)(iii), each Loan Party acknowledges and agrees that Lender shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but Lender may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all Lender Expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Loan Party and shall be chargeable to the Loan Account;

(iv) Each Loan Party shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is material and necessary in connection with the conduct of such Loan Party's business. Any expenses incurred in connection with the foregoing shall be borne by the Loan Parties;

(v) No Loan Party shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person which is material and necessary in connection with the conduct of such Loan Party's business unless such Loan Party has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of such Loan Party thereunder) to Lender (and any transferees of Lender);

(h) **Investment Related Property.**

(i) Upon the occurrence and during the continuance of an Event of Default, following the request of Lender, all sums of money and property paid or distributed in respect of the Investment Related Property that are received by any Loan Party shall be held by such Loan Party in trust for the benefit of Lender segregated from such Loan Party's other property, and such Loan Party shall deliver it promptly to Lender in the exact form received.

(ii) Each Loan Party shall cooperate with Lender in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the

Investment Related Property or to effect any sale or transfer thereof upon the occurrence and during the continuance of an Event of Default; and

(i) **Cash Management Transition.** Each Loan Party and each Subsidiary of each Loan Party shall maintain its Cash Management Services, including all deposit accounts and lockbox services in a manner, in accounts and at the same institutions, as existed immediately prior to the Petition Date, unless otherwise agreed to by Lender. Such Cash Management Services maintained by each Loan Party and each Subsidiary of each Loan Party shall be of a type and on terms reasonably satisfactory to Lender.

(j) **Motor Vehicles.** Promptly upon the request of the Lender in its sole discretion, Borrower shall deliver to Lender, an original certificate of title, a release signed by Wells Fargo, an application naming Lender as first priority lienholder thereto and/or such other documentation as Lender shall request with respect to each item of Eligible Equipment which is a motor vehicle or which has a certificate of title (including all such Eligible Equipment described on Schedule 5.33 to the Information Certificate), and Borrower shall cause, or cooperate with Lender in causing, such certificate of title and related items to be submitted to the appropriate state motor vehicle filing office for reissuance to Lender with the Lender's Lien noted thereon. Borrower shall deliver all original certificates of title with respect to Eligible Equipment and, upon request by Lender, all other original certificates of title with respect to motor vehicles and with respect to other equipment which has a certificate of title to be held by Lender. If Lender, in its sole discretion, agrees to any elimination or addition of any item of Eligible Equipment, upon request by Lender, Borrower shall amend Schedule 5.29 to the Information Certificate to accomplish such elimination or addition.

6.13 **Material Contracts.** Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 6.1, provide Lender with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate. Each Loan Party shall maintain all Material Contracts in full force and effect and shall not default in the payment or performance of its obligations thereunder, except when such failure could not reasonably be expected to result in a Material Adverse Change.

6.14 **Location of Inventory and Equipment.** Keep the Inventory and Equipment of each Loan Party and each of its Subsidiaries (other than vehicles and Equipment out for repair and Inventory in transit) only at the locations identified on Schedule 5.29 to the Information Certificate or otherwise expressly permitted by Section 7.16 and keep the chief executive office of each Loan Party and each of its Subsidiaries only at the locations identified on Schedule 5.6(b) to the Information Certificate; provided, however, that Borrower may amend Schedule 5.29 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 10 days prior to the date on which such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notification, the applicable Loan Party provides Lender a Collateral Access Agreement with respect thereto if such location is not owned by such Loan Party.

6.15 **Further Assurances.**

(a) At any time upon the reasonable request of Lender, execute or deliver to Lender any and all financing statements, fixture filings, security agreements, pledges, collateral assignments, endorsements of certificates of title, opinions of counsel, and all other documents (the "Additional Documents") that Lender may reasonably request and in form and substance reasonably satisfactory to Lender, to create, perfect, and continue perfection or to better perfect Lender's Liens in the assets of each Loan Party (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Loan Party that is a CFC if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such documents are unreasonably excessive (as reasonably determined by Lender in consultation with Borrower) in relation to the benefits to Lender afforded thereby. To the maximum extent permitted by Applicable Law, if any Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time, not to exceed 10 days following the request to do so, such Loan Party hereby authorizes Lender to execute any such Additional Documents in the applicable Loan Party's name, as applicable, and authorizes Lender to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Lender may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the personal property assets of each Loan Party and all of the outstanding capital Stock of each Loan Party (subject to exceptions and limitations contained in the Loan Documents including with respect to CFCs);

(b) Each Loan Party authorizes the filing by Lender of financing or continuation statements, or amendments thereto, and such Loan Party will execute and deliver to Lender such other instruments or notices, as Lender may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby;

(c) Each Loan Party authorizes Lender at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of such financing statement. Each Loan Party also hereby ratifies any and all financing statements or amendments previously filed by Lender in any jurisdiction; and

(d) Each Loan Party acknowledges that no Loan Party is authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Lender, subject to such Loan Party’s rights under Section 9-509(d)(2) of the Code.

6.16 **Material Licenses.** Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 6.1, provide Lender with copies of each Material License entered into since delivery of the previous Compliance Certificate. Borrower and each other Loan Party shall maintain all of its Material Licenses in full force and effect, except when such failure could not reasonably be expected to result in a Material Adverse Change.

6.17 **Agricultural Matters.**

(a) Borrower and each of its Subsidiaries will comply with all payment instructions imposed on Borrower or such Subsidiary in any notification received by Borrower or such Subsidiary, whether pursuant to the UCC, the FSA or otherwise, and whether sent by a seller of farm products, a lender to such seller, the Secretary of State of any state or any other Person, of any Lien on any farm products purchased or to be purchased hereafter.

(b) Borrower and its Subsidiaries shall pay each of its invoices from vendors and suppliers of perishable agricultural commodities or other farm products in a manner and within a time period consistent with Borrower’s or such Subsidiary’s past practices, except for invoices being contested in good faith by appropriate proceedings and as to which adequate reserves have been taken in accordance with GAAP.

6.18 **Payment of Post-Petition Obligations.** Subject to the Orders, Borrower will, and will cause each of its Subsidiaries to, pay its post-Petition Date Indebtedness and other obligations, including tax liabilities and Lease obligations (but excluding any past due rent) before the same shall become delinquent or in default, except where (a)(1) the validity of or amount thereof is being contested in good faith by appropriate proceedings, (2) Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (3) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation or the right of the lessor under such Lease to terminate such Lease, or (4) the failure to make such payment could not reasonably be expected to result in a Material Adverse Change.

6.19 **Priority of Claims Waivers.** Unless reserved for in accordance with the Borrowing Base provisions hereof, Borrower from time to time shall promptly deliver, or cause to be promptly delivered, a priority of claims waiver (“Priority of Claims Waiver”) from each vendor, landlord, public warehouse operator or other third party bailee that has not provided a Priority of Claims Waiver in form and substance satisfactory to Lender for each third party storage facility located in any priming jurisdiction.

6.20 **Advisory Firm.** Borrower shall provide Lender with reasonable access to Houlihan Lokey Capital, Inc. and Conway MacKenzie, Inc. or any replacement or successor financial advisory firms retained by Borrower or any of the other Loan Parties, and Borrower shall instruct such firm to cooperate reasonably with Lender; provided, that, an authorized representative of Borrower shall be permitted to participate in any meeting or phone call with Lender and any such firm.

6.21 **Approved Budget; Cash Flow Reporting.**

(a) Commencing with the first Tuesday following the Closing Date, Borrower will furnish to Lender on each Tuesday (or, if such day is not a Business Day, the next succeeding Business Day) of each week, a report (the “Weekly Actuals Report”), in form and detail acceptable to Lender in its reasonable discretion, setting forth actual cash receipts and disbursements for the one week period ended on the previous Friday (or, in the case of first such report, the period from the Petition Date to the previous Friday).

(b) Together with every fourth Weekly Actuals Report (except, for the first four weeks following the Petition Date, with the second and fourth Weekly Actuals Report), Borrower will furnish to Lender an updated cash forecast (each, an “Updated Budget”) for the period from through the end of the succeeding 13 weeks, setting forth projected cash receipts and disbursements, in form and scope similar to the then-applicable Approved Budget. If acceptable to Lender in its sole

discretion (as confirmed by Lender in writing), such Updated Budget shall become the "Approved Budget" thereunder and shall govern for the period set forth therein until such time as a new Updated Budget shall be approved by Lender (if at all).

(c) Together with every fourth Weekly Actuals Report, Borrower will furnish to Lender a variance report showing the difference between actual cash receipts and disbursements for the immediately prior four week period commencing on the Petition Date and projected cash receipts and disbursements for such period as compared to the projections set forth in the Approved Budget.

6.22 **Budget Compliance.**

(a) (i) For each four week period commencing as of the Petition Date, Borrower will not permit the difference between the actual disbursements for the items set forth in the (w) "Honey Payments", (x) "Payroll", (y) "Other Operating Disbursements" and (z) "Total Disbursements" line items in the relevant Weekly Actuals Report for such four week period to exceed by more than 15% of the disbursements for such items for such period as set forth in the Approved Budget then-applicable for such period.

(ii) For the period commencing as of the Petition Date through the last date reflected in the relevant Weekly Actuals Report, Borrower will not permit the difference between the actual disbursements set forth in the "Professional Fees" line item in the relevant Weekly Actuals Report for such period to exceed by more than 15% of the disbursements for such line item for such period as set forth in the Approved Budget then applicable for such period.

(b) For each four week period commencing as of the Petition Date, Borrower will not permit the difference between the actual cash receipts set forth in each applicable receipts line item in the relevant Weekly Actuals Report for such four week period to be less than 85% of the cash receipts for each such line item for such period as set for in the Approved Budget then-applicable for such period.

(c) At no time shall Borrower use any Proceeds of Collateral, Collections or other assets except to the extent permitted by the Approved Budget then-applicable, subject to any variances permitted herein, or for any purpose not permitted by Section 7.13.

For the avoidance of doubt, the covenants included in this Section 6.22 shall apply in all circumstances and shall not be limited or deemed inapplicable notwithstanding anything set forth in any of the negative covenants included in Section 7 hereof.

7. **NEGATIVE COVENANTS.**

Borrower and each other Loan Party covenants and agrees that until Payment in Full of the Obligations, neither Borrower nor any other Loan Party will, nor will it permit any of its Subsidiaries to, do any of the following:

7.1 **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

7.2 **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

7.3 **Restrictions on Fundamental Changes.**

(a) Other than pursuant to the RSA, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock;

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution);

(c) Suspend or cease operation of a substantial portion of its or their business; or

(d) Form or acquire any direct or indirect Subsidiary after the Closing Date without the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

7.4 **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 7.3 or 7.12, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the

Collateral or any other asset except as expressly permitted by this Agreement. Lender shall not be deemed to have consented to any sale or other disposition of any of the Collateral or any other asset except as expressly permitted in this Agreement or the other Loan Documents.

7.5 **Change Name.** Change the name, organizational identification number, state of organization, organizational identity or “location” for purposes of Section 9-307 of the Code of any Loan Party or any of its Subsidiaries, in each case without providing at least 45 days prior written notice thereof to Lender.

7.6 **Nature of Business.** Make any change in the nature of its or their business as conducted on the date of this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent any Loan Party or any of its Subsidiaries from engaging in any business that is reasonably related or ancillary to its business.

7.7 **Prepayments and Amendments.**

(a) Except as expressly permitted by the Interim Order or the Final Order (as applicable), make any payment on account of Indebtedness or other obligations which are pre-Petition Date obligations or otherwise have been contractually subordinated in right of payment to the Obligations (or the “Obligations”, as such term is defined in the Prepetition Credit Facility) if such payment is not permitted at such time under this Agreement and the applicable subordination terms and conditions, including, without limitation, making any payment in respect of any Subordinated Debt if such payment is not expressly permitted under this Agreement and under the applicable Subordination Agreement; or

(b) Except as expressly permitted by the Interim Order or the Final Order (as applicable), directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or governing any of the Subordinated Debt, except to the extent expressly permitted under the terms of the applicable Subordination Agreement and not inconsistent with the provisions of this Agreement;

(ii) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of Lender.

7.8 **Change of Control.** Other than pursuant to the RSA, cause, permit, or suffer, directly or indirectly, any Change of Control.

7.9 **Restricted Junior Payments.** Declare or make any Restricted Junior Payment.

7.10 **Accounting Methods.** Modify or change its method of accounting (other than as may be required to be in conformity with GAAP).

7.11 **Investments; Controlled Investments.**

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

(b) Other than amounts deposited into Deposit Accounts identified on Schedule 5.15 to the Information Certificate which are specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the employees of any Loan Party or its Subsidiaries and other than amounts permitted in the petty cash accounts described in the following sentence, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless such Loan Party or such Subsidiary, as applicable, and the applicable bank or securities intermediary have entered into Control Agreements with Lender governing such Permitted Investments in order to perfect (and further establish) Lender’s Liens in such Permitted Investments. No Loan Party shall, or shall permit any of its Subsidiaries, to establish or maintain any Deposit Account or Securities Account with a banking institution other than Lender or Wells Fargo, except for up to two (2) petty cash accounts maintained with banks (other than Lender) provided such petty cash accounts shall not contain more than \$5,000 in the aggregate at any one time.

7.12 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with any Loan Party or any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) so long as it has been approved by a Loan Party's or its applicable Subsidiary's Board of Directors (or comparable governing body) in accordance with Applicable Law, any reasonable and customary indemnity provided for the benefit of directors (or comparable managers) of such Loan Party or its applicable Subsidiary;

(b) so long as it has been approved by a Loan Party's or its applicable Subsidiary's Board of Directors (or comparable governing body) in accordance with Applicable Law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of such Loan Party or its applicable Subsidiary in the ordinary course of business and consistent with industry practice;

(c) transactions expressly permitted by Section 7.3 or Section 7.9;

(d) so long as Borrower has provided prior written notice thereof to Lender, a transaction not otherwise prohibited by this Agreement which has terms and conditions as favorable to such Loan Party as would be obtainable by such Loan Party in a comparable arms-length transaction with a Person which is not another Loan Party, Subsidiary or Affiliate; and

(e) the lending arrangement between Borrower and certain individual members of the Groeb family pursuant to which such individuals are indebted to Borrower in the approximate amount of \$185,000 on the Closing Date (as further described in Schedule P-1).

7.13 **Use of Proceeds.** The proceeds of the loans and Collections and Proceeds of Collateral shall be used (a) subject to the Orders and the limitations set forth in this Agreement, to refinance all of the Obligations (as such term is defined in the Prepetition Credit Facility) arising under or in connection with the Prepetition Credit Facility and to the extent outstanding on the Petition Date (except to the extent of \$3,000,000 of the Advances (as such term is defined in the Prepetition Credit Facility) which amount shall remain outstanding under the Prepetition Credit Facility in accordance with its terms), (b) on the Closing Date and thereafter, to pay the fees, costs and expenses, including Lender Expenses, incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (c) subject to the terms and conditions hereof and the Approved Budget, for working capital purposes of Borrower, and (d) any payments contemplated by the so called "first day" motions filed in connection with the Case to the extent expressly permitted by the Approved Budget; provided, however, that no part of the proceeds of the loans made to Borrower will be used to purchase or carry any Margin Stock, to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any other purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any purpose not permitted by the Orders, as applicable. Borrower shall not be permitted to use the proceeds of the loans: (i) to make any adequate protection payments not required under the Interim Order or the Final Order (as applicable), (ii) to finance in any way any action, suit, arbitration, proceedings, application, motion or other litigation challenging the validity, perfection, priority, extent or enforceability of the Obligations or the Liens of Lender on the Collateral, (iii) to finance in any way any action, suit, arbitration, proceedings, application, motion or other litigation challenging the validity, perfection, priority, extent or enforceability of the Obligations or the Liens of the Prepetition Lender on the Collateral (as defined in the Prepetition Credit Facility), (iv) except as required under the Interim Order or the Final Order, to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of Lender or (v) unless the Lender shall grant its consent in writing in its sole discretion, in violation of the Approved Budget.

7.14 **Limitation on Issuance of Stock.** Issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock which would result in a Change of Control.

7.15 **Consignments.** Consign any of its Inventory or sell any of its Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale, except as set forth on Schedule 7.15 to the Information Certificate.

7.16 **Inventory and Equipment with Bailees.** Store the Inventory or Equipment of any Loan Party or any of its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party, except as set forth on Schedule 5.29 to the Information Certificate or on Schedule 7.16 to the Information Certificate; provided, however, that Borrower may amend Schedule 5.29 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 10 days prior to the date such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notice, the applicable Loan Party provides Lender a Collateral Access Agreement with respect to such location if such location is not owned by such Loan Party; provided, further, however, that no Collateral Access Agreement shall be required with respect to any such additional bailee or warehouseman location at which the maximum amount of Inventory and Equipment stored at such location does not exceed \$100,000.

7.17 **Salaries and Other Compensation.** Pay excessive or unreasonable salaries, bonuses, commissions, consultant fees or other compensation; or increase the salary, bonus, commissions, consultant fees or other compensation of the directors, officers and consultants of any Loan Party, and any members of their families except to the extent approved in an order entered by the Bankruptcy Court and acceptable to the Lender in its reasonable discretion, and permitted pursuant to the Applicable Budget.

7.18 **Lease Rejections.** Borrower shall not, and shall not permit any other Loan Party to, pursuant to Section 365 of the Bankruptcy Code, reject a Lease or otherwise terminate a Lease (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code) without first providing 15 days' prior written notice to Lender (or such lesser period agreed to by Lender in its reasonable discretion) during which time Lender shall be permitted to find a replacement leasee to whom such Lease may be assigned; Borrower hereby consents to such prospective assignee found by Lender and agrees that the Loan Parties shall (i) not seek to reject such Lease, (ii) promptly withdraw any previously filed rejection motion and (iii) promptly file a motion seeking expedited relief and hearing on the earliest court date available for purposes of assuming such Lease and assigning it to such assignees.

7.19 **Chapter 11 Claims.** Borrower shall not incur, create, assume, suffer to exist or permit any super-priority administrative claim against any Loan Party which is *pari passu* with or senior to the claims of Lender against the Loan Parties.

7.20 **Repayment of Indebtedness.** Except pursuant to a confirmed Reorganization Plan or the "first day" orders and except as specifically permitted hereunder, Borrower shall not, without the express prior written consent of Lender, make any payment or transfer with respect to any Lien, Indebtedness or other obligation incurred or arising prior to the filing of the Case that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

8. **[RESERVED]**

9. **EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

9.1 If Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal, interest, fees, charges or other amounts due Lender or any Bank Product Provider, reimbursement of Lender Expenses, or other amounts constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding);

9.2 If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 4.3, 6.1, 6.2, 6.3 (solely if any Loan Party is not in good standing in its jurisdiction of organization), 6.5(a) (solely with respect to F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a lien having priority over Lender's Liens), 6.5(b), 6.6, 6.7 (solely if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss its affairs, finances, and accounts with its officers and employees), 6.8, 6.11, 6.12; 6.13, 6.14, 6.16 or 6.17 of this Agreement, or (ii) Section 7 of this Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 6.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 6.4, 6.5(a) (other than F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a lien having priority over Lender's Liens), 6.7 (other than if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books or records or disclose its affairs, finances, and accounts with its officers and employees), 6.9, 6.10, and 6.15 of this Agreement and such failure continues for a period of 15 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Lender; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is unable to be cured or is the subject of another provision of this Section 9 (in which event such other provision of this Section 9 shall govern), and such failure

continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Lender;

(d) (i) fails to perform or observe any covenant or other agreement contained in the RSA or (ii) takes any action inconsistent with the RSA;

9.3 [Reserved]

9.4 [Reserved]

9.5 [Reserved]

9.6 If any Loan Party or any of its Subsidiaries or any Guarantor is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of such Loan Party, such Subsidiary or such Guarantor, taken as a whole;

9.7 [Reserved]

9.8 If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

9.9 If the obligation of any Guarantor under any Guaranty or any other Loan Document to which any Guarantor is a party is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement or such Guaranty), or if any Guarantor fails to perform any obligation under any Guaranty or under any such Loan Document, or repudiates or revokes or purports to repudiate or revoke any obligation under any Guaranty or any such Loan Document, or any Guarantor is dissolved, liquidated or ceases to exist for any reason (in each case other than as a result of a transaction expressly permitted under the Loan Documents);

9.10 [Reserved]

9.11 [Reserved]

9.12 If any event or circumstance shall occur which, in the sole discretion of Lender exercised in good faith, would be reasonably likely to cause Lender to suspect that any Loan Party or any Guarantor has engaged in fraudulent activity with respect to the Collateral or other matters;

9.13 Any director, officer or owner of at least ten percent (10%) of the issued and outstanding ownership interests of a Loan Party or a Guarantor is indicted for a felony offense under state or federal law involving embezzlement, fraud or any other financial crime or any other felony offense under state or federal law involving intentional misconduct, or a Loan Party or a Guarantor hires an officer or appoints a director who has been convicted of any such felony offense, or a Person becomes an owner of at least ten percent (10%) of the issued and outstanding ownership interests of a Loan Party or a Guarantor who has been convicted of any such felony offense; provided, however, the indictment of Ernest Groeb and/or Troy Groeb, formerly directors/officers and current owners, for felony offenses involving the illegal importation of honey or related offenses under state or federal laws shall not constitute an Event of Default under this Section 9.13;

9.14 If any Loan Party or any Guarantor fails to pay any indebtedness or obligation owed to Lender or its Affiliates which is unrelated to the Credit Facility or this Agreement as it becomes due and payable or the occurrence of any default or event of default under any agreement between any Loan Party or any Guarantor and Lender or its Affiliates unrelated to the Loan Documents;

9.15 The validity or enforceability of any Loan Document as against any Loan Party or of any Guaranty as against such Guarantor shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by a Loan Party or any Subsidiary of a Loan Party or by any Guarantor, or by any Governmental Authority having jurisdiction over a Loan Party or any Subsidiary of a Loan Party or any Guarantor, seeking to establish the invalidity or unenforceability thereof as against any Loan Party or any Guarantor, or a Loan Party or any Subsidiary of a Loan Party or any Guarantor shall deny that such Loan Party or such Subsidiary or such Guarantor has any liability or obligation purported to be created under any Loan Document or any Guaranty;

9.16 If (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$25,000, or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan;

9.17 If any Key Officer shall die or shall fail to remain in such position or shall fail to perform the material duties of such position;

9.18 If Borrower implements any product recall involving any products of Borrower which Borrower's customers have purchased from Borrower in an aggregate amount in excess of \$25,000 during any Fiscal Year;

9.19 Any Loan Party or any Guarantor (i) becomes the subject of any governmental investigation related to any felony offense, or is indicted by any Governmental Authority with respect to any felony offense, under federal or state law; provided, however, that the investigation which was commenced by the USAO NDIL and described in, and deferred pursuant to, the Deferred Prosecution Agreement, shall not be deemed a violation of this Section 9.19 so long as any such investigation or prosecution continues to be deferred under the Deferred Prosecution Agreement and so long as Borrower has not failed to cure a material breach under the Deferred Prosecution Agreement within the applicable cure period (if any) under the Deferred Prosecution Agreement, or (ii) becomes the subject of any investigation, prosecution, charge or action related to any offense or any violation of law related to the factual matters described in the Deferred Prosecution Agreement by any federal or state agency or department or other Governmental Authority other than the USAO NDIL;

9.20 (a) Borrower receives notice from the USAO NDIL that a material breach has occurred under any provision of the Deferred Prosecution Agreement and such material breach has not been cured within the applicable cure period (if any) under the Deferred Prosecution Agreement, (b) the USAO NDIL commences or recommences any investigation or prosecution with respect to any matter or matters described in the factual statement of the Deferred Prosecution Agreement, or (c) the Deferred Prosecution Dismissal has not occurred on or before February 28, 2015;

9.21 If any obligation of any Pledgor under any Pledge Agreement or other Loan Document to which it is a party is limited or terminated by operation of law, or if any Pledgor fails to perform any of its obligations under any Pledge Agreement or other Loan Document to which it is a party, or any Pledgor purports to repudiate or revoke any of its obligations under any Pledge Agreement or other Loan Document to which it is a party, or any Pledgor is dissolved, liquidated or ceases to exist for any reason or is the subject of an Insolvency Proceeding;

9.22 The Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or Borrower or any Loan Party shall file a motion or other pleading seeking the dismissal of the Case under Section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in the Case and the order appointing such trustee, responsible office or examiner shall be reversed or vacated within 20 days after the entry thereof; an order of a Bankruptcy Court shall be entered granting any Superpriority Claim (other than the Carve-Out) in the Case which is *pari passu* with or senior to the claims of Lender against Borrower or any Loan Party thereunder;

9.23 The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of Borrower or any of the Loan Parties or permit other actions that would result in a Material Adverse Change;

9.24 An order of the Bankruptcy Court shall be entered reversing, staying, vacating or (without the written consent of Lender) otherwise amending, supplementing or modifying the Interim Order or the Final Order in a manner which is adverse to the interest of Lender;

9.25 Except as permitted by the Interim Order or Final Order, or as otherwise permitted by this Agreement (including in connection with adequate protection payments), or as otherwise agreed to by Lender, Borrower or any Loan Party shall make any Prepetition Payment other than Prepetition Payments authorized by the Bankruptcy Court (i) in accordance with "first day" or "second day" orders, (ii) in connection with the assumption of executor contracts and unexpired leases and (ii) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date;

9.26 Borrower or any Loan Party shall not comply with any terms of any of the (i) Interim Order, (ii) Final Order or (iii) Approved Budget;

9.27 Borrower or any other Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order, authorizing a process for the sale of all or substantially all of Borrower's or any Loan Party's assets pursuant to Section 363 of the Bankruptcy Code;

9.28 Borrower or any Subsidiary shall fail to make payments (whether principal, interest or fees and expenses and in excess of \$5,000) in respect to any post-Petition Date Indebtedness, when and as the same shall become due and payable;

9.29 Any event or condition occurs that results in any post-Petition Date Indebtedness in an aggregate principal amount in excess of \$5,000 becoming due prior to its scheduled maturity or that enables or permits (after the giving of notice and/or the lapse of any applicable grace period) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 9.29 shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

9.30 One or more judgment for the payment of money of a post-Petition Date liability or debt in excess of amounts covered by insurance shall be rendered against Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of ten (10) consecutive days during which executing shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of Borrower or any Subsidiary to enforce any such judgment; and

9.31 Any Lien purported to be created under any Loan Documents including the Interim Order or the Final Order shall cease to be, or shall be asserted by Borrower or any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, with the priority required by the applicable Loan Document, Interim Order or Final Order, except as expressly permitted hereunder or thereunder; or any Borrower or Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document or any Lien granted under any Loan Document or the Interim Order or the Final Order; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document.

9.32 Any Subordinated Creditor that is a party to the RSA shall file a motion with the Bankruptcy Court in breach of the applicable Subordination Agreement with Borrower or otherwise in breach of the RSA.

9.33 Any Subordinated Creditor that is not a party to the RSA shall file a motion with the Bankruptcy Court in breach of the applicable Subordination Agreement with Borrower and such motion is not dismissed within fourteen (14) days.

9.34 Except as a result of the Case, any material provision of any Prepetition Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or as a result of acts or omissions by the Prepetition Lender or the Payment in Full of the Prepetition Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Prepetition Loan Documents; or any Loan Party denies in writing that it has any or further liability or obligation under any Prepetition Loan Documents (other than as a result of a discharge of such Loan Party's Prepetition Obligations in accordance with the terms thereof), or purports in writing to revoke or rescind any Prepetition Loan Documents.

9.35 The loss of plan exclusivity by the Company under section 1121 of the Bankruptcy Code.

10. RIGHTS AND REMEDIES.

10.1 **Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before or notice from, the Bankruptcy Court (in each case under clauses (a) or (b) by written notice to Borrower), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by Applicable Law, do any one or more of the following:

(a) declare the Obligations (other than the Hedge Obligations, which may be accelerated in accordance with the terms of the applicable Hedge Agreement), whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower and each other Loan Party shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower and each Loan Party;

(b) declare the funding obligations of Lender under this Agreement terminated, whereupon such funding obligations shall immediately be terminated together with any obligation of Lender hereunder to make Advances;

(c) give notice to an Account Debtor or other Person obligated to pay an Account, a General Intangible, Negotiable Collateral, or other amount due, notice that the Account, General Intangible, Negotiable Collateral or other amount due has been assigned to Lender for security and must be paid directly to Lender and Lender may collect the Accounts, General Intangible and Negotiable Collateral of each Loan Party directly, and any collection costs and expenses shall constitute part of the Obligations under the Loan Documents;

(d) in Lender's name or in each Loan Party's name, as such Loan Party's agent and attorney-in-fact, notify the United States Postal Service to change the address for delivery of such Loan Party's mail to any address designated by Lender, otherwise intercept such Loan Party's mail, and receive, open and dispose of such Loan Party's mail, applying all Collateral as permitted under this Agreement and holding all other mail for such Loan Party's account or forwarding such mail to such Loan Party's last known address;

(e) without notice to or consent from any Loan Party, and without any obligation to pay rent or other compensation, take exclusive possession of all locations where any Loan Party conducts its business or has any rights of possession and use the locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, and for any other incidental purposes deemed appropriate by Lender in good faith; and

(f) exercise all other rights and remedies provided for in this Agreement, in the other Loan Documents, or otherwise available to it, including, without limitation, all the rights and remedies of a secured party on default under the Code or any other Applicable Law.

10.2 **Additional Rights and Remedies.** Without limiting the generality of the foregoing and upon the occurrence and during the continuance of an Event of Default, Borrower and each other Loan Party expressly agrees that:

(a) Lender, without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon Borrower, any Loan Party or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other Applicable Law), may take immediate possession of all or any portion of the Collateral and (i) require Borrower and each other Loan Party to, and Borrower and each other Loan Party hereby agrees that it will at its own expense and upon request of Lender forthwith, assemble all or part of the Collateral as directed by Lender and make it available to Lender at one or more locations designated by Lender where Borrower or such other Loan Party conducts business, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Lender's, Borrower's or such other Loan Party's offices or elsewhere, for cash, on credit, and upon such other terms as Lender may deem commercially reasonable. Borrower and each other Loan Party agrees that, to the extent notice of sale shall be required by law, at least 10 days notice to Borrower or such other Loan Party of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time, and such sale may be made at the time and place to which it was so adjourned. Borrower and each other Loan Party agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Borrower and each other Loan Party agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and Borrower or such other Loan Party is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code;

(b) Lender may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under Applicable Law and without the requirement of notice to or upon any Loan Party or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other Applicable Law), (i) with respect to any Loan Party's Deposit Accounts in which Lender's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Loan Party to pay the balance of such Deposit Account to or for the benefit of Lender, and (ii) with respect to any Loan Party's Securities Accounts in which Lender's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Loan Party to (A) transfer any cash in such Securities Account to or for the benefit of Lender, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Lender;

(c) any cash held by Lender as Collateral and all cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Obligations in the order set forth in Section 10.5 of this Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, Borrower and each other Loan Party shall remain jointly and severally liable for any such deficiency; and

(d) the Obligations arise out of a commercial transaction, and that if an Event of Default shall occur and be continuing Lender shall have the right to an immediate writ of possession without notice of a hearing. Lender shall have the right to the appointment of a receiver for each Loan Party or for the properties and assets of each Loan Party, and Borrower and each other Loan Party hereby consents to such rights and such appointment and hereby waives any objection Borrower or such Loan Party may have thereto or the right to have a bond or other security posted by Lender.

10.3 **Lender Appointed Attorney in Fact.** Borrower and each other Loan Party hereby irrevocably appoints Lender its attorney-in-fact, with full authority in the place and stead of Borrower or such Loan Party and in the name of Borrower or such Loan Party or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any instrument which Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of Borrower or such other Loan Party;

(b) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(c) to file any claims or take any action or institute any proceedings which Lender may deem necessary or desirable for the collection of any of the Collateral of Borrower or such other Loan Party or otherwise to enforce the rights of Lender with respect to any of the Collateral;

(d) to repair, alter, or supply Goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to Borrower or such other Loan Party in respect of any Account of Borrower or such other Loan Party;

(e) to use any Intellectual Property or Intellectual Property Licenses of Borrower or such other Loan Party including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of Borrower or such other Loan Party;

(f) to take exclusive possession of all locations where Borrower or such other Loan Party conducts its business or has rights of possession, without notice to or consent of Borrower or any Loan Party and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location;

(g) Lender shall have the right, but shall not be obligated, to bring suit in its own name or in the applicable Loan Party's name, to enforce the Intellectual Property and Intellectual Property Licenses and, if Lender shall commence any such suit, Borrower or such other Loan Party shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement; and

(h) to the extent permitted by law, Borrower and each other Loan Party hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all commitments of Lender under this Agreement to provide extensions of credit are terminated and all Obligations have been paid in full in cash.

10.4 **Remedies Cumulative.** The rights and remedies of Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Default or Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

10.5 **Crediting of Payments and Proceeds.** All payments received by Lender with respect to the Obligations and all net proceeds from the enforcement of the Obligations shall be applied in such manner as Lender shall determine in its sole discretion and, thereafter, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under Applicable Law.

10.6 **Marshaling.** Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies under the Loan Documents and

in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Borrower and each other Loan Party hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Lender's rights and remedies under the Loan Documents or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations are outstanding or by which any of the Obligations are secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Borrower hereby irrevocably waives the benefits of all such laws.

10.7 **License.** Borrower and each other Loan Party hereby grants to Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of Borrower and such other Loan Party for the purpose of: (a) completing the manufacture of any in-process materials upon the occurrence and during the continuance of any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by Borrower or such other Loan Party for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all Collateral upon the occurrence and during the continuance of any Event of Default.

11. **WAIVERS; INDEMNIFICATION.**

11.1 **Demand; Protest; etc.** Borrower and each other Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by Lender on which Borrower or such other Loan Party may in any way be liable.

11.2 **The Lender's Liability for Collateral.** Borrower and each other Loan Party hereby agrees that: (a) so long as Lender complies with its obligations, if any, under the Code, Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower and such other Loan Party.

11.3 **Indemnification.** Borrower and each other Loan Party shall pay, indemnify, defend, and hold the Lender-Related Persons (each, an "**Indemnified Person**") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring, waiver, amendment, forbearance or workout with respect hereto) of this Agreement, any of the other Loan Documents, the Interim Order, the Final Order or the transactions contemplated hereby or thereby or the monitoring of compliance by each Loan Party and each of its Subsidiaries with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the Interim Order, the Final Order or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, (c) in connection with the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Loan Documents, (d) with respect to the failure by Borrower or any other Loan Party to perform or observe any of the provisions hereof or any other Loan Document, (e) in connection with the exercise or enforcement of any of the rights of Lender hereunder or under any other Loan Document, (f) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (g) in connection with the negotiation, preparation and filing and recordation of the Loan Documents, the Interim Order and the Final Order, (h) obtaining of approval of the Loan Documents by the Bankruptcy Court, (i) the preparation and review of pleadings, documents and reports related to the Case or any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Case or any subsequent case under Chapter 7 of the Bankruptcy Code and (j) general monitoring of the Case or any subsequent case under Chapter 7 of the Bankruptcy Code (each and all of the foregoing, the "**Indemnified Liabilities**"). The foregoing to the contrary notwithstanding, neither Borrower nor any other Loan Party shall have any obligation to any Indemnified Person under this **Section 11.3** with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, or attorneys. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower or any other Loan Party was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower or such Loan Party with respect thereto. **WITHOUT**

LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrower, any other Loan Party or Lender, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower:

GROEB FARMS, INC.
10464 Bryan Highway
Onsted, Michigan 49265
Attn: Jack Irvin
Fax: (517) 467-2840
Email: jack@groebfarms.com

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

FOLEY & LARDNER LLP
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202
Attn: Patricia J. Lane
Fax: (414) 297-4900
Email: plane@foley.com

If to Lender:

HC CAPITAL HOLDINGS 0909A, LLC
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attn: Robert M. Strauss
Fax: (512) 765-6530
Email: Strauss@peakrockcapital.com

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Attn: Leonard Klingbaum
Fax: (212) 446-6460
Email: Leonard.Klingbaum@kirkland.com

Any party hereto may change the address at which it is to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment). Any notice given by Lender to Borrower as provided in this Section 12 shall be deemed sufficient notice as to all Loan Parties, regardless of whether each Loan Party is sent a separate copy of such notice or whether each Loan Party is specifically identified in such notice.

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO AS WELL AS ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ITS CONFLICT OF LAWS RULES AND EXCEPT TO THE EXTENT THE LAW OF ANY OTHER JURISDICTION APPLIES AS TO THE PERFECTION OR ENFORCEMENT OF LENDER'S LIEN IN ANY COLLATERAL AND EXCEPT TO THE EXTENT EXPRESSLY PROVIDED TO THE CONTRARY IN ANY LOAN DOCUMENT) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA (INCLUDING THE BANKRUPTCY CODE).

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY LOAN PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS HEREUNDER OR THEREUNDER, MUST BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, SUCH PROCEEDING MAY BE BROUGHT IN THE COURTS OF THE STATES OF NEW YORK OR MICHIGAN, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF MICHIGAN AND APPELLATE COURTS OF ANY OF THE FOREGOING. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER, ON THE ONE HAND, AND LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT BORROWER ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 13. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH OTHER LOAN PARTY AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND EACH OTHER LOAN PARTY AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. **ASSIGNMENTS; SUCCESSORS.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that neither Borrower nor any other Loan Party may assign this Agreement or any other Loan Document or any rights or duties hereunder or under any of the other Loan Documents without Lender's prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lender shall release Borrower or any other Loan Party from its Obligations. Lender may assign this Agreement and the other Loan

Documents in whole or in part and its rights and duties hereunder or grant participations in the Obligations hereunder and thereunder and no consent or approval by Borrower or any other Loan Party is required in connection with any such assignment or participation; provided, however, if a payment made to any assignee of Lender would be subject to U.S. federal withholding tax imposed by FATCA if such assignee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such assignee shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that such assignee has complied with such assignee's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

15. AMENDMENTS; WAIVERS. No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No amendment of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender and Borrower, and then only to the extent specifically stated. No waiver by Lender of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender, and then only to the extent specifically stated. No waiver or amendment by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrower and each other Loan Party of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have. The Lender may require a written amendment to this Agreement in connection with any changes to any Schedule of the Information Certificate which Borrower makes to such Schedule of Information as permitted under this Agreement to reflect such changes to such Schedule of Information.

16. TAXES.

(a) All payments made by Borrower or any other Loan Party hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Lender's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Lender as promptly as possible after the date the payment of any Tax is due pursuant to Applicable Law, certified copies of tax receipts evidencing such payment by Borrower.

(b) Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

17. GENERAL PROVISIONS.

17.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower, each Guarantor which is a party hereto and Lender.

17.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender or any Loan Party, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Debtor-Creditor Relationship.** The relationship between the Lender, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Lender shall not have (and shall not be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated

thereby, and there is no agency or joint venture relationship between Lender, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.6 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

17.7 **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by Borrower, any other Loan Party or any Guarantor or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of Lender related thereto, the liability of Borrower, such other Loan Party or such Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made and all of Lender's Liens in the Collateral shall be automatically reinstated without further action.

17.8 **Confidentiality.**

(a) Lender agrees that material, non-public information regarding the Loan Parties and their respective Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Lender in a confidential manner, and shall not be disclosed by Lender to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to Lender and to employees, directors and officers of Lender (the Persons in this clause (i), "Lender Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of Lender, provided that any such Subsidiary or Affiliate shall have agreed in writing for Borrower's benefit to receive such information hereunder subject to the terms of this Section 17.8, (iii) as may be required by regulatory authorities, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Lender or Lender Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing for Borrower's benefit to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; (x) to equity owners of each Loan Party and (xi) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Lender may use the name, logos, and other insignia of the Loan Parties and the Maximum Revolver Amount provided hereunder in any "tombstone" or comparable advertising, on its website or in other marketing materials of Lender, in each case with the prior written approval of Borrower (not to be unreasonably withheld, conditioned or delayed).

17.9 **Lender Expenses.** Borrower and each other Loan Party agrees to pay the Lender Expenses on the earlier of (a) the first day of the month following the date on which such Lender Expenses were first incurred, or (b) the date on which demand therefor is made by Lender, and Borrower and each other Loan Party agrees that its obligations contained in this Section 17.9 shall survive payment or satisfaction in full of all other Obligations.

17.10 **Setoff.** Upon the occurrence and during the continuance of any Default or Event of Default, Lender may at any time, in its sole discretion and without demand or notice to anyone, setoff any liability owed to Borrower, any other Loan Party or any Guarantor by Lender against any of the Obligations, whether or not due.

17.11 **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any of the Obligations are outstanding and unpaid and so long as the obligation of Lender to provide extensions of credit hereunder has not expired or been terminated.

17.12 **Patriot Act.** Lender hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, if Lender is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties, and (b) OFAC/PEP searches and customary individual background checks of the Loan Parties' senior management and key principals, and Borrower, each other Loan Party agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Expenses hereunder and be for the account of Borrower.

17.13 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.14 **Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Lender is acting. Lender hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Lender as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Lender and the right to share in payments and collections of the Collateral as more fully set forth herein and in the other Loan Documents. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Lender shall have the right, but shall have no obligation, to establish, maintain, relax, or release Reserves in respect of the Bank Product Obligations and that if Reserves are established there is no obligation on the part of Lender to determine or ensure whether the amount of any such reserve is appropriate or not. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any other Loan Party.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered under seal as of the date first above written.

BORROWER:

GROEB FARMS, INC.

By: _____
Name:
Title:

LENDER:

HC CAPITAL HOLDINGS 0909A, LLC

By: _____

Name:

Title:

Schedule 1.1

a. **Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“Account” means an account (as that term is defined in Article 9 of the Code).

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Additional Cash Collateral” means, the cash collateral in the original amount of approximately \$1,000,000 deposited by Pledgors in deposit accounts maintained with Lender and pledged by Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements in favor of Lender.

“Additional Documents” has the meaning specified therefor in Section 6.15 of this Agreement.

“Advances” has the meaning specified therefor in Section 2.1(a) of this Agreement.

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 7.12 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of the board of directors or equivalent governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Aggregate Maximum Loan Balance” means the sum of Advances, plus Prepetition Advances, plus Prepetition Term Loans, in each case outstanding at such time.

“Agreement” means this Senior Secured Superpriority Priming Debtor-In-Possession Credit and Security Agreement to which this Schedule 1.1 is attached.

“Applicable Law” means as to any Person, all statutes, rules, regulations, orders, or other requirements having the force of law and applicable to such Person, and all court orders and injunctions, and/or similar rulings applicable to such Person, in each case of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person.

“Approved Budget” means a 13-week forecast of projected receipts and disbursements in form, scope and substance acceptable to and approved in writing by Lender in its sole discretion. The initial Approved Budget is attached hereto as Exhibit [____].

“Authorized Person” means any one of the individuals identified on Schedule A-2, as such Schedule is updated from time to time by written notice from Borrower to Lender.

“Availability” means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 of this Agreement (after giving effect to all then outstanding Obligations).

“Avoidance Actions” means, the Loan Parties’ claims and causes of action under Section 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

“Bank Product” means any one or more of the following financial products or accommodations extended to Borrower or its Subsidiaries by a Bank Product Provider: (a) commercial credit cards, (b) commercial credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called “procurement cards” or “P-cards”), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

“Bank Product Agreements” means those agreements entered into from time to time by Borrower or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products, including, without limitation, all Cash Management Documents.

“Bank Product Collateralization” means providing cash collateral (pursuant to documentation reasonably satisfactory to Lender) to be held by Lender for the benefit of the Bank Product Provider in an amount determined by Lender as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

“Bank Product Obligations” means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by a Loan Party or its Subsidiaries to Lender or another Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (b) all Hedge Obligations.

“Bank Product Provider” means Lender or any of its Affiliates, or any other institution, that provide Bank Products to Borrower or its Subsidiaries.

“Bank Product Reserve Amount” means, as of any date of determination, the Dollar amount of reserves that Lender has determined are necessary or appropriate to establish (based upon Lender’s reasonable determination of credit and operating risk exposure to Borrower or its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Michigan or any other court having jurisdiction over the Case from time to time.

“Benefit Plan” means a “defined benefit plan” (as defined in Section 3(35) of ERISA) for which Borrower or any of its Subsidiaries or ERISA Affiliates has been an “employer” (as defined in Section 3(5) of ERISA) within the past six years.

“Board of Directors” means the board of directors (or comparable managers) of Borrower, any other Loan Party or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Books” means books and records (including Borrower’s or any other Loan Party’s Records indicating, summarizing, or evidencing Borrower’s or such other Loan Party’s assets (including the Collateral) or liabilities, Borrower’s or such other Loan Party’s Records relating to Borrower’s or such other Loan Party’s business operations or financial condition, or Borrower’s or such other Loan Party’s Goods or General Intangibles related to such information).

“Borrower” means Groeb Farms, Inc., a Michigan corporation.

“Borrowing” means a borrowing consisting of Advances (i) requested by Borrower, (ii) made by Lender pursuant to Section 2.6.

(C), or (iii) a Protective Advance.

“Borrowing Base” means, as of any date of determination, the result of:

(a) 85% (less the amount, if any, of the Dilution Reserve, if applicable) of the amount of Eligible Accounts, *plus*

(b) the *lower* of

(i) \$11,000,000, or

(ii) (A) the lower of

(I) 75% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of raw materials, or

(II) 85% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the most recently determined Net Liquidation

Percentage times the Value of Eligible Inventory consisting of raw materials, plus

(B) the lower of

(I) 75% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of finished goods, or

(II) 85% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the most recently determined Net Liquidation Percentage *times* the Value of Eligible Inventory consisting of finished goods, plus

(C) the *lower* of

(I) 42% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of mesquite honey so acquired by Borrower in calendar year 2013, or

(II) 100% of the amount of the Eligible Additional Cash Collateral, plus

(c) 100% of the amount of the Eligible Original Cash Collateral, plus

(d) 100% of the amount of the Eligible Additional Cash Collateral, minus

(e) the aggregate amount of Reserves established by Lender.

“Borrowing Base Certificate” means a form of borrowing base certificate in form and substance reasonably acceptable to Lender.

“Borrowing Request” a written request for a Borrowing substantially in the form of Exhibit F.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close pursuant to the rules and regulations of the Federal Reserve System.

“Capitalized Lease Obligation” means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Carve-Out” has the meaning specified in the Orders, as applicable.

“Carve-Out Cap” has the meaning specified in the Orders, as applicable.

“Carve-Out Reserves” means, at any time, such reserves as Lender, from time to time, determines in its Permitted Discretion as being appropriate to reflect (i) the remaining available amount of the Carve-Out Cap at such time, if any and (ii) the accrued but unpaid fees, costs and expenses of professionals retained by Borrower and the other Loan Parties and the Creditor’s Committee as such time, in each case as set forth in the most recently delivered Borrowing Base Certificate.

“Case” means the case under Chapter 11 of the Bankruptcy Code with respect to Borrower, with respect to which Borrower is the debtor and debtor-in-possession.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing

within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and having one of the three highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant stored value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Cash Management Documents" means the agreements governing each of the Cash Management Services of Lender or any other institution utilized by Borrower, which agreements shall currently include the Master Agreement for Treasury Management Services or other applicable treasury management services agreement, "Acceptance of Services", the "Service Description" governing each such treasury management service used by Borrower, and all replacement or successor agreements which govern such Cash Management Services of Lender or any other institution.

"Cash Management Transition Period" has the meaning specified in Section 6.12(i) of this Agreement.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC).

"Change of Control" means that (a) the Institutional Subordinated Creditors fail to directly own and control at least 63.6% of the Stock of Borrower having the right to vote for the election of members of the Board of Directors of Borrower, (b) the Groeb Family Subordinated Creditors and their children, grandchildren or other relatives, or trusts for their benefit, fail to directly own and control at least 23.4% of the Stock of Borrower having the right to vote for the election of members of the Board of Directors of Borrower, or (c) a majority of the members of the Board of Directors of Borrower do not constitute Continuing Directors.

"Chattel Paper" means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

"Closing Date" means the date of the making of the initial Advance (or other extension of credit) under this Agreement.

"Code" means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

"Collateral" means each of the assets referred to in Section 3 hereof and all of Borrower's:

- (a) Accounts;
- (b) Books;

- (c) Chattel Paper;
- (d) Deposit Accounts, money, cash and Cash Equivalents;
- (e) Goods, including Equipment and Fixtures;
- (f) General Intangibles;
- (g) Inventory;
- (h) Investment Related Property;
- (i) Negotiable Collateral;
- (j) Supporting Obligations;
- (k) Commercial Tort Claims and, subject to entry of the Final Order, proceeds from Avoidance Actions;
- (l) Upon entry of the Final Order, proceeds of Avoidance Actions;
- (m) Other assets of such Loan Party that now or hereafter come into the possession, custody, or control of Lender (or its agent or designee); and

(n) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the “Proceeds”). Without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to Borrower or Lender from time to time with respect to any of the Investment Related Property.

In addition, for purposes of this Agreement, “Collateral” shall also include all “Collateral” as described in the Pledge Agreements.

“Collateral Access Agreement” means a landlord’s disclaimer and consent, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Books, Equipment, Accounts or Inventory of any Loan Party or of any of its Subsidiaries, in each case, in favor of Lender with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, warehouseman, processor, consignee or other Person and in form and substance reasonably satisfactory to Lender.

“Collection Account” means the Deposit Account identified on Schedule A-1.

“Collections” means *all* cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

“Commercial Tort Claims” means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 5.6(d) to the Information Certificate.

“Compliance Certificate” means a certificate substantially in the form of Exhibit A delivered by the chief financial officer of Borrower to Lender.

“Confidential Information” has the meaning specified therefor in Section 17.8 of this Agreement.

“Continuing Director” means (a) any member of the Board of Directors who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors of Borrower after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Borrower and whose initial assumption of office resulted from such contest or the settlement thereof.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Lender, executed and delivered by a Loan Party or any of its Subsidiaries, Lender, and the applicable securities intermediary (with respect to a Securities Account), the applicable bank (with respect to a Deposit Account) or issuer (with respect to uncertificated securities).

“Copyrights” means any and all rights in any works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule 5.25(b) to the Information Certificate, (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Loan Party’s rights corresponding thereto throughout the world.

“Copyright Security Agreement” means each Copyright Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Covenant Threshold” means that Availability is \$5,000,000 or more, as determined by Lender.

“Credit Facility” means the Revolving Credit Facility.

“Creditor’s Committee” means any official committee of unsecured creditors duly appointed in the Case, if any.

“Daily Balance” means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

“Daily Three Month LIBOR” means the rate per annum (rounded up to the nearest whole 1/8th of one percent) for United States dollar deposits quoted by Lender for the purpose of calculating the effective Interest Rate for loans that reference Daily Three Month LIBOR as the Inter-Bank Market Offered Rate in effect from time to time for the 3 month delivery of funds in amounts approximately equal to the principal amount of such loans. Borrower understands and agrees that Lender may base its quotation of the Inter-Bank Market Offered Rate upon such offers or other market indicators of the Inter-Bank Market as Lender in its discretion deems appropriate, including but not limited to the rate offered for U.S. dollar deposits on the London Inter-Bank Market. When interest is determined in relation to Daily Three Month LIBOR, each change in the interest rate shall become effective each Business Day that Lender determines that Daily Three Month LIBOR has changed.

“Default” means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

“Deferred Prosecution Agreement” means that certain Deferred Prosecution Agreement signed by Borrower on or about February 11, 2013 and filed on or about February 15, 2013, between Borrower and the USAO NDIL, approved by the United States District Court for the Northern District of Illinois, Eastern Division.

“Deferred Prosecution Dismissal” means the dismissal with prejudice of the information filed by the USAO NDIL against Borrower pursuant to the Deferred Prosecution Agreement and the related expiration of the Deferred Prosecution Agreement.

“Deposit Account” means any deposit account (as that term is defined in the Code).

“Designated Account” means the operating Deposit Account of Borrower at Lender identified on Schedule

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"Dilution" means, as of any date of determination, a percentage that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, deductions, or other dilutive items as determined by Lender with respect to Borrower's Accounts, by (b) Borrower's billings with respect to Accounts.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point for each percentage point by which Dilution is in excess of 5%.

"Dollars" or "\$" means United States dollars.

"Eligible Additional Cash Collateral" means, as of any date of determination, the amount of the Additional Cash Collateral then pledged by the Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements but only to the extent that such pledge and such cash continue to be on deposit and available to Lender; provided, however, any such Additional Cash Collateral shall not be Eligible Additional Cash Collateral in any of the following circumstances:

(a) such Additional Cash Collateral is not subject to valid and perfected first priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);

(b) the applicable Pledgor of any such Additional Cash Collateral is contesting the validity, enforceability or priority of Lender's Lien in such Additional Cash Collateral;

(c) the applicable Pledgor of any such Additional Cash Collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or

(d) such Additional Cash Collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such Additional Cash Collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such Additional Cash Collateral or the enforceability, perfection or priority of Lender's first priority Lien in such Additional Cash Collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the Additional Cash Collateral that has been deemed ineligible by Lender.

"Eligible Cash Collateral" means, collectively, the cash collateral deposited by Pledgors in deposit accounts maintained with Lender or any depository bank and pledged by Pledgors to Lender pursuant to the Pledge Agreements and, in each case, subject to a Control Agreement in favor of Lender; provided, however, any such cash collateral shall not be Eligible Cash Collateral in any of the following circumstances:

(a) such cash collateral is not subject to valid and perfected first-priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);

(b) the applicable Pledgor of any such cash collateral is contesting the validity, enforceability or priority of Lender's Lien in such cash collateral;

(c) the applicable Pledgor of any such cash collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or

(d) such cash collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such cash collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such cash collateral or the enforceability, perfection or priority of Lender's first-priority Lien in such cash collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the cash collateral that has been deemed ineligible by Lender.

"Eligible Accounts" means those Accounts created by Borrower in the ordinary course of its business, that arise out of Borrower's sale or lease of Goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or

more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Lender in Lender's reasonable discretion. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, credits and unapplied cash. Eligible Accounts shall not include the following:

- (a) Accounts that the Account Debtor has failed to pay within the earlier of 90 days after the original invoice date or 60 days after the original due date;
- (b) Accounts with selling terms of more than 60 days;
- (c) Accounts owed by an Account Debtor (or its Affiliates) where twenty-five percent (25%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) or (b) above or clauses (i) or (s) below;
- (d) Accounts with respect to which the Account Debtor is an Affiliate, agent or equity owner of Borrower or an employee or agent of Borrower or any Affiliate of Borrower;
- (e) Accounts arising in a transaction wherein Goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, or any other terms by reason of which the payment by the Account Debtor may be conditional or contingent;
- (f) Accounts that are not payable in Dollars;
- (g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or any state thereof or under the laws of Canada or any province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (x) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Lender (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Lender and is directly drawable by Lender, or (y) the Account is guaranteed pursuant to an approved working capital guarantee from the Export-Import Bank of the United States in favor of Lender and acceptable to Lender in all respects;
- (h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrower has complied, to the reasonable satisfaction of Lender, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States;
- (i) Accounts with respect to which the Account Debtor is a creditor of Borrower, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute;
- (j) That portion of Accounts which reflect a reasonable reserve for warranty claims or returns or amounts which are owed to account debtors, including those for rebates, allowances, co-op advertising, new store allowances or other deductions;
- (k) Accounts owing by a single Account Debtor or group of Affiliated Account Debtors whose total obligations owing to Borrower exceed fifteen percent (15%) of the aggregate amount of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of the foregoing applicable percentages may be deemed Eligible Accounts), such percentage being subject to reduction if the creditworthiness of such Account Debtor deteriorates;
- (l) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent or has gone out of business, or as to which Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor;
- (m) Accounts, the collection of which, Lender, in its reasonable discretion, believes to be doubtful by reason of the Account Debtor's financial condition;
- (n) Accounts representing credit card sales or "C.O.D." sales;
- (o) Accounts that are not subject to a valid and perfected first priority Lender's Lien or that are subject to any other Lien (other than the junior Permitted Lien in favor of the Institutional Subordinated Creditors);

(p) Accounts that consist of progress billings (such that the obligation of the Account Debtors with respect to such Accounts is conditioned upon Borrower's satisfactory completion of any further performance under the agreement giving rise thereto) or retainage invoices;

(q) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity;

(r) that portion of Accounts which represent finance charges, service charges, sales taxes or excise taxes;

(s) that portion of Accounts which has been restructured, extended, amended or otherwise modified;

(t) bill and hold invoices, except those with respect to which Lender shall have received an agreement in writing from the Account Debtor, in form and substance satisfactory to Lender, confirming the unconditional obligation of the Account Debtor to take the Goods related thereto and pay such invoice, so long as such Accounts satisfy all other criteria for Eligible Accounts hereunder;

(u) Accounts which have not been invoiced;

(v) Accounts constituting (i) Proceeds of copyrightable material unless such copyrightable material shall have been registered with the United States Copyright Office, or (ii) Proceeds of patentable inventions unless such patentable inventions have been registered with the United States Patent and Trademark Office; and

(w) Accounts or that portion of Accounts otherwise deemed ineligible by Lender in its reasonable discretion.

Any Accounts which are not Eligible Accounts shall nonetheless constitute Collateral.

"Eligible Equipment" means Equipment of Borrower which is subject to a valid and perfected first priority Lender's Lien, is not subject to a Lien in favor of any Person other than Lender, is designated by Lender as eligible, and covered by the most recent acceptable appraisal received by Lender. All Equipment which does not constitute Eligible Equipment shall nonetheless constitute Collateral.

"Eligible New Equipment" shall mean any Equipment acquired by Borrower on or after October 2, 2012 which is in good order, repair, operating and marketable condition (ordinary wear and tear excepted) and in each case acceptable to Lender in its sole discretion. In general, Eligible New Equipment shall not include:

- (a) Equipment at premises other than those owned or leased and controlled by Borrower, unless Lender shall have entered into a Collateral Access Agreement with the owner or operator of such premises and shall have received such other documents, instruments and agreements as Lender may request;
- (b) Equipment subject to a security interest or Lien in favor of any Person other than Lender;
- (c) Equipment located outside the United States of America or Canada (other than Quebec);
- (d) Equipment that is not subject to the first priority, valid and perfected security interest of Lender;
- (e) damaged or defective Equipment or Equipment not used or usable in the ordinary course of Borrower's business as presently conducted; or
- (f) Equipment that is warehouse racking.

Any Equipment which is not Eligible New Equipment shall nonetheless constitute Collateral.

"Eligible New Racking" shall mean any warehouse racking acquired by Borrower on or after October 2, 2012 which is in good order, repair, operating and marketable condition (ordinary wear and tear excepted) and in each case acceptable to Lender in its sole discretion. In general, Eligible New Racking shall not include:

- (a) warehouse racking at premises other than those owned or leased and controlled by Borrower, unless Lender shall have entered into a Collateral Access Agreement with the owner or operator of such premises and shall have received such other documents, instruments and agreements as Lender may request;
- (b) warehouse racking subject to a security interest or Lien in favor of any Person other than Lender;
- (c) warehouse racking located outside the United States of America or Canada (other than Quebec);
- (d) warehouse racking that is not subject to the first priority, valid and perfected security interest of Lender;
- (e) damaged or defective warehouse racking or warehouse racking not used or usable in the ordinary course of Borrower's business as presently conducted; or
- (f) warehouse racking that is Eligible Equipment or Eligible New Equipment.

Any warehouse racking which is not Eligible New Racking shall nonetheless constitute Collateral.

"Eligible Inventory" means Inventory consisting of raw materials and finished goods held for sale in the ordinary course of Borrower's business, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Lender in Lender's reasonable discretion. An item of Inventory shall not be included in Eligible Inventory if:

- (a) Borrower does not have good, valid, and marketable title thereto;
- (b) it consists of work-in-process Inventory, components which are not part of finished goods, supplies used or consumed in Borrower's business, or Goods that constitute spare parts or maintenance parts (other than after-market parts), packaging and shipping materials, or sample inventory or customer supplied parts or Inventory;
- (c) it consists of Inventory that is perishable or live or where less than 8 weeks remain until the Inventory's stated expiration or "sell-by" or "use-by" date;
- (d) Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of Borrower);
- (e) it is not located at one of the locations in the continental United States set forth on Schedule 5.29 to the Information Certificate, except for Transfer Eligible Inventory in an aggregate amount not to exceed \$150,000 at any time;
- (f) it is stored at locations holding Inventory of Borrower valued at less than \$100,000;
- (g) it is in-transit to or from a location of Borrower, except for Transfer Eligible Inventory in an aggregate amount not to exceed \$150,000 at any time;
- (h) it is located on real property leased by Borrower or in a contract warehouse or on the real property of any other Person, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor, warehouseman or other Person, as the case may be, and unless it is segregated or otherwise separately identifiable from Goods of others, if any, stored on the premises;
- (i) it is the subject of a bill of lading or other document of title;
- (j) it is on consignment from any consignor; or on consignment to any consignee or subject to any bailment unless the consignee or bailee has (i) executed an agreement with Lender, and (ii) provided evidence acceptable to Lender that Borrower has properly perfected a first priority security interest in such consigned Inventory and has properly notified in writing the other creditors of consignee who hold an interest in such Inventory of Borrower's security interest in such Inventory, and (iii) Borrower has taken such other actions with respect to such consigned Inventory as Lender may reasonably request;
- (k) it is not subject to a valid and perfected first priority Lender's Lien;

- (l) it consists of goods returned, rejected or put on hold by Borrower's customers;
- (m) it consists of Goods that are damaged, contaminated, spoiled, defective, obsolete or slow moving;
- (n) Inventory that Borrower has returned, has attempted to return, is in the process of returning or intends to return to the vendor of such Inventory;
- (o) it consists of Goods that are restricted or controlled, or regulated items;
- (p) it consists of Goods that are bill and hold Goods;
- (q) it is subject to third party trademark, licensing or other proprietary rights;
- (r) it consists of customer-specific Inventory not supported by purchase orders; or
- (s) Inventory otherwise deemed ineligible by Lender in its reasonable discretion.

Any Inventory which is not Eligible Inventory shall nonetheless constitute Collateral.

"Eligible Original Cash Collateral" means, as of any date of determination, the amount of the Original Cash Collateral then pledged by the Pledgors to Lender pursuant to the Pledge Agreement and subject to the Control Agreements; provided, however, any such Original Cash Collateral shall not be Eligible Original Cash Collateral in any of the following circumstances:

- (a) such Original Cash Collateral is not subject to valid and perfected first priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);
- (b) the applicable Pledgor of any such Original Cash Collateral is contesting the validity, enforceability or priority of Lender's Lien in such Original Cash Collateral;
- (c) the applicable Pledgor of any such Original Cash Collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or
- (d) such Original Cash Collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such Original Cash Collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such Original Cash Collateral or the enforceability, perfection or priority of Lender's first priority Lien in such Original Cash Collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the Original Cash Collateral that has been deemed ineligible by Lender.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or any of its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and

feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities.

“Equipment” means equipment (as that term is defined in the Code).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 and 430 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of a Loan Party or its Subsidiaries under IRC Section 414(o).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the IRC or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“Event of Default” has the meaning specified therefor in Section 9 of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Farm Product Lien Amount” means any amount which Borrower owes to a producer or seller of farm products which is secured by a Lien.

“Farm Products Reserve” means a reserve equal to the Farm Product Lien Amount determined by Lender from time to time in its sole discretion.

“FATCA” means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amendment or successor version that is substantially comparable) and any current or future regulations or official interpretations thereof.

“Final Order” means an order of the Bankruptcy Court that is satisfactory in form and substance to Lender in its sole discretion, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion, (x) have been entered and on such prior notice to such parties as may be reasonably satisfactory to Lender and (y) not have been vacated, reversed, modified, amended or stayed.

“Fiscal Month” means any of the twelve periods comprising Borrower’s Fiscal Year, determined in accordance with Borrower’s historical practice.

“Fiscal Quarter” means a period of three consecutive Fiscal Months ending on or about March 31, June 30, September 30 or December 31.

“Fiscal Year” means a period of twelve Fiscal Months ending on or about December 31.

“Fixtures” means fixtures (as that term is defined in the Code).

“Foreign Subsidiary” means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and any Subsidiary that holds no material assets other than interests in Foreign Subsidiaries.

“FSA” means the Food Service Security Act of 1985, as amended and in effect from time to time, and regulations issued from time to time thereunder.

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles as in effect in the United States on the Closing Date, consistently applied; (i) except for any change in accounting practices to the extent that, due to a promulgation of the Financial Accounting Standards Board changing or implementing any new accounting standard, Borrower either (a) is required to implement such change, or (b) for future periods will be required to and for the current period may in accordance with generally accepted accounting principles implement such change, for its financial statements to be in conformity with generally accepted accounting principles (any such change is hereafter referred to a “Required GAAP Change”), provided that Borrower shall fully disclose in such financial statements any such Required GAAP Change and the effects of the Required GAAP Change on Borrower’s income, retained earnings or other accounts, as applicable, and (ii) except that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under Hedge Agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such Hedge Agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, certificate of formation, by-laws, operating agreement, limited liability company agreement, shareholder agreement, investment agreement (including the Investment Agreements) or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Groeb Family Subordinated Creditors” means Ernest L. Groeb, Troy L. Groeb, E. Jeanne Groeb and E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001.

“Groeb Family Subordinated Creditors Subordination Agreement” means that certain Subordination Agreement by and between Ernest L. Groeb, as shareholders’ representative, as subordinated creditor, and Lender, as senior creditor, as acknowledged by Ernest L. Groeb, Troy L. Groeb, E. Jeanne Groeb and E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001, as amended, and as acknowledged by Borrower.

“Guarantors” means (a) each Subsidiary of Borrower that becomes a Guarantor as required by this Agreement, and (b) each other Person that becomes a guarantor after the Closing Date, and each of them is a “Guarantor”.

“Guaranty” means any guaranty executed and delivered by a Guarantor in favor of Lender in form and substance reasonably satisfactory to Lender, and all of such guaranties are, collectively, the “Guaranties”.

“Hard Costs” shall mean, with respect to the purchase by Borrower of an item of Eligible New Equipment or an item of Eligible New Racking, the net cash amount actually paid to acquire title to such item, net of all incentives, trade in allowances, discounts and rebates, and exclusive of freight, delivery charges, installation costs and charges, software costs, charges and fees, warranty costs, taxes, insurance and other incidental costs or expenses and all indirect costs or expenses of any kind.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any Applicable Laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of any Loan Party or any of its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with Lender or another Bank Product Provider.

“Indebtedness” as to any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables and accrued expenses incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all net obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation. “Indebtedness” shall not include any obligations in respect of customer advances received and held in the ordinary course of business.

“Indemnified Liabilities” has the meaning specified therefor in Section 11.3 of this Agreement.

“Indemnified Person” has the meaning specified therefor in Section 11.3 of this Agreement.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors generally, receiverships, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Institutional Subordinated Creditors” means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, L.P. and Horizon Capital Partners III, L.P.

“Institutional Subordinated Creditors Subordination Agreement” means that certain Intercreditor and Subordination Agreement by and among the Institutional Subordinated Creditors, as subordinated lenders, and Lender, as senior lender, and acknowledged by Borrower.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

“Intellectual Property Licenses” means, with respect to any Person (the “Specified Party”), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to the

Specified Party pursuant to end-user licenses), (B) the license agreements listed on Schedule 5.25(b) to the Information Certificate, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Lender's rights under the Loan Documents.

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Rate" means an interest rate equal to Daily Three Month LIBOR, which interest rate shall change whenever Daily Three Month LIBOR changes. Notwithstanding the foregoing, in no event shall the Interest Rate be less than two percent (2.00%) per annum.

"Interest Rate Margin" means with respect to Advances under the Revolving Credit Facility, two and one half percent (2.5%) per annum.

"Interim Order" means an order of the Bankruptcy Court on an application or motion by Borrower that is reasonably satisfactory in form and substance to Lender, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion, (x) have been entered and on such prior notice to such parties as may be reasonably satisfactory to Lender and (y) not have been vacated, reversed, modified, amended or stayed.

"Inventory" means inventory (as that term is defined in the Code).

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business not to exceed \$100,000 in the aggregate during any Fiscal Year of Borrower, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"Investment Agreements" means, collectively, that certain Investment Agreement dated as of March 16, 2007, by and among Borrower (formerly known as GF Acquisition, Inc), the Institutional Subordinated Creditors, George W. Cawman, Jr., Howard S. Goss, Thomas R. Liebermann, Jack C. Meng, John C. Morley, Lanny A. Passaro Trust, J. William Petty, Ernest L. Groeb and Troy Groeb, and that certain Investment Agreement dated as of March 31, 2010, by and among Borrower, the Institutional Subordinated Creditors, Francis H. Barker, Robert G. Bush, George W. Cawman, Jr., Ernest L. Groeb, Troy Groeb, Joellen Sullivan, Thomas R. Lieberman, Jack C. Meng, John C. Morley, P. Kim Packard, Lanny A. Passaro Trust and J. William Petty.

"Investment Related Property" means any and all investment property (as that term is defined in the Code).

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"ISP98" means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Key Officer" means Rolf Richter, as Chief Executive Officer and President.

"Lease" means any agreement, whether written or oral no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Leasehold Obligations Reserve" means, on any date, (i) the aggregate amount of leasehold obligations of the Loan Parties due and owing with respect to properties of a vendor, landlord, public warehouse operator or other third party bailee located in a priming jurisdiction or at a distribution center, in each case which is not subject to a Priority of Claims Waiver in form and substance reasonably satisfactory to the Lender; for each such property the amount of leasehold obligations shall be the next two months' leasehold obligations, and (ii) the aggregate amount of leasehold obligations of the Loan Parties with respect to all other Leases; for each such property the amount of leasehold obligations shall be the sum of (A) all past due rent, plus (B) one month's leasehold obligations for all such Leases subject to a mortgage in favor of Lender located in a priming jurisdiction.

"Lender" has the meaning specified therefor in the preamble to this Agreement and its successors and assigns.

“Lender-Related Persons” means Lender, together with its Affiliates, officers, directors, employees, attorneys, and agents.

“Lender’s Liens” mean the Liens granted by Borrower and the other Loan Parties and their respective Subsidiaries to Lender under the Loan Documents.

“Lender Expenses” means all (a) reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by any Loan Party or any of its Subsidiaries or any Guarantor under any of the Loan Documents that are paid, advanced, or incurred by Lender, (b) reasonable out-of-pocket fees or charges paid or incurred by Lender in connection with Lender’s transactions with any Loan Party or any of its Subsidiaries or any Guarantor under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, judgment lien, litigation, bankruptcy and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation contained in this Agreement to the extent applicable), and environmental audits, (c) Lender’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any out of pocket costs and expenses incurred in connection therewith, (d) out-of-pocket charges paid or incurred by Lender resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket examination fees and expenses (including reasonable travel, meals, and lodging) of Lender related to any inspections, exams, audits or appraisals to the extent of the fees and charges (and up to the amount of any limitation contained in this Agreement to the extent applicable), (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or Lender’s relationship with any Loan Party or any of its Subsidiaries or any Guarantor, (h) Lender’s reasonable costs and expenses (including reasonable attorneys fees) incurred in advising, structuring, drafting, reviewing, administering (including reasonable travel, meals, and lodging), or amending the Loan Documents, and (i) Lender’s reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a “workout,” a “restructuring,” or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or any Guarantor or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

“Lender Representatives” has the meaning specified therefor in Section 17.8(a) of this Agreement.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security purposes, charge, deposit arrangement for security purposes, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan Account” has the meaning specified therefor in Section 2.8 of this Agreement.

“Loan Documents” means this Agreement, each amendment thereto, any Borrowing Base Certificate, the Control Agreements, the Cash Management Documents, the Copyright Security Agreements, the Guaranties, the Orders, the Patent Security Agreements, the Trademark Security Agreements, the Subordination Agreements, the Pledge Agreements, any note or notes executed by Borrower in connection with this Agreement and payable to Lender and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries, any Guarantor or any other Person in favor of Lender in connection with this Agreement, but specifically excluding all Hedge Agreements.

“Loan Party” means Borrower and each Subsidiary of Borrower which becomes a Guarantor.

“Lockbox” means “Lockbox” as defined and described in the Cash Management Documents.

“Management Fee Subordination Agreement” means the Management Fee Subordination Agreement executed and delivered by Horizon Partners Ltd. in favor of Lender on or about the date of this Agreement.

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Change" means (a) a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries or their estates taken as a whole, (b) a material impairment of the ability of any Loan Party or its Subsidiaries or of any Guarantor or of their estates to perform their obligations under the Loan Documents or of the Lender's ability to enforce the Obligations or realize upon any of the collateral security for the Obligations, including, without limitation, any of the Collateral, or (c) a material impairment of the enforceability or priority of Lender's Liens with respect to any of the collateral security for the Obligations, including, without limitation, any of the Collateral, as a result of an action or failure to act on the part of any Loan Party or its Subsidiaries or of any Guarantor or of their estates.

"Material Contract" means, with respect to any Loan Party or any Subsidiary of any Loan Party, (i) each contract or agreement to which such Loan Party or such Subsidiary is a party involving aggregate consideration payable to or by such Loan Party or such Subsidiary of \$150,000 or more (other than purchase orders in the ordinary course of the business of such Loan Party or such Subsidiary), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

"Material Licenses" means, with respect to any Loan Party or any Subsidiary of any Loan Party, any license, permit or other authorization which is required or necessary for any Loan Party or any Subsidiary of any Loan Party to conduct any material portion of its business or operations.

"Maturity Date" has the meaning specified therefor in Section 2.9 of this Agreement.

"Maximum Revolver Amount" is \$27,000,000 as of the date of this Agreement.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Negotiable Collateral" means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

"Net Forced Liquidation Value" means, as to Eligible Equipment, at any time, the value of such Eligible Equipment, determined on a forced liquidation basis, as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such value to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Net Liquidation Percentage" means the percentage of the Value of Borrower's Eligible Inventory that is estimated to be recoverable in an orderly liquidation of such Eligible Inventory as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such percentage to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Net Orderly Liquidation Value" means, as to the Eligible Equipment, Eligible New Equipment and Eligible New Racking, at any time, the value of such Eligible Equipment, Eligible New Equipment or Eligible New Racking, as applicable, determined on an orderly liquidation basis, as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such value to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Obligations" means (a) all loans (including the Advances), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees, Lender Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole

or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party or any Guarantor pursuant to or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, sole, joint, several or joint and several, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Loan Party or any Guarantor is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Overadvance Amount” has the meaning specified therefor in Section 2.4f of this Agreement.

“Orders” mean the Interim Order and the Final Order, collectively.

“Original Cash Collateral” means the cash collateral in the original amount of \$2,000,000 deposited by Pledgors in deposit accounts maintained with Lender and pledged by Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements in favor of Lender.

“Payment in Full” or “Paid in Full” means, when used in connection with the Obligations, the full and final payment in cash of all of the Obligations (other than unasserted contingent indemnification obligations), and the expiration, termination, cancellation or cash collateralization of all Bank Product Obligations (including Hedge Obligations) or other similar obligations, and the termination of all commitments and obligations of Lender to make loans or extend other financial accommodations to Borrower under the Credit Agreement or the other Loan Documents.

“Patents” means patents and patent applications, including (i) the patents and patent applications listed on Schedule 5.25(b) to the Information Certificate, (ii) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Loan Party’s rights corresponding thereto throughout the world.

“Patent Security Agreement” means each Patent Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Patriot Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the IRC and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the IRC and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the IRC and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the IRC.

“Permitted Discretion” means a determination made in good faith and in the exercise of the commercially reasonable business judgment of Lender in accordance with customary business practices for comparable asset-based transactions.

“Permitted Dispositions” means:

- (a) sales of Inventory to buyers in the ordinary course of business;
- (b) the granting of Permitted Liens;

- (c) the making of a Permitted Investment; and
- (d) any other disposition (not otherwise specifically permitted in this definition of Permitted Dispositions) which is agreed to in writing by Lender in its sole discretion.

"Permitted Indebtedness" means:

- (a) Indebtedness evidenced by this Agreement or the other Loan Documents or any other Indebtedness of a Loan Party or any Subsidiary of a Loan Party to Lender or any of Lender's Affiliates;
- (b) Indebtedness set forth on Schedule 5.19 to the Information Certificate;
- (c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness;
- (d) endorsement of instruments or other payment items for deposit;
- (e) Indebtedness under Capital Leases of Borrower or any of its Subsidiaries;
- (f) unsecured Indebtedness (not otherwise specifically permitted in this definition of Permitted Indebtedness) in an aggregate principal amount not to exceed at any time \$50,000; and
- (g) other Indebtedness (not otherwise specifically permitted in this definition of Permitted Indebtedness) which is agreed to in writing by Lender in its sole discretion.

"Permitted Investments" means:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (c) advances made in connection with purchases of Goods or services in the ordinary course of business from Persons which are not Affiliates of Borrower and reasonable advances made for costs and expenses in the ordinary course of business;
- (d) Investments owned by Borrower or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1;
- (e) Investments resulting from entering into Bank Product Agreements;
- (f) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business; and
- (g) Investments constituting deposits made in connection with the purchase of goods or services or to secure the performance of statutory obligations constituting Permitted Liens, in each case in the ordinary course of business in an aggregate amount for such deposits not to exceed \$100,000 at any one time.

"Permitted Liens" means

- (a) Liens granted to, or for the benefit of, Lender and/or the Bank Product Providers to secure the Obligations;
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Lender's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;
- (c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 9.3 of the Agreement;

(d) Liens set forth on Schedule P-2; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date;

(e) the interests of lessors under operating leases and non-exclusive licensors under license agreements;

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired, the proceeds thereof and the contracts pursuant to which such asset was acquired, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof;

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;

(h) Liens on amounts deposited to secure the obligations of a Loan Party or any Subsidiary of a Loan Party in connection with worker's compensation or other unemployment insurance;

(i) Liens on amounts deposited to secure the obligations of a Loan Party or any Subsidiary of a Loan Party in connection with the making or entering into of bids, tenders or leases in the ordinary course of business and not in connection with the borrowing of money;

(j) Liens on amounts deposited to secure the reimbursement obligations of a Loan Party or any Subsidiary of a Loan Party with respect to surety or appeal bonds obtained in the ordinary course of business;

(k) with respect to any real property owned or leased by a Loan Party or any Subsidiary of any Loan Party, survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of such real properties, which do not materially interfere with the business of such Loan Party or such Subsidiary

(l) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions permitted under this Agreement solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens in favor of customs authorities arising as a matter of law to secure customs duties in connection with the importation of goods; and

(n) Liens (not otherwise specifically permitted in this definition of Permitted Liens) which are agreed to in writing by Lender in its sole discretion.

"Permitted Overadvance Amount" means \$14,000,000.

"Permitted Protest" means the right of Borrower or any other Loan Party or any of their respective Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books and records of Borrower, such other Loan Party or such Subsidiary in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower, such other Loan Party or such Subsidiary, as applicable, in good faith, and (c) Lender is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Lender's Liens.

"Permitted Purchase Money Indebtedness" means Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding not to exceed \$[100],000 during any Fiscal Year of Borrower.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" has the meaning specified therefor in the preamble to this Agreement.

"Petition Lender" means HC Capital Holdings 0909A, LLC, in its capacity as "Lender" under the Prepetition Credit Facility.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Pledge Agreements" means, collectively, the Pledge Agreements executed and delivered by the Pledgors in favor of Lender, and each is a "Pledge Agreement".

"Pledgors" means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, LP, Horizon Capital Partners III, L.P. and Horizon Partners, Ltd., and each is a "Pledgor".

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Prepetition Advances" means "Advances" under and as defined in the Prepetition Credit Facility as in effect immediately prior to the Petition Date.

"Prepetition Credit Facility" means the Credit and Security Agreement dated as of January 30, 2012, between Borrower and Lender (as successor to Wells Fargo), as amended by the (i) First Amendment to Credit and Security Agreement and Waiver of Default, dated as of October 2, 2012, (ii) Second Amendment to Credit and Security Agreement and Waiver of Defaults, dated as of March 12, 2013, (iii) Third Amendment to Credit and Security Agreement, dated as of April 25, 2013, (iv) Forbearance Agreement and Fourth Amendment to Credit and Security Agreement, dated as of August 15, 2013, (v) Forbearance Agreement and Fifth Amendment to Credit and Security Agreement, dated as of September 9, 2013 and (vi) Waiver Agreement and Sixth Amendment to Credit and Security Agreement, dated as of September 26, 2013, and as amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date. "Prepetition Lender" means the "Lender" under the Prepetition Credit Facility.

"Prepetition Loan Documents" means the "Loan Documents" as defined in the Prepetition Credit Facility.

"Prepetition Obligations" means "Obligations" under and as defined in the Prepetition Credit Facility.

"Prepetition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Indebtedness or trade payables (including, without limitation, in respect of reclamation claims) or other claims against the Loan Parties, in each case arising prior to the Petition Date.

"Prepetition Subordinated Debt" means Indebtedness or other obligations owed by Borrower or any other Loan Party which have been subordinated to the Obligations pursuant to a Subordination Agreement, in each case prior to the Petition Date.

"Prepetition Term Loans" means "Term Loans" and "CapEx Purchase Loans" under and as defined in the Prepetition Credit Facility as in effect immediately prior to the Petition Date.

"Prime Rate" means at any time the rate of interest most recently announced by Lender at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Lender's base rates, and serves as the basis upon which effective rates of interest are calculated for those loans making reference to it, and is evidenced by its recording in such internal publication or publications as Lender may designate. Each change in the rate of interest shall become effective on the date each Prime Rate change is announced by Lender.

"Priority of Claims Waiver" has the meaning specified therefor in Section 6.19.

"Proceeds" has the meaning specified therefor in Schedule 1.1, definition of "Collateral".

"Prohibited Preferred Stock" means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 1 year after the Maturity Date, or, on or before the date that is less than 1 year after the Maturity Date, is redeemable at the option

of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“Projections” means Borrower’s forecasted (a) balance sheets, (b) profit and loss statements, (c) Availability projections, and (d) cash flow statements, all prepared on a basis reasonably consistent with Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“Protective Advance” has the meaning specified therefor in Section 2.3(d).

“PTO” means the United States Patent and Trademark Office.

“Purchase Money Indebtedness” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 60 days after, the acquisition, construction or improvement of any fixed assets for the purpose of financing all or any part of the cost of acquisition, construction or improvement thereof.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of Lender,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“Reorganization Plan” means a plan or plans of reorganization in the Case.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Reserves” means, as of any date of determination, the sum of (a) an amount or percent of a specified item or category of items that Lender establishes from time to time in its sole discretion to reduce Availability to reflect (i) such matters, events, conditions, contingencies or risks which affect or which may reasonably be expected to affect the assets, business or prospects of Borrower, any other Loan Party or the Collateral or its value or the enforceability, perfection or priority of Lender’s security interest in the Collateral, or (ii) Lender’s judgment that any collateral report or financial information relating to Borrower or any other Loan Party delivered to Lender is incomplete, inaccurate or misleading in any material respect, *plus* (b) the Dilution Reserve, the Farm Products Reserve, the Leasehold Obligations Reserve, the Bank Product Reserve Amount and the Carve Out Reserve.

“Restricted Junior Payment” means (a) declaration or payment of any dividend or the making of any other payment or distribution on account of Stock issued by Borrower to the direct or indirect holders of such Stock, (b) any purchase, redemption, or other acquisition or retirement for value of any Stock issued by Borrower, (c) any payment in respect of any Subordinated Debt owed by Borrower to any Subordinated Creditor and/or any Subordinated Creditors, or (d) any payment of management, consulting, monitoring, sale representation, advisory or other service fees (and related costs and expenses) to Horizon Partners, Ltd. or to any other Affiliate of Horizon Partners, Ltd. or any other Affiliate of Borrower.

“Restricted Parties” means, collectively, (a) Little Bee Impex, (b) China Industrial and (c) E.J. Goodrich.

“Revolver Usage” means, as of any date of determination, the sum of the amount of outstanding Advances.

“Revolving Credit Facility” means the \$27,000,000 revolving line of credit facility described in Section 2.1 pursuant to which Lender provides Advances to Borrower.

“RSA” means, collectively, those certain Restructuring Support Agreements to be entered into in connection with a contemplated Insolvency Proceeding of Borrower, by and among Borrower and certain holders of claims against Borrower.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“S&P” has the meaning specified therefor in the definition of Cash Equivalents.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Securities Account” means a securities account (as that term is defined in the Code).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Security Interest” has the meaning specified therefor in Section 3.1 of this Agreement.

“Solvent” means, with respect to any Person on a particular date, that, (i) at fair valuations, the sum of such Person’s assets (and including as assets for this purpose all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) is greater than all of such Person’s debts and including subordinated and contingent liabilities computed at the amount which, such Person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability); and (ii) such Person is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof.

“Stock” means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Subordinated Creditors” means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, L.P., Horizon Capital Partners III, L.P., Ernest L. Groeb, Troy Groeb, E. Jeanne Groeb, E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001, as amended, Horizon Partners, Ltd. and any other Person now or in the future subordinating Indebtedness or other obligations of any Loan Party held by that Person to the payment of the Obligations, and each is a “Subordinated Creditor”.

“Subordinated Debt” means Indebtedness or other obligations owed by Borrower or any other Loan Party which have been subordinated to the Obligations pursuant to a Subordination Agreement.

“Subordinated Securities Purchase Agreements” means, collectively, that certain Securities Purchase Agreement dated as of March 16, 2007 and that certain Securities Purchase Agreement dated as of March 31, 2010, by and among Borrower and the Institutional Subordinated Creditors.

“Subordination Agreement” means each subordination agreement now or hereafter executed by one or more of the Subordinated Creditors in favor of Lender in form and content acceptable to Lender in its sole discretion, including, without limitation, the Institutional Subordinated Creditors Subordination Agreement, the Groeb Family Subordinated Creditors Subordination Agreement and the Management Fee Subordination Agreement.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

“Superpriority Claim” means a claim against Borrower in the Case which is an administrative expense claim having priority over any and all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

“Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, however, that Taxes shall exclude (i) any tax imposed on the net income or net profits of Lender (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof in which Lender is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which Lender’s principal office is located in each case as a result of a present or former connection between Lender and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from Lender having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), and (ii) any U.S. withholding taxes imposed under FATCA.

“Termination Date” has the meaning specified therefor in Section 2.9 of this Agreement

“Trademark Security Agreement” means each Trademark Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (i) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 5.25(b) to the Information Certificate, (ii) all renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iv) the right to sue for past, present and future infringements and dilutions thereof, (v) the goodwill of each Loan Party’s business symbolized by the foregoing or connected therewith, and (vi) all of each Loan Party’s rights corresponding thereto throughout the world.

“Transfer Eligible Inventory” means Eligible Inventory that is in transit on trucks or trailers owned or leased by Borrower with a destination being a location identified on Schedule 5.29 to the Information Certificate which is owned by Borrower or leased by Borrower and subject to a Collateral Access Agreement.

“Uniform Customs” means the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

“United States” means the United States of America.

“Updated Budget” has the meaning specified therefor in Section 6.21(b).

“Priority of Claims Waiver” has the meaning specified therefor in Section 6.19.

“USAO NDIL” means the Department of Justice, United States Attorney’s Office for the Northern District of Illinois.

“URL” means “uniform resource locator,” an internet web address.

“Value” means, as determined by Lender in good faith, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value, provided that for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Lender, if any.

“Voidable Transfer” has the meaning specified therefor in Section 17.7 of this Agreement.

“Wells Fargo” means Wells Fargo Bank, National Association.

“Weekly Actuals Report” has the meaning specified therefor in Section 6.21(a).

b. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions) (an “Accounting Change”) occurring after the Closing Date, or in the application thereof (or if Lender notifies Borrower that Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Lender and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lender and Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. Whenever used herein, the term “financial statements” shall include the footnotes and schedules thereto. Whenever the term “Borrower” is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

c. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein. The meaning of any term defined herein by reference to the Code will not be limited by reason of any limitation set forth on the scope of the Code, whether under Section 9-109 of the Code, by reason of federal preemption or otherwise.

d. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization) of all of the Obligations (including the payment of any Lender Expenses that have accrued irrespective of whether demand has been made therefor and the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements) other than unasserted contingent indemnification Obligations. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

e. **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

Schedule 2.12

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Borrower shall pay to Lender each of the following fees:

Monthly:

(a) **Unused Line Fee.** An unused line fee of one-quarter of one percent (0.25%) per annum of the daily average of the Maximum Revolver Amount reduced by outstanding Advances (the "Unused Amount"), from the date of this Agreement to and including the Termination Date, which unused line fee shall be payable monthly in arrears on the first day of each month and on the Termination Date.

(b) **Cash Management Fees.** Service fees to Lender for Cash Management Services provided pursuant to the Cash Management Documents, Bank Product Agreements or any other agreement entered into by the parties, in the amount prescribed in Lender's current service fee schedule.

Upon demand by Lender or as otherwise specified in this Agreement:

(a) **Collateral Exam Fees, Costs and Expenses.** Lender's costs and expenses in connection with any collateral exams, audits or inspections conducted by or on behalf of Lender at the current rates established from time to time by Lender as its fee for collateral exams, audits or inspections (which fees are currently \$125 per hour per collateral examiner), together with all actual out-of-pocket costs and expenses incurred in conducting any collateral exam, audit, or inspection. Lender may conduct collateral exams, audits and inspections from time to time in its sole discretion.

(b) **Appraisal Fees, Costs and Expenses.** Lender's costs and expenses, including any appraisal fees and costs and expenses incurred by an appraiser, in connection with any appraisal of all or any part of the Collateral conducted at the request of the Lender; provided, however, that commencing on the first anniversary of the Closing Date and during each year thereafter, so long as no Default or Event of Default shall have occurred, Borrower shall have no obligation to reimburse Lender for fees, costs and expenses related to more than one (1) such appraisal of all or any part of the Collateral conducted during each such Fiscal Year. Notwithstanding the foregoing limitation, Borrower shall have the obligation to reimburse Lender for fees, costs and expenses related to any appraisal of all or any part of the Collateral conducted as a result of Borrower failing to maintain the Covenant Threshold.

Schedule 6.1

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Deliver to Lender each of the financial statements, reports, or other items set forth below at the following times, in form satisfactory to Lender:

as soon as available, but in any event within 25 days after the end of each Fiscal Month:	(a) an unaudited consolidated and consolidating balance sheet, income statement, statement of cash flow, and statement of owner's equity covering the operations of Borrower and its Subsidiaries during such period and compared to the prior period, together with a corresponding discussion and analysis of results from management; and (b) a Compliance Certificate.
as soon as available, but in any event within 120 days after the end of each Fiscal Year:	(a) consolidated and consolidating financial statements of Borrower for each such Fiscal Year, audited by independent certified public accountants reasonably acceptable to Lender and certified, without any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item), by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, statement of cash flow, and statement of owner's equity and, if prepared, such accountants' letter to management), together with a corresponding discussion and analysis of results from management; (b) a Compliance Certificate; and
as soon as available, but in any event within 30 days before the start of each Fiscal Year:	(a) copies of Borrower's Projections, in form and substance (including as to scope and underlying assumptions) satisfactory to Lender, in its sole discretion, for such Fiscal Year, on a monthly basis, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby.

Schedule 6.2

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Provide Lender with each of the documents set forth below at the following times in form and substance satisfactory to Lender:

Daily:	(a) a Daily Collateral Report in form and detail acceptable to Lender; (b) an Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records; (c) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Accounts of Borrower and its Subsidiaries; (d) copies of invoices together with corresponding shipping and delivery documents and credit memos together with corresponding supporting documentation with respect to invoices and credit memos in excess of an amount determined in the sole discretion of Lender from time to time; and (e) a Borrowing Base Certificate.
Weekly on the second Business Day of each week or more frequently if Lender requests:	(a) the total dollar value of all mesquite honey Inventory of Borrower; (b) a conference call with financial advisors and Borrower detailing Borrower's efforts and progress with respect to the debtor in possession financing budget, chapter 11 bankruptcy preparations, restructuring and other management plans and strategies, including, without limitation, a summary description of margin improvements (if any), vendor and customer terms and expense reductions (if any); and (c) Inventory system/perpetual reports specifying the cost of Borrower's Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting).
Monthly (no later than the 10th day of each month or more frequently if Lender requests:	(a) a detailed aging of Borrower's Accounts, together with a reconciliation to the monthly Account roll-forward and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting); (b) a detailed calculation of those Accounts that are not eligible for the Borrowing Base; and (c) a summary aging, by vendor, of Borrower's accounts payable (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting).
Monthly (no later than the 20th day of each month) or more frequently if Lender requests:	(a) a reconciliation of Accounts aging, trade accounts payable aging, and Inventory perpetual of Borrower to the general ledger and the monthly financial statements, including any book reserves related to each category; (b) Inventory system/perpetual reports specifying the cost of Borrower's Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting); and (c) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base.
Annually, or more frequently, if Lender requests:	(a) a detailed list of Borrower's and its Subsidiaries' customers, with address and contact information; and (b) mark to market Inventory adjustments.
Upon request by Lender:	(a) copies of purchase orders and invoices for Inventory and Equipment acquired by Borrower

	<p>or its Subsidiaries,</p> <p>(b) such other reports and information as to the Collateral and as to Borrower, each other Loan Party and each Subsidiary of each Loan Party and each Guarantor, as Lender may reasonably request.</p>
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EXHIBIT A

[To come]

EXHIBIT B

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

CONDITIONS PRECEDENT

THE OBLIGATION OF LENDER TO MAKE ITS INITIAL EXTENSION OF CREDIT PROVIDED FOR IN THIS AGREEMENT IS SUBJECT TO THE FULFILLMENT, TO THE SATISFACTION OF LENDER, OF EACH OF THE FOLLOWING CONDITIONS PRECEDENT:

(a) the Closing Date shall occur on or before October ___, 2013 [To be the date that is not later than 3 days following the Petition Date];

(b) Lender shall have received a certificate from the Secretary of Borrower (i) attesting to the resolutions of the Board of Directors of Borrower, as applicable, authorizing its execution, delivery, and performance of the Loan Documents to which it is a party, (ii) authorizing specific officers to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers;

(c) Lender shall have received copies of the articles of incorporation and bylaws of Borrower, as amended, modified, or supplemented to the Closing Date, certified as true, correct and complete by the Secretary of Borrower;

(d) [RESERVED]

(e) Each Loan Party and each of its Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by such Loan Party or its Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby;

(f) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Lender;

(g) Lender shall have received such other items as Lender shall have reasonably requested;

(h) Lender shall have received a completed Borrowing Base Certificate;

(i) Lender shall have received, not later than three (3) days following the Petition Date, a certified copy of the Interim Order by the Bankruptcy Court, which Interim Order shall, among other things, (i) authorize Borrower to enter into this Agreement and the other Loan Documents, in the amount and on the terms set forth in this Agreement and the other Loan Documents, (ii) approve the Loan Documents and grant the Lien and Superpriority Claim contemplated thereby, approve the prepayment of the obligations under the Prepetition Credit Facility (to the extent required herein) by Borrower and all of the fees provided for in this Agreement and (iv) not have been vacated, reversed, modified, amended or stayed;

(j) All of the "first day orders" entered at the time of commencement of the Case, each of which shall be reasonably satisfactory in form and substance to Lender;

(k) Lender shall have received all fees required to be paid, and all Lender Expenses for which invoices have been presented (including the reasonable documental fees and expenses of legal counsel), on or before the Closing Date. The Prepetition Lender shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable documented fees and expenses of legal counsel), on or before the Closing Date; and

(l) No litigation shall have commenced which has not been stayed by the automatic stay or by the Bankruptcy Court which, if successful, would result in a Material Adverse Change other than the Case.

EXHIBIT C

[To come]

EXHIBIT D

[To come]

EXHIBIT E

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

INFORMATION CERTIFICATE
OF
BORROWER

Dated: October __, 2013

HC Capital Holdings 0909A, LLC
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attn: Robert M. Strauss
Fax: (512) 765-6530
Email: Strauss@peakrockcapital.com

In connection with certain financing provided or to be provided by HC Capital Holdings 0909A, LLC ("Lender"), the undersigned Borrower represents and warrants to Lender the following information about each Loan Party and each Subsidiary of each Loan Party and each Guarantor (Capitalized definitional terms not specifically defined shall have the meaning set forth in the Senior Secured Superpriority Priming Debtor-in-Possession Credit and Security Agreement (the "Agreement")):

1. Attached as Schedule 5.1(b) is a complete and accurate description of (i) the authorized Stock of each Loan Party and each of its Subsidiaries and each Guarantor, by class, and the number of shares issued and outstanding and the names of the owners thereof (including stockholders, members and partners) and their holdings, all as of the date of this Agreement, (ii) all subscriptions, options, warrants or calls relating to any shares of Stock of such Loan Party, such Subsidiary and such Guarantor, including any right of conversion or exchange; (iii) each stockholders' agreement, restrictive agreement, voting agreement or similar agreement relating to any such Stock; and (iv) and organization chart for the Guarantors, the Borrower and their Subsidiaries.
2. Each Loan Party and each Guarantor is affiliated with, or has ownership in, the entities (including Subsidiaries) set forth on Schedule 5.1(c).
3. Each Loan Party and each Guarantor uses the following trade name(s) in the operation of their business (e.g. billing, advertising, etc.):

Borrower: Groeb Farms, Inc.; Miller's American Honey
4. Each Loan Party and each Guarantor is a registered organization of the following type:

Groeb Farms, Inc. is a Michigan corporation.
5. The exact legal name (within the meaning of Section 9-503 of the Code) of each Loan Party and each Guarantor as set forth in its respective certificate of incorporation, organization or formation, or other public organic document, as amended to date is set forth in Schedule 5.6(a).
6. Each Loan Party and each Guarantor is organized solely under the laws of the State set forth on Schedule 5.6(a). Each Loan Party and each Guarantor is in good standing under those laws and no Loan Party or Guarantor is organized in any other State.
7. The chief executive office and mailing address of each Loan Party and each Guarantor is located at the address set forth on Schedule 5.6(b) hereto.
8. The books and records of each Loan Party and each Guarantor pertaining to Accounts, contract rights, Inventory, and other assets are located at the addresses specified on Schedule 5.6(b).

9. The identity and Federal Employer Identification Number of each Loan Party and each Subsidiary of each Loan Party and each Guarantor and organizational identification number, if any, is set forth on Schedule 5.6(c). (Please Use Form Attached)
10. No Loan Party has any Commercial Tort Claims, except as set forth on Schedule 5.6(d).
11. There are no judgments, actions, suits, proceedings or other litigation pending by or against or threatened by or against any Loan Party, any of its Subsidiaries and/or any of its Affiliates or any of its officers or principals, except for the Case and as set forth on Schedule 5.7(b).
12. Since its date of organization, the name as set forth in each Loan Party's organizational documentation filed of record with the applicable state authority has been changed as follows: N/A
13. Since the date of its organization, each Loan Party has made or entered into the following mergers or acquisitions:
- On March 31, 2010, Groeb Farms, Inc. acquired Miller's American Honey, Inc., which became a wholly-owned subsidiary of Groeb Farms, Inc. On June 30, 2010, Miller's American Honey, Inc. merged with Groeb Farms, Inc.
- In March 2007, Groeb Farms, Inc. merged with GF Acquisition, Inc. GF Acquisition, Inc. was formed for the sole purpose of acquiring Groeb Farms, Inc.
- Prior to 2007, Groeb Farms acquired a fresh salsa company (Gourmet Jose), which was sold in early 2008.
14. The assets of each Loan Party and each Subsidiary of each Loan Party are owned and held free and clear of Liens, mortgages, pledges, security interests, encumbrances or charges except as set forth below: See Schedule P-2 attached to the Agreement.
15. No Loan Party or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any Pension Plan other than (A) on the Closing Date, those listed in Schedule 5.11(d) and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.
16. Each Loan Party has been and remains in compliance with all environmental laws applicable to its business or operations except as set forth on Schedule 5.12 and except to the extent that the failure to be in compliance therewith could not reasonably be expected to result in a Material Adverse Change.
17. No Loan Party has any Deposit Accounts, investment accounts, Securities Accounts or similar accounts with any bank, securities intermediary or other financial institution, except as set forth on Schedule 5.15 for the purposes and of the types indicated therein and except as otherwise permitted in Section 7.11(b).
18. No Loan Party is a party to or bound by an collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth below (indicate date of agreement, parties to agreement, description of employees covered, and date of termination): None
19. Set forth on Schedule 5.17 is a reasonably detailed description of each Material Contract of each Loan Party and each of its Subsidiaries as of the date of the Agreement.
20. Set forth on Schedule 5.19 is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date.
21. No Loan Party has made any loans or advances or guaranteed or otherwise become liable for the obligations of any others, except as set forth below:
- One or more members of the Groeb family is indebted to Groeb Farms, Inc. in the approximate amount of \$185,000 plus interest in connection with the sale of a division of Groeb Farms, Inc.

22. No Loan Party has any Chattel Paper (whether tangible or electronic) or instruments as of the date hereof, except as follows: None
23. No Loan Party owns or licenses any Trademarks, Patents, Copyrights or other Intellectual Property, and is not a party to any Intellectual Property License except as set forth on Schedule 5.25 (indicate type of Intellectual Property and whether owned or licensed, registration number, date of registration, and, if licensed, the name and address of the licensor).
24. Schedule 5.26(a) sets forth all real property owned by each Loan Party.
25. The Inventory, Equipment and other goods of each Loan Party are located only at the locations set forth on Schedule 5.29.
26. Set forth on Schedule 5.31 is a reasonably detailed description of each Material License of each Loan Party and each of its Subsidiaries as of the date of this Agreement.
27. Set forth on Schedule 5.33 is a list of all Eligible Equipment owned by each Loan Party as of the date of this Agreement.
28. At the present time, there are no delinquent taxes due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) except as follows:

In connection with an audit, the IRS determined that Groeb Farms, Inc. owes an additional \$1,372 plus interest and penalties for the tax year 2010. Groeb Farms, Inc. has not yet paid this tax deficiency because it has not received the final bill from the IRS.

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Lender shall be entitled to rely upon the foregoing in all respects and the undersigned is duly authorized to execute and deliver this Information Certificate on behalf of each Loan Party.

Very truly yours,

GROEB FARMS, INC.

By: _____
Name: Jack M. Irvin, Jr.
Title: Vice-President and Chief Financial Officer

Schedule 5.1(b)

TO INFORMATION CERTIFICATE

Capitalization of Borrower

Organization Chart

Items (i), (iv): Capital Stock, Organization Chart

See attached.

Item (ii):

See attached.

Item (iii):

Investment Agreement for 78,500 Shares of Convertible Preferred Stock and 2,500 Shares of Series D Common Stock issued by GF Acquisition, Inc., dated as of March 16, 2007, as amended

Investment Agreement for 26,923 Shares of Series C 6% Convertible Preferred Stock issued by Groeb Farms, Inc., dated as of March 31, 2010, as amended

Securities Purchase Agreement among Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., Marquette Capital Fund I, LP, GF Acquisition, Inc. and Groeb Farms, Inc., dated March 16, 2007, as amended

Securities Purchase Agreement among Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., Marquette Capital Fund I, LP and Groeb Farms, Inc., dated March 31, 2010, as amended

Executive Investment/Shareholder Agreement between GF Acquisition, Inc. and Ernest L. Groeb, dated as of March 16, 2007¹

Groeb Farms, Inc. has additional shareholder agreements with other employees and such shareholder agreements are similar to Ernest L. Groeb's Executive Investment/Shareholder Agreement

¹ Groeb Farms, Inc. has repurchased Ernie L. Groeb's common stock and believes this Executive Investment/Shareholder Agreement has been terminated. Ernie L. Groeb disagrees and believes such agreement is still in effect.

**GROEB FARMS, INC.
PRO FORMA OWNERSHIP**

As of August 31, 2013

Updated: 9/18/13

As of August 31, 2013			Updated: 9/18/13					Primary Ownership		Fully Diluted Ownership		
Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Shares	%	Shares	%	Class Of Stock
Management												
Common Shares - Series D												
Michael R. Modjeski	12/31/09	59,420	1	1,000	58,420	59.42		1,000	0.78%	1,000	0.67%	Common D
Craig S. Moore	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Joyce Darlene Schlachter	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Jack Irvin	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Alison Tringale	11/4/10	115,206	1	1,266	113,940	91.00		1,266	0.99%	1,266	0.85%	Common D
Total Common D		324,626		5,266	319,360		0	5,266	4.13%	5,266	3.55%	
Conv. Preferred - Series B												
Ernest L. Groeb	3/16/07	469,500	100	469,500	0	100.00		4,695	3.68%	4,695	3.17%	Pref B
Troy L. Groeb	3/16/07	469,500	100	469,500	0	100.00		4,695	3.68%	4,695	3.17%	Pref B
Total Conv. Preferred Series B		939,000		939,000	0			9,390	7.36%	9,390	6.34%	
Conv. Preferred Series C												
Groeb Farms Partnership	4/1/10	930,540	130	930,540	0	130.00		7,158	5.61%	7,158	4.83%	Pref C
Joellen Sullivan	4/1/10	45,240	130	45,240	0	130.00		348	0.27%	348	0.23%	Pref C
Alison Tringale	11/4/10	45,240	130	45,240	0	130.00		348	0.27%	348	0.23%	Pref C
Total Conv. Preferred Series C		1,021,020		1,021,020	0			7,854	6.16%	7,854	5.30%	
Total Management		2,284,646		1,965,286	319,360		0	22,510	17.65%	22,510	15.19%	
Board of Directors												
Restricted Common Shares - Series F												
George W. Cawman	12/18/07	1,500	\$1	\$1,500	\$0	1.00		1,500	1.18%	1,500	1.01%	Common F
Robert G. Bush	12/18/07	250	1	250	0	1.00		250	0.20%	250	0.17%	Common F
Kim W. Jenkins	12/18/07	100	1	100	0	1.00		100	0.08%	100	0.07%	Common F
Frank H. Barker	2/23/10	0	1	0	0	1.00		0	0.00%	825	0.56%	Common F
P. Kim Packard	2/23/10	500	1	500	0	1.00		500	0.39%	825	0.56%	Common F
J. William Petty, Trustee of Carolyn V. Petty 2000 Trust U/A/D 2/25/2000	12/18/07	1,000	1	1,000	0	1.00		1,000	0.78%	1,000	0.67%	Common F
Total Restricted Common F		3,350		3,350	0			3,350	2.63%	4,500	3.04%	
Conv. Preferred Series C												
Francis H. Barker	4/1/10	53,560	130	53,560	0	130.00		412	0.32%	412	0.28%	Pref C
George W. Cawman, Jr.	4/1/10	249,990	130	249,990	0	130.00		1,923	1.51%	1,923	1.30%	Pref C
J. William Petty	4/1/10	75,010	130	75,010	0	130.00		577	0.45%	577	0.39%	Pref C
John C. Morley	4/1/10	31,720	130	31,720	0	130.00		244	0.19%	244	0.16%	Pref C
Lanny A. Passaro Trust	4/1/10	31,720	130	31,720	0	130.00		244	0.19%	244	0.16%	Pref C
P. Kim Packard	4/1/10	18,330	130	18,330	0	130.00		141	0.11%	141	0.10%	Pref C
Robert G. Bush	4/1/10	99,190	130	99,190	0	130.00		763	0.60%	763	0.51%	Pref C
Jack C. Meng	4/1/10	63,440	130	63,440	0	130.00		488	0.38%	488	0.33%	Pref C
Thomas R. Liebermann	4/1/10	4,940	130	4,940	0	130.00		38	0.03%	38	0.03%	Pref C
Total Conv. Preferred Series C		627,900		627,900	0			4,830	3.79%	4,830	3.26%	
Total Board of Directors		631,250		631,250	0		0	8,180	6.41%	9,330	6.30%	

GROEB FARMS, INC.
PRO FORMA OWNERSHIP

As of August 31, 2013

Updated: 9/18/13

As of August 31, 2013	Updated: 9/18/13								Primary Ownership		Fully Diluted Ownership		
Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Shares	%	Shares	%	Class Of Stock	
Outside Investors													
Conv. Preferred Series A													
Horizon Capital Partners III, L.P.	3/16/07	1,411,000	\$100	\$1,411,000	\$0	100.00		14,110	11.06%	14,110	9.52%	Pref A	
Marquette Capital Fund I, L.P.	3/16/07	1,700,000	100	1,700,000	0	100.00		17,000	13.33%	17,000	11.47%	Pref A	
Argosy Investment Partners III, L.P.	3/16/07	3,200,000	100	3,200,000	0	100.00		32,000	25.09%	32,000	21.59%	Pref A	
George W. Cawman	3/16/07	250,000	100	250,000	0	100.00		2,500	1.96%	2,500	1.69%	Pref A	
Howard S. Goss	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
Thomas R. Liebermann	3/16/07	25,000	100	25,000	0	100.00		250	0.20%	250	0.17%	Pref A	
Jack C. Meng	3/16/07	100,000	100	100,000	0	100.00		1,000	0.78%	1,000	0.67%	Pref A	
John C. Morley	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
Lanny A. Passaro Trust	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
J. William Petty	3/16/07	75,000	100	75,000	0	100.00		750	0.59%	750	0.51%	Pref A	
Total Conv. Preferred Series A		6,911,000		6,911,000	0			69,110	54.19%	69,110	46.63%		
Conv. Preferred Series C													
Horizon Capital Partners III, L.P.	4/1/10	375,060	130	375,050	10	130.00		2,885	2.26%	2,885	1.95%	Pref C	
Marquette Capital Fund I, L.P.	4/1/10	573,690	130	573,690	0	130.00		4,413	3.46%	4,413	2.98%	Pref C	
Argosy Investment Partners III, L.P.	4/1/10	947,570	130	947,570	0	130.00		7,289	5.72%	7,289	4.92%	Pref C	
Total Conv. Preferred Series C		1,896,320		1,896,310	10			14,587	11.44%	14,587	9.84%		
Common Shares - Series E													
Horizon Capital Partners III, L.P.	3/16/07	6,567	1	6,567	0	1.00		6,567	5.15%	6,567	4.43%	Common E	
Horizon Partners, Ltd.	3/16/07	6,567	1	6,567	0	1.00		6,567	5.15%	6,567	4.43%	Common E	
Total Common Shares Series E		13,134		13,134	0			13,134	10.30%	13,134	8.86%		
Junior Subordinate Note Warrants 'C'													
Horizon Capital Partners III, L.P.	3/16/07	—	1	—	—	1.00		—	—	900	0.61%		
Marquette Capital Fund I, L.P.	3/16/07	—	1	—	—	1.00		—	—	5,103	3.44%		
Argosy Investment Partners III, L.P.	3/16/07	—	1	—	—	1.00		—	—	4,504	3.04%		
Total Warrants		0		0	0			0	0.00%	10,507	7.09%		
Senior Subordinate Note Warrants 'G'													
Horizon Capital Partners III, L.P.	3/31/10	—	1	—	—	1.00		—	—	193	0.13%		
Marquette Capital Fund I, L.P.	3/31/10	—	1	—	—	1.00		—	—	4,692	3.17%		
Argosy Investment Partners III, L.P.	3/31/10	—	1	—	—	1.00		—	—	4,139	2.79%		
Total Warrants		0		0	0			0	0.00%	9,024	6.09%		
Total Outside Investors		8,820,454		8,820,444	10		0	96,831	75.93%	116,362	78.52%		
TOTAL ACTIVE SHARES		\$11,736,350		11,416,980	319,370		0	127,521	100.00%	148,202	100.00%		

**GROEB FARMS, INC.
PRO FORMA OWNERSHIP**

As of August 31, 2013

Updated: 9/18/13

Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Primary Ownership		Fully Diluted Ownership		Class Of Stock
								Shares	%	Shares	%	
TOTAL ACTIVE SHARES		<u>\$11,736,350</u>		<u>11,416,980</u>	<u>319,370</u>		<u>0</u>	<u>127,521</u>	<u>100.00%</u>	<u>148,202</u>	<u>100.00%</u>	

Treasury Shares

Repurchased from: Issuance Date: Repurchased:

Common D:

Ernest L. Groeb	3/16/07	8/3/2012	\$125,000	\$1	\$0	\$125,000	50.00	-2,500	0	0.00%	0	0.00%	Common D
Ernest L. Groeb	4/1/10	8/3/2012	51,506	1	0	51,506	91.00	-566	0	0.00%	0	0.00%	Common D
Troy L. Groeb	12/31/09	11/19/2012	59,420	1	0	59,420	59.42	-1,000	0	0.00%	0	0.00%	Common D
Troy L. Groeb	4/1/10	11/19/2012	24,206	1	0	24,206	91.00	-266	0	0.00%	0	0.00%	Common D
Joellen Sullivan	12/31/09	11/19/2012	59,420	1	0	59,420	59.42	-1,000	0	0.00%	0	0.00%	Common D
Joellen Sullivan	4/1/10	11/19/2012	24,206	1	0	24,206	91.00	-266	0	0.00%	0	0.00%	Common D

Common F:

Ernest L. Groeb	3/16/07	8/3/2012	9,851	1	0	9,851	1.00	-9,851	0	0.00%	0	0.00%	Common F
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Total Treasury APIC

<u>353,609</u>	<u>-15,449</u>	<u>0</u>	<u>0.00%</u>	<u>0</u>	<u>0.00%</u>
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TOTAL Additional Paid-in Capital *(ties to Balance Sheet)*

672,979

Schedule 5.1(c)

TO INFORMATION CERTIFICATE

Subsidiaries; Affiliates; Investments

Part 1 – Subsidiaries of Borrower (50% or more owned by Borrower)

Name	Jurisdiction of Organization	Percentage Owned
None		

Part 2 – Affiliates of Borrower (Less than 50% Owned by Borrower)

Name	Jurisdiction of Organization	Percentage Owned
None		

Part 3 – Affiliates of Borrower (Subject to common ownership with Borrower)

Name	Jurisdiction of Organization	Owner	Percentage Owned
None			

Part 4 – Owners of Borrower

Name	Jurisdiction of Organization	Percentage Owned
See Schedule 5.1(b)		

Schedule 5.6(a)

TO INFORMATION CERTIFICATE

Exact Legal Names and Jurisdiction of Organization of Borrower

Exact Legal Name	Jurisdiction of Organization
Groeb Farms, Inc.	Michigan

Schedule 5.6(b)

TO INFORMATION CERTIFICATE

Locations

Part 1 - Chief Executive Office and Mailing Address

Borrower:

10464 Bryan Highway
Onsted, MI 49265

Part 2 - Location of Books and Records

Borrower:

10464 Bryan Highway
Onsted, MI 49265

2301 E Michigan Ave
Jackson, MI 49202

Schedule 5.6(c)

TO INFORMATION CERTIFICATE

Federal Employer Identification Number
Organizational Identification Number
for Borrower

(Please Use Form Attached For Tax Identification Number)

Name	Organizational Identification Number	Federal Identification Number
Groeb Farms, Inc.	371576	38-2778390

Schedule 5.6(d)

TO INFORMATION CERTIFICATE

Commercial Tort Claims

None

Schedule 5.7(b)

TO INFORMATION CERTIFICATE

Judgments/ Pending Litigation

Borrower:

Groeb Farms, Inc. v. China Industrial Manufacturing Group, Inc.: Groeb Farms and China Industrial entered into two contracts pursuant to which China Industrial agreed to deliver a total of 262 loads of pure Indonesian light amber honey ("Honey") to Groeb Farms. China Industrial delivered 30 loads of Honey to Groeb Farms but failed to deliver the remaining 232 loads of Honey to Groeb Farms as required by the two contracts. As a result of China Industrial's failure to deliver the remaining 232 loads of Honey to Groeb Farms, Groeb Farms incurred significant damages. Groeb Farms brought suit against China Industrial for breach of contract. China Industrial asserted a counterclaim against Groeb Farms seeking the recovery of payments that were withheld from China Industrial based on the failure to deliver the loads of Honey. The case was settled by a confidential settlement agreement, and the case was dismissed on April 29, 2013.

Little Bee Impex / Kashmir Apiaries Exports ("Little Bee"): Little Bee agreed to deliver 380 loads of White, Light Amber and Extra Light Amber Pure Bees Honey to Groeb Farms no later than May 11, 2011. Little Bee failed to deliver the specified loads of honey and caused Groeb Farms to incur significant damages. Groeb Farms set off against the amounts due to Little Bee the damages that Groeb Farms has incurred. Little Bee asserted claims against Groeb Farms for the failure to pay such amounts due to Little Bee. Little Bee and Groeb Farms reached a confidential settlement agreement to resolve the matter during arbitration. Once the settlement agreement is fulfilled, the arbitration proceeding will be dismissed. Groeb Farms' potential liability is not covered by insurance.

Consolidated Class Actions: In April 2013, two civil putative class action lawsuits brought by producers, packers and/or distributors of honey were filed in the United States District Court for the Northern District of Illinois. In Adee Honey Farms, et al v. Groeb Farms, et al., Case No. 1:13-cv-02922 (the "Adee Lawsuit"), the putative class alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and Lanham Act. In Moore's Honey Farm, et al. v. Groeb Farms, Inc., et al., Case No. 1:13-cv-02905 (the "Moore Lawsuit" and collectively with the Adee Lawsuit the "Putative Class Actions"), the putative class alleges violations of RICO and common law fraud, negligent misrepresentations, conspiracy, and clandestine wrongful importation without paying the anti-dumping duties. On June 24, 2013, the Putative Class Actions were consolidated (hereinafter, the "Putative Class Action") by Order of the Court handling the Moore Lawsuit (the "Consolidation Order"). The Putative Class Action is based on the factual statements contained in the DPA regarding the purchase of trans-shipped honey. While none of the claims make a specific damage demand, RICO and Lanham Act cases carry a potential for treble damages. All claims also seek attorneys' fees. On September 9, 2013, the court granted the parties' agreed order to extend the deadline for the Putative Class Action Plaintiffs to file an amended complaint until October 24, 2013. Settlement discussions in this matter are ongoing. Groeb Farms' potential liability is covered by insurance to the extent set forth in the insurer's reservation of rights letter.

Yager v. Groeb Farms: Karen Yager, a former Groeb Farms salesperson, filed a suit in state court in Maryland on May 20, 2013 alleging gender discrimination with respect to a layoff, failure to pay all compensation owed with respect to a bonus agreement, and breach of contract with respect to the same bonus agreement. Yager asserts damages in excess of \$75,000.00 Groeb Farms removed the case to federal court on July 25, 2013. The case is currently stayed until November 15, 2013 to allow for settlement discussions, which are ongoing. Groeb Farms' potential liability is not covered by insurance.

Peter Nelson (California Workers' Compensation Matter): Nelson, a former employee, filed a claim for workers' compensation, and a claim for retaliatory discharge based on the filing of a workers' compensation claim with the California Workers' Compensation Appeal Board. The retaliatory discharge claim was settled in June 2013. The workers' compensation matter is ongoing. Groeb Farms' potential liability based on the workers' compensation claim, which is estimated to be \$25,000, is covered by insurance.

Jodi Sullivan Matter (threatened litigation): Jodi Sullivan is a former Groeb Farms employee who has threatened to sue Groeb Farms. On or about September 26, 2012, the Company terminated Ms. Sullivan's employment as part of a reduction in force and, in connection with such termination, elected to repurchase her Series D Common Stock for the estimated fair market value, which was in the aggregate \$1,266. Shortly after her termination, Ms. Sullivan retained an attorney, Marvin A. Robon, of Barkan & Robon, Ltd., Maumee, Ohio, alleging, among other things, improper termination, improper purchase of her Series D Common stock, failure to purchase her preferred stock and other claims. Although the parties entered into settlement discussions, no conclusion was ever reached and Ms. Sullivan may file a lawsuit against Groeb Farms. Groeb Farms' potential liability is not covered by insurance.

Schedule 5.11(d)

TO INFORMATION CERTIFICATE

Pension Plans

Borrower:

Groeb Farms, Inc. maintains a 401(k) plan.

Schedule 5.12

TO INFORMATION CERTIFICATE

Environmental Compliance

None

Schedule 5.15

TO INFORMATION CERTIFICATE

Deposit Accounts; Investment Accounts

Part 1 - Deposit Accounts

Borrower:

Name and Address of Bank	Account No.	Purpose
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122226913	Operating Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122234636	Cash Collection Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122226921	BASIC Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122407232	Petty Cash Account
Comerica Bank 11351 Brooklyn Rd. Brooklyn, MI 49230	Box 663	Safety Deposit Box
Old National Bank P.O. Box 718 Evansville IN 47705	5012453655	Petty Cash Account

Part 2 - Investment and Other Accounts

Borrower:

None

Schedule 5.17

TO INFORMATION CERTIFICATE

Material Contracts

Credit and Security Agreement, dated as of January 30, 2012, between Groeb Farms, Inc. and HC Capital Holdings 0909A, LLC (as successor to Wells Fargo Bank, National Association), as amended from time to time.

The agreements evidencing the indebtedness set forth on Schedule 5.19.

Schedule 5.19

TO INFORMATION CERTIFICATE

Existing Indebtedness

Part 1 - Direct Debt

Borrower:

The Prepetition Obligations.

Name/Address of Payee	Principal Balance as of Closing Date	Nature of Debt	Term
Ernest L. Groeb, as Shareholders' Representative 10464 Bryan Highway Onsted, MI 49265	\$1,500,000	Junior subordinated debt	Debt matures March 31, 2017
Argosy Investment Partners III, L.P. 950 West Valley Road, Suite 2900 Wayne, PA 19087 Horizon Capital Partners III, L.P. 3838 Tamiami Trail N, Suite 408 Naples, Florida Marquette Capital Fund I, LP 60 South Sixth Street Minneapolis, MN	\$3,500,000	Senior subordinated debt	Debt matures March 31, 2017
Argosy Investment Partners III, L.P. 950 West Valley Road, Suite 2900 Wayne, PA 19087 Horizon Capital Partners III, L.P. c/o Horizon Partners Ltd. 3838 Tamiami Trail N, Suite 408 Naples, Florida Marquette Capital Fund I, LP 60 South Sixth Street Minneapolis, MN	\$3,500,000	Senior subordinated debt	Debt matures March 31, 2017
Olesanik Family Living Trust 5100 Baggins Hill Road Templeton, CA 93485	\$423,762	Unsecured debt	Debt matures July 2017

Part 2 - Guarantees

Borrower:

Name/Address of Payee	Principal Balance as of Closing Date	Nature of Debt	Term
None			

Schedule 5.24

TO INFORMATION CERTIFICATE

Collective Bargaining or Similar Agreements

None


Schedule 5.25

TO INFORMATION CERTIFICATE

Intellectual Property

Part 1 – Trademarks Owned

Borrower:

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
	3907823	01/18/11
GROEB FARMS, INC.	3907825	01/18/11
SUPERIOR HONEY	3061871	02/28/06

Trademark Application	Application/Serial Number	Application Date
None		

Part 2 – Trademarks Licensed

Borrower:

Trademark	License Number	Effective Date of License	Expiration Date of License	Licensor
Smokey the Bear	#12-007	July 1, 2012	June 30, 2015	Forest Service, United States Department of Agriculture

Trademark Application	Application/Serial Number	Application Date
None		

Part 3 – Patents Owned

Borrower:

U.S. Patent No.	Title	File Date	Issue Date
None			

U.S. Application No.	Title	Priority Date
None		

Part 4 – Patents Licensed

Borrower:

Patent Description	Registration Number	Registration Date	Expiration Date	Licensor
None				

Patent Application	Application / Serial Number	Application Date
None		

Part 5 – Copyrights Owned

Borrower:

Copyright	Registration Number	Registration Date
None		

Part 6 – Copyrights Licensed

Borrower:

Copyright	Registration Number	Registration Date	Licensor
None			

Part 7 – Other License Agreements

Borrower:

Name of Document	Date of Document	Licensor	Term	Licensed Intellectual Property
None				

Schedule 5.26(a)

TO INFORMATION CERTIFICATE

Owned Real Estate

None.

Schedule 5.29

TO INFORMATION CERTIFICATE

Locations of Inventory and Equipment

Locations of Inventory, Equipment and Other Assets**Borrower:**

Address	Owned/Leased/Third Party	Name/Address of Lessor or Third Party, as Applicable
10464 Bryan Highway Onsted, MI 49265	Leased	Ernest L. Groeb, Jr. Trust B, United Bank & Trust, Successor Trustee PO Box 248 Tecumseh, MI 749286
3220 SE County Highway 484 Bellevue, FL 34421	Leased	Groeb Farms, LLC P.O. Box 398 Bellevue, FL 34424
31 Plymouth St. Mansfield, MA 02048	Public Warehouse	Barrett Distribution Center 31 Plymouth St. Mansfield, MA 02048
3601 S. Leonard Rd. St. Joseph, MO 64503	Public Warehouse	BMS Logistics, Inc. 100 N. Airport Rd. St. Joseph, MO 64503
215 Industrial Drive #D Hampshire, IL 60140-8900	Public Warehouse	Food Ingredients, Inc. 2425 Alft Lane Elgin, IL 60124
2490 S. Broadway St., Bldg 7 Green Bay, WI 54304	Public Warehouse	Northland Cold Storage, Inc. P.O. Box 11796 Green Bay, WI 54307
26525 Danti Ct. Hayward, CA 94545	Public Warehouse	Green Packing, Inc. 3650 Perada Dr. Walnut Creek, CA 94598
1455 Riverview Drive San Bernardino, CA 92408	Leased	GT94, LP 9171 Wilshire Blvd. Suite 900 Hollywood, CA 90210

Schedule 5.31

TO INFORMATION CERTIFICATE

Material Licenses

None

Schedule 5.32

TO INFORMATION CERTIFICATE

Existing Liens on Farm Products

None

Schedule 5.33

TO INFORMATION CERTIFICATE

Eligible Equipment

Trailers

Year	Description	VIN	Hilco Appraisal Ref#
2011	Utility 53' Trailer	1UYVS253XBG147601	39
2011	Utility 53' Trailer	1UYVS253XBG147602	40
2010	Utility 53' Trailer	1UYVS2538AG917602	41
2010	Utility 53' Trailer	1UYVS2536AG917601	42
2010	Utility 53' Trailer	1UYVS2534AG917502	43
2010	Utility 53' Trailer	1UYVS2532AG917501	44
2009	Utility 53' Trailer	1UYVS25339G631202	45
2009	Utility 53' Trailer	1UYVS25319G631201	46
2008	Utility 53' Trailer	1UYVS25358G404902	47
2008	Utility 53' Trailer	1UYVS25358G404901	48
2008	Utility 53' Trailer	1UYVS25328G375309	49
2008	Utility 53' Trailer	1UYVS25338G354307	50
2008	Utility 53' Trailer	1UYVS25338G354310	51
2006	Utility 53' Trailer	1UYVS25326G892302	52
2006	Utility 53' Trailer	1UYVS25306G892301	53
2006	Utility 53' Trailer	1UYVS25316P826002	54
2006	Utility 53' Trailer	1UYVS253X6G761914	55

Tractors

2005	Freightliner Model M2 106, 4x2 water truck	1FVACVDD75HV43767	64
2003	Freightliner Model CL-120T, 6x4 Tractor	1FUJA6CG63LK43708	66

Schedule 7.15

TO INFORMATION CERTIFICATE

Consignment, Bill and Hold, Sale or Return, Sale on Approval or Conditional Sale Arrangements

None

Schedule 7.16

TO INFORMATION CERTIFICATE

Inventory With Bailee, Warehouseman, Processor, etc.

Address	Type of Bailee	Name/Address of Bailee
31 Plymouth St. Mansfield, MA 02048	Public Warehouse	Barrett Distribution Center 31 Plymouth St. Mansfield, MA 02048
3601 S. Leonard Rd. St. Joseph, MO 64503	Public Warehouse	BMS Logistics, Inc. 100 N. Airport Rd. St. Joseph, MO 64503
2490 S. Broadway St., Bldg 7 Green Bay, WI 54304	Public Warehouse	Northland Cold Storage, Inc. P.O. Box 11796 Green Bay, WI 54307
30039 Ahern Avenue Union City CA 94587	Public Warehouse	Green Packaging, Inc. 3650 Peradad Dr. Walnut Creek, CA 94598

Schedule A-1

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Collection Account

Account No. 4122234636 of Borrower maintained with Wells Fargo Bank, National Association.

Schedule A-2

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Authorized Persons

Rolf Richter, President and Chief Executive Officer
Jack M. Irvin, Jr., Vice-President, Chief Financial Officer and Secretary

Schedule D-1

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Designated Account

Account No. 4122226913 of Borrower maintained with Wells Fargo Bank, National Association.

Schedule P-1

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Permitted Investments

One or more individual members of the Groeb family is indebted to Groeb Farms, Inc. in the approximate amount of \$185,000 plus interest in connection with the sale of a division of Groeb Farms, Inc.

Certain employees are indebted to Groeb Farms, Inc. in the approximate amount of \$102,000 for the purchase of stock. Due to the value of Groeb Farms, Inc.'s stock this payment obligation may have been terminated.

Schedule P-2

TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT

Permitted Liens

Liens securing the Prepetition Obligations.

Debtor Searched [Debtor Found]	Jurisdiction	Secured Party	Filing No.	Filing Date	Lien Description
Groeb Farms, Inc.	Michigan Secretary of State	Wells Fargo Bank, N.A.	2010088737-8	06/29/10	(2) Sellick Rough Terrain Forklifts SLP50JDS-4 and all equipment parts, substitutions and replacements and the proceeds thereof
Groeb Farms, Inc.	Michigan Secretary of State	Toyota Motor Credit Corp	2011078647-7	06/01/11	(1) Toyota 7BNCU20 with Crown Industrial Battery 18-125-17 and Energic Charger
Groeb Farms, Inc.	Michigan Secretary of State	Marquette Capital Fund I, LP	2012015872-1	01/30/12	All of the Debtor's right, title and interest in and to all tangible and intangible assets of any type or description, including the following, whether now owned and existing or hereafter created or acquired, wherever located, together with all additions and accessions and all proceeds and products thereof: all accounts, chattel paper, instruments, investment property, equipment, inventory, general intangibles, deposit accounts, documents, letter of credit rights, any supporting obligations relating to the foregoing, any insurance coverage relating to the foregoing and all books and records of the Debtor.
Groeb Farms, Inc.	Michigan Secretary of State	Raymond Leasing Corporation	2012178465-4	12/26/12	All material handling equipment and associated accessories, including without limitation, lift trucks, pallet trucks, orderpickers, batteries and chargers in the possession of Debtor or hereafter acquired by Debtor in accordance with Equipment Master Lease Schedule No 306691 or any schedule thereunder.
Groeb Farms, Inc.	Michigan Secretary of State	TCF Equipment Finance, Inc.	2013050737-0	04/10/13	All Equipment and other Goods now or hereafter subject to Lease Agreement No TC-04131896 dated 4/3/2013, including (1) Signature Touch Metal Detector with Conveyor, USB, together with modifications, additions, attachments, accessories, parts, repairs and replacement thereto, and all substitutes for and proceeds of any of the Equipment, including without limitation insurance proceeds.
Groeb Farms, Inc.	Michigan Secretary of State	HC Capital Holdings 0909A, LLC	2012002923-5 2013135415-0	01/06/2012 09/18/2013	All assets.
Groeb Farms, Inc.	Michigan Secretary of State	Navistar Financial			2 Freightliners

Debtor Searched [Debtor Found]	Jurisdiction	Secured Party	Filing No.	Filing Date	Lien Description
Groeb Farms, Inc.	Michigan Secretary of State	GE Capital			5 Freightliners; 1 Tractor; 2 Trailers
Groeb Farms, Inc.	Michigan Secretary of State	Ford Motor Credit			2011 Ford Escape
Groeb Farms, Inc.	Michigan Secretary of State	Xerox			Fax; Copier
Groeb Farms, Inc.	Michigan Secretary of State	Konica Minolta			Printer; Copier
Groeb Farms, Inc.	Michigan Secretary of State	Toyota Financial			1 Forklift

EXHIBIT F

[To come]

EXHIBIT []

APPROVED BUDGET

(Attached)

GROEB FARMS INC.

WEEKLY CASH FLOW FORECAST - DIP Budget

(USD in 000's)

Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Weeks
Pre/Post Bankruptcy	Pre BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	1 - 14
Actual/Fcst	Est	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst
Week Ending	9/27	10/4	10/11	10/18	10/25	11/1	11/8	11/15	11/22	11/29	12/6	12/13	12/20	12/27	Total
Total Net Sales	1,934	\$ 1,608	\$ 2,052	\$ 2,052	\$ 2,052	\$ 2,117	\$ 2,375	\$ 2,375	\$ 2,375	\$ 1,425	\$ 2,178	\$ 2,178	\$ 2,178	\$ 1,525	\$ 28,425
<u>CASH FLOW SUMMARY</u>															
Total Cash Receipts	\$ 2,137	\$ 2,148	\$ 1,644	\$ 1,885	\$ 2,054	\$ 2,054	\$ 2,054	\$ 2,118	\$ 2,374	\$ 2,374	\$ 2,374	\$ 1,434	\$ 1,761	\$ 1,761	\$ 28,174
Operating Cash Disbursements:															
Honey Payments	1,268	1,574	2,184	2,635	2,331	2,647	2,116	2,214	1,427	1,727	2,239	2,098	1,444	1,450	27,356
Payroll	177	-	83	81	81	81	81	81	81	81	81	82	78	78	1,145
Other Operating Disbursements	230	454	359	336	331	433	403	347	342	310	485	354	340	313	5,038
Total Operating Disbursements	\$ 1,675	\$ 2,028	\$ 2,626	\$ 3,052	\$ 2,743	\$ 3,160	\$ 2,600	\$ 2,643	\$ 1,850	\$ 2,119	\$ 2,806	\$ 2,534	\$ 1,862	\$ 1,841	\$ 33,539
Bankruptcy Related Costs:															
Shippers & Warehouse Claims	-	42	42	42	42	-	-	-	-	-	-	-	-	-	169
Utility Deposits	-	9	9	-	-	-	-	-	-	-	-	-	-	-	18
Filing Fee	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Bankruptcy Related Disbursements	-	52	51	42	42	-	-	-	-	-	-	-	-	-	188
Capital Expenditure	-	-	10	-	10	-	10	-	10	-	10	-	10	-	60
Debt Service	-	6	-	-	-	6	-	-	-	6	-	-	-	-	18
Revolver/DIP Interest	-	73	-	-	-	72	-	-	-	-	86	-	-	-	231
Professional Fees	809	-	40	-	-	-	525	-	636	-	541	-	708	1,000	4,260
Amendment/Bank/Treasury Mgmt Fee	800	405	-	15	405	-	-	15	-	-	-	-	15	-	1,655
Total Disbursements	3,283	2,565	2,727	3,109	3,200	3,237	3,135	2,658	2,496	2,125	3,443	2,534	2,595	2,841	39,951
NET CASH FLOWS	\$ (1,147)	\$ (417)	\$ (1,084)	\$ (1,224)	\$ (1,146)	\$ (1,183)	\$ (1,081)	\$ (539)	\$ (122)	\$ 249	\$ (1,069)	\$ (1,101)	\$ (834)	\$ (1,080)	\$ (11,777)
Total DIP Facility Advances and Prepetition Advances															
Beginning Balance	\$ 15,016	\$ 16,162	\$ 17,432	\$ 18,515	\$ 19,739	\$ 20,885	\$ 22,068	\$ 23,149	\$ 23,688	\$ 23,810	\$ 23,561	\$ 24,630	\$ 25,731	\$ 26,565	15,016
Add: Net Cash Flow	1,147	417	1,084	1,224	1,146	1,183	1,081	539	122	(249)	1,069	1,101	834	1,080	11,777
Add: Term Loan	-	852	-	-	-	-	-	-	-	-	-	-	-	-	852
Ending Balance	\$ 16,162	\$ 17,432	\$ 18,515	\$ 19,739	\$ 20,885	\$ 22,068	\$ 23,149	\$ 23,688	\$ 23,810	\$ 23,561	\$ 24,630	\$ 25,731	\$ 26,565	\$ 27,645	\$ 27,645
Total Collateral	14,830	13,919	14,012	14,294	14,448	14,880	15,351	15,624	15,624	14,891	14,827	15,429	15,978	15,938	
Borrowing Base (collateral after limits & reserves)	14,030	11,769	11,862	12,144	12,298	12,730	13,201	13,474	13,474	12,741	12,677	13,279	13,828	14,788	
(Over)/Under Advance	\$ (2,132)	\$ (5,662)	\$ (6,654)	\$ (7,596)	\$ (8,587)	\$ (9,338)	\$ (9,947)	\$ (10,214)	\$ (10,336)	\$ (10,820)	\$ (11,953)	\$ (12,452)	\$ (12,736)	\$ (12,857)	

EXHIBIT B

Senior Sub Debt RSA

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (together with all exhibits and attachments hereto, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this “Agreement”) is made and entered into as of September 30, 2013, by and among: (i) Honey Financing Company, LLC (the “Senior Lender Affiliate”); (ii) HC Capital Holdings 0909A, LLC (the “Senior Lender”); (iii) Groeb Farms, Inc. (the “Company” or the “Debtor”); and (iv) each of the undersigned holders of Senior Subordinated Notes (as defined herein) (the “Senior Subordinated Noteholders”). The Senior Lender Affiliate, the Senior Lender, the Company, and Senior Subordinated Noteholders are referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Plan (as defined below).

RECITALS

WHEREAS, as of the date hereof, the Senior Lender is the lender under that certain Credit and Security Agreement and related agreements with the Company, dated as of January 20, 2012 (as amended by the: (i) First Amendment to Credit Agreement and Waiver of Default, dated as of October 2, 2012; (ii) Second Amendment to Credit Agreement and Waiver of Default, dated as of March 12, 2013; (iii) Third Amendment to Credit and Security Agreement, dated as of April 25, 2013; (iv) Forbearance Agreement and Fourth Amendment to Credit and Security Agreement, dated as of August 15, 2013; (v) Forbearance Agreement and Fifth Amendment to Credit and Security Agreement, dated as of September 9, 2013; and (vi) Waiver Agreement and Sixth Amendment to Credit and Security Agreement, dated as of September 26, 2013, the “Senior Credit Agreement”);

WHEREAS, among the agreements related to the Senior Credit Agreement is that certain Intercreditor and Subordination Agreement dated January 30, 2012, as amended (the “Intercreditor Agreement”), by and among the Senior Lender and the Senior Subordinated Noteholders;

WHEREAS, as of the date hereof, the Senior Subordinated Noteholders together with Horizon Capital Partners III, LP, hold notes issued by the Company under those certain 12% Senior Subordinated Debentures, due March 31, 2017, in the aggregate principal amount of \$7,000,000 (the “Senior Subordinated Notes”). The Senior Subordinated Notes and other obligations of the Company are secured by liens on and security interests in substantially all of the assets of the Company pursuant to that certain Security Agreement dated March 16, 2007, as amended.

WHEREAS, the Company has agreed to restructuring and recapitalization transactions (collectively, the “Restructuring Transactions”) with the Senior Lender Affiliate, the Senior Lender, the Court-appointed Interim Class Counsel (the “Interim CA Counsel”) on behalf of the named plaintiffs and the other members of the proposed class (the “Class Action Claimants”) in the consolidated class action lawsuits pending against the Company in the United States District Court for the Northern District of Illinois, captioned *In re Honey Transshipment Litigation*, Case No. 13 C 2905 (N.D. Ill.) (JBG) (the “Pending Class Action”), and the Senior Subordinated

Noteholders, the terms and conditions of which shall be materially consistent with those set forth in the *Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”), a copy of which is attached hereto as **Exhibit A**, and this Agreement;

WHEREAS, the Company has agreed to commence a voluntary, pre-arranged reorganization case (the “Chapter 11 Case”) 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 Michigan (the “Bankruptcy Court”) to effectuate the Restructuring Transactions;

WHEREAS, each of the Senior Subordinated Noteholders have agreed to support the Restructuring Transactions pursuant to the terms hereof;

WHEREAS, the Parties acknowledge that the Restructuring Transactions, including this Agreement and the Plan are the product of arm’s-length, good faith negotiations between the Parties; and

WHEREAS, each Party desires to express to each other Party its support and commitment in respect of the Restructuring Transactions.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. *Plan.* The Plan is expressly incorporated herein and is made part of this Agreement; however, the Plan is supplemented by the terms and conditions of this Agreement. In the event of any inconsistency between the Plan and this Agreement, the Plan shall control.

Section 2. Commitments Regarding the Restructuring Transactions.

2.01. Agreement for Postpetition Financing and Use of Cash Collateral. Each Senior Subordinated Noteholder agrees to consent to the Company’s continued use of cash collateral during the Chapter 11 Case and to the proposed debtor-in-possession financing (the “DIP Financing”), and provided that the Company provides the acknowledgements, adequate replacement liens, and reporting described herein, the Senior Subordinated Noteholders agree that they are not entitled to any additional adequate protection on account of any diminution in value of their security interest based on the Company’s use of cash collateral or entry into the DIP Financing during the pendency of the Chapter 11 Case. As and for adequate protection of the Senior Subordinated Noteholders’ lien on and security interest in the pre-petition assets of the Company, the Company: (i) acknowledges and will acknowledge in the Chapter 11 Case the validity and unavailability of the pre-petition liens; and (ii) agrees to grant to the Senior Subordinated Noteholders a replacement lien on and duly perfected security interest in all post-petition assets of the Debtor of the same types and kind as were subject to the pre-petition security interest of the Senior Subordinated Noteholders, to the extent of any diminution in value of their security interest in the Company’s assets. All such replacement liens shall have the same priority, dignity, and effect in the replacement collateral as the pre-petition liens of the Senior Subordinated Noteholders in the pre-petition collateral. All such replacement

liens shall be deemed properly perfected without further act or deed of the Company or the Senior Subordinated Noteholders. Such replacement liens shall be subordinated to the DIP Financing as provided herein. As further adequate protection, the Company agrees to provide to the other Parties a cash flow projection and budget showing actually cash receipts and expenditures compared to the projected budget on a weekly basis, and a copy of all monthly operating reports required by the Office of the United States Trustee. The Company agrees to seek orders of the Bankruptcy Court approving the proposed adequate protection described herein.

2.02. Commitments of the Company. The Company agrees to: (i) support and implement the Restructuring Transactions and all transactions set forth in the Plan and this Agreement, including, without limitation, the proposed treatment of Senior Subordinated Noteholder claims as set forth in the “Term Sheet” attached hereto as **Exhibit B**; (ii) take any and all necessary and appropriate actions in furtherance of the Plan and this Agreement; (iii) complete the Restructuring Transactions and all transactions set forth in the Plan; and (iv) use best efforts to obtain any and all required regulatory and/or third-party approvals for the Restructuring Transactions; (v) not object to the claims or liens, or seek or take any action to avoid the claims or liens of the Senior Subordinated Noteholders, and seek appropriate orders of the Bankruptcy Court regarding the same; and (vi) not undertake any actions inconsistent with the adoption and implementation of the Plan and speedy confirmation thereof.

2.03. Commitments of the Senior Subordinated Noteholders. As long as this Agreement has not been terminated in accordance with Section 4 hereof, and subject to the commencement of the Plan solicitation pursuant to applicable law and receipt by each Senior Subordinated Noteholder of a disclosure statement (including all exhibits, the “Disclosure Statement”) and other solicitation materials (the “Solicitation Materials”) in respect of the Plan, which Disclosure Statement and Solicitation Materials shall (i) reflect the terms set forth in the Plan and (ii) be acceptable to the Senior Lender Affiliate, each Senior Subordinated Noteholder agrees that it shall:

(a) vote to accept the Plan by delivering its duly executed and completed ballot or ballots (as applicable) accepting the Plan on a timely basis, and not change or withdraw such vote for the Plan, provided that the Plan is not modified or amended to change in any material way the treatment of the claims and liens of the Senior Subordinated Noteholders as expressed in the Term Sheet; and

(b) not, (1) object to, delay, impede, or take any other action to interfere with acceptance or implementation of the Plan or the proposed settlement with Interim CA Counsel pursuant to which the Company shall make \$1.75 million of applicable insurance proceeds available upon emergence from chapter 11 to the Class Action Claimants on a pro rata basis in accordance with the Plan (the “Class Action Settlement”), (2) propose, file, support, or vote for any restructuring, workout, plan of arrangement or plan of reorganization for the Company other than the Plan, or (3) directly or indirectly cause any entity to take any action contemplated in clauses (1) and (2) of this Section 2.03(b); and

(c) execute at the request of the Senior Lender Affiliate agreed upon deposit account control agreements in respect of funds pledged as collateral pursuant to the Senior Credit Agreement;

provided, however, that nothing in this Agreement shall require the Senior Subordinated Noteholders to incur or expend any amount for out of pocket expenses, including attorney's fees and expenses, in furtherance of the provisions of this Agreement.

2.04. Commitments of the Senior Lender and Senior Lender Affiliate. So long as this Agreement has not been terminated pursuant to Section 4 hereof, the Senior Lender Affiliate and the Senior Lender: (i) commit to support the Debtor by providing the DIP Financing pursuant to its terms; (ii) agree to do all things necessary and appropriate in furtherance and support of the Restructuring Transactions and the Plan, including voting for the Plan; (iii) not apply the Senior Subordinated Noteholders' pledged cash collateral to the satisfy obligations under the Senior Credit Agreement, and release the pledged cash collateral on the effective date of the Plan to the respective pledgor; and (iv) seek entry of an order confirming the Plan, which Plan shall include, among other things, approval of the proposed treatment of claims held by Senior Subordinated Noteholders and other terms of treatment pursuant to the Term Sheet. Further, notwithstanding the terms of the Intercreditor Agreement, Senior Lender consents to the Senior Subordinated Noteholders' taking or refraining from taking the actions contemplated by the terms of this Agreement.

Section 3. *Representations and Warranties.*

3.01. Mutual Representations, Warranties, and Covenants. Each Party, severally and not jointly, represents, warrants, and covenants to each other Party, as of the date hereof, as follows (each of which is a continuing representation, warranty, and covenant):

(a) *Enforceability.* It is validly existing and in good standing under the laws of the state of its organization (to the extent applicable), and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable laws relating to or limiting creditor's rights generally or by equitable principles relating to enforceability.

(b) *No Consent or Approval.* Except as expressly provided in this Agreement, no consent or approval is required by any other person or entity in order for it to carry out and perform its respective obligations under the Restructuring Transactions, other than with respect to the Class Action Settlement.

(c) *Power and Authority.* Except as expressly provided in this Agreement or the Bankruptcy Code, it has all requisite power and authority to enter into this Agreement and to carry out and perform its respective obligations under the Restructuring Transactions, other than with respect to the Class Action Settlement.

(d) *Authorization.* The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action on its part.

(e) *Governmental Consents.* The execution, delivery, and performance by it of this Agreement does not and shall not require any registration or filing with consent or approval of, or notice to, or other action to, with or by, any federal, state, or other governmental authority or regulatory body, other than with respect to the Class Action Settlement.

(f) *No Conflicts.* The execution, delivery, and performance of this Agreement does not and shall not: (i) violate any provision of law, rules, or regulations applicable to it or any of its subsidiaries; (ii) violate its certificate of incorporation, bylaws, or other organizational documents or those of any of its subsidiaries; or (iii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party.

(g) *Senior Subordinated Notes holdings.* Each Senior Subordinated Noteholder certifies that it presently holds the amount of Senior Subordinated Note set forth on its signature page hereto.

Section 4. Termination Events.

4.01. Senior Lender Affiliate and Senior Lender Termination Events.

(a) The Senior Lender and the Senior Lender Affiliate may terminate this Agreement upon the occurrence of any of the following events (each, a “Senior Lender Termination Event”):

(i) the breach by any Senior Subordinated Noteholder of any of its obligations, representations, warranties, covenants, or commitments set forth in this Agreement, including the commitments set forth in Section 2.01 hereof; or

(ii) a Senior Lender Termination Event (as defined in an Alternative RSA (as defined herein)) is triggered under a similar restructuring support agreement (an “Alternative RSA”) executed with Interim CA Counsel or the Company.

4.02. Senior Subordinated Noteholder Termination Events. A Senior Subordinated Noteholder may terminate this Agreement upon five (5) business days’ prior written notice to the other Parties, delivered in accordance with Section 5.12 hereof, upon: (i) the breach by any other Party of any of the obligations of such Party set forth in this Agreement that remains uncured for a period of five (5) business days after the receipt by the Parties of notice of such breach; *provided, however,* that the Company’s failure to obtain court or insurer approval of the Class Action Settlement shall not constitute a termination event under this Section 4.02; (ii) the occurrence of a Senior Lender Termination Event not caused by a Senior Subordinated Noteholder; (iii) the termination of advances under the DIP Financing to the Company upon the occurrence of an event of default; (iv) the failure of the Company to provide the Senior Subordinated Noteholders with forms of the New Warrants, New Subordinated Notes, and New Intercreditor Agreement (each as defined in the Plan) prior to filing the supplement to the Plan (the “Plan Supplement”) that are reasonably acceptable to the Senior Subordinated Noteholders; or (v) the failure of the Company to obtain confirmation of the Plan by December 27, 2013.

4.03. Mutual Termination. This Agreement, and the obligations of each Party hereunder, may be terminated by mutual agreement among the Parties.

4.04. Effect of Termination.

(a) Upon termination of this Agreement pursuant to Sections 4.01, 4.02, or 4.03, this Agreement shall be of no further force and effect and each Party hereto shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement; *provided, however*, that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder prior to the date of termination, and *provided further* that, should the Senior Subordinated Noteholders terminate this Agreement under clause 4.02(iv) hereof, each of them shall be entitled to cast a vote for or against the Plan and file objections, if any, to confirmation of the Plan, subject to any limitations in the Intercreditor Agreement; *provided further, however*, that notwithstanding the terms of the Intercreditor Agreement, if this Agreement is terminated pursuant to Sections 4.01, 4.02, or 4.03 of this Agreement, then the Senior Subordinated Noteholders shall be entitled to object to confirmation solely on the basis that the terms of the New Subordinated Notes, the New Warrants, or the New Intercreditor Agreement (as such terms are defined in the Plan) are not reasonably satisfactory to them.

4.05. Termination Upon Effective Date of Plan. This Agreement shall terminate automatically without any further required action or notice on the date that the Plan becomes effective (immediately following the effectiveness of the Plan).

Section 5. *Miscellaneous.*

5.01. Collateral Protections. Notwithstanding anything to the contrary herein, nothing shall: (i) prohibit the Senior Lender or the Senior Lender Affiliate (or both) from taking any action relating to the maintenance, protection, and preservation of an interests in the Collateral (as defined in the Senior Credit Agreement); (ii) prohibit the Senior Lender or the Senior Lender Affiliate (or both) from objecting to any motion or pleading filed with the Bankruptcy Court seeking approval to use cash collateral (as defined in the Bankruptcy Code) or to obtain debtor-in-possession financing, in each case on proposed terms unacceptable to the Senior Lender or the Senior Lender Affiliate (or both); (iii) limit the Senior Lender's rights under the Senior Credit Agreement and related documents or applicable law to appear and participate as a party in interest in any matter to be adjudicated in the Chapter 11 Case; or (iv) limit the ability of the Senior Lender Affiliate to consult with the Company or any other party.

5.02. Further Assurances. Subject to the other terms of this Agreement, each Party hereby covenants and agrees to cooperate with each other Party in good faith in connection with, and shall exercise commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the Plan and the Restructuring Transactions, as well as the negotiation, drafting, execution, and delivery of the definitive documentation relating thereto. Furthermore, subject to the terms hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, including making and filing any required regulatory filings (provided, however, that neither the Senior Lender Affiliate nor the Senior Lender shall be required to incur

any material cost, expense, or liability in connection therewith), and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement.

5.03. Confidentiality; Disclosure. No Party shall, without the prior written consent of each of the other Parties hereto, make any public announcement or otherwise communicate with any media with respect to this Agreement, the Alternative RSAs, the Restructuring Transactions, or the Plan, other than as may be required by applicable law and regulation or by any governmental or regulatory authority. The terms of this Agreement may be disclosed by any Party hereto to the Bankruptcy Court. No Party shall use the name of any other Party in any press release without such other Party's prior written consent.

5.04. Complete Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, between the Parties with respect thereto. No claim of waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be made against any Party, except on the basis of a written instrument executed by or on behalf of such Party.

5.05. Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties. No rights or obligations of any Party under this Agreement may be assigned or transferred to any other person or entity absent the written consent of each of the other Parties hereto.

5.06. Headings. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

5.07. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM; WAIVER OF TRIAL BY JURY. THIS AGREEMENT IS TO BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in either the United States District Court for the Eastern District of Michigan or any Michigan State court sitting in Detroit (the "Chosen Courts"), and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts; (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts; and (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto; *provided, however*, that when the Company commences the Chapter 11 Case, then the Bankruptcy Court shall be the sole Chosen Court. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.08. Execution of Agreement. This Agreement may be executed and delivered (by facsimile, electronic mail, or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the

same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

5.09. Interpretation. This Agreement is the product of negotiations among the Parties, and in the enforcement or interpretation hereof is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

5.10. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, administrators, and representatives, other than a trustee or similar representative appointed in a bankruptcy case.

5.11. Relationship Among Parties. It is understood and agreed that the Senior Lender Affiliate and the Senior Lender have no fiduciary duty or other duty of trust or confidence in any form with the Company or the Senior Subordinated Noteholders. No prior history, pattern, or practice of sharing confidences among or between the Parties shall in any way affect or negate this understanding and agreement.

5.12. Notices. All notices hereunder shall be deemed given if in writing and delivered, if sent by telecopy, electronic mail, courier or registered or certified mail (return receipt requested) to the following addresses and telecopier numbers (or at such other addresses or telecopier numbers as shall be specified by like notice):

(a) if to the Senior Lender Affiliate or the Senior Lender, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Ray C. Schrock, P.C.
Facsimile: (212) 446-4900
Email address: rschrock@kirkland.com

and

Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
Attn: Jeffrey D. Pawlitz
Facsimile: (312) 862-2200
Email address: jpawlitz@kirkland.com

(b) if to the Company, to:

Groeb Farms, Inc.
8 10464 Bryan Highway
Onsted, MI 49265
Attn: Jack M. Irvin, Jr.
Facsimile No.: (517) 467-2840
Email address: (517) 467-8002

with copies (which shall not constitute notice) to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, MI 48226
Attention: Judy A. O'Neill, Esq.
Facsimile: (313) 234-2800
Email addresses: joneill@foley.com

(c) if to the Senior Subordinated Noteholders, to:

Marquette Capital Fund I, LP
c/o Marquette Capital Partners LLC
60 South Sixth Street
Suite 3510
Minneapolis, Minnesota 55402
Attention: Thomas H. Jenkins
Telecopy No.: (612) 661-3999
Email address: tom.jenkins@marquette.com

and

Argosy Investment Partners III, L.P.
950 West Valley Road, Suite 2900
Wayne, Pennsylvania 19087
Attention: Michael R. Bailey
Telecopy No.: (610) 964-9524
Email address: michael@argosycapital.com

With copies (which shall not constitute notice) to:

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Attn: Clinton E. Cutler
Facsimile: (612) 492-7077

Email address: ccutler@fredlaw.com

Any notice given by delivery, mail, or courier shall be effective when received. Any notice given by telecopier shall be effective upon oral or machine confirmation of transmission.

5.13. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason (other than Section 4.05 hereof), each Party fully reserves any and all of its rights and remedies.

5.14. Specific Performance. It is understood and agreed by each Party that money damages would be an insufficient remedy for any breach of this Agreement, and any non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring the breaching Party to comply promptly with any of its obligations hereunder.

5.15. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

5.16. No Third-Party Beneficiaries. This Agreement shall be solely for the benefit of the Parties, and no other person or entity shall be a third-party beneficiary hereof.

5.17. Expense Reimbursement. Regardless of whether the Restructuring Transactions are consummated, the Company shall promptly pay in cash upon demand any and all reasonable and documented accrued and unpaid out-of-pocket expenses incurred by the Senior Lender Affiliate and the Senior Lender (including, without limitation, all reasonable and documented fees and out-of-pocket expenses of the legal counsel to the Senior Lender and the Senior Affiliate, Kirkland & Ellis LLP and Pepper Hamilton LLP) in connection with the negotiation, documentation, and consummation of this Agreement, the Plan, the Solicitation Materials, and all other documents related to the Plan and the Restructuring Transactions.

5.18. Reservation. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each Party to protect and preserve its rights, remedies, and interests, including, without limitation, its claims against any of the other Parties (or their respective affiliates or subsidiaries).

5.19. No Solicitation; Representation by Counsel.

(a) This Agreement is not and shall not be deemed to be a solicitation for votes in favor of the Plan in the Chapter 11 Case. The acceptances of the Parties with respect to the Plan will not be solicited until such Party has received the Solicitation Materials and related ballots.

(b) Each Party acknowledges that it is a sophisticated party and has had an opportunity to receive information from the Company and that it has been represented by competent counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule

of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.

5.20. Amendments. This Agreement may not be modified, amended, or supplemented except in writing signed by the Parties.

5.21. Transfers of Senior Subordinated Notes. Each Senior Subordinated Noteholder agrees that it shall continue to hold and not transfer any of its existing Senior Subordinated Notes held as of the time of execution of this Agreement unless the transferee of such Senior Subordinated Notes agrees to be bound in writing to the provisions of this Agreement by submitting a joinder in form and substance reasonably acceptable to the Senior Lender and the Senior Lender Affiliate. Any Senior Subordinated Noteholder seeking to transfer some or all of its Senior Subordinated Notes must provide the Company, the Senior Lender, and the Senior Lender Affiliate with written notice of the proposed transfer at least five (5) business days prior thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

[signature pages follow]

Signature Page to the Restructuring Support Agreement

HONEY FINANCING COMPANY, LLC

By:

Name:

Title:



ROBERT STRAUSS

MANAGING DIRECTOR

HC CAPITAL HOLDINGS 0909A, LLC

By:

Name:

Title:



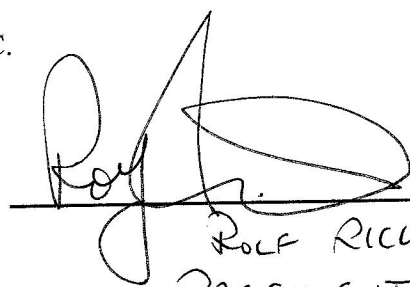
ROBERT STRAUSS

MANAGING DIRECTOR

Signature Page to the Restructuring Support Agreement

GROEB FARMS, INC.

By:
Name:
Title:



ROLF RICHTER
PRESIDENT AND CEO

Signature Page to the Restructuring Support Agreement

ARGOSY INVESTMENT PARTNERS III, L.P.


By: ARGOSY ASSOCIATES III, L.P., its General Partner

By: ARGOSY ASSOCIATES III, INC., its General Partner

By:

Name:

Title:



MICHAEL R. BAILEY
VICE PRESIDENT

MARQUETTE CAPITAL FUND I, L.P.,

By: Marquette Capital Partners, LLC, its general partner

By:

Name:

Title:

Thomas H. Jenkins
Managing Member

Signature Page to the Restructuring Support Agreement

ARGOSY INVESTMENT PARTNERS III, L.P.

By: ARGOSY ASSOCIATES III, L.P., its General Partner

By: ARGOSY ASSOCIATES III, INC., its General Partner

By:

Name:

Title:

MARQUETTE CAPITAL FUND I, L.P.,

By: Marquette Capital Partners, LLC, its general partner

By:

Name:

Title:

Thomas H. Jenkins

Thomas H. Jenkins

Managing Member

EXHIBIT A

PLAN

In re:)	
)	Chapter 11
GROEB FARMS, INC.)	
)	Case No. 13-(_____)
Debtor.)	
)	Tax I.D. No. 38-2778390

Judy A. O'Neill (P32142)
John A. Simon (P61866)
Tamar N. Dolcourt (P73425)
FOLEY & LARDNER, LLP
One Detroit Center
500 Woodward Avenue, Suite 2700
Detroit, MI, 48226-3489
Telephone: (313) 234-7100
Facsimile: (313) 234-2800
*Proposed Counsel for the Debtor and
Debtor in Possession*

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INTRODUCTION

Groeb Farms, Inc. (the “Debtor”) proposes this plan of reorganization (together with the documents comprising the Plan Supplement, the “Plan”) for the resolution of outstanding Claims against, and Interests in, the Debtor. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtor’s history, business, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of the Plan. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

As used in this Plan, capitalized terms have the meanings set forth below.

1. “*Accrued Professional Compensation*” means, at any given time, all accrued, contingent, and/or unpaid fees and expenses (including success fees) for legal, financial advisory, accounting, and other services and reimbursement of expenses that are: (a) awardable and allowable under sections 328, 330, or 331 of the Bankruptcy Code or otherwise rendered allowable before the Effective Date by any retained estate Professional in the Chapter 11 Case, (b) owing to Kirkland & Ellis or Pepper Hamilton, or (c) awardable and allowable under section 503 of the Bankruptcy Code, that the Court has not otherwise denied by Final Order; all to the extent that any such fees and expenses have not been previously paid (regardless of whether a fee application has been filed for any such amount) and after applying any retainer that has been provided to such Professional. To the extent that the Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then those reduced or denied amounts shall no longer constitute Accrued Professional Compensation. For the avoidance of doubt, Accrued Professional Compensation includes unbilled fees and expenses incurred on account of services provided by Professionals that have not yet been submitted for payment, except to the extent that such fees and expenses are either denied or reduced by a Final Order by the Court or any higher court of competent jurisdiction.

2. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Debtor’s Estates pursuant to sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtor, (b) Allowed Fee Claims; (c) amounts owing pursuant to the DIP Order, and (e) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

3. “*Administrative Claims Bar Date*” means the first Business Day that is 45 days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

4. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

5. “*Allowed*” means with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim or Proof of Interest, as applicable, Filed by the applicable Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Court a Proof of Claim is or shall not be required to be Filed), (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim or Proof of Interest, as applicable, has been timely Filed, or (c) a Claim or Interest Allowed pursuant to the Plan or a Final Order of the Court; *provided, however*, that with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest, as applicable, shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Court, or such an objection is so interposed by the Debtor or the General Unsecured Claims Litigation Trustee, as applicable, and the Claim or Interest, as applicable, shall have been Allowed for voting purposes only by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

6. “*Approved*” means, with respect to the Class Action Settlement, that the Insurer has agreed to pay the Class Action Settlement Amount and the Bankruptcy Court and a United States District Court has approved the Class Action Settlement on a final basis.

7. “*Available Insurance Proceeds*” means any applicable insurance proceeds to which the Debtor is entitled under its past and present insurance policies.

8. “*Avoidance Actions*” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtor arising under chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code.

9. “*Bankruptcy Code*” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Case.

10. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Court.

11. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

12. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

13. “*Causes of Action*” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, and usury; and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any state or foreign law fraudulent transfer or similar claim; (f) any cause of action listed on the list of retained causes of action set forth in the Plan Supplement; (g) all Transshipping Claims; and (h) any cause of action described on the Debtor’s Schedules or Statement of Financial Affairs. .

14. “*Chapter 11 Case*” means the case pending for the Debtor under chapter 11 of the Bankruptcy Code in the Court.

15. “*Claim*” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.
16. “*Claims Bar Date*” means: (a) with respect to Governmental Units holding Claims that arose prior to the Petition Date, March 30, 2014, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, and (b) with respect to all General Unsecured Claims arising prior to the Petition Date, as well as Claims arising under section 503(b)(9) of the Bankruptcy Code, November 4, 2013, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, in each case as set forth in further detail in the Claims Bar Date Order.
17. “*Claims Bar Date Order*” means the an order granting the relief set forth in the *Debtor’s First Day Motion for an Order Establishing Bar Date for Filing Proofs of Claim, Including 503(b)(9) Claims and Approving the Form and Manner of Notice Thereof*.
18. “*Claims Objection Deadline*” means the deadline for objecting to a Claim, which shall be on the date that is the later of: (a) 180 days after the Effective Date, and (b) such other period of limitation as may be specifically fixed by the Debtor or the Reorganized Debtor, as applicable, or by an order of the Court for objecting to such Claims.
19. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.
20. “*Class*” means a category of holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.
21. “*Class Action*” means the prepetition uncertified class action lawsuits pending against the Debtor, captioned *Adee Honey Farms et al. v. Groeb Farms, Inc. et al.*, Case No. 13-cv-02922 (JBG), and *Moore’s Honey Farm, et al. v. Groeb Farms, Inc.*, et al., Case No. 1:13-cv-02905, which have been consolidated in the United States District Court for the Northern District of Illinois, and which shall constitute Other General Unsecured Claims unless and until the Class Action Settlement is Approved.
22. “*Class Action Claim*” means a Claim arising on account of the Class Action.
23. “*Class Action Settlement*” means a settlement pursuant to which holders of Class Action Claims shall be entitled to receive the Class Action Settlement Amount, provided that the settlement has been Approved.
24. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code, if any.
25. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.
26. “*Confirmation Date*” means the date upon which the Court enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules 5003 and 9021.
27. “*Confirmation Hearing*” means the hearing held by the Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.
28. “*Confirmation Order*” means a Final Order of the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which order shall be in form and substance acceptable to the Senior Lender Affiliate.
29. “*Consummation*” means the occurrence of the Effective Date.
30. “*Convenience Class Distribution*” means a distribution in Cash to satisfy in full the Unsecured Convenience Class Claims; *provided* that such distribution shall not exceed \$250,000.

31. “*Court*” means the United States Bankruptcy Court for the Eastern District of Michigan having jurisdiction over the Chapter 11 Case, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Eastern District of Michigan.

32. “*Cure Claim*” means a monetary Claim based upon the Debtor’s defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtor pursuant to section 365 of the Bankruptcy Code.

33. “*Cure Notice*” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include: (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith, and (c) procedures for resolution by the Court of any related disputes.

34. “*Debtor*” has the meaning set forth in the Introduction.

35. “*Deferred Prosecution Agreement*” means that certain agreement by and between the United States Attorney’s Office for the Northern District of Illinois and Groeb Farms, dated as of February 11, 2013, including all attachments thereto.

36. “*DIP Agreement*” means that certain senior secured debtor-in-possession financing agreement, dated as of October [REDACTED], 2013, by and among the Debtor and the DIP Lenders, as amended, supplemented, or otherwise modified from time to time.

37. “*DIP Facility*” means the DIP Agreement, together with related loan, security, collateral, and other documents.

38. “*DIP Facility Claims*” means those claims arising under the DIP Agreement, including any accrued but unpaid interest and fees due and owing under the DIP Agreement as of the Effective Date pursuant to the terms of the DIP Agreement, the DIP Order, and/or any related documents.

39. “*DIP Lender*” means the Senior Lender, or an affiliate thereof, including but not limited to the Senior Lender Affiliate, as well as any successors or assigns, as permitted under the DIP Facility.

40. “*DIP Order*” means the Final Order entered by the Court approving the DIP Facility and authorizing and directing the Debtor to enter into the DIP Facility.

41. “*Disallowed*” means, with respect to any Claim or Interest, a Claim or Interest or any portion thereof that: (a) has been disallowed by a Final Order, (b) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (c) is not Scheduled and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof, or (e) has been withdrawn by the holder thereof.

42. “*Disclosure Statement*” means the *Disclosure Statement for the Plan of Reorganization of Groeb Farms, Inc. Pursuant to Chapter 11 of the Bankruptcy Code*, filed on the Petition Date, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

43. “*Disputed*” means a Claim or Interest that is not yet Allowed.

44. “*Disputed Claim Amount*” means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim, (ii) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, or (iii) if a request for estimation is Filed by any party, the amount at which such Disputed Claim is estimated by the Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, (ii) the amount estimated by the Court with respect to such Disputed Claim, (iii) the amount estimated in good faith by the Debtor or Reorganized Debtor, as applicable, with respect to the Disputed Claim; or (c) zero, if the Disputed Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was Filed, or deemed to have been Filed, by the applicable Claims Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Court.

45. “*Effective Date*” means, with respect to the Plan, the date that is a Business Day selected by the Debtor and the Senior Lender Affiliate on which: (a) no stay of the Confirmation Order is in effect, (b) all conditions precedent specified in Article X.B have been satisfied or waived (in accordance with Article X.C), and (c) the Plan is declared effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

46. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

47. “*Estate*” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

48. “*Exculpated Claim*” means any Claim related to any act or omission derived from, based upon, related to, or arising from the Debtor’s in or out-of-court restructuring efforts, the Chapter 11 Case, the marketing process, formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including any term sheets related thereto), or any contract, instrument, release, or other agreement or document created or entered into in connection with the marketing process, the Disclosure Statement, the Plan, the filing of the Chapter 11 Case, the pursuit of Consummation, and the administration and implementation of the Chapter 11 Cases and the Plan, including (a) the Restructuring Support Agreement, (b) the issuance of the New Equity, (c) the execution, delivery, and performance of the Exit Facility Documents, and (d) the distribution of property under the Plan or any other agreement; *provided, however*, the foregoing shall not be deemed to release, affect, or limit any of the rights and obligations of the Exculpated Parties from, or exculpate the Exculpated Parties with respect to, any of the Exculpated Parties’ obligations or covenants arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

49. “*Exculpated Parties*” means each of the following in their capacity as such: (a) the Senior Lender, (b) the Senior Lender Affiliate, (c) the DIP Lender, (d) the Committee, (e) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date, (f) each holder of Class 5A Claims that executes a New Trade Agreement, subject to any reservations on Claims and/or Causes of Action to the extent set forth in the Plan or the Plan Supplement, (g) twith respect to the Debtor, the Reorganized Debtor, and each of the foregoing entities in clauses (a) through (g), such Person’s current equity holders, including shareholders, partnership interest holders, and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case, solely in their capacity as such);.

50. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

51. “*Existing Equity Interests*” means any equity interest in the Debtor in existence as of the Effective Date. For the avoidance of doubt, Existing Equity Interests do not include interest in New Equity.

52. “*Exit Facility*” means the new senior secured lending facility that the Reorganized Debtor will enter into on the Effective Date, the form of which shall be included in the Plan Supplement.

53. “*Exit Facility Documents*” means the documents evidencing the Exit Facility.

54. “*Exit Fees*” mean the fees payable under the Exit Facility Documents.

55. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Petition Date, compounded annually.

56. “*Fee Claim*” means a Claim for Accrued Professional Compensation; *provided, however*, that any Fee Claim for fees and expenses incurred by Kirkland & Ellis or Pepper Hamilton shall be Allowed without the Filing by such Professionals of any final request for payment.

57. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Case with the Court or, with respect to the filing of a Proof of Claim or Proof of Interest, the Notice and Claims Agent.

58. “*Final Order*” means an order or judgment of the Court (or any other court of competent jurisdiction) entered by the Clerk of the Court (or any other court) on the docket in the Chapter 11 Case (or the docket of such other court), which has not been reversed, stayed, modified, amended, or vacated, and as to which: (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or motion for new trial, stay, reargument, or rehearing shall be pending, or (b) if an appeal, writ of certiorari, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with rule 8002 of the Bankruptcy Rules; *provided, however*, that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order; *provided further*, that the Senior Lender Affiliate may agree in its sole discretion to waive the requirement that a particular order be a Final Order.

59. “*First Day Declaration*” means the *Declaration of Jack Irvin, Jr. in Support of Chapter 11 Petition and First Day Pleadings*.

60. “*General Unsecured Claim*” means any Claim against the Debtor that is not: (a) an Administrative Claim, (b) a Priority Tax Claim, (c) an Other Priority Claim, (d) an Other Secured Claim, (e) a Senior Loan Claim, (f) a Senior Subordinated Note Claim, (g) a DIP Facility Claim, or (h) a Section 510(b) Claim. General Unsecured Claims specifically include the Junior Subordinated Note Claims and the Seller Note Claims.

61. “*General Unsecured Claims Litigation Trust*” means the trust established for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the General Unsecured Claims Litigation Trust Agreement.

62. “*General Unsecured Claims Litigation Trust Agreement*” means the trust agreement that, among other things, establishes the General Unsecured Claims Litigation Trust, and describes the powers, duties, and responsibilities of the General Unsecured Claims Litigation Trustee, which trust agreement shall be substantially in the form included in the Plan Supplement, in form and substance reasonably acceptable to the Debtor and the Committee, and acceptable to the Senior Lender Affiliate.

63. “*General Unsecured Claims Litigation Trust Assets*” means the General Unsecured Claims Litigation Trust Payment, the General Unsecured Claims Litigation Trust Causes of Action, and all proceeds of the foregoing.

64. “*General Unsecured Claims Litigation Trust Beneficiaries*” means, collectively, the holders of General Unsecured Claims Litigation Trust Interests.

65. “*General Unsecured Claims Litigation Trust Causes of Action*” means any and all actual or potential Avoidance Actions and Causes of Action, exclusive of: (a) any of the foregoing that are released under the Plan; and (b) those Causes of Action (including Avoidance Actions) directly arising from or pertaining to contracts or relationships holders of Trade Claims.

66. “*General Unsecured Claims Litigation Trust Distributable Proceeds*” means all actual proceeds of the General Unsecured Claims Litigation Trust Causes of Action.

67. “*General Unsecured Claims Litigation Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Debtor or the Committee (or any designee thereof, including the General Unsecured Claims Litigation Trustee) on account of administration of the General Unsecured Claims Litigation Trust, including any reasonable administrative fees and expenses, reasonable attorney’s fees and expenses, reasonable insurance fees, taxes, and reasonable escrow expenses.

68. “*General Unsecured Claims Litigation Trust Interests*” means the non-transferable interests in the General Unsecured Claims Litigation Trust, distributions of which will be made to holders of certain Allowed General Unsecured Claims in accordance with Article III.C.5.

69. “*General Unsecured Claims Litigation Trust Payment*” means a one-time, non-refundable payment of \$50,000 in Cash to be provided by the Debtor or the Reorganized Debtor (through the Exit Facility) to the General Unsecured Claims Litigation Trust on the Effective Date, which payment shall be used either (i) to fund a distribution to holders of General Unsecured Claims Litigation Trust Interests, (ii) to provide funding in connection with the investigation and/or prosecution of the General Unsecured Claims Litigation Trust Causes of Action, and/or (iii) for such other purposes determined by the General Unsecured Claims Litigation Trustee in its sole discretion and consistent with the General Unsecured Claims Litigation Trust Agreement and applicable law.

70. “*General Unsecured Claims Litigation Trustee*” means the Person identified in the Plan Supplement to serve as the trustee of the General Unsecured Claims Litigation Trust and any successor thereto appointed pursuant to the General Unsecured Claims Litigation Trust Agreement.

71. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

72. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

73. “*Indemnification Provision*” means the Debtor’s indemnification provisions currently in place (whether in the by-laws, certificates of incorporation, board resolutions, indemnification agreements, contracts or employment contracts) for the current directors, officers, and employees of the Debtor.

74. “*Insurer*” means Chubb Group of Insurance Companies.

75. “*Intercreditor Agreement*” means (i) that certain Intercreditor Agreement, dated as of January 30, 2012, by and among Wells Fargo Bank, National Association, on one hand, and Marquette Capital Fund I, LP, Argosy Investment Partners III, L.P., and Horizon Capital Partners III, L.P., on the other hand, and the other loan parties from time to time party thereto, governing, among other things, the respective rights, remedies, and priorities of Claims and Liens held by such parties, or any similar or related agreement (and as the same may have been modified, amended, or restated), for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, (ii) that certain Subordination Agreement, dated as of January 30, 2012, by and among Ernest L. Groeb, as shareholders’ representative under the stock purchase agreement, and Wells Fargo Bank, National Association, for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, and (iii) any other applicable intercreditor agreements.

76. “*Interests*” means the common stock, limited liability company interests, and any other equity, ownership, or profits interests of the Debtor and options, warrants, rights, or other securities or agreements to acquire the common stock, limited liability company interests, or other equity, ownership, or profits interests of the Debtor (whether or not arising under or in connection with any employment agreement).

77. “*Interim Compensation Order*” means an order by the Bankruptcy Court establishing interim compensation procedures for Professionals (other than Kirkland & Ellis and Pepper Hamilton).

78. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

79. “*Junior Subordinated Notes*” means approximately \$1.5 million in issued and outstanding notes pursuant to that certain 8% junior subordinated note by and between GF Acquisition, Inc., and Ernest L. Groeb, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time).

80. “*Junior Subordinated Note Claims*” means any Claim arising under the Junior Subordinated Notes, which shall be treated as unsecured creditors under the Plan, as a result of the collateral securing such Claims having insufficient value to secure any of the Claim.

81. “*Kirkland & Ellis*” means Kirkland & Ellis LLP, counsel to the DIP Lender, the Senior Lender, and the Senior Lender Affiliate.

82. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

83. “*Management Incentive Plan*” means that certain post-Effective Date management incentive plan (acceptable to the Senior Lender Affiliate), the terms of which shall be set forth in the Plan Supplement.

84. “*New Board*” means the initial board of directors of the Reorganized Debtor, each of whom shall be acceptable to the Senior Lender Affiliate and disclosed in advance of the Confirmation Hearing in accordance with section 1129(a)(5) of the Bankruptcy Code.

85. “*New Equity*” means the equity in the Reorganized Debtor issued pursuant to the Plan, the terms of which shall be governed by the New Organizational Documents.

86. “*New Equity Distribution Calculation*” means the following calculation, which shall be utilized to determine allocation of 100% of the New Equity between DIP Facility Claims and Senior Loan Claims: holders of DIP Facility Claims shall receive a percentage of the New Equity equal to the ratio of \$7 million divided by the aggregate sum of (i) \$7 million and (ii) the Senior Loan Claims. Holders of Senior Loan Claims shall receive the remaining New Equity after taking into account the distribution of New Equity to holders of DIP Facility Claims.

87. “*New Intercreditor Agreement*” means the intercreditor agreement that will govern the relationship between the Exit Facility and the New Subordinated Notes, a form of which shall be included in the Plan Supplement, and the terms of which shall be acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

88. “*New Organizational Documents*” means the form of the certificates or articles of incorporation, bylaws, or such other applicable formation documents of the Reorganized Debtor (reasonably acceptable to the Senior Lender Affiliate), which forms shall be included in the Plan Supplement.

89. “*New Subordinated Notes*” means the notes that the Reorganized Debtor shall cause to be issued on the Effective Date to holders of Senior Subordinated Note Claims (and ancillary documents, including a security agreement), the form of which shall be set forth in the Plan Supplement, and the terms of which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

90. “*New Trade Agreement*” means a uniform trade agreement reasonably acceptable to the Debtor and the Senior Lender Affiliate, a form of which shall be included in the Plan Supplement.

91. “*New Trade Terms*” means the terms of a New Trade Agreement.

92. “*New Warrants*” means the warrants that the Reorganized Debtor shall cause to be issued on the Effective Date for 13% of New Equity of the Reorganized Debtor, subject to the terms set forth in the Plan Supplement, which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

93. “*Notice and Claims Agent*” means Kurtzman Carson Consultants, LLC.

94. “*Opt-Out Claim*” means a Class Action Claim of a holder that elects to opt-out of the Class Action Settlement in the event the Class Action is certified pursuant to Bankruptcy Rule 7023(b)(3) or Fed. R. Civ. P. 23(b)(3), as applicable.

95. “*Other General Unsecured Claims*” means General Unsecured Claims that are not Trade Claims, including, without limitation, Junior Subordinated Note Claims, Seller Note Claims, Opt-Out Claims, and, except as set forth in Article I.21 hereof, Class Action Claims.

96. “*Other Priority Claim*” means any allowed Claim against the Debtor entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim (including a DIP Facility Claim); or (b) a Priority Tax Claim, to the extent such claim has not already been paid during the Chapter 11 Case.

97. “*Other Secured Claim*” means any Secured Claim against the Debtor that is not: (a) a DIP Claim, (b) a Senior Loan Claim, or (c) a Senior Subordinated Note Claim.

98. “*Pepper Hamilton*” means Pepper Hamilton LLP.

99. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

100. “*Petition Date*” means September 30, 2013, the date on which the Debtor’s Chapter 11 Case commenced.

101. “*Plan*” has the meaning set forth in the Introduction.

102. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan (acceptable to the Senior Lender Affiliate and as amended, supplemented, or modified from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules), to be Filed seven (7) days before the Voting Deadline, and additional documents or amendments to previously Filed documents, Filed before the Effective Date as amendments to the Plan Supplement, including the following, as applicable: (a) New Organizational Documents, (b) the Exit Facility Documents, (c) Schedule of Assumed Executory Contracts and Unexpired Leases, (d) the General Unsecured Claims Litigation Trust Litigation Trust Agreement, (e) a list of retained Causes of Action, (f) the Management Incentive Plan, (g) a document listing the members of the New Boards, (h) the New Intercreditor Agreement; (i) the New Subordinated Notes, (j) the New Warrants; and (k) the New Trade Agreement. The Debtor shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date with the consent of the Senior Lender Affiliate; *provided, however*, that with respect to items (h), (i), and (j), any amendments must be reasonably satisfactory to holders of Senior Subordinated Note Claims that execute a Restructuring Support Agreement (that has not been terminated prior to the Effective Date).

103. “*Priority Claims*” means Priority Tax Claims and Other Priority Claims.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Pro Rata*” means the proportion that an Allowed Claim or Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that respective Class, or the proportion that Allowed Claims or Allowed Interests in a particular Class bear to the aggregate amount of Allowed Claims or Allowed Interests in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim or Allowed interests under the Plan.

106. “*Professional*” means an Entity: (a) employed pursuant to a Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code, or (b) Kirkland & Ellis LLP and Pepper Hamilton LLP.

107. “*Professional Fee Account*” means an interest-bearing account to hold and maintain an amount of Cash equal to the Professional Fee Amount funded by the Debtor not later than two (2) Business Days prior to the Effective Date, solely for the purpose of paying all remaining Allowed and unpaid Fee Claims. Such Cash shall remain subject to the jurisdiction of the Court.

108. “*Professional Fee Amount*” means the aggregate unpaid Fee Claims through the Effective Date as estimated in accordance with Article II.B.

109. “*Proof of Claim*” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

110. “*Proof of Interest*” means a proof of Interest Filed in the Debtor in the Chapter 11 Case.

111. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

112. “*Released Party*” means each of the following, each in their capacity as such: (a) the Senior Lender; (b) the Senior Lender Affiliate; (c) the DIP Lender; (d) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date; (e) the Committee; (f) the Exit Facility Lender; (g) with respect each of the foregoing entities in clauses (a) through (f) such person’s current and former shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case in their capacity as such); and (h) the Debtor and the Reorganized Debtor and each of their respective current shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

113. “*Reorganized Debtor*” means the Debtor on and after the Effective Date.

114. “*Restructuring Support Agreement*” means each Restructuring Support Agreement, as amended, supplemented, or otherwise modified from time to time, copies of which are attached as exhibits to the First Day Declaration.

115. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means the schedule (including any amendments or modifications thereto) of certain Executory Contracts and Unexpired Leases to be assumed by the Debtor pursuant to the Plan, as set forth in the Plan Supplement, as amended from time to time prior to the Confirmation Date.

116. “*Schedules*” means, to the extent required, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

117. “*Section 510(b) Claims*” means any Claims arising from (a) rescission of a purchase or sale of a security of the Debtor, (b) purchase or sale of such a security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim, which for the avoidance of doubt shall not include Senior Subordinated Note Claims or Junior Subordinated Note Claims.

118. “*Secured*” means when referring to a Claim, a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

119. “*Secured Tax Claims*” means any Secured Claim against the Debtor that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

120. “*Security*” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

121. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as amended, or any similar federal, state or local law.

122. “*Seller Note*” means the unsecured note in favor of the Olesanik Family Living Trust with a current outstanding balance in the approximate amount of \$423,762, which was assumed by the Debtor prior to the Petition Date.

123. “*Seller Note Claims*” means Claims arising on account of the Seller Note.¹

124. “*Senior Lender*” means HC Capital Holding 0909A, LLC.

125. “*Senior Lender Affiliate*” means Honey Financing Corporation.

126. “*Senior Loan Agreement*” means that certain Credit and Security Agreement by and between the Debtor, as borrower, and the Senior Lender, as lender and successor to Wells Fargo Bank, National Association, dated as of January 30, 2012, including payment on account of any accrued but unpaid interest (including at the default contract rate, as applicable) (as amended, restated, supplemented, or otherwise modified from time to time).

127. “*Senior Loan Claims*” means any Claim arising under the Senior Loan Agreement.

128. “*Senior Loan Facility*” means the Senior Loan Agreement, together with related loan, security, collateral, and other documents.

129. “*Senior Subordinated Notes*” means approximately \$7.0 million in issued and outstanding notes claims pursuant to those certain 12% senior subordinated debentures by and among the Debtor and Miller’s American Honey, Inc., on one hand, and Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, on the other hand, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time), plus all accrued and unpaid interest due as of the Petition Date.

130. “*Senior Subordinated Note Claims*” means any Claim arising under the Senior Subordinated Notes.

¹ 4.1.1 Cap summary chart shows \$440,000 outstanding as of 7/31/13.

131. “*Trade Claim*” means a General Unsecured Claim that arises on account of products or services provided to the Debtor on an ongoing basis with which the Debtor will continue to conduct business with during the Chapter 11 Case and after the Effective Date.

132. “*Trade Claim Distribution*” means the distribution made to holders of Trade Claims in amount equal to 40% in an Allowed amount of the Trade Claim, pursuant to a New Trade Agreement.

133. “*Transshipping Claim*” means any Claim in favor of the Debtor arising from transshipping, any Claim in favor of the Debtor arising from the facts set forth in the Deferred Prosecution Agreement, or any Claim in favor of the Debtor arising from the facts set forth in the Information filed with the Deferred Prosecution Agreement.

134. “*U.S. Trustee*” means the Office of the United States Trustee for the Eastern District of Michigan.

135. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

136. “*Unexpired Lease*” means a lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

137. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in cash.

138. “*Unsecured Convenience Class Claim*” means any Allowed General Unsecured Claim, other than Trade Claims that receive treatment pursuant to Article III.C.5(b)(i) that is \$7,500 or less.

139. “*Voting Deadline*” means [December 13], 2013 at 5:00 p.m., prevailing Eastern Time.

B. Rules of Interpretation

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under the Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Case, unless otherwise stated; (13) references to “Proofs of Claim” and “Holders of Claim” shall include “Proofs of Interest” and “Holders of Interests” as applicable; and (14) any immaterial effectuating provisions may be interpreted by the Reorganized Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further Court order.

C. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of Michigan, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate or limited liability company governance matters; *provided that* corporate or limited liability company governance matters relating to the Debtor or the Reorganized Debtor, as applicable, not incorporated or formed (as applicable) in Michigan shall be governed by the laws of the state of incorporation or formation (as applicable) of the Debtor or Reorganized Debtor.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. Reference to the Debtor or the Reorganized Debtor

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtor or the Reorganized Debtor shall mean the Debtor and the Reorganized Debtor, as applicable, to the extent the context requires.

G. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

ARTICLE II.

DIP FACILITY CLAIMS, ADMINISTRATIVE CLAIMS, AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Except with respect to Administrative Claims that are Fee Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Case or a holder of an Allowed Administrative Claim and the Debtor agree to less favorable treatment with respect to such holder's Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; *provided, however*, that Allowed Administrative Claims that arise in the ordinary course of the Debtor's businesses shall be paid in the ordinary course of business, in accordance with

the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between the holder of such Allowed Administrative Claim and the Debtor or the Reorganized Debtor, as the case may be. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order. For purposes of this Plan, all Administrative Claims arising or granted under the DIP Order shall be deemed Allowed by Final Order.

Except as otherwise provided in this Article II.A or any prior applicable Court order, and except with respect to Administrative Claims that are Fee Claims or DIP Facility Claims, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Allowed Administrative Claims by such date that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Reorganized Debtor and the requesting party no later than 30 days after the Administrative Claims Bar Date.

B. Professional Compensation

1. Applications for and Payment of Fee Claims.

In accordance with this Article II.B, on the Effective Date, the Debtor shall establish the Professional Fee Account. The Debtor shall fund the Professional Fee Account with Cash in the amount of the aggregate Professional Fee Amount (which amount, for clarity, shall include only unpaid and outstanding Fee Claims) for all Professionals. The Professional Fee Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtor's Estates except as otherwise provided in Article II.B.2 of the Plan.

To receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall provide an estimate of their Fee Claims before and as of the Effective Date and shall deliver such estimate to the Debtor and Senior Lender Affiliate no later than five (5) Business Days prior to the intended Effective Date. If a Professional does not provide an estimate, the Debtor, with the consent of the Senior Lender Affiliate, may estimate the unbilled fees and expenses of such Professional and such estimate will be used to establish the Professional Fee Amount attributable to that Professional. The total amount so estimated shall be the Professional Fee Amount.

2. Final Fee Applications and Payment of Fee Claims.

All final requests for payment of Fee Claims of Kirkland & Ellis and Pepper Hamilton shall be paid upon presentation to the Debtor or Reorganized Debtor from the Professional Fee Account without the need for Filing of any final request for payment. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Court orders, the Allowed amounts of Fee Claims for Professionals (other than the Fee Claims of Kirkland & Ellis and Pepper Hamilton) shall be determined by the Court. The amount of Fee Claims owing to Professionals shall be paid in Cash to Professionals (other than Kirkland & Ellis and Pepper Hamilton) from funds held in the Professional Fee Account when such Fee Claims are Allowed by a Final Order. To the extent that funds held in the Professional Fee Account are unable to satisfy the amount of Fee Claims owing to the Professionals, any Professional whose estimate was lower than the Allowed amount of its Fee Claims shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II. After all Allowed Fee Claims have been paid in full to the extent required by Article II.B.2, any excess amounts in the Professional Fee Account shall be returned to or transferred to the Reorganized Debtor.

3. Post-Effective Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtor or the Reorganized Debtor, as applicable, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, shall pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by the Reorganized Debtor.

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court.

C. DIP Facility Claims

Except to the extent that a holder of an Allowed DIP Facility Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed DIP Facility Claim, each such holder shall receive (i) its Pro Rata share of the New Equity based on the New Equity Distribution Calculation in satisfaction of \$7 million of DIP Facility Claims and (ii) payment in full, in Cash, on the Effective Date or as soon as reasonably practicable after the Effective Date; *provided, however*, that to the extent the Commitment Fee (as defined in the DIP Agreement) has previously been paid and included as part of the DIP Facility Claim, an amount equal to the Commitment Fee shall be waived by the DIP Lender and the Allowed DIP Facility Claim, as set forth in Article III(B) below, shall be reduced by such amount to reflect the waiver.

D. Priority Tax Claims

The legal and equitable rights of the holders of Priority Tax Claims are Unimpaired under the Plan. Unless the holder of such Claim and the Debtor agree to a different treatment, holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed, in the ordinary course of the Debtor's business, consistent with past practice; *provided, however*, that in the event the balance of any such Claim becomes due during the pendency of this Chapter 11 Case and remains unpaid as of the Effective Date, the holder of such Claim shall be paid in full in Cash on the Effective Date. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Classification of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, except for Fee Claims, Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such Claim or Interest has not been paid, released, withdrawn or otherwise settled before the Effective Date.

The categories of Claims and Interests set forth below classify all Claims against and Interests in the Debtor for all purposes of this Plan. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. The treatment with respect to each Class of Claims and Interests provided for in this Article III shall be in full and complete satisfaction, release and discharge of such Claims and Interests.

B. Summary of Classification

A creditor that holds multiple Claims against the Debtor, all of which Claims are based upon or relate to the same or similar indebtedness or obligations, whether by reason of guarantee, indemnity agreement, joint and several liability or otherwise, shall be deemed to have only one Claim against the Estate in an amount equal to the largest of all such similar Allowed Claims, solely for the purposes of distributions under the Plan. For purposes of voting on the Plan, any Creditor holding such similar Claims against the Debtor may only vote the largest of all such similar Allowed Claims; *provided, however*, that this provision shall not prohibit the bifurcation of Claims among Classes pursuant to section 506(a) of the Bankruptcy Code, nor shall this provision apply to bifurcated Claims.

The categories of Claims and Interests are classified for all purposes, including voting, confirmation, and distribution, pursuant to the Plan as follows:

Class	Claim/Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Senior Loan Claims	Impaired	Entitled to Vote
4	Senior Subordinated Note Claims	Impaired	Entitled to Vote
5A	Trade Claims	Impaired	Entitled to Vote
5B	Other General Unsecured Claims	Impaired	Entitled to Vote
5C	Unsecured Convenience Class Claim	Unimpaired	Deemed to Accept
6	Section 510(b) Claims	Impaired	Deemed to Reject
7	Existing Equity Interests	Impaired	Deemed to Reject

C. *Treatment of Claims and Interests*

1. Class 1 – Other Priority Claims

- (a) *Classification:* Class 1 consists of all Other Priority Claims.
- (b) *Treatment:* Except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Case, in full in Cash in the ordinary course of business by the Debtor or the Reorganized Debtor, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, or as soon thereafter as reasonably practicable, (ii) the date on which such Other Priority Claim against the Debtor becomes Allowed, or (iii) such other date as may be ordered by the Court.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of all Other Secured Claims.
- (b) *Treatment:* On the Effective Date, except to the extent that a holder of an Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim shall receive, at the option of the Senior Lender Affiliate: (i) payment in full in Cash, including the payment of interest allowable under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any; (ii) reinstatement pursuant to Section 1124 of the Bankruptcy Code; (iii) the collateral securing any such Allowed Other Secured Claim, or (iv) such other consideration so as to render such Allowed Other Secured Claim Unimpaired.

In the event an Allowed Other Secured Claim may also be classified as a Secured Tax Claim, such Claim shall: (i) be paid in full in Cash, including the payment of interest under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any, or (ii) retain any lien until such Claim is paid in full (it being understood that such Other Secured Claim may be paid in the ordinary course as and when it comes due, rather than on the Effective Date).

- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - Senior Loan Claims

- (a) *Classification:* Class 3 consists of all Senior Loan Claims.
- (b) *Allowance:* To the extent any such amounts have not been previously satisfied pursuant to the DIP Credit Facility, the Senior Loan Claims shall be Allowed in an aggregate amount equal to approximately \$16,570,949.08 million, plus interest and fees due and owing under the Senior Facility as of the Effective Date pursuant to the terms of the Senior Facility or related documents, including payment on account of any accrued but unpaid interest (including at the default contract rate pursuant to the terms of the Senior Facility, if applicable), which amount shall be subject to adjustment to an amount acceptable to the Senior Lender to the extent previously satisfied by the DIP Credit Facility.
- (c) *Treatment:* On the Effective Date, except to the extent that a holder of a Senior Loan Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for the Allowed Senior Loan Claim, each holder of a Senior Loan Claim shall receive (i) Cash in satisfaction of any Allowed Senior Loan Claim in excess of \$3 million and (ii) its Pro Rata share of the New Equity in the Reorganized Debtor based on the New Equity Distribution Calculation in satisfaction of all remaining Allowed Senior Loan Claims, after which, on the Effective Date the cash collateral pledged in favor of the Senior Lender to secure the Senior Loan Claims shall be released to its respective pledgers in accordance with their respective interests therein.
- (d) *Voting:* Class 3 is Impaired under the Plan. Therefore, holders of Class 3 Senior Loan Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Senior Subordinated Note Claims

- (a) *Classification:* Class 4 consists of all Senior Subordinated Note Claims.
- (b) *Allowance:* Senior Subordinated Note Claims shall be Allowed in an aggregate amount equal to \$7.0 million, plus accrued but unpaid interest as of the Petition Date.
- (c) *Treatment:* On the Effective Date, or as soon thereafter as reasonably practicable, except to the extent that a holder of a Senior Subordinated Note Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Senior Subordinated Note Claim, each holder of a Senior Subordinated Note Claim shall receive its Pro Rata share of the (i) New Subordinated Notes and (ii) New Warrants.
- (d) *Voting:* Class 4 is Impaired under the Plan. Therefore, holders of Class 4 Senior Subordinated Note Claims are entitled to vote to accept or reject the Plan.

5. Class 5A –Trade Claims

- (a) *Classification:* Class 5A consists of all Trade Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Trade Claim agrees to less favorable treatment,

in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Trade Claim, each holder of a Allowed Trade Claim shall receive either:

- (i) if such holder agrees to the New Trade Terms and such holder and the Debtor enter into a New Trade Agreement, a cash recovery equal to such holder's Trade Claim Distribution, which the Reorganized Debtor shall satisfy by paying 110% on each invoice for products ordered post-Effective Date with each holder that executes a New Trade Agreement until the Trade Claim Distribution has been paid in full; *provided, however*, that the Reorganized Company shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; or
 - (ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5A is Impaired under the Plan. Therefore, holders of Class 5A Trade Claims are entitled to vote to accept or reject the Plan.

6. Class 5B - Other General Unsecured Claims

- (a) *Classification:* Class 5B consists of all Other General Unsecured Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Other General Unsecured Claim agrees to less favorable treatment, or agrees to be an Unsecured Convenience Class Claim, in full and final satisfaction, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other General Unsecured Claim, each holder of an Allowed Other General Unsecured Claim shall receive its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5B is Impaired under the Plan. Therefore, holders of Class 5B Other General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5C - Unsecured Convenience Class Claims

- (a) *Classification:* Class 5C consists of Unsecured Convenience Class Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Unsecured Convenience Class Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Convenience Class Claim, each holder of an Allowed Unsecured Convenience Class Claim shall receive payment in full in Cash on account of such Allowed Unsecured Convenience Class Claim pursuant to the Convenience Class Distribution.
- (c) *Voting:* Class 5C is Unimpaired under the Plan. Holders of Claims in Class 5C are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 5C Unsecured Convenience Class Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 - Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims.

- (b) *Treatment:* On the Effective Date, each Allowed Section 510(b) Claim shall be cancelled without any distribution and such holders of Section 510(b) Claims will receive no recovery.
- (c) *Voting:* Class 6 is Impaired under the Plan. Holders of Claims in Class 6 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

9. Class 7 - Existing Equity Interests

- (a) *Classification:* Class 7 consists of all Existing Equity Interests.
- (b) *Treatment:* On the Effective Date, Existing Equity Interests shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution to holders of Existing Equity Interests on account of such Existing Equity Interests.
- (c) *Voting:* Class 7 is Impaired under the Plan. Therefore, holders of Claims in Class 7 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

D. *Special Provision Governing Unimpaired Claims*

Nothing under the Plan shall affect the Debtor's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

E. *Subordinated Claims*

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, including, without limitation, the Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to direct the Debtor to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV. ACCEPTANCE REQUIREMENTS

A. *Acceptance or Rejection of the Plan*

1. Voting Classes

Classes 3, 4, 5A and 5B are Impaired under the Plan and are entitled to vote to accept or reject the Plan.

2. Conclusive Presumed Acceptance of the Plan

Classes 1, 2, and 5C are Unimpaired under the Plan and therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3. Deemed Not to Accept the Plan

Classes 6 and 7 are Impaired under the Plan, and holders of Class 6 Claims and Class 7 Interests shall not receive or retain any property under the Plan on account of such Claims and Interests and are, therefore, deemed not to accept the Plan pursuant to section 1126(g) of the Bankruptcy Code.

B. Confirmation Pursuant to 1129(b) of the Bankruptcy Code

The Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Classes of Claims and Interests that vote, or are deemed, not to accept the Plan. The Debtor reserves the right to modify the Plan in accordance with Article XI.A hereof, to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE V.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Restructuring Transactions

On the Effective Date, or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (i) the execution and delivery of the Exit Facility Documents and other appropriate agreements or other documents of restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to the Bankruptcy Code or applicable state law; and (iv) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

B. Sources of Consideration for Plan Distributions

The Reorganized Debtor shall fund distributions under the Plan as follows:

1. Cash Consideration

Except to the extent otherwise set forth herein, all Cash consideration necessary for the Reorganized Debtor to make payments or distributions pursuant hereto shall be obtained from proceeds of the Exit Facility or the Debtor's other Cash on hand, including Cash derived from business operations. Further, the Debtor and the Reorganized Debtor will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtor to satisfy their obligations under the Plan.

2. Issuance and Distribution of New Equity

On the Effective Date, the Reorganized Debtor shall issue the New Equity for distribution to holders of DIP Facility Claims and Senior Loan Claims in accordance with Article II.C and Article III herein. The issuance of the New Equity shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

All of the shares of New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the New Organizational Documents and the other instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

Notwithstanding anything to the contrary herein, in no event shall more than \$10 million of DIP Facility Claims and Senior Loan Claims in the aggregate be satisfied with the New Equity.

3. Exit Facility

On the Effective Date the Reorganized Debtor shall enter into the Exit Facility. Confirmation shall be deemed approval of the Exit Facility to the extent not approved by the Court previously (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtor or the Reorganized Debtor in connection therewith), and the Reorganized Debtor is authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Reorganized Debtor and the Senior Lender Affiliate may deem to be necessary to consummate the Exit Facility. Proceeds of the Exit Facility shall be used to satisfy obligations outstanding under the DIP Credit Facility and to provide necessary working capital for the Reorganized Debtor.

C. *New Subordinated Notes and New Warrants*

On the Effective Date, the Reorganized Debtor shall issue the New Subordinated Notes and the New Warrants, the terms of which shall be set forth in the Plan Supplement, for distribution to holders of Senior Subordinated Note Claims in accordance with Article III herein; *provided, however*, that the aggregate amount of the New Subordinated Notes shall not exceed \$3 million and the aggregate amount of the New Warrants shall not exceed 13% of the New Equity, subject to the terms set forth in the Plan Supplement. The issuance of the New Subordinated Notes and the New Warrants shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

Each distribution and issuance of the New Subordinated Notes and the New Warrants under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

As set forth in the New Subordinated Notes and the New Intercreditor Agreement, the New Subordinated Notes shall have a security interest in the same assets of the Reorganized Debtor as granted under the Exit Facility Documents, provided that such security interest shall be junior to the security interest granted pursuant to the Exit Facility Documents.

D. *General Unsecured Claims Litigation Trust*

1. Creation and Governance of the General Unsecured Claims Litigation Trust.

On the Effective Date, the Debtor shall transfer to the General Unsecured Claims Litigation Trust the General Unsecured Claims Litigation Trust Assets and Avoidance Actions. The Debtor and the General Unsecured Claims Litigation Trustee shall execute the General Unsecured Claims Litigation Trust Agreement and shall take all steps necessary to establish the General Unsecured Claims Litigation Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries. In the event of any conflict between the terms of the Plan and the terms of the General Unsecured Claims Litigation Trust Agreement, the terms of the Plan shall govern. Additionally, on the Effective Date the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the General Unsecured Claims Litigation Trust all of its rights, title, and interest in and to all of the General Unsecured Claims Litigation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the General Unsecured Claims Litigation Trust Assets shall automatically vest in the General Unsecured Claims Litigation Trust free and clear of all Claims, liens, encumbrances, or interests subject only to: (a) General Unsecured Claims Litigation Trust Interests, and (b) the expenses of the General Unsecured Claims Litigation Trust, as provided for in the General Unsecured Claims Litigation Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The General Unsecured Claims Litigation Trustee shall

be the exclusive trustee of the assets of the General Unsecured Claims Litigation Trust for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representatives of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The General Unsecured Claims Litigation Trust shall be governed by the General Unsecured Claims Litigation Trust Agreement and administered by the General Unsecured Claims Litigation Trustee. The powers, rights, and responsibilities of the General Unsecured Claims Litigation Trustee shall be specified in the General Unsecured Claims Litigation Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this Article V.D. The General Unsecured Claims Litigation Trustee shall hold and distribute the General Unsecured Claims Litigation Trust Assets in accordance with the provisions of the Plan and the General Unsecured Claims Litigation Trust Agreement. Other rights and duties of the General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust Beneficiaries shall be as set forth in the General Unsecured Claims Litigation Trust Agreement. After the Effective Date, the Debtor and the Reorganized Debtor shall have no interest in the General Unsecured Claims Litigation Trust Assets except as set forth in the General Unsecured Claims Litigation Trust Agreement. In connection with the vesting and transfer of the General Unsecured Claims Litigation Trust Assets (including any General Unsecured Claims Litigation Trust Causes of Action) to the General Unsecured Claims Litigation Trust, any attorney-client, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) expressly transferred to the General Unsecured Claims Litigation Trust shall vest in the General Unsecured Claims Litigation Trust. The Debtor and the General Unsecured Claims Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections, and immunities, to the extent the Debtor so desires.

2. Purpose of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trust shall be established for the purpose of pursuing or liquidating the General Unsecured Claims Litigation Trust Assets, distributing the General Unsecured Claims Litigation Trust Distributable Proceeds, if any, reconciling (and, if agreed to by the Debtor or the Reorganized Debtor, objecting to) General Unsecured Claims as provided for in the Plan and, if, as, and to the extent determined by the General Unsecured Claims Litigation Trustee pursuant to the General Unsecured Claims Litigation Trust Agreement, distributing the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

3. General Unsecured Claims Litigation Trustee and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trust Agreement generally will provide for, among other things: (a) the payment of the General Unsecured Claims Litigation Trust Expenses, (b) the payment of other reasonable expenses of the General Unsecured Claims Litigation Trust, including the cost of pursuing the General Unsecured Claims Litigation Trust Causes of Action, (c) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation, (d) the investment of Cash by the General Unsecured Claims Litigation Trustee within certain limitations, including those specified in the Plan, (e) the orderly liquidation of the General Unsecured Claims Litigation Trust Assets, and (f) litigation of any General Unsecured Claims Litigation Trust Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such General Unsecured Claims Litigation Trust Causes of Action.

Except as otherwise ordered by the Bankruptcy Court, the General Unsecured Claims Litigation Trust Expenses shall be paid from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, may employ, without further order of the Bankruptcy Court, professionals (including Professionals previously retained by the Creditors' Committee) to assist in carrying out its duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that the General Unsecured Claims Litigation Trustee shall provide ten Business Days' notice to the Reorganized Debtor before the payment of any such professional fees and expenses.

The General Unsecured Claims Litigation Trust Agreement may include reasonable and customary provisions that allow for indemnification by the General Unsecured Claims Litigation Trust. Any such indemnification shall be the sole responsibility of the General Unsecured Claims Litigation Trust and payable solely from the General Unsecured Claims Litigation Trust Assets.

In furtherance of and consistent with the purpose of the General Unsecured Claims Litigation Trust and the Plan, the General Unsecured Claims Litigation Trustee, for the benefit of the General Unsecured Claims Litigation Trust, shall: (a) hold the General Unsecured Claims Litigation Trust Assets for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries, (b) make distributions of General Unsecured Claims Litigation Trust Distributable Proceeds as provided herein and in the General Unsecured Claims Litigation Trust Agreement, and (c) have the power and authority to prosecute and resolve any General Unsecured Claims Litigation Trust Causes of Action, without approval of the Bankruptcy Court. The General Unsecured Claims Litigation Trustee shall be responsible for all decisions and duties with respect to the General Unsecured Claims Litigation Trust and the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement. In all circumstances, the General Unsecured Claims Litigation Trustee shall act in the best interests of the General Unsecured Claims Litigation Trust Beneficiaries and with the same fiduciary duties as a Chapter 7 trustee.

4. Compensation and Duties of the General Unsecured Claims Litigation Trustee.

The salient terms of the General Unsecured Claims Litigation Trustee's employment, including the General Unsecured Claims Litigation Trustee's duties and compensation shall be set forth in the General Unsecured Claims Litigation Trust Agreement. The General Unsecured Claims Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

5. Cooperation of Reorganized Debtor.

The Reorganized Debtor, upon reasonable notice, shall be required to provide information and access to pertinent documents, to the extent the Reorganized Debtor has such information and/or documents, to the General Unsecured Claims Litigation Trustee sufficient to enable the General Unsecured Claims Litigation Trustee to perform its duties hereunder. The Reorganized Debtor shall reasonably cooperate with the General Unsecured Claims Litigation Trustee in the administration of the General Unsecured Claims Litigation Trust, including, in providing documentation, witness testimony, and other evidence in support of the prosecution of the General Unsecured Claims Litigation Trust Causes of Action, at no cost or expense of the General Unsecured Claims Litigation Trust other than out of pocket expenses for copying or similar expenses; provided however, that such cooperation shall not involve violation of an attorney client privilege, unless agreed to by the Reorganized Debtor.

6. United States Federal Income Tax Treatment of the General Unsecured Claims Litigation Trust.

For all United States federal income tax purposes, the parties shall treat the transfer of the General Unsecured Claims Litigation Trust Assets to the General Unsecured Claims Litigation Trust as: (a) a transfer of the General Unsecured Claims Litigation Trust Assets directly to the applicable holders of Allowed General Unsecured Claims, followed by (b) the transfer by the holders of such Allowed General Unsecured Claims to the General Unsecured Claims Litigation Trust of such General Unsecured Claims Litigation Trust Assets in exchange for the General Unsecured Claims Litigation Trust Interests; *provided, however*, that the General Unsecured Claims Litigation Trust Assets will be subject to any post-Effective Date obligations incurred by the General Unsecured Claims Litigation Trust relating to the pursuit of General Unsecured Claims Litigation Trust Assets. Accordingly, the General Unsecured Claims Litigation Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the General Unsecured Claims Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

7. Tax Reporting.

- (a) The General Unsecured Claims Litigation Trustee shall file tax returns for the General Unsecured Claims Litigation Trust treating the General Unsecured Claims Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

- (b) Except to the extent definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee) indicates that such valuation is not necessary to maintain the treatment of the General Unsecured Claims Litigation Trust as a liquidating trust for purposes of the Internal Revenue Code and applicable Treasury Regulations, as soon as reasonably practicable after the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, the General Unsecured Claims Litigation Trust Assets. Such valuation shall be made available from time to time to all parties to the General Unsecured Claims Litigation Trust Agreement, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.
- (c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee), allocations of General Unsecured Claims Litigation Trust taxable income or loss shall be allocated by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining General Unsecured Claims Litigation Trust Assets. The tax book value of the General Unsecured Claims Litigation Trust Assets for purpose of this paragraph shall equal their fair market value on the date the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.
- (d) The General Unsecured Claims Litigation Trustee shall be responsible for payment, out of the General Unsecured Claims Litigation Trust Assets, of any taxes imposed on the General Unsecured Claims Litigation Trust or its assets.
- (e) The General Unsecured Claims Litigation Trustee shall distribute such notices to the General Unsecured Claims Litigation Trust Beneficiaries as the General Unsecured Claims Litigation Trustee determines are necessary or desirable.

8. General Unsecured Claims Litigation Trust Assets.

The General Unsecured Claims Litigation Trustee shall, in consultation with the Reorganized Debtor, have the exclusive right on behalf of the General Unsecured Claims Litigation Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all General Unsecured Claims Litigation Trust Causes of Action without any further order of the Bankruptcy Court, except as otherwise provided herein or in the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that such consultation shall be subject to the execution and delivery of one or more joint interest, common interest, or other similar agreements in form and substance reasonably acceptable to the General Unsecured Claims Litigation Trustee and the Reorganized Debtor. From and after the Effective Date, the General Unsecured Claims Litigation Trustee, in accordance with section 1123(b)(3) of the Bankruptcy Code, and on behalf of the General Unsecured Claims Litigation Trust, shall serve as a representative of the Estates and shall, in consultation with the Reorganized Debtor, retain and possess the right to commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action constituting General Unsecured Claims Litigation Trust Causes of Action in any court or other tribunal. The General Unsecured Claims Litigation Trustee shall provide the Reorganized Debtor with periodic reporting relating to the status of the General Unsecured Claims Litigation Trust Causes of Action.

For the avoidance of doubt, the General Unsecured Litigation Trust Assets shall not include any Claim or Cause of Action against a Released Party. Also for the avoidance of doubt, any proceeds of the General Unsecured Claims Litigation Trust shall be distributed Pro Rata to holders of Allowed Class 5B Claims and holders of Allowed Class 5A Claims that do not enter into a New Trade Agreement with the Debtor.

9. General Unsecured Claims Litigation Trust Fees and Expenses.

From and after the Effective Date, the General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the General Unsecured Claims Litigation Trust and any professionals retained by the General Unsecured Claims Litigation Trust from the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement.

10. Distribution of Unrestricted Cash.

The General Unsecured Claims Litigation Trustee shall distribute to the General Unsecured Claims Litigation Trust Beneficiaries on account of their interests in the General Unsecured Claims Litigation Trust, at least annually, its net income plus all net proceeds from the sale of assets, except that the General Unsecured Claims Litigation Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the General Unsecured Claims Litigation Trust Assets or to satisfy Claims and contingent liabilities or pay anticipated fees and expenses.

11. General Unsecured Claims Litigation Trust Funding.

The funding by the Debtor of the General Unsecured Claims Litigation Trust Payment shall be authorized and approved, as of the Effective Date, in all respects, without need for the consent of or notice to any Person, notwithstanding any contrary provision in any financing and/or other agreement between the Debtor or the Reorganized Debtor and any other Person, and any such contrary provision shall be deemed null and void to the extent necessary to permit such funding.

12. Distributions to General Unsecured Claims Litigation Trust Beneficiaries.

The General Unsecured Claims Litigation Trustee may, in its discretion, distribute any portion of the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries at any time and/or use such funds, provided that such distribution or use is for any purpose permitted under the Plan, the General Unsecured Claims Litigation Trust Agreement, and applicable law.

13. Cash Investments.

The General Unsecured Claims Litigation Trustee may invest Cash (including any earnings thereon or proceeds therefrom); *provided, however*, that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the General Unsecured Claims Litigation Trustee determines that the pursuit of additional General Unsecured Claims Litigation Trust Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, and (b) all distributions of General Unsecured Claims Litigation Trust Distributable Proceeds required to be made by the General Unsecured Claims Litigation Trustee to the General Unsecured Claims Litigation Trust Beneficiaries under the Plan have been made, but in no event shall the General Unsecured Claims Litigation Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such

third anniversary (and, in the event of further extension by agreement of the Reorganized Debtor and the General Unsecured Claims Litigation Trustee, at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the General Unsecured Claims Litigation Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the General Unsecured Claims Litigation Trust Assets. Upon dissolution of the General Unsecured Claims Litigation Trust, any remaining General Unsecured Claims Litigation Trust Assets shall be distributed first to all General Unsecured Claims Litigation Trust Beneficiaries in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement as appropriate; *provided, however*, that if the General Unsecured Claims Litigation Trustee reasonably determines that such remaining General Unsecured Claims Litigation Trust Assets are insufficient to render a further distribution practicable, or exceed the amounts required to be paid under the Plan, the General Unsecured Claims Litigation Trustee may transfer such remaining funds to a charitable institution qualified as a not-for-profit corporation under applicable federal and state laws selected by the General Unsecured Claims Litigation Trustee.

E. Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, the Debtor, as the Reorganized Debtor, shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other analogous formation documents) are amended by the Plan, replaced by the New Organizational Documents, or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

F. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date all property in the Estate, all Causes of Action, and any property acquired by the Debtor pursuant to the Plan shall vest in the Reorganized Debtor, free and clear of all liens, Claims, charges, or other encumbrances, except for Liens securing the Exit Facility, if applicable. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

G. Cancellation of Existing Securities

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtor under the DIP Agreement, the Senior Loan Agreement, the Senior Subordinated Notes, the Seller Notes, and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of or ownership interest in the Debtor giving rise to any Claim or Interest shall be cancelled solely as to the Debtor, and the Reorganized Debtor shall not have any continuing obligations thereunder; and (2) the obligations of the Debtor pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged; *provided, however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of enabling holders of Allowed Claims and Allowed Interests to receive distributions under the Plan as provided herein; *provided further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to the Reorganized Debtor, except to

the extent set forth in or provided for under the Plan. On and after the Effective Date, all duties and responsibilities of the DIP Lender under the DIP Facility and the Senior Lender under the Senior Loan Facility shall be discharged unless otherwise specifically set forth in or provided for under the Plan.

H. Corporate Action

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, as applicable: (1) the issuance of the New Equity; (2) selection of the directors and officers for the Reorganized Debtor; (3) execution and delivery of the Exit Facility Documents; (4) adoption of the Management Incentive Plan; (5) implementation of the restructuring transactions contemplated by this Plan; and (6) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtor, and any corporate action required by the Debtor or the Reorganized Debtor in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of the Debtor or the Reorganized Debtor. On or (as applicable) before the Effective Date, the appropriate officers of the Debtor or the Reorganized Debtor shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtor. The authorizations and approvals contemplated by this Article V.H shall be effective notwithstanding any requirements under nonbankruptcy law.

I. New Management Incentive Plan

Subject to the terms of the New Management Incentive Plan, a form of which shall be included in the Plan Supplement, as soon as reasonably practicable after the Effective Date, the new board of directors of Reorganized Debtor shall be authorized to adopt the New Management Incentive Plan pursuant to which options, warrants, or another form of consideration to acquire up to 10% of the New Equity of the Reorganized Debtor shall be allocable at the discretion of the New Board of the Reorganized Debtor.

To the extent required under the Plan or applicable nonbankruptcy law, the Reorganized Debtor will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in the state, province, or country of incorporation in accordance with applicable corporate laws. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents of the Reorganized Debtor will prohibit the issuance of non-voting equity securities and provide for the other restrictions required therein. After the Effective Date, the Reorganized Debtor may amend and restate its New Organizational Documents and other constituent documents as permitted by applicable corporate laws and the New Organizational Documents.

J. Directors and Officers of the Reorganized Debtor

As of the Effective Date, the term of the current members of the board of directors of the Debtor shall expire, and the initial boards of directors, including the New Board, as well as the officers of the Reorganized Debtor, shall be appointed in accordance with the New Organizational Documents and other constituent documents of the Reorganized Debtor.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the initial Reorganized Debtor Board, as well as those Persons that will serve as an officer of the Reorganized Debtor. To the extent any such director or officer is an "insider" under the Bankruptcy Code, the nature of any compensation to be paid to such director or officer will also be disclosed. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtor.

K. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtor, and the officers and members of the New Board, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, including the New Equity, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorization, or consents except those expressly required pursuant to the Plan. In furtherance of the foregoing, any New Organizational Documents which is contractual in nature (such as a stockholders agreement or limited liability company agreement) shall, upon the Effective Date, be deemed to become valid, binding and enforceable in accordance with its terms as to all Persons intended to be bound thereby.

L. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.²

M. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article IX and Article V.E hereof, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and such rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtor. **To the fullest extent permitted by applicable law, no Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against it. The Debtor or the Reorganized Debtor, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Debtor or Reorganized Debtor, as applicable, expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise set forth herein, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtor. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, except to the extent transferred to the General Unsecured Claims Litigation Trust hereunder. Subject to Article V.D, hereof, the Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Court.

² Foley note: Consider deleting this due to 6th Circuit law.

N. Release of Avoidance Actions

On the Effective Date, except as otherwise set forth herein, in the Plan Supplement, or in the Confirmation Order, the Debtor shall release any and all Avoidance Actions against the Released Parties, the Debtor and the Reorganized Debtor, and any of their successors or assigns and any Entity acting on behalf of the Debtor or the Reorganized Debtor shall be deemed to have waived the right to pursue any and all Avoidance Actions.

**ARTICLE VI.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected, other than those that are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases or are the subject of pending motions to assume on the Effective Date.

Entry of the Confirmation Order shall constitute a Court order approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan or the Schedule of Assumed Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or set forth in a motion or order relating to the same, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Court authorizing and providing for its assumption under applicable federal law. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Court within thirty (30) days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection; *provided, however*, that any such Rejection Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be subject to the cap on rejection damages imposed by section 502(b) of the Bankruptcy Code. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Reorganized Debtor, the Estate, or property of the foregoing parties, without the need for any objection by the Debtor or the Reorganized Debtor, as applicable, or further notice to, or action, order, or approval of the Court. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as Other General Unsecured Claims and shall be treated in accordance with Article III.C.5 of the Plan, as applicable.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any Cure Claims under an Executory Contract and Unexpired Lease, as reflected on the Cure Notice shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the such Cure Claim in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any Cure Claims, (2) the ability of the Reorganized Debtor or any assignee, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, payments on Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

At least fourteen (14) days before the Confirmation Hearing, the Debtor shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be Filed, served and actually received by the Debtor at least three (3) Business Days before the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or amount of the Cure Claim in the Cure Notice will be deemed to have assented to such assumption or amount of the Cure Claim. Notwithstanding anything herein to the contrary, in the event that any Executory Contract or Unexpired Lease is removed from the Schedule of Rejected Executory Contracts and Unexpired Leases after such 14-day deadline, a Cure Notice of proposed assumption and proposed amounts of Cure Claims with respect to such Executory Contract or Unexpired Lease will be sent promptly to the counterparty thereof and a noticed hearing set to consider whether such Executory Contract or Unexpired Lease can be assumed.

In any case, if the Court determines that the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the applicable Cure Notice, the Debtor or the Reorganized Debtor, at the direction of the Senior Lender Affiliate, will have the right to add such Executory Contract or Unexpired Lease to the Schedule of Assumed Executory Contracts and Unexpired Leases, in which case such Executory Contract or Unexpired Lease will be deemed rejected as the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and for which the Cure Claim has been paid shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Court.

D. Insurance Policies

All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, unless otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, the Debtor shall be deemed to have rejected all insurance policies and any agreements, documents, and instruments related thereto.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan, or subject to a motion to reject such agreement.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

F. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor, or, after the Effective Date, the

Reorganized Debtor shall have twenty-eight (28) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

G. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

H. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Deferred Prosecution Agreement

Nothing herein, in the Confirmation Order, or in any other document or order in this Chapter 11 Case shall affect the respective rights and obligations of the United States and the Debtor under the Deferred Prosecution Agreement. In accordance with the requirement set forth in section 17 of the Deferred Prosecution Agreement, the Debtor obligations under the Deferred Prosecution Agreement shall be binding upon the Reorganized Debtor and the rights and benefits of the Debtor under the Deferred Prosecution Agreement shall bestow to the benefit of the Reorganized Debtor.

**ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim (or such holder's Affiliate) shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII of the Plan. Except as otherwise provided in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Debtor shall have no obligation to recognize any transfer of Claims occurring on or after the Effective Date.

B. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions

(a) Delivery of Distributions to DIP Lender

Except as otherwise provided in the Plan, all distributions to holders of Allowed DIP Facility Claims shall be governed by the DIP Agreement and shall be deemed completed when made to the DIP Lender.

(a) Delivery of Distributions to Senior Lender

Except as otherwise provided in the Plan, all distributions to holders of Senior Loan Claims shall be governed by the Senior Loan Agreement and shall be deemed completed when made to the Senior Lender.

(b) Delivery of Distributions in General

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims (other than holders of DIP Facility Claims and Senior Loan Claims) shall be made to: (1) to the signatory set forth on any of the Proofs of Claim Filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (2) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtor after the date of any related Proof of Claim; (3) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Reorganized Debtor has not received a written notice of a change of address; or (4) on any counsel that has appeared in the Chapter 11 Case on the holder's behalf. Subject to this Article VII, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor, the Reorganized Debtor and the General Unsecured Claims Litigation Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtor has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date; *provided further* that undeliverable distributions to holders of General Unsecured Claims Litigation Trust Beneficiaries shall revert back to the General Unsecured Claims Litigation Trust. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VII.B.2, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property or Interest in property shall be discharged and forever barred.

C. *Securities Registration Exemption*

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of securities, including the New Equity, as contemplated by Article III.B of the Plan, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. In addition, under section 1145 of the Bankruptcy Code, such New Equity will be freely tradable in the U.S. by the recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, any applicable terms and limitations set forth in the New Organizational Documents and the New Warrants, and compliance with applicable securities laws and any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any transfer of such Securities or instruments.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the General Unsecured Claims Litigation Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made from the General Unsecured Claims Litigation Trust under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of

information necessary to facilitate such distributions or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtor and the General Unsecured Claims Litigation Trustee reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

E. Allocations

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed herein.

F. No Postpetition Interest on Claims

Unless otherwise specifically provided for in the DIP Order, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

G. Setoffs and Recoupment

The Debtor or the Reorganized Debtor may (with the Senior Lender Affiliate's consent), but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtor or the Reorganized Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such Claim it may have against the holder of such Claim.

H. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

The Debtor or the Reorganized Debtor, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the Reorganized Debtor to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such holder to timely repay or return such distribution shall result in the holder owing the Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers

under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VIII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims or Interests

After the Effective Date, the Debtor or the Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Case allowing such Claim. Any Claim or Interest that is subject to the Claims Bar Date and as of the Claims Bar Date has been listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

Notwithstanding anything to the contrary herein, a Class Action Claim shall not be an Allowed Class Action Claim at any time prior to a final determination as to Approval of the Class Action Settlement. If the Class Action Settlement is denied on a final basis, the Debtor, the General Unsecured Claims Litigation Trustee, or the Reorganized Debtor, as applicable, shall have thirty (30) days following the date upon which the Class Action Settlement was denied on a final basis to object to any Proofs of Claim filed in respect to Class Action Claims.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Reorganized Debtor, by order of the Court, shall have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court.

C. Estimation of Claims.

Before or after the Effective Date, the Debtor or the Reorganized Debtor may (but are not required to) at any time request that the Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Court has ruled on any such objection, and the Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Court. In the event that the Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), absent an objection to the same by the Claim holder prior to the Voting Deadline, and the Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims or Interests without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Reorganized Debtor without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Deadline.

F. Disallowance of Claims or Interests

Any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor, the Reorganized Debtor or the General Unsecured Claims Litigation Trustee, as applicable. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Court.

Except as provided herein or otherwise agreed, any and all Proofs of Claim or Proofs of Interest filed after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Court, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests, unless on or before the Confirmation Hearing such late Filed Claim or Interest has been deemed timely Filed by a Final Order.

G. Amendments to Claims or Interests

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Interest may not be Filed or amended without the prior authorization of the Court and the Reorganized Debtor and any such new or amended Claim or Interest Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Court.

H. No Distributions Pending Allowance

If an objection to a Claim Interest or portion thereof is Filed as set forth in Article VIII no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Court allowing any Disputed Claim becomes a Final Order, the Reorganized Debtor shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in Article III.C.

**ARTICLE IX.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that

a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, the Estate, and holders of Claims and Interests, and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtor may compromise and settle Claims against them and Causes of Action against other Persons.

B. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action that arose prior to the Effective Date of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan (including the Plan Supplement documents), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns. In addition, the DIP Lender and the Senior Lender shall execute and deliver all documents reasonably requested by the administrative agent(s) for the Exit Facility to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Reorganized Debtor to file UCC-3 termination statements (to the extent applicable) with respect thereto.

D. Debtor Release

To the fullest extent permitted by applicable law and pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtor, the Reorganized Debtor, and the Estate from any and all claims, obligations, rights, suits, damages, Causes of Action (including Avoidance Actions), remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of the Debtor and/or the Reorganized Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities law, or otherwise, that the Debtor, the Reorganized Debtor, or their Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any

Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the other restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

E. Third Party Release

As of the Effective Date, to the fullest extent permitted by applicable law, each Released Party and each holder of a Claim against or an Interest in the Debtor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all claims, equity interests, obligations, debts, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of a debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, existing or hereafter arising, in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of claims and equity interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing; *provided, however*, that the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

F. Exculpation

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any (1) Exculpated Claim and (2) any obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Securities pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

G. Injunction

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE VIII HEREOF, ALL ENTITIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VIII HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO ARTICLE VIII.D OR ARTICLE VIII.E HEREOF, DISCHARGED PURSUANT TO ARTICLE VIII.B HEREOF, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIII.F HEREOF, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE RELEASED PARTIES OR THE EXCULPATED PARTIES: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SUBROGATION, SETOFF, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE INTERESTS, PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR EXCULPATED PURSUANT TO THE PLAN.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR OR ANY OF THEIR ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTOR'S LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE ESTATE, THE REORGANIZED DEBTOR, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS

BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

H. Subordination Rights

Any distributions under the Plan to holders shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**ARTICLE X.
CONDITIONS PRECEDENT TO CONFIRMATION
AND CONSUMMATION OF THE PLAN**

A. Conditions Precedent to the Confirmation Date

It shall be a condition to Confirmation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have been approved by the Court in form and substance reasonably acceptable to the Senior Lender Affiliate;
2. The Court shall have found that adequate information and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan have been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017, 9019 and 3020(b);
3. There shall be no pending defaults under the DIP Facility; and
4. The Plan and the Plan Supplement, including any exhibits, schedules, amendments, modifications, or supplements thereto, each in form and substance reasonably acceptable to the Senior Lender Affiliate, shall have been Filed subject to the terms hereof.

B. Conditions Precedent to the Effective Date

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
2. There shall be no pending defaults under the DIP Facility;
3. The Exit Facility Documents shall be in full force and effect;
4. The Plan, including any amendments, modifications, or supplements thereto, and inclusive of any amendments, modifications, or supplements made after the Confirmation Date but prior to the Effective Date, shall be in form and substance reasonably acceptable to the Debtor and the Senior Lender Affiliate and made in accordance with Article X.A of the Plan;

5. The Exit Facility Documents shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation of the Exit Facility, other than the occurrence of the Effective Date of the Plan, shall have been waived or satisfied in accordance with the terms thereof;

6. The General Unsecured Claims Litigation Trust shall have been established pursuant to the General Unsecured Claims Litigation Trust Agreement.

7. All governmental and material third party approvals and consents, including Court approval, necessary in connection with the transactions contemplated by this Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

8. All documents and agreements necessary to implement this Plan shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. All conditions precedent to the issuance of the New Equity, other than any conditions related to the occurrence of the Effective Date, shall have occurred;

10. The Professional Fee Account shall have been funded; and

11. The Effective Date shall have occurred on or before December 31, 2013.

C. Waiver of Conditions

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in this Article X may be waived only by written consent of the Debtor and the Senior Lender Affiliate (except to the extent a condition requires only Senior Lender Affiliate approval, in which case only written consent of the Senior Lender Affiliate shall be required); *provided, however*, that the Debtor may not waive entry of the Order approving the Disclosure Statement and the Confirmation Order.

D. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any holders of a Claim or Interest or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any holders, or any other Entity in any respect.

**ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modification and Amendments

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves the rights to alter, amend, or modify materially the Plan (provided that such alterations, amendments, or modifications are in form and substance acceptable to the Senior Lender Affiliate) with respect to the Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtor (with the consent of the Senior Lender Affiliate) reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtor or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XII.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Case and all matters, arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Claims pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) the Reorganized Debtor amending, modifying, or supplementing, after the Confirmation Date, pursuant to Article VI hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired;
4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
6. adjudicate, decide, or resolve any and all matters related to Causes of Action, including, without limitation, any of the Transshipping Claims;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII.H.1 hereof;

13. resolve any cases, controversies, suits, disputes related to the General Unsecured Claims Litigation Trust, including the General Unsecured Claims Litigation Trust Assets;

14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Chapter 11 Case, the Plan, the Disclosure Statement, the Confirmation Order;

16. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

17. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20. hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

21. enforce all orders previously entered by the Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;

23. enter an order concluding or closing the Chapter 11 Case; and

24. enforce the injunction, release, and exculpation provisions set forth in Article IX hereof.

**ARTICLE XIII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Subject to Article X.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtor may File with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtor (prior to or on the Effective Date) or the Reorganized Debtor (after the Effective Date) for each quarter (including any fraction thereof) until the Chapter 11 Case are converted, dismissed, or closed, whichever occurs first.

D. Dissolution of the Committee

On the Effective Date, the Committee (if any) shall dissolve and all members, employees, or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Case.

E. Indemnification Provisions

The Indemnification Provisions shall not be discharged or impaired by Confirmation, shall survive Confirmation and shall remain unaffected thereby after the Effective Date; *provided, however*, that, notwithstanding the foregoing, the right of an indemnified Person to receive any indemnities, reimbursements, advancements, payments, or other amounts arising out of, relating to, or in connection with the Indemnification Provisions shall be limited to, and an indemnified Person's sole and exclusive remedy to receive any of the foregoing shall be exclusively from, the director and officer insurance policies of the Debtor in effect on the Effective Date, and no indemnified Person shall seek, or be entitled to receive, any of the foregoing from (directly or indirectly) the Reorganized Debtor. Entry of the Confirmation Order will constitute the Court's approval of the Debtor's foregoing assumption of each of the Indemnification Provisions.

F. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

G. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtor or Reorganized Debtor shall be served on:

the Debtor:

Groeb Farms, Inc.:
10464 Bryan Highway
Onsted, Michigan 492657313
Attn.: Rolf Richter

with copies to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, Michigan 48226-3489
Attn: Judy A. O'Neill

the Senior Lender Affiliate:

c/o Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Ray Schrock, P.C.

and

c/o Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Jeffrey D. Pawlitz

I. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

J. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, the Plan Supplement, and the Exit Facility Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

K. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Court to be invalid, void, or unenforceable, the 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 original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's consent; and (3) nonseverable and mutually dependent.

Respectfully submitted, as of the date first set forth above,

GROEB FARMS, INC.

By: /s/ DRAFT

Name: Rolf Richter

Title: President and CEO of Groeb Farms, Inc.

EXHIBIT B

SENIOR SUBORDINATED NOTEHOLDER TERM SHEET

**Proposed Terms of Senior Subordinated Note Restructure (“Term Sheet”)
Among Argosy Investment Partners III, L.P. (“Argosy”),
Marquette Capital Fund I, LP (“Marquette”),
Groeb Farms, Inc. (the “Company”), and
Honey Financing Company, LLC (“Senior Lender Affiliate”)**

NO LEGALLY BINDING OBLIGATIONS WILL BE CREATED UNLESS AND UNTIL A WRITTEN DEFINITIVE AGREEMENT IS EXECUTED AND DELIVERED BY THE PARTIES. THIS TERM SHEET IS NOT A COMMITMENT TO INVEST OR ACQUIRE OR VOTE IN FAVOR OF OR AGAINST A BANKRUPTCY REORGANIZATION PLAN AND IS CONDITIONED ON APPROVAL OF A MAJORITY OF THE SENIOR SUBORDINATED NOTEHOLDERS AND THE COMPLETION OF DUE DILIGENCE, LEGAL REVIEW, AND DOCUMENTATION THAT IS SATISFACTORY TO A MAJORITY OF THE SENIOR SUBORDINATED NOTEHOLDERS IN THEIR SOLE AND ABSOLUTE DISCRETION.

THE TERM SHEET IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES OF THE COMPANY, NOR IS IT A SOLICITATION OF THE ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN FOR PURPOSES OF SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION SHALL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE.

THE TERM SHEET REPRESENTS A SETTLEMENT PROPOSAL IN FURTHERANCE OF SETTLEMENT DISCUSSIONS. ACCORDINGLY, THE TERM SHEET IS PROTECTED BY RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS. THIS TERM SHEET, AS WELL AS ITS TERMS, ITS EXISTENCE, AND THE EXISTENCE OF THESE DISCUSSIONS, MAY NOT BE DISCLOSED TO THIRD PARTIES WITHOUT EXPRESS WRITTEN CONSENT OF HC CAPITAL HOLDING 0909A, LLC (THE “SENIOR LENDER”) AND SENIOR LENDER AFFILIATE.

THE TERM SHEET DOES NOT INCLUDE A DESCRIPTION OF ALL OF THE ADDITIONAL TERMS, CONDITIONS, AND OTHER PROVISIONS THAT ARE TO BE CONTAINED IN THE DEFINITIVE DOCUMENTATION GOVERNING THE RESTRUCTURING TRANSACTION, WHICH REMAINS SUBJECT TO DISCUSSION AND NEGOTIATION AND THE AGREEMENTS AND CONSENTS REFLECTED IN THE RSA. THE RSA SHALL INCORPORATE THE TERMS BELOW. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE RSA AND THE TERM SHEET, THE RSA SHALL CONTROL. ALL DEFINED TERMS NOT DEFINED HEREIN SHALL BE REFERENCED IN THE RSA.

Issues

Proposals

1) Transaction

- Senior Lender Affiliate has proposed a term sheet to the Company and certain other parties including Marquette and Argosy to enter into a Restructuring Support Agreement (“RSA”) for a planned chapter 11 reorganization of the Company.
- This Term Sheet describes the terms under which Marquette and Argosy will restructure the obligations of the Company owed to Marquette, Argosy and Horizon Capital Partners III, L.P. (“Horizon” and collectively with Marquette and Argosy, “Senior Subordinated Noteholders”).

2) Subdebt warrants

- Upon the Effective Date, the reorganized Company (the “Reorganized Company”) shall issue to Senior Subordinated Noteholders warrants (the “New

Warrants”) in the Reorganized Company exercisable at an aggregate \$1.00 strike price per New Warrant, eligible for cashless exercise, for a total of 13% of all equity interests (the “New Equity”) in the Reorganized Company. For the avoidance of doubt, the New Warrant strike price is based on all New Equity of the Reorganized Company under the Plan being issued at \$1.00 per share, and the New Warrant percentage shall be subject to any dilution also suffered by the initial holders of New Equity in the Reorganized Company, including but not limited to dilution as a result of management incentive plans.

- New Warrants will be distributed among the Senior Subordinated Noteholders ratably based on their respective Senior Subordinated Note principal amounts.
- Each Senior Subordinated Noteholder shall be entitled to customary tag along rights and be subject to customary drag-along obligations with respect to the New Equity issued upon exercise of their New Warrants, shall be entitled to anti-dilution protections, including preemptive rights, with respect to the issuance of any additional securities (subject to appropriate carve outs for management incentive plans) and, for so long as the Senior Subordinated Noteholder holds at least 50% of the initially issued New Warrants or New Equity issued as a result of exercise of the New Warrants, such Senior Subordinated Noteholder shall be entitled to (a) on a monthly basis, (i) an unaudited consolidated balance sheet, income statement, and statement of cash flows, together with a corresponding discussion and analysis of results from management, and (ii) a compliance certificate showing compliance with financial covenants along with underlying calculations and a borrowing base certificate; (b) on an annual basis, audited or reviewed financial statements; and (c) quarterly meetings with management, with up to two such meetings per year in person, at the Senior Subordinated Noteholder's expense.

3) Subdebt issuance

- Upon the Effective Date, the Reorganized Company shall issue new subordinated notes equal to \$3.0m total in principal amount (the “New Subordinated Notes”) to the Senior Subordinated Noteholders. The New Subordinated Notes shall be issued ratably to Senior Subordinated Noteholders based on their respective Senior Subordinated Note principal amount.
- The New Subordinated Notes shall mature five (5) years after the Effective Date and carry a 10% accruing annual interest rate. Cash interest shall be payable upon the Reorganized Company reaching a TBD level of pro forma fixed charge coverage. At any time when the Reorganized Company does not reach such a level, interest will accrue as PIK.
- New Subordinated Notes shall be secured by a subordinated lien on all assets of the Reorganized Company.

4) Subordination/ lien priority

- The security interests and liens of the Reorganized Company securing the New Subordinated Notes shall be subordinated only to a senior secured revolving and term loan facility to the Reorganized Company in the maximum amount of \$30M (the "Exit Facility"), and shall be subject to standard subordination and intercreditor rights in favor of the Senior Lender. Other than the Exit Facility and any replacement facility, there will be no debt issued by the Reorganized Company with rights senior to those of the New Subordinated Notes.

5) Release of cash collateral

- Upon the Effective Date, Senior Lender and Senior Lender Affiliate shall immediately release all pledged cash collateral of Senior Subordinated Noteholders and other pledgors to secure the Company's obligations to the Senior Lender and Senior Lender Affiliate.

6) Contingencies

- Negotiation and execution of a definitive RSA incorporating these terms and other terms acceptable to the Senior Lender and Senior Lender Affiliate, the Company and a majority in principal amount of the Senior Subordinated Noteholders.
- The Senior Lender and Senior Lender Affiliate will convert \$10M in the aggregate of the Senior Loan Facility and DIP Facility balances to New Equity in the Reorganized Company at the Effective Date at one share per dollar of debt converted to equity. The Senior Lender and Senior Lender Affiliate will be entitled to a \$10M liquidation preference on the New Equity.

EXHIBIT C

Putative Class Action RSA

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (together with all exhibits and attachments hereto, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this “Agreement”) is made and entered into as of October 1, 2013, by and among (i) Honey Financing Company, LLC (the “Senior Lender Affiliate”), (ii) HC Capital Holdings 0909A, LLC (the “Senior Lender”); (iii) Groeb Farms, Inc. (the “Company” or the “Debtor”), and (iv) Court-appointed Interim Co-Lead Counsel (the “Interim CA Counsel”) on behalf of the named plaintiffs and the other members of the proposed class (the “Plaintiffs”) in the consolidated class action lawsuits pending against the Company in the United States District Court for the Northern District of Illinois, captioned *In re Honey Transshipment Litigation*, Case No. 13 C 2905 (N.D. Ill.) (JBG) (the “Pending Class Action”). The Senior Lender Affiliate, the Senior Lender, the Company, and the Interim CA Counsel are each referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Plan (as defined below).

RECITALS

WHEREAS, as of the date hereof, Senior Lender is the lender under a certain Credit and Security Agreement with the Company, dated as of January 20, 2012 (as amended by the: (i) First Amendment to Credit Agreement and Waiver of Default, dated as of October 2, 2012; (ii) Second Amendment to Credit Agreement and Waiver of Default, dated as of March 12, 2013; (iii) Third Amendment to Credit and Security Agreement, dated as of April 25, 2013; (iv) Forbearance Agreement and Fourth Amendment to Credit and Security Agreement, dated as of August 15, 2013; (v) Forbearance Agreement and Fifth Amendment to Credit and Security Agreement, dated as of September 9, 2013; and (vi) Waiver Agreement and Sixth Amendment to Credit And Security Agreement, dated as of September 26, 2013, the “Senior Credit Agreement”);

WHEREAS, the Company has agreed to restructuring and recapitalization transactions (collectively, the “Restructuring Transactions”) with the Senior Lender Affiliate, the Senior Lender, the Interim CA Counsel, and holders of the 12% Senior Subordinated Debenture Notes due March 2017 (the “Senior Subordinated Noteholders”), the terms and conditions of which are set forth in the *Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”), a copy of which is attached hereto as **Exhibit A**, and this Agreement;

WHEREAS, the Company has agreed to commence a voluntary, pre-arranged reorganization case (the “Chapter 11 Case”) 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 Michigan (the “Bankruptcy Court”) to effectuate the Restructuring Transactions;

WHEREAS, in exchange for the consideration set forth in this Restructuring Support Agreement, including any addenda or exhibits thereto, the Interim CA Counsel has agreed to: (a) settle the Pending Class Action against the Company, subject to U.S. District Court and Bankruptcy Court approval, as necessary on the terms set forth in **Exhibit B** (the “Class Action”

Settlement”), which are incorporated herein by reference; (b) support the Restructuring Transactions; and (c) take all appropriate actions under Fed. Civ. P 23 and other applicable rules to obtain preliminary and final approval of the Class Action Settlement, as defined below;

WHEREAS, the Parties acknowledge that the Restructuring Transactions, including this Agreement and the Plan, are the product of arm’s-length, good faith negotiations between the Parties; and

WHEREAS, each Party desires to express to each other Party its support and commitment in respect of the Restructuring Transactions.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. Plan. The Plan is expressly incorporated herein and is made part of this Agreement; *however*, the Plan is supplemented by the terms and conditions of this Agreement. In the event of any inconsistency between the Plan and this Agreement, this Agreement shall control.

Section 2. Commitments Regarding the Restructuring Transactions.

2.01. Commitments of the Interim CA Counsel. Interim CA Counsel shall:

(a) take all actions to execute a final settlement agreement between the Company and the Interim CA Counsel reflecting the terms of the Class Action Settlement on or before October 3, 2013 and to file with the U.S. District Court in which the Pending Class Action is pending (the “District Court”) or the Bankruptcy Court, as appropriate (the “Court”): (i) on or before October 10, 2013 (the “Preliminary Approval Deadline”), all papers necessary to present Plaintiffs’ motion for preliminary approval of the Class Action Settlement, which papers shall be, in form and substance, reasonably satisfactory to the Company, the Senior Lender, and the Senior Lender Affiliate, and which papers shall include a request for class certification pursuant to Federal Rule of Civil Procedure 23(b)(1) or, in the alternative, Federal Rule of Civil Procedure 23(b)(3); and (ii) within 120 days of the date of this preliminary approval and CAFA notice being sent to the Attorneys General (the “Final Approval Deadline”), a motion for final approval of the Class Action Settlement, which motion shall be in form and substance reasonably acceptable to the Company, the Senior Lender and the Senior Lender Affiliate. Should the Court preliminarily certify a settlement class pursuant to Rule 23(b)(1), Interim CA Counsel shall request an objection deadline of not more than twenty-eight (28) days from the date of notice for any members of the class who intend to object to the settlement (the “Objection Deadline”). Should the Court preliminarily certify a settlement class pursuant to Rule 23(b)(3), Interim CA Counsel shall request an objection and opt-out deadline of not more than twenty-eight (28) days from the date of notice for any members of the class who intend to object to the settlement or opt out of the class (the “Opt-Out Deadline”).

(b) support the Plan, subject to the commencement of the Plan solicitation pursuant to applicable law and receipt by the Interim CA Counsel of a disclosure statement (including all

exhibits thereto, the “Disclosure Statement”) and other solicitation materials (the “Solicitation Materials”) in respect of the Plan, which Disclosure Statement and Solicitation Materials shall (i) provide for the treatment of any class claimants (the “Class Action Claimants”) as general unsecured creditors (“GUCs”) under the Plan; (ii) not be inconsistent with the terms set forth in this Agreement; (iii) provide that the approval by the District Court and the Bankruptcy Court of the Class Action Settlement shall not be a condition precedent to the confirmation or effective date of the Plan and such events shall not be conditions precedent to the effective date of the Settlement; and (iv) otherwise be acceptable to the Senior Lender Affiliate.

(c) (i) seek provisional class status for purposes of voting on the Plan only (the “Voting Class Status”); (ii) deliver its duly executed and completed ballot accepting the Plan on a timely basis with other GUCs even if such time frame is shorter for such claim as the time provided in the Bankruptcy Rules; and not change or withdraw such vote; *provided, however*, that the Interim CA Counsel’s ballot shall not count as an acceptance of the Plan with respect to any Class Action Claimant that opts out of the settlement class, to the extent the settlement class is certified and under Rule 23(b)(3), and further provided that if final approval of the Class Action Settlement is obtained by the Final Approval Deadline, then the Class Action Settlement shall control the treatment of the class members; and

(d) not (i) object to, delay, impede, or take any other action to affirmatively interfere with acceptance or implementation of the Plan, (ii) propose, file, support, or vote for any restructuring, workout, plan of arrangement or plan of reorganization for the Company other than the Plan, or (iii) directly or indirectly cause any entity take any action contemplated in clauses (i) and (ii) of this Section 2.01(d); and

(e) support, on an ongoing basis, the Company’s efforts to obtain entry of one or more orders in the Chapter 11 Case or in the District Court approving: (i) the Class Action Settlement and (ii) preliminary class certification for Class Action Claimants for the purposes of voting, only;

(f) in the event that the Class Action Settlement is not approved by the later of the (i) the Effective Date of the Plan or (ii) the Final Approval Deadline, return the DOJ Documents (as defined herein) to the Company.

provided, however, that nothing herein shall prejudice the rights of the Interim CA Counsel from seeking to certify a class for the purposes of distributions under the Plan so long as such actions do not interfere with the prosecution of the Plan.

2.02. Commitments of the Company. The Company agrees to:

(a) execute a definitive Settlement Agreement consistent with the Class Action Settlement on or before October 3, 2013;

(b) support and implement the Restructuring Transactions and all transactions set forth in the Plan and this Agreement, including, without limitation, the terms and conditions of the Class Action Settlement:

(i) file, no later than October 10, 2013, a motion seeking approval of the Class Action Settlement, in the Bankruptcy Court and/or the District Court as applicable, subject to approval of the Class Action Settlement pursuant to Section 2.01(a) above.

(c) provide the Interim CA Counsel upon execution of this Agreement with: (i) copies of the documents and other materials that the Company had previously produced to the United States Department of Justice (the “DOJ Documents”); and (ii) a copy of the Disclosure Statement simultaneously with filing the Disclosure Statement with the Bankruptcy Court;

(d) take any and all necessary and appropriate actions in furtherance of the Plan and this Agreement, including with respect to the Class Action Settlement;

(e) use best efforts to obtain the approval of the Company’s insurer, Chubb Group of Insurance Companies (“Chubb”) to pay \$1,750,000 from the applicable Insurance Proceeds to the Class Action Claimants pursuant to the Class Action Settlement

(f) cooperate with the Interim CA Counsel to obtain the preliminary and final approval of the Class Action Settlement.

2.03. Commitments of the Senior Lender and Senior Lender Affiliate. So long as this Agreement has not been terminated pursuant to Section 4 hereof, the Senior Lender Affiliate commits to reasonably cooperate with the Company to fulfill its obligations under this Agreement.

Section 3. *Representations, Warranties, and Acknowledgements*

3.01. Mutual Representations, Warranties, and Covenants. Each Party, severally and not jointly, represents, warrants, and covenants to any other Party, as of the date hereof, as follows (each of which is a continuing representation, warranty, and covenant):

(a) *Enforceability.* It is validly existing and in good standing under the laws of the state of its organization (to the extent applicable), and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable laws relating to or limiting creditor’s rights generally or by equitable principles relating to enforceability.

(b) *No Consent or Approval.* Except as expressly provided in this Agreement, no consent or approval is required by any other person or entity in order for it to carry out and perform its respective obligations under the Restructuring Transactions.

(c) *Power and Authority.* Except as expressly provided in this Agreement or the Bankruptcy Code, it has all requisite power and authority to enter into this Agreement and to carry out and perform its respective obligations under the Restructuring Transactions. The Parties acknowledge that the Class Action Settlement is subject to the approval of the Bankruptcy Court, and the District Court, as applicable.

(d) *Authorization.* The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action on its part.

(e) *Governmental Consents.* Except as otherwise provided in this Agreement, the execution, delivery, and performance by it of this Agreement does not and shall not require any registration or filing with consent or approval of, or notice to, or other action to, with or by, any federal, state, or other governmental authority or regulatory body.

(f) *No Conflicts.* The execution, delivery, and performance of this Agreement does not and shall not: (i) violate any provision of law, rules, or regulations applicable to it or any of its subsidiaries; (ii) violate its certificate of incorporation, bylaws, or other organizational documents or those of any of its subsidiaries; or (iii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party.

3.02. Insurance Proceeds. The Company represents and warrants, to the Interim CA Counsel that the Company's policy with Chubb is the only insurance policy of the Company that is available to the Class Action Claimants.

Section 4. *Termination Events.*

4.01. Senior Lender and Senior Lender Affiliate Termination Events.

(a) The Senior Lender and the Senior Lender Affiliate may terminate this Agreement upon the occurrence of any of the following events (each, a "Senior Lender Termination Event"):

(i) the breach by the Interim CA Counsel of any of its obligations, representations, warranties, covenants, or commitments set forth in this Agreement, including the commitments set forth in Section 2.01 hereof; or

(ii) a Senior Lender Termination Event is triggered under a similar restructuring support agreement (an "Alternative RSA") executed with a Senior Subordinated Noteholder or the Company.

4.02. Interim CA Counsel Termination and Company Events. The Interim CA Counsel or the Company, as applicable, may terminate this Agreement upon five (5) business days' prior written notice to the other Parties, delivered in accordance with Section 5.11 hereof, upon the breach by the any other Party of the terms of the Class Action Settlement that, to the extent such event, remains uncured for a period of five (5) business days after the receipt by such Parties of notice of such breach.

4.03. Mutual Termination. This Agreement and the obligations of each Party hereunder, may be terminated by mutual agreement among the Parties.

4.04. Effect of Termination.

(a) Upon termination of this Agreement pursuant to Sections 4.01, 4.02, or 4.03, this Agreement shall be of no further force and effect and each Party hereto shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or

otherwise, that it would have been entitled to take had it not entered into this Agreement; *provided, however*, that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder prior to the date of termination and in no event shall such termination relieve Interim CA Counsel from its obligations under Section 2.1(d) or 4.05 hereof or Sections I.3, I.4, and III.2 of Exhibit B.

4.05. Termination Upon the Effective Date of Plan or Final Approval Deadline, Without Class Action Approval. This Agreement shall terminate automatically without any further required action or notice (i) if the Class Action Settlement is approved, on the effective date of the Class Action Settlement, or (ii) if the Class Action Settlement is not approved, on the Final Approval Deadline (the “Termination Date”).

Section 5. Miscellaneous.

5.01. Further Assurances. Subject to the other terms of this Agreement, each Party hereby covenants and agrees to cooperate with each of the other Parties in good faith in connection with, and shall exercise commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the Plan, the Restructuring Transactions, and the Class Action Settlement as well as the negotiation, drafting, execution, and delivery of the definitive documentation relating thereto, and seeking approval of the Class Action Settlement as set forth above. Furthermore, subject to the terms hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by each of the other Parties to carry out the purposes and intent of this Agreement, including making and filing any required regulatory filings (provided, however, that neither the Senior Lender Affiliate nor the Senior Lender shall be required to incur any material cost, expense, or liability in connection therewith), and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement.

5.02. Confidentiality; Disclosure. No Party shall, without the prior written consent of each of the other Parties hereto, make any public announcement or otherwise communicate with any media with respect to this Agreement, any Alternative RSAs, the Restructuring Transactions, or the Plan, other than as may be required by applicable law and regulation or by any governmental or regulatory authority, or the Company. No Party shall use the name of any other Parties in any press release without such other Party’s prior written consent.

5.03. Complete Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, between the Parties with respect thereto. No claim of waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be made against any Party, except on the basis of a written instrument executed by or on behalf of such Party.

5.04. Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties. No rights or obligations of any Party under this Agreement may be assigned or transferred to any other person or entity absent the written consent of each of the other Parties hereto.

5.05. Headings. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

5.06. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM; WAIVER OF TRIAL BY JURY. THIS AGREEMENT IS TO BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in either the United States District Court for the Northern District of Illinois or the United States District Court for the Eastern District of Michigan (including the United States Bankruptcy Court) or any Michigan State court sitting in the City of Detroit (the "Chosen Courts"), and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts; (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts; and (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto; *provided, however*, that when the Company commences the Chapter 11 Case, then the Bankruptcy Court shall be the sole Chosen Court. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5.07. Execution of Agreement. This Agreement may be executed and delivered (by facsimile, electronic mail, or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

5.08. Interpretation. This Agreement is the product of negotiations among the Parties, and in the enforcement or interpretation hereof is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

5.09. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, administrators, and representatives, other than a trustee or similar representative appointed in a bankruptcy case.

5.10. Relationship Among Parties. It is understood and agreed that neither the Senior Lender Affiliate nor the Senior Lender has a fiduciary duty or other duty of trust or confidence in any form with the Company or the Interim CA Counsel or the Class Action Claimants. No prior history, pattern, or practice of sharing confidences among or between the Parties shall in any way affect or negate this understanding and agreement.

5.11. Notices. All notices hereunder shall be deemed given if in writing and delivered, if sent by telecopy, electronic mail, courier or registered or certified mail (return receipt requested) to the following addresses and telecopier numbers (or at such other addresses or telecopier numbers as shall be specified by like notice):

(a) if to the Senior Lender Affiliate or the Senior Lender, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Ray C. Schrock, P.C.
Facsimile: (212) 446-4900
Email address: rschrock@kirkland.com

and

Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
Attn: Jeffrey D. Pawlitz
Facsimile: (312) 862-2200
Email address: jpawlitz@kirkland.com

(b) if to the Company, to:

Groeb Farms, Inc.
8 10464 Bryan Highway
Onsted, MI 49265
Attn: Jack M. Irvin, Jr.
Facsimile No.: (517) 467-2840
Email address: (517) 467-8002

with copies (which shall not constitute notice) to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, MI 48226
Attention: Judy A. O'Neill, Esq.
Facsimile: (313) 234-2800
Email addresses: joneill@foley.com

(c) if to the Class Action Claimants, to:

Grant & Eisenhofer P.A.

30 North LaSalle Street, Suite 1200
Chicago, IL 60602
Attention: Adam J. Levitt, Esq.
Facsimile: (312) 214-0001
Email address: alevitt@gelaw.com

and

Hausfeld LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Attention: James J. Pizzirusso, Esq.
Facsimile: (202) 504-7201
Email address: jpizzirusso@hausfeldllp.com

Any notice given by delivery, mail, or courier shall be effective when received. Any notice given by telecopier shall be effective upon oral or machine confirmation of transmission.

5.12. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason (other than Section 4.05 hereof), each Party fully reserves any and all of its rights and remedies.

5.13. Specific Performance. It is understood and agreed by each Party that money damages would be an insufficient remedy for any breach of this Agreement, and any non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring the breaching Party to comply promptly with any of its obligations hereunder.

5.14. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

5.15. No Third-Party Beneficiaries. This Agreement shall be solely for the benefit of the Parties, and no other person or entity shall be a third-party beneficiary hereof, other than the Class Action Claimants.

5.16. Expense Reimbursement. Regardless of whether the Restructuring Transactions are consummated, the Company shall promptly pay in cash upon demand any and all reasonable and documented accrued and unpaid out-of-pocket expenses incurred by the Senior Lender Affiliate and the Senior Lender (including, without limitation, all reasonable and documented fees and out-of-pocket expenses of the legal counsel to the Senior Lender Affiliate and the Senior Lender, Kirkland & Ellis LLP and Pepper Hamilton LLP in connection with the

negotiation, documentation, and consummation of this Agreement, the Plan, the Solicitation Materials, and all other documents related to the Plan and the Restructuring Transactions.

5.17. Reservation. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each Party to protect and preserve its rights, remedies, and interests, including, without limitation, its claims against any of the other Parties (or their respective affiliates or subsidiaries).

5.18. No Solicitation; Representation by Counsel; Adequate Information.

(a) This Agreement is not and shall not be deemed to be a solicitation for votes in favor of the Plan in the Chapter 11 Case. The acceptances of the Parties with respect to the Plan will not be solicited until such Party has received the Solicitation Materials and related ballots.

(b) Each Party acknowledges that it is a sophisticated party and has had an opportunity to receive information from the Company and that it has been represented by competent counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.


(c) The Senior Lender Affiliate acknowledges, agrees, and represents to the other Parties that it has such knowledge and experience in financial and business matters that the Senior Lender Affiliate is capable of evaluating the merits and risks of the securities to be acquired by it pursuant to the Restructuring Transactions and understands and is able to bear any economic risks with such investment.

5.19. Amendments. This Agreement may not be modified, amended, or supplemented except in writing signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

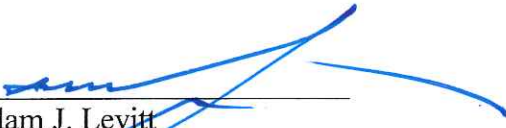
[signature pages follow]

Signature Page to the Restructuring Support Agreement


James J. Pizzirusso
Interim Co-Lead Counsel
Hausfeld LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
(202) 504-7200

On behalf of the Class

Signature Page to the Restructuring Support Agreement



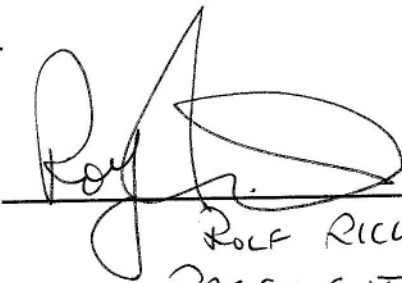
Adam J. Levitt
Interim Co-Lead Counsel
Grant & Eisenhofer P.A.
30 North LaSalle Street, Suite 1200
Chicago, Illinois 60602
(312) 214-0000

On behalf of the Class

Signature Page to the Restructuring Support Agreement

GROEB FARMS, INC.

By:
Name:
Title:



ROLF RICHTER
PRESIDENT AND CEO

Signature Page to the Restructuring Support Agreement

HONEY FINANCING COMPANY, LLC

By:

Name:

Title:



ROBERT STRAUSS

MANAGING DIRECTOR

HC CAPITAL HOLDINGS 0909A, LLC

By:

Name:

Title:



ROBERT STRAUSS

MANAGING DIRECTOR

EXHIBIT A

PLAN

)	
In re:)	Chapter 11
)	
GROEB FARMS, INC.)	Case No. 13-(_____)
)	
Debtor.)	Tax I.D. No. 38-2778390
)	

Judy A. O'Neill (P32142)
John A. Simon (P61866)
Tamar N. Dolcourt (P73425)
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One Detroit Center
500 Woodward Avenue, Suite 2700
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Facsimile: (313) 234-2800
*Proposed Counsel for the Debtor and
Debtor in Possession*

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INTRODUCTION

Groeb Farms, Inc. (the “Debtor”) proposes this plan of reorganization (together with the documents comprising the Plan Supplement, the “Plan”) for the resolution of outstanding Claims against, and Interests in, the Debtor. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtor’s history, business, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of the Plan. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

As used in this Plan, capitalized terms have the meanings set forth below.

1. “*Accrued Professional Compensation*” means, at any given time, all accrued, contingent, and/or unpaid fees and expenses (including success fees) for legal, financial advisory, accounting, and other services and reimbursement of expenses that are: (a) awardable and allowable under sections 328, 330, or 331 of the Bankruptcy Code or otherwise rendered allowable before the Effective Date by any retained estate Professional in the Chapter 11 Case, (b) owing to Kirkland & Ellis or Pepper Hamilton, or (c) awardable and allowable under section 503 of the Bankruptcy Code, that the Court has not otherwise denied by Final Order; all to the extent that any such fees and expenses have not been previously paid (regardless of whether a fee application has been filed for any such amount) and after applying any retainer that has been provided to such Professional. To the extent that the Court or any higher court of competent jurisdiction denies or reduces by a Final Order any amount of a Professional’s fees or expenses, then those reduced or denied amounts shall no longer constitute Accrued Professional Compensation. For the avoidance of doubt, Accrued Professional Compensation includes unbilled fees and expenses incurred on account of services provided by Professionals that have not yet been submitted for payment, except to the extent that such fees and expenses are either denied or reduced by a Final Order by the Court or any higher court of competent jurisdiction.

2. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Debtor’s Estates pursuant to sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtor, (b) Allowed Fee Claims; (c) amounts owing pursuant to the DIP Order, and (e) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

3. “*Administrative Claims Bar Date*” means the first Business Day that is 45 days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

4. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

5. “*Allowed*” means with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest that is evidenced by a Proof of Claim or Proof of Interest, as applicable, Filed by the applicable Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the Court a Proof of Claim is or shall not be required to be Filed), (b) a Claim or Interest that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim or Proof of Interest, as applicable, has been timely Filed, or (c) a Claim or Interest Allowed pursuant to the Plan or a Final Order of the Court; *provided, however*, that with respect to a Claim or Interest described in clauses (a) and (b) above, such Claim or Interest, as applicable, shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Court, or such an objection is so interposed by the Debtor or the General Unsecured Claims Litigation Trustee, as applicable, and the Claim or Interest, as applicable, shall have been Allowed for voting purposes only by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

6. “*Approved*” means, with respect to the Class Action Settlement, that the Insurer has agreed to pay the Class Action Settlement Amount and the Bankruptcy Court and a United States District Court has approved the Class Action Settlement on a final basis.

7. “*Available Insurance Proceeds*” means any applicable insurance proceeds to which the Debtor is entitled under its past and present insurance policies.

8. “*Avoidance Actions*” means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtor arising under chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code.

9. “*Bankruptcy Code*” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Case.

10. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Court.

11. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

12. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

13. “*Causes of Action*” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, and usury; and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any state or foreign law fraudulent transfer or similar claim; (f) any cause of action listed on the list of retained causes of action set forth in the Plan Supplement; (g) all Transshipping Claims; and (h) any cause of action described on the Debtor’s Schedules or Statement of Financial Affairs. .

14. “*Chapter 11 Case*” means the case pending for the Debtor under chapter 11 of the Bankruptcy Code in the Court.

15. “*Claim*” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.
16. “*Claims Bar Date*” means: (a) with respect to Governmental Units holding Claims that arose prior to the Petition Date, March 30, 2014, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, and (b) with respect to all General Unsecured Claims arising prior to the Petition Date, as well as Claims arising under section 503(b)(9) of the Bankruptcy Code, November 4, 2013, at 5:00 p.m., prevailing Pacific Time, or such other date established by the Court by which Proofs of Claims must have been Filed, in each case as set forth in further detail in the Claims Bar Date Order.
17. “*Claims Bar Date Order*” means the an order granting the relief set forth in the *Debtor’s First Day Motion for an Order Establishing Bar Date for Filing Proofs of Claim, Including 503(b)(9) Claims and Approving the Form and Manner of Notice Thereof*.
18. “*Claims Objection Deadline*” means the deadline for objecting to a Claim, which shall be on the date that is the later of: (a) 180 days after the Effective Date, and (b) such other period of limitation as may be specifically fixed by the Debtor or the Reorganized Debtor, as applicable, or by an order of the Court for objecting to such Claims.
19. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.
20. “*Class*” means a category of holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.
21. “*Class Action*” means the prepetition uncertified class action lawsuits pending against the Debtor, captioned *Adee Honey Farms et al. v. Groeb Farms, Inc. et al.*, Case No. 13-cv-02922 (JBG), and *Moore’s Honey Farm, et al. v. Groeb Farms, Inc.*, et al., Case No. 1:13-cv-02905, which have been consolidated in the United States District Court for the Northern District of Illinois, and which shall constitute Other General Unsecured Claims unless and until the Class Action Settlement is Approved.
22. “*Class Action Claim*” means a Claim arising on account of the Class Action.
23. “*Class Action Settlement*” means a settlement pursuant to which holders of Class Action Claims shall be entitled to receive the Class Action Settlement Amount, provided that the settlement has been Approved.
24. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code, if any.
25. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.
26. “*Confirmation Date*” means the date upon which the Court enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules 5003 and 9021.
27. “*Confirmation Hearing*” means the hearing held by the Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.
28. “*Confirmation Order*” means a Final Order of the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which order shall be in form and substance acceptable to the Senior Lender Affiliate.
29. “*Consummation*” means the occurrence of the Effective Date.
30. “*Convenience Class Distribution*” means a distribution in Cash to satisfy in full the Unsecured Convenience Class Claims; *provided* that such distribution shall not exceed \$250,000.

31. “*Court*” means the United States Bankruptcy Court for the Eastern District of Michigan having jurisdiction over the Chapter 11 Case, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Eastern District of Michigan.

32. “*Cure Claim*” means a monetary Claim based upon the Debtor’s defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtor pursuant to section 365 of the Bankruptcy Code.

33. “*Cure Notice*” means a notice of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include: (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases, (b) Cure Claims to be paid in connection therewith, and (c) procedures for resolution by the Court of any related disputes.

34. “*Debtor*” has the meaning set forth in the Introduction.

35. “*Deferred Prosecution Agreement*” means that certain agreement by and between the United States Attorney’s Office for the Northern District of Illinois and Groeb Farms, dated as of February 11, 2013, including all attachments thereto.

36. “*DIP Agreement*” means that certain senior secured debtor-in-possession financing agreement, dated as of October [REDACTED], 2013, by and among the Debtor and the DIP Lenders, as amended, supplemented, or otherwise modified from time to time.

37. “*DIP Facility*” means the DIP Agreement, together with related loan, security, collateral, and other documents.

38. “*DIP Facility Claims*” means those claims arising under the DIP Agreement, including any accrued but unpaid interest and fees due and owing under the DIP Agreement as of the Effective Date pursuant to the terms of the DIP Agreement, the DIP Order, and/or any related documents.

39. “*DIP Lender*” means the Senior Lender, or an affiliate thereof, including but not limited to the Senior Lender Affiliate, as well as any successors or assigns, as permitted under the DIP Facility.

40. “*DIP Order*” means the Final Order entered by the Court approving the DIP Facility and authorizing and directing the Debtor to enter into the DIP Facility.

41. “*Disallowed*” means, with respect to any Claim or Interest, a Claim or Interest or any portion thereof that: (a) has been disallowed by a Final Order, (b) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (c) is not Scheduled and as to which no Proof of Claim or Proof of Interest or request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court or otherwise deemed timely filed under applicable law or this Plan, (d) has been withdrawn by agreement of the applicable Debtor and the holder thereof, or (e) has been withdrawn by the holder thereof.

42. “*Disclosure Statement*” means the *Disclosure Statement for the Plan of Reorganization of Groeb Farms, Inc. Pursuant to Chapter 11 of the Bankruptcy Code*, filed on the Petition Date, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

43. “*Disputed*” means a Claim or Interest that is not yet Allowed.

44. “*Disputed Claim Amount*” means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim, (ii) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, or (iii) if a request for estimation is Filed by any party, the amount at which such Disputed Claim is estimated by the Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim: (i) an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and the holder of such Disputed Claim, (ii) the amount estimated by the Court with respect to such Disputed Claim, (iii) the amount estimated in good faith by the Debtor or Reorganized Debtor, as applicable, with respect to the Disputed Claim; or (c) zero, if the Disputed Claim was listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was Filed, or deemed to have been Filed, by the applicable Claims Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Court.

45. “*Effective Date*” means, with respect to the Plan, the date that is a Business Day selected by the Debtor and the Senior Lender Affiliate on which: (a) no stay of the Confirmation Order is in effect, (b) all conditions precedent specified in Article X.B have been satisfied or waived (in accordance with Article X.C), and (c) the Plan is declared effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

46. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

47. “*Estate*” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

48. “*Exculpated Claim*” means any Claim related to any act or omission derived from, based upon, related to, or arising from the Debtor’s in or out-of-court restructuring efforts, the Chapter 11 Case, the marketing process, formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including any term sheets related thereto), or any contract, instrument, release, or other agreement or document created or entered into in connection with the marketing process, the Disclosure Statement, the Plan, the filing of the Chapter 11 Case, the pursuit of Consummation, and the administration and implementation of the Chapter 11 Cases and the Plan, including (a) the Restructuring Support Agreement, (b) the issuance of the New Equity, (c) the execution, delivery, and performance of the Exit Facility Documents, and (d) the distribution of property under the Plan or any other agreement; *provided, however*, the foregoing shall not be deemed to release, affect, or limit any of the rights and obligations of the Exculpated Parties from, or exculpate the Exculpated Parties with respect to, any of the Exculpated Parties’ obligations or covenants arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

49. “*Exculpated Parties*” means each of the following in their capacity as such: (a) the Senior Lender, (b) the Senior Lender Affiliate, (c) the DIP Lender, (d) the Committee, (e) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date, (f) each holder of Class 5A Claims that executes a New Trade Agreement, subject to any reservations on Claims and/or Causes of Action to the extent set forth in the Plan or the Plan Supplement, (g) twith respect to the Debtor, the Reorganized Debtor, and each of the foregoing entities in clauses (a) through (g), such Person’s current equity holders, including shareholders, partnership interest holders, and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case, solely in their capacity as such);.

50. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

51. “*Existing Equity Interests*” means any equity interest in the Debtor in existence as of the Effective Date. For the avoidance of doubt, Existing Equity Interests do not include interest in New Equity.

52. “*Exit Facility*” means the new senior secured lending facility that the Reorganized Debtor will enter into on the Effective Date, the form of which shall be included in the Plan Supplement.

53. “*Exit Facility Documents*” means the documents evidencing the Exit Facility.

54. “*Exit Fees*” mean the fees payable under the Exit Facility Documents.

55. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Petition Date, compounded annually.

56. “*Fee Claim*” means a Claim for Accrued Professional Compensation; *provided, however*, that any Fee Claim for fees and expenses incurred by Kirkland & Ellis or Pepper Hamilton shall be Allowed without the Filing by such Professionals of any final request for payment.

57. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Case with the Court or, with respect to the filing of a Proof of Claim or Proof of Interest, the Notice and Claims Agent.

58. “*Final Order*” means an order or judgment of the Court (or any other court of competent jurisdiction) entered by the Clerk of the Court (or any other court) on the docket in the Chapter 11 Case (or the docket of such other court), which has not been reversed, stayed, modified, amended, or vacated, and as to which: (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or motion for new trial, stay, reargument, or rehearing shall be pending, or (b) if an appeal, writ of certiorari, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with rule 8002 of the Bankruptcy Rules; *provided, however*, that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order; *provided further*, that the Senior Lender Affiliate may agree in its sole discretion to waive the requirement that a particular order be a Final Order.

59. “*First Day Declaration*” means the *Declaration of Jack Irvin, Jr. in Support of Chapter 11 Petition and First Day Pleadings*.

60. “*General Unsecured Claim*” means any Claim against the Debtor that is not: (a) an Administrative Claim, (b) a Priority Tax Claim, (c) an Other Priority Claim, (d) an Other Secured Claim, (e) a Senior Loan Claim, (f) a Senior Subordinated Note Claim, (g) a DIP Facility Claim, or (h) a Section 510(b) Claim. General Unsecured Claims specifically include the Junior Subordinated Note Claims and the Seller Note Claims.

61. “*General Unsecured Claims Litigation Trust*” means the trust established for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the General Unsecured Claims Litigation Trust Agreement.

62. “*General Unsecured Claims Litigation Trust Agreement*” means the trust agreement that, among other things, establishes the General Unsecured Claims Litigation Trust, and describes the powers, duties, and responsibilities of the General Unsecured Claims Litigation Trustee, which trust agreement shall be substantially in the form included in the Plan Supplement, in form and substance reasonably acceptable to the Debtor and the Committee, and acceptable to the Senior Lender Affiliate.

63. “*General Unsecured Claims Litigation Trust Assets*” means the General Unsecured Claims Litigation Trust Payment, the General Unsecured Claims Litigation Trust Causes of Action, and all proceeds of the foregoing.

64. “*General Unsecured Claims Litigation Trust Beneficiaries*” means, collectively, the holders of General Unsecured Claims Litigation Trust Interests.

65. “*General Unsecured Claims Litigation Trust Causes of Action*” means any and all actual or potential Avoidance Actions and Causes of Action, exclusive of: (a) any of the foregoing that are released under the Plan; and (b) those Causes of Action (including Avoidance Actions) directly arising from or pertaining to contracts or relationships holders of Trade Claims.

66. “*General Unsecured Claims Litigation Trust Distributable Proceeds*” means all actual proceeds of the General Unsecured Claims Litigation Trust Causes of Action.

67. “*General Unsecured Claims Litigation Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Debtor or the Committee (or any designee thereof, including the General Unsecured Claims Litigation Trustee) on account of administration of the General Unsecured Claims Litigation Trust, including any reasonable administrative fees and expenses, reasonable attorney’s fees and expenses, reasonable insurance fees, taxes, and reasonable escrow expenses.

68. “*General Unsecured Claims Litigation Trust Interests*” means the non-transferable interests in the General Unsecured Claims Litigation Trust, distributions of which will be made to holders of certain Allowed General Unsecured Claims in accordance with Article III.C.5.

69. “*General Unsecured Claims Litigation Trust Payment*” means a one-time, non-refundable payment of \$50,000 in Cash to be provided by the Debtor or the Reorganized Debtor (through the Exit Facility) to the General Unsecured Claims Litigation Trust on the Effective Date, which payment shall be used either (i) to fund a distribution to holders of General Unsecured Claims Litigation Trust Interests, (ii) to provide funding in connection with the investigation and/or prosecution of the General Unsecured Claims Litigation Trust Causes of Action, and/or (iii) for such other purposes determined by the General Unsecured Claims Litigation Trustee in its sole discretion and consistent with the General Unsecured Claims Litigation Trust Agreement and applicable law.

70. “*General Unsecured Claims Litigation Trustee*” means the Person identified in the Plan Supplement to serve as the trustee of the General Unsecured Claims Litigation Trust and any successor thereto appointed pursuant to the General Unsecured Claims Litigation Trust Agreement.

71. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

72. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Unimpaired.

73. “*Indemnification Provision*” means the Debtor’s indemnification provisions currently in place (whether in the by-laws, certificates of incorporation, board resolutions, indemnification agreements, contracts or employment contracts) for the current directors, officers, and employees of the Debtor.

74. “*Insurer*” means Chubb Group of Insurance Companies.

75. “*Intercreditor Agreement*” means (i) that certain Intercreditor Agreement, dated as of January 30, 2012, by and among Wells Fargo Bank, National Association, on one hand, and Marquette Capital Fund I, LP, Argosy Investment Partners III, L.P., and Horizon Capital Partners III, L.P., on the other hand, and the other loan parties from time to time party thereto, governing, among other things, the respective rights, remedies, and priorities of Claims and Liens held by such parties, or any similar or related agreement (and as the same may have been modified, amended, or restated), for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, (ii) that certain Subordination Agreement, dated as of January 30, 2012, by and among Ernest L. Groeb, as shareholders’ representative under the stock purchase agreement, and Wells Fargo Bank, National Association, for which the interest of Wells Fargo Bank, National Association, has been assigned to Senior Lender pursuant to a Loan Purchase Agreement, and (iii) any other applicable intercreditor agreements.

76. “*Interests*” means the common stock, limited liability company interests, and any other equity, ownership, or profits interests of the Debtor and options, warrants, rights, or other securities or agreements to acquire the common stock, limited liability company interests, or other equity, ownership, or profits interests of the Debtor (whether or not arising under or in connection with any employment agreement).

77. “*Interim Compensation Order*” means an order by the Bankruptcy Court establishing interim compensation procedures for Professionals (other than Kirkland & Ellis and Pepper Hamilton).

78. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

79. “*Junior Subordinated Notes*” means approximately \$1.5 million in issued and outstanding notes pursuant to that certain 8% junior subordinated note by and between GF Acquisition, Inc., and Ernest L. Groeb, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time).

80. “*Junior Subordinated Note Claims*” means any Claim arising under the Junior Subordinated Notes, which shall be treated as unsecured creditors under the Plan, as a result of the collateral securing such Claims having insufficient value to secure any of the Claim..

81. “*Kirkland & Ellis*” means Kirkland & Ellis LLP, counsel to the DIP Lender, the Senior Lender, and the Senior Lender Affiliate.

82. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

83. “*Management Incentive Plan*” means that certain post-Effective Date management incentive plan (acceptable to the Senior Lender Affiliate), the terms of which shall be set forth in the Plan Supplement.

84. “*New Board*” means the initial board of directors of the Reorganized Debtor, each of whom shall be acceptable to the Senior Lender Affiliate and disclosed in advance of the Confirmation Hearing in accordance with section 1129(a)(5) of the Bankruptcy Code.

85. “*New Equity*” means the equity in the Reorganized Debtor issued pursuant to the Plan, the terms of which shall be governed by the New Organizational Documents.

86. “*New Equity Distribution Calculation*” means the following calculation, which shall be utilized to determine allocation of 100% of the New Equity between DIP Facility Claims and Senior Loan Claims: holders of DIP Facility Claims shall receive a percentage of the New Equity equal to the ratio of \$7 million divided by the aggregate sum of (i) \$7 million and (ii) the Senior Loan Claims. Holders of Senior Loan Claims shall receive the remaining New Equity after taking into account the distribution of New Equity to holders of DIP Facility Claims.

87. “*New Intercreditor Agreement*” means the intercreditor agreement that will govern the relationship between the Exit Facility and the New Subordinated Notes, a form of which shall be included in the Plan Supplement, and the terms of which shall be acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

88. “*New Organizational Documents*” means the form of the certificates or articles of incorporation, bylaws, or such other applicable formation documents of the Reorganized Debtor (reasonably acceptable to the Senior Lender Affiliate), which forms shall be included in the Plan Supplement.

89. “*New Subordinated Notes*” means the notes that the Reorganized Debtor shall cause to be issued on the Effective Date to holders of Senior Subordinated Note Claims (and ancillary documents, including a security agreement), the form of which shall be set forth in the Plan Supplement, and the terms of which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

90. “*New Trade Agreement*” means a uniform trade agreement reasonably acceptable to the Debtor and the Senior Lender Affiliate, a form of which shall be included in the Plan Supplement.

91. “*New Trade Terms*” means the terms of a New Trade Agreement.

92. “*New Warrants*” means the warrants that the Reorganized Debtor shall cause to be issued on the Effective Date for 13% of New Equity of the Reorganized Debtor, subject to the terms set forth in the Plan Supplement, which shall be reasonably acceptable to the Senior Lender Affiliate and the Senior Subordinated Noteholders that execute a Restructuring Support Agreement (that is not terminated prior to the Effective Date).

93. “*Notice and Claims Agent*” means Kurtzman Carson Consultants, LLC.

94. “*Opt-Out Claim*” means a Class Action Claim of a holder that elects to opt-out of the Class Action Settlement in the event the Class Action is certified pursuant to Bankruptcy Rule 7023(b)(3) or Fed. R. Civ. P. 23(b)(3), as applicable.

95. “*Other General Unsecured Claims*” means General Unsecured Claims that are not Trade Claims, including, without limitation, Junior Subordinated Note Claims, Seller Note Claims, Opt-Out Claims, and, except as set forth in Article I.21 hereof, Class Action Claims.

96. “*Other Priority Claim*” means any allowed Claim against the Debtor entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim (including a DIP Facility Claim); or (b) a Priority Tax Claim, to the extent such claim has not already been paid during the Chapter 11 Case.

97. “*Other Secured Claim*” means any Secured Claim against the Debtor that is not: (a) a DIP Claim, (b) a Senior Loan Claim, or (c) a Senior Subordinated Note Claim.

98. “*Pepper Hamilton*” means Pepper Hamilton LLP.

99. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

100. “*Petition Date*” means September 30, 2013, the date on which the Debtor’s Chapter 11 Case commenced.

101. “*Plan*” has the meaning set forth in the Introduction.

102. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan (acceptable to the Senior Lender Affiliate and as amended, supplemented, or modified from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules), to be Filed seven (7) days before the Voting Deadline, and additional documents or amendments to previously Filed documents, Filed before the Effective Date as amendments to the Plan Supplement, including the following, as applicable: (a) New Organizational Documents, (b) the Exit Facility Documents, (c) Schedule of Assumed Executory Contracts and Unexpired Leases, (d) the General Unsecured Claims Litigation Trust Litigation Trust Agreement, (e) a list of retained Causes of Action, (f) the Management Incentive Plan, (g) a document listing the members of the New Boards, (h) the New Intercreditor Agreement; (i) the New Subordinated Notes, (j) the New Warrants; and (k) the New Trade Agreement. The Debtor shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date with the consent of the Senior Lender Affiliate; *provided, however*, that with respect to items (h), (i), and (j), any amendments must be reasonably satisfactory to holders of Senior Subordinated Note Claims that execute a Restructuring Support Agreement (that has not been terminated prior to the Effective Date).

103. “*Priority Claims*” means Priority Tax Claims and Other Priority Claims.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Pro Rata*” means the proportion that an Allowed Claim or Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that respective Class, or the proportion that Allowed Claims or Allowed Interests in a particular Class bear to the aggregate amount of Allowed Claims or Allowed Interests in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim or Allowed interests under the Plan.

106. “*Professional*” means an Entity: (a) employed pursuant to a Court order in accordance with sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code, or (b) Kirkland & Ellis LLP and Pepper Hamilton LLP.

107. “*Professional Fee Account*” means an interest-bearing account to hold and maintain an amount of Cash equal to the Professional Fee Amount funded by the Debtor not later than two (2) Business Days prior to the Effective Date, solely for the purpose of paying all remaining Allowed and unpaid Fee Claims. Such Cash shall remain subject to the jurisdiction of the Court.

108. “*Professional Fee Amount*” means the aggregate unpaid Fee Claims through the Effective Date as estimated in accordance with Article II.B.

109. “*Proof of Claim*” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

110. “*Proof of Interest*” means a proof of Interest Filed in the Debtor in the Chapter 11 Case.

111. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

112. “*Released Party*” means each of the following, each in their capacity as such: (a) the Senior Lender; (b) the Senior Lender Affiliate; (c) the DIP Lender; (d) holders of Senior Subordinated Note Claims that execute an Restructuring Support Agreement that has not been terminated as of the Effective Date; (e) the Committee; (f) the Exit Facility Lender; (g) with respect each of the foregoing entities in clauses (a) through (f) such person’s current and former shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns (in each case in their capacity as such); and (h) the Debtor and the Reorganized Debtor and each of their respective current shareholders, affiliates, partners, subsidiaries, members, officers, directors, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

113. “*Reorganized Debtor*” means the Debtor on and after the Effective Date.

114. “*Restructuring Support Agreement*” means each Restructuring Support Agreement, as amended, supplemented, or otherwise modified from time to time, copies of which are attached as exhibits to the First Day Declaration.

115. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means the schedule (including any amendments or modifications thereto) of certain Executory Contracts and Unexpired Leases to be assumed by the Debtor pursuant to the Plan, as set forth in the Plan Supplement, as amended from time to time prior to the Confirmation Date.

116. “*Schedules*” means, to the extent required, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

117. “*Section 510(b) Claims*” means any Claims arising from (a) rescission of a purchase or sale of a security of the Debtor, (b) purchase or sale of such a security, or (c) reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim, which for the avoidance of doubt shall not include Senior Subordinated Note Claims or Junior Subordinated Note Claims.

118. “*Secured*” means when referring to a Claim, a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

119. “*Secured Tax Claims*” means any Secured Claim against the Debtor that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

120. “*Security*” shall have the meaning set forth in section 101(49) of the Bankruptcy Code.

121. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, as amended, or any similar federal, state or local law.

122. “*Seller Note*” means the unsecured note in favor of the Olesanik Family Living Trust with a current outstanding balance in the approximate amount of \$423,762, which was assumed by the Debtor prior to the Petition Date.

123. “*Seller Note Claims*” means Claims arising on account of the Seller Note.¹

124. “*Senior Lender*” means HC Capital Holding 0909A, LLC.

125. “*Senior Lender Affiliate*” means Honey Financing Corporation.

126. “*Senior Loan Agreement*” means that certain Credit and Security Agreement by and between the Debtor, as borrower, and the Senior Lender, as lender and successor to Wells Fargo Bank, National Association, dated as of January 30, 2012, including payment on account of any accrued but unpaid interest (including at the default contract rate, as applicable) (as amended, restated, supplemented, or otherwise modified from time to time).

127. “*Senior Loan Claims*” means any Claim arising under the Senior Loan Agreement.

128. “*Senior Loan Facility*” means the Senior Loan Agreement, together with related loan, security, collateral, and other documents.

129. “*Senior Subordinated Notes*” means approximately \$7.0 million in issued and outstanding notes claims pursuant to those certain 12% senior subordinated debentures by and among the Debtor and Miller’s American Honey, Inc., on one hand, and Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, on the other hand, due March 16, 2014 (as amended, restated, supplemented, or otherwise modified from time to time), plus all accrued and unpaid interest due as of the Petition Date.

130. “*Senior Subordinated Note Claims*” means any Claim arising under the Senior Subordinated Notes.

¹ 4.1.1 Cap summary chart shows \$440,000 outstanding as of 7/31/13.

131. “*Trade Claim*” means a General Unsecured Claim that arises on account of products or services provided to the Debtor on an ongoing basis with which the Debtor will continue to conduct business with during the Chapter 11 Case and after the Effective Date.

132. “*Trade Claim Distribution*” means the distribution made to holders of Trade Claims in amount equal to 40% in an Allowed amount of the Trade Claim, pursuant to a New Trade Agreement.

133. “*Transshipping Claim*” means any Claim in favor of the Debtor arising from transshipping, any Claim in favor of the Debtor arising from the facts set forth in the Deferred Prosecution Agreement, or any Claim in favor of the Debtor arising from the facts set forth in the Information filed with the Deferred Prosecution Agreement.

134. “*U.S. Trustee*” means the Office of the United States Trustee for the Eastern District of Michigan.

135. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

136. “*Unexpired Lease*” means a lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

137. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in cash.

138. “*Unsecured Convenience Class Claim*” means any Allowed General Unsecured Claim, other than Trade Claims that receive treatment pursuant to Article III.C.5(b)(i) that is \$7,500 or less.

139. “*Voting Deadline*” means [December 13], 2013 at 5:00 p.m., prevailing Eastern Time.

B. Rules of Interpretation

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under the Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Case, unless otherwise stated; (13) references to “Proofs of Claim” and “Holders of Claim” shall include “Proofs of Interest” and “Holders of Interests” as applicable; and (14) any immaterial effectuating provisions may be interpreted by the Reorganized Debtor in such a manner that is consistent with the overall purpose and intent of the Plan all without further Court order.

C. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of Michigan, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate or limited liability company governance matters; *provided that* corporate or limited liability company governance matters relating to the Debtor or the Reorganized Debtor, as applicable, not incorporated or formed (as applicable) in Michigan shall be governed by the laws of the state of incorporation or formation (as applicable) of the Debtor or Reorganized Debtor.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. Reference to the Debtor or the Reorganized Debtor

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtor or the Reorganized Debtor shall mean the Debtor and the Reorganized Debtor, as applicable, to the extent the context requires.

G. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

ARTICLE II.

DIP FACILITY CLAIMS, ADMINISTRATIVE CLAIMS, AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Except with respect to Administrative Claims that are Fee Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Case or a holder of an Allowed Administrative Claim and the Debtor agree to less favorable treatment with respect to such holder's Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; *provided, however*, that Allowed Administrative Claims that arise in the ordinary course of the Debtor's businesses shall be paid in the ordinary course of business, in accordance with

the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between the holder of such Allowed Administrative Claim and the Debtor or the Reorganized Debtor, as the case may be. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order. For purposes of this Plan, all Administrative Claims arising or granted under the DIP Order shall be deemed Allowed by Final Order.

Except as otherwise provided in this Article II.A or any prior applicable Court order, and except with respect to Administrative Claims that are Fee Claims or DIP Facility Claims, requests for payment of Allowed Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Allowed Administrative Claims by such date that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be Filed and served on the Reorganized Debtor and the requesting party no later than 30 days after the Administrative Claims Bar Date.

B. Professional Compensation

1. Applications for and Payment of Fee Claims.

In accordance with this Article II.B, on the Effective Date, the Debtor shall establish the Professional Fee Account. The Debtor shall fund the Professional Fee Account with Cash in the amount of the aggregate Professional Fee Amount (which amount, for clarity, shall include only unpaid and outstanding Fee Claims) for all Professionals. The Professional Fee Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtor's Estates except as otherwise provided in Article II.B.2 of the Plan.

To receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall provide an estimate of their Fee Claims before and as of the Effective Date and shall deliver such estimate to the Debtor and Senior Lender Affiliate no later than five (5) Business Days prior to the intended Effective Date. If a Professional does not provide an estimate, the Debtor, with the consent of the Senior Lender Affiliate, may estimate the unbilled fees and expenses of such Professional and such estimate will be used to establish the Professional Fee Amount attributable to that Professional. The total amount so estimated shall be the Professional Fee Amount.

2. Final Fee Applications and Payment of Fee Claims.

All final requests for payment of Fee Claims of Kirkland & Ellis and Pepper Hamilton shall be paid upon presentation to the Debtor or Reorganized Debtor from the Professional Fee Account without the need for Filing of any final request for payment. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Court orders, the Allowed amounts of Fee Claims for Professionals (other than the Fee Claims of Kirkland & Ellis and Pepper Hamilton) shall be determined by the Court. The amount of Fee Claims owing to Professionals shall be paid in Cash to Professionals (other than Kirkland & Ellis and Pepper Hamilton) from funds held in the Professional Fee Account when such Fee Claims are Allowed by a Final Order. To the extent that funds held in the Professional Fee Account are unable to satisfy the amount of Fee Claims owing to the Professionals, any Professional whose estimate was lower than the Allowed amount of its Fee Claims shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II. After all Allowed Fee Claims have been paid in full to the extent required by Article II.B.2, any excess amounts in the Professional Fee Account shall be returned to or transferred to the Reorganized Debtor.

3. Post-Effective Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtor or the Reorganized Debtor, as applicable, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, shall pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by the Reorganized Debtor.

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court.

C. DIP Facility Claims

Except to the extent that a holder of an Allowed DIP Facility Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed DIP Facility Claim, each such holder shall receive (i) its Pro Rata share of the New Equity based on the New Equity Distribution Calculation in satisfaction of \$7 million of DIP Facility Claims and (ii) payment in full, in Cash, on the Effective Date or as soon as reasonably practicable after the Effective Date; *provided, however*, that to the extent the Commitment Fee (as defined in the DIP Agreement) has previously been paid and included as part of the DIP Facility Claim, an amount equal to the Commitment Fee shall be waived by the DIP Lender and the Allowed DIP Facility Claim, as set forth in Article III(B) below, shall be reduced by such amount to reflect the waiver.

D. Priority Tax Claims

The legal and equitable rights of the holders of Priority Tax Claims are Unimpaired under the Plan. Unless the holder of such Claim and the Debtor agree to a different treatment, holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed, in the ordinary course of the Debtor's business, consistent with past practice; *provided, however*, that in the event the balance of any such Claim becomes due during the pendency of this Chapter 11 Case and remains unpaid as of the Effective Date, the holder of such Claim shall be paid in full in Cash on the Effective Date. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Classification of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, except for Fee Claims, Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such Claim or Interest has not been paid, released, withdrawn or otherwise settled before the Effective Date.

The categories of Claims and Interests set forth below classify all Claims against and Interests in the Debtor for all purposes of this Plan. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. The treatment with respect to each Class of Claims and Interests provided for in this Article III shall be in full and complete satisfaction, release and discharge of such Claims and Interests.

B. Summary of Classification

A creditor that holds multiple Claims against the Debtor, all of which Claims are based upon or relate to the same or similar indebtedness or obligations, whether by reason of guarantee, indemnity agreement, joint and several liability or otherwise, shall be deemed to have only one Claim against the Estate in an amount equal to the largest of all such similar Allowed Claims, solely for the purposes of distributions under the Plan. For purposes of voting on the Plan, any Creditor holding such similar Claims against the Debtor may only vote the largest of all such similar Allowed Claims; *provided, however*, that this provision shall not prohibit the bifurcation of Claims among Classes pursuant to section 506(a) of the Bankruptcy Code, nor shall this provision apply to bifurcated Claims.

The categories of Claims and Interests are classified for all purposes, including voting, confirmation, and distribution, pursuant to the Plan as follows:

Class	Claim/Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Senior Loan Claims	Impaired	Entitled to Vote
4	Senior Subordinated Note Claims	Impaired	Entitled to Vote
5A	Trade Claims	Impaired	Entitled to Vote
5B	Other General Unsecured Claims	Impaired	Entitled to Vote
5C	Unsecured Convenience Class Claim	Unimpaired	Deemed to Accept
6	Section 510(b) Claims	Impaired	Deemed to Reject
7	Existing Equity Interests	Impaired	Deemed to Reject

C. *Treatment of Claims and Interests*

1. Class 1 – Other Priority Claims

- (a) *Classification:* Class 1 consists of all Other Priority Claims.
- (b) *Treatment:* Except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Case, in full in Cash in the ordinary course of business by the Debtor or the Reorganized Debtor, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, or as soon thereafter as reasonably practicable, (ii) the date on which such Other Priority Claim against the Debtor becomes Allowed, or (iii) such other date as may be ordered by the Court.
- (c) *Voting:* Class 1 is Unimpaired under the Plan. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 1 Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of all Other Secured Claims.
- (b) *Treatment:* On the Effective Date, except to the extent that a holder of an Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim shall receive, at the option of the Senior Lender Affiliate: (i) payment in full in Cash, including the payment of interest allowable under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any; (ii) reinstatement pursuant to Section 1124 of the Bankruptcy Code; (iii) the collateral securing any such Allowed Other Secured Claim, or (iv) such other consideration so as to render such Allowed Other Secured Claim Unimpaired.

In the event an Allowed Other Secured Claim may also be classified as a Secured Tax Claim, such Claim shall: (i) be paid in full in Cash, including the payment of interest under section 506(b) of the Bankruptcy Code and/or section 511 of the Bankruptcy Code, if any, or (ii) retain any lien until such Claim is paid in full (it being understood that such Other Secured Claim may be paid in the ordinary course as and when it comes due, rather than on the Effective Date).

- (c) *Voting:* Class 2 is Unimpaired under the Plan. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - Senior Loan Claims

- (a) *Classification:* Class 3 consists of all Senior Loan Claims.
- (b) *Allowance:* To the extent any such amounts have not been previously satisfied pursuant to the DIP Credit Facility, the Senior Loan Claims shall be Allowed in an aggregate amount equal to approximately \$16,570,949.08 million, plus interest and fees due and owing under the Senior Facility as of the Effective Date pursuant to the terms of the Senior Facility or related documents, including payment on account of any accrued but unpaid interest (including at the default contract rate pursuant to the terms of the Senior Facility, if applicable), which amount shall be subject to adjustment to an amount acceptable to the Senior Lender to the extent previously satisfied by the DIP Credit Facility.
- (c) *Treatment:* On the Effective Date, except to the extent that a holder of a Senior Loan Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for the Allowed Senior Loan Claim, each holder of a Senior Loan Claim shall receive (i) Cash in satisfaction of any Allowed Senior Loan Claim in excess of \$3 million and (ii) its Pro Rata share of the New Equity in the Reorganized Debtor based on the New Equity Distribution Calculation in satisfaction of all remaining Allowed Senior Loan Claims, after which, on the Effective Date the cash collateral pledged in favor of the Senior Lender to secure the Senior Loan Claims shall be released to its respective pledgers in accordance with their respective interests therein.
- (d) *Voting:* Class 3 is Impaired under the Plan. Therefore, holders of Class 3 Senior Loan Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Senior Subordinated Note Claims

- (a) *Classification:* Class 4 consists of all Senior Subordinated Note Claims.
- (b) *Allowance:* Senior Subordinated Note Claims shall be Allowed in an aggregate amount equal to \$7.0 million, plus accrued but unpaid interest as of the Petition Date.
- (c) *Treatment:* On the Effective Date, or as soon thereafter as reasonably practicable, except to the extent that a holder of a Senior Subordinated Note Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Senior Subordinated Note Claim, each holder of a Senior Subordinated Note Claim shall receive its Pro Rata share of the (i) New Subordinated Notes and (ii) New Warrants.
- (d) *Voting:* Class 4 is Impaired under the Plan. Therefore, holders of Class 4 Senior Subordinated Note Claims are entitled to vote to accept or reject the Plan.

5. Class 5A –Trade Claims

- (a) *Classification:* Class 5A consists of all Trade Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Trade Claim agrees to less favorable treatment,

in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Trade Claim, each holder of a Allowed Trade Claim shall receive either:

- (i) if such holder agrees to the New Trade Terms and such holder and the Debtor enter into a New Trade Agreement, a cash recovery equal to such holder's Trade Claim Distribution, which the Reorganized Debtor shall satisfy by paying 110% on each invoice for products ordered post-Effective Date with each holder that executes a New Trade Agreement until the Trade Claim Distribution has been paid in full; *provided, however*, that the Reorganized Company shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; or
 - (ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5A is Impaired under the Plan. Therefore, holders of Class 5A Trade Claims are entitled to vote to accept or reject the Plan.

6. Class 5B - Other General Unsecured Claims

- (a) *Classification:* Class 5B consists of all Other General Unsecured Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Other General Unsecured Claim agrees to less favorable treatment, or agrees to be an Unsecured Convenience Class Claim, in full and final satisfaction, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other General Unsecured Claim, each holder of an Allowed Other General Unsecured Claim shall receive its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust.
- (c) *Voting:* Class 5B is Impaired under the Plan. Therefore, holders of Class 5B Other General Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 5C - Unsecured Convenience Class Claims

- (a) *Classification:* Class 5C consists of Unsecured Convenience Class Claims.
- (b) *Treatment:* On the Effective Date or as soon as reasonably practicable thereafter, except to the extent that a holder of an Allowed Unsecured Convenience Class Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Unsecured Convenience Class Claim, each holder of an Allowed Unsecured Convenience Class Claim shall receive payment in full in Cash on account of such Allowed Unsecured Convenience Class Claim pursuant to the Convenience Class Distribution.
- (c) *Voting:* Class 5C is Unimpaired under the Plan. Holders of Claims in Class 5C are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 5C Unsecured Convenience Class Claims are not entitled to vote to accept or reject the Plan.

8. Class 6 - Section 510(b) Claims

- (a) *Classification:* Class 6 consists of all Section 510(b) Claims.

- (b) *Treatment:* On the Effective Date, each Allowed Section 510(b) Claim shall be cancelled without any distribution and such holders of Section 510(b) Claims will receive no recovery.
- (c) *Voting:* Class 6 is Impaired under the Plan. Holders of Claims in Class 6 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

9. Class 7 - Existing Equity Interests

- (a) *Classification:* Class 7 consists of all Existing Equity Interests.
- (b) *Treatment:* On the Effective Date, Existing Equity Interests shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution to holders of Existing Equity Interests on account of such Existing Equity Interests.
- (c) *Voting:* Class 7 is Impaired under the Plan. Therefore, holders of Claims in Class 7 are conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

D. *Special Provision Governing Unimpaired Claims*

Nothing under the Plan shall affect the Debtor's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

E. *Subordinated Claims*

Except as otherwise provided in the Plan, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, including, without limitation, the Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to direct the Debtor to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV. ACCEPTANCE REQUIREMENTS

A. *Acceptance or Rejection of the Plan*

1. Voting Classes

Classes 3, 4, 5A and 5B are Impaired under the Plan and are entitled to vote to accept or reject the Plan.

2. Conclusive Presumed Acceptance of the Plan

Classes 1, 2, and 5C are Unimpaired under the Plan and therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

3. Deemed Not to Accept the Plan

Classes 6 and 7 are Impaired under the Plan, and holders of Class 6 Claims and Class 7 Interests shall not receive or retain any property under the Plan on account of such Claims and Interests and are, therefore, deemed not to accept the Plan pursuant to section 1126(g) of the Bankruptcy Code.

B. Confirmation Pursuant to 1129(b) of the Bankruptcy Code

The Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Classes of Claims and Interests that vote, or are deemed, not to accept the Plan. The Debtor reserves the right to modify the Plan in accordance with Article XI.A hereof, to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE V.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Restructuring Transactions

On the Effective Date, or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (i) the execution and delivery of the Exit Facility Documents and other appropriate agreements or other documents of restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to the Bankruptcy Code or applicable state law; and (iv) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

B. Sources of Consideration for Plan Distributions

The Reorganized Debtor shall fund distributions under the Plan as follows:

1. Cash Consideration

Except to the extent otherwise set forth herein, all Cash consideration necessary for the Reorganized Debtor to make payments or distributions pursuant hereto shall be obtained from proceeds of the Exit Facility or the Debtor's other Cash on hand, including Cash derived from business operations. Further, the Debtor and the Reorganized Debtor will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtor to satisfy their obligations under the Plan.

2. Issuance and Distribution of New Equity

On the Effective Date, the Reorganized Debtor shall issue the New Equity for distribution to holders of DIP Facility Claims and Senior Loan Claims in accordance with Article II.C and Article III herein. The issuance of the New Equity shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

All of the shares of New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the New Organizational Documents and the other instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

Notwithstanding anything to the contrary herein, in no event shall more than \$10 million of DIP Facility Claims and Senior Loan Claims in the aggregate be satisfied with the New Equity.

3. Exit Facility

On the Effective Date the Reorganized Debtor shall enter into the Exit Facility. Confirmation shall be deemed approval of the Exit Facility to the extent not approved by the Court previously (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtor or the Reorganized Debtor in connection therewith), and the Reorganized Debtor is authorized to execute and deliver those documents necessary or appropriate to obtain the Exit Facility, including the Exit Facility Documents, without further notice to or order of the Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such modifications as the Reorganized Debtor and the Senior Lender Affiliate may deem to be necessary to consummate the Exit Facility. Proceeds of the Exit Facility shall be used to satisfy obligations outstanding under the DIP Credit Facility and to provide necessary working capital for the Reorganized Debtor.

C. *New Subordinated Notes and New Warrants*

On the Effective Date, the Reorganized Debtor shall issue the New Subordinated Notes and the New Warrants, the terms of which shall be set forth in the Plan Supplement, for distribution to holders of Senior Subordinated Note Claims in accordance with Article III herein; *provided, however*, that the aggregate amount of the New Subordinated Notes shall not exceed \$3 million and the aggregate amount of the New Warrants shall not exceed 13% of the New Equity, subject to the terms set forth in the Plan Supplement. The issuance of the New Subordinated Notes and the New Warrants shall be authorized without the need for any further corporate action and without any further action by the holders of Claims or Interests.

Each distribution and issuance of the New Subordinated Notes and the New Warrants under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

As set forth in the New Subordinated Notes and the New Intercreditor Agreement, the New Subordinated Notes shall have a security interest in the same assets of the Reorganized Debtor as granted under the Exit Facility Documents, provided that such security interest shall be junior to the security interest granted pursuant to the Exit Facility Documents.

D. *General Unsecured Claims Litigation Trust*

1. Creation and Governance of the General Unsecured Claims Litigation Trust.

On the Effective Date, the Debtor shall transfer to the General Unsecured Claims Litigation Trust the General Unsecured Claims Litigation Trust Assets and Avoidance Actions. The Debtor and the General Unsecured Claims Litigation Trustee shall execute the General Unsecured Claims Litigation Trust Agreement and shall take all steps necessary to establish the General Unsecured Claims Litigation Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries. In the event of any conflict between the terms of the Plan and the terms of the General Unsecured Claims Litigation Trust Agreement, the terms of the Plan shall govern. Additionally, on the Effective Date the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the General Unsecured Claims Litigation Trust all of its rights, title, and interest in and to all of the General Unsecured Claims Litigation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the General Unsecured Claims Litigation Trust Assets shall automatically vest in the General Unsecured Claims Litigation Trust free and clear of all Claims, liens, encumbrances, or interests subject only to: (a) General Unsecured Claims Litigation Trust Interests, and (b) the expenses of the General Unsecured Claims Litigation Trust, as provided for in the General Unsecured Claims Litigation Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The General Unsecured Claims Litigation Trustee shall

be the exclusive trustee of the assets of the General Unsecured Claims Litigation Trust for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representatives of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The General Unsecured Claims Litigation Trust shall be governed by the General Unsecured Claims Litigation Trust Agreement and administered by the General Unsecured Claims Litigation Trustee. The powers, rights, and responsibilities of the General Unsecured Claims Litigation Trustee shall be specified in the General Unsecured Claims Litigation Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this Article V.D. The General Unsecured Claims Litigation Trustee shall hold and distribute the General Unsecured Claims Litigation Trust Assets in accordance with the provisions of the Plan and the General Unsecured Claims Litigation Trust Agreement. Other rights and duties of the General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust Beneficiaries shall be as set forth in the General Unsecured Claims Litigation Trust Agreement. After the Effective Date, the Debtor and the Reorganized Debtor shall have no interest in the General Unsecured Claims Litigation Trust Assets except as set forth in the General Unsecured Claims Litigation Trust Agreement. In connection with the vesting and transfer of the General Unsecured Claims Litigation Trust Assets (including any General Unsecured Claims Litigation Trust Causes of Action) to the General Unsecured Claims Litigation Trust, any attorney-client, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written or oral) expressly transferred to the General Unsecured Claims Litigation Trust shall vest in the General Unsecured Claims Litigation Trust. The Debtor and the General Unsecured Claims Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections, and immunities, to the extent the Debtor so desires.

2. Purpose of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trust shall be established for the purpose of pursuing or liquidating the General Unsecured Claims Litigation Trust Assets, distributing the General Unsecured Claims Litigation Trust Distributable Proceeds, if any, reconciling (and, if agreed to by the Debtor or the Reorganized Debtor, objecting to) General Unsecured Claims as provided for in the Plan and, if, as, and to the extent determined by the General Unsecured Claims Litigation Trustee pursuant to the General Unsecured Claims Litigation Trust Agreement, distributing the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

3. General Unsecured Claims Litigation Trustee and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trust Agreement generally will provide for, among other things: (a) the payment of the General Unsecured Claims Litigation Trust Expenses, (b) the payment of other reasonable expenses of the General Unsecured Claims Litigation Trust, including the cost of pursuing the General Unsecured Claims Litigation Trust Causes of Action, (c) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation, (d) the investment of Cash by the General Unsecured Claims Litigation Trustee within certain limitations, including those specified in the Plan, (e) the orderly liquidation of the General Unsecured Claims Litigation Trust Assets, and (f) litigation of any General Unsecured Claims Litigation Trust Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such General Unsecured Claims Litigation Trust Causes of Action.

Except as otherwise ordered by the Bankruptcy Court, the General Unsecured Claims Litigation Trust Expenses shall be paid from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and General Unsecured Claims Litigation Trust Agreement.

The General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, may employ, without further order of the Bankruptcy Court, professionals (including Professionals previously retained by the Creditors' Committee) to assist in carrying out its duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the General Unsecured Claims Litigation Trust Assets in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that the General Unsecured Claims Litigation Trustee shall provide ten Business Days' notice to the Reorganized Debtor before the payment of any such professional fees and expenses.

The General Unsecured Claims Litigation Trust Agreement may include reasonable and customary provisions that allow for indemnification by the General Unsecured Claims Litigation Trust. Any such indemnification shall be the sole responsibility of the General Unsecured Claims Litigation Trust and payable solely from the General Unsecured Claims Litigation Trust Assets.

In furtherance of and consistent with the purpose of the General Unsecured Claims Litigation Trust and the Plan, the General Unsecured Claims Litigation Trustee, for the benefit of the General Unsecured Claims Litigation Trust, shall: (a) hold the General Unsecured Claims Litigation Trust Assets for the benefit of the General Unsecured Claims Litigation Trust Beneficiaries, (b) make distributions of General Unsecured Claims Litigation Trust Distributable Proceeds as provided herein and in the General Unsecured Claims Litigation Trust Agreement, and (c) have the power and authority to prosecute and resolve any General Unsecured Claims Litigation Trust Causes of Action, without approval of the Bankruptcy Court. The General Unsecured Claims Litigation Trustee shall be responsible for all decisions and duties with respect to the General Unsecured Claims Litigation Trust and the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement. In all circumstances, the General Unsecured Claims Litigation Trustee shall act in the best interests of the General Unsecured Claims Litigation Trust Beneficiaries and with the same fiduciary duties as a Chapter 7 trustee.

4. Compensation and Duties of the General Unsecured Claims Litigation Trustee.

The salient terms of the General Unsecured Claims Litigation Trustee's employment, including the General Unsecured Claims Litigation Trustee's duties and compensation shall be set forth in the General Unsecured Claims Litigation Trust Agreement. The General Unsecured Claims Litigation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

5. Cooperation of Reorganized Debtor.

The Reorganized Debtor, upon reasonable notice, shall be required to provide information and access to pertinent documents, to the extent the Reorganized Debtor has such information and/or documents, to the General Unsecured Claims Litigation Trustee sufficient to enable the General Unsecured Claims Litigation Trustee to perform its duties hereunder. The Reorganized Debtor shall reasonably cooperate with the General Unsecured Claims Litigation Trustee in the administration of the General Unsecured Claims Litigation Trust, including, in providing documentation, witness testimony, and other evidence in support of the prosecution of the General Unsecured Claims Litigation Trust Causes of Action, at no cost or expense of the General Unsecured Claims Litigation Trust other than out of pocket expenses for copying or similar expenses; provided however, that such cooperation shall not involve violation of an attorney client privilege, unless agreed to by the Reorganized Debtor.

6. United States Federal Income Tax Treatment of the General Unsecured Claims Litigation Trust.

For all United States federal income tax purposes, the parties shall treat the transfer of the General Unsecured Claims Litigation Trust Assets to the General Unsecured Claims Litigation Trust as: (a) a transfer of the General Unsecured Claims Litigation Trust Assets directly to the applicable holders of Allowed General Unsecured Claims, followed by (b) the transfer by the holders of such Allowed General Unsecured Claims to the General Unsecured Claims Litigation Trust of such General Unsecured Claims Litigation Trust Assets in exchange for the General Unsecured Claims Litigation Trust Interests; *provided, however*, that the General Unsecured Claims Litigation Trust Assets will be subject to any post-Effective Date obligations incurred by the General Unsecured Claims Litigation Trust relating to the pursuit of General Unsecured Claims Litigation Trust Assets. Accordingly, the General Unsecured Claims Litigation Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the General Unsecured Claims Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

7. Tax Reporting.

- (a) The General Unsecured Claims Litigation Trustee shall file tax returns for the General Unsecured Claims Litigation Trust treating the General Unsecured Claims Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

- (b) Except to the extent definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee) indicates that such valuation is not necessary to maintain the treatment of the General Unsecured Claims Litigation Trust as a liquidating trust for purposes of the Internal Revenue Code and applicable Treasury Regulations, as soon as reasonably practicable after the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, the General Unsecured Claims Litigation Trustee shall make a good faith valuation of the General Unsecured Claims Litigation Trust Assets. Such valuation shall be made available from time to time to all parties to the General Unsecured Claims Litigation Trust Agreement, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.
- (c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the General Unsecured Claims Litigation Trustee of a private letter ruling if the General Unsecured Claims Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the General Unsecured Claims Litigation Trustee), allocations of General Unsecured Claims Litigation Trust taxable income or loss shall be allocated by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining General Unsecured Claims Litigation Trust Assets. The tax book value of the General Unsecured Claims Litigation Trust Assets for purpose of this paragraph shall equal their fair market value on the date the General Unsecured Claims Litigation Trust Assets are transferred to the General Unsecured Claims Litigation Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.
- (d) The General Unsecured Claims Litigation Trustee shall be responsible for payment, out of the General Unsecured Claims Litigation Trust Assets, of any taxes imposed on the General Unsecured Claims Litigation Trust or its assets.
- (e) The General Unsecured Claims Litigation Trustee shall distribute such notices to the General Unsecured Claims Litigation Trust Beneficiaries as the General Unsecured Claims Litigation Trustee determines are necessary or desirable.

8. General Unsecured Claims Litigation Trust Assets.

The General Unsecured Claims Litigation Trustee shall, in consultation with the Reorganized Debtor, have the exclusive right on behalf of the General Unsecured Claims Litigation Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all General Unsecured Claims Litigation Trust Causes of Action without any further order of the Bankruptcy Court, except as otherwise provided herein or in the General Unsecured Claims Litigation Trust Agreement; *provided, however*, that such consultation shall be subject to the execution and delivery of one or more joint interest, common interest, or other similar agreements in form and substance reasonably acceptable to the General Unsecured Claims Litigation Trustee and the Reorganized Debtor. From and after the Effective Date, the General Unsecured Claims Litigation Trustee, in accordance with section 1123(b)(3) of the Bankruptcy Code, and on behalf of the General Unsecured Claims Litigation Trust, shall serve as a representative of the Estates and shall, in consultation with the Reorganized Debtor, retain and possess the right to commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action constituting General Unsecured Claims Litigation Trust Causes of Action in any court or other tribunal. The General Unsecured Claims Litigation Trustee shall provide the Reorganized Debtor with periodic reporting relating to the status of the General Unsecured Claims Litigation Trust Causes of Action.

For the avoidance of doubt, the General Unsecured Litigation Trust Assets shall not include any Claim or Cause of Action against a Released Party. Also for the avoidance of doubt, any proceeds of the General Unsecured Claims Litigation Trust shall be distributed Pro Rata to holders of Allowed Class 5B Claims and holders of Allowed Class 5A Claims that do not enter into a New Trade Agreement with the Debtor.

9. General Unsecured Claims Litigation Trust Fees and Expenses.

From and after the Effective Date, the General Unsecured Claims Litigation Trustee, on behalf of the General Unsecured Claims Litigation Trust, shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the General Unsecured Claims Litigation Trust and any professionals retained by the General Unsecured Claims Litigation Trust from the General Unsecured Claims Litigation Trust Assets, except as otherwise provided in the General Unsecured Claims Litigation Trust Agreement.

10. Distribution of Unrestricted Cash.

The General Unsecured Claims Litigation Trustee shall distribute to the General Unsecured Claims Litigation Trust Beneficiaries on account of their interests in the General Unsecured Claims Litigation Trust, at least annually, its net income plus all net proceeds from the sale of assets, except that the General Unsecured Claims Litigation Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the General Unsecured Claims Litigation Trust Assets or to satisfy Claims and contingent liabilities or pay anticipated fees and expenses.

11. General Unsecured Claims Litigation Trust Funding.

The funding by the Debtor of the General Unsecured Claims Litigation Trust Payment shall be authorized and approved, as of the Effective Date, in all respects, without need for the consent of or notice to any Person, notwithstanding any contrary provision in any financing and/or other agreement between the Debtor or the Reorganized Debtor and any other Person, and any such contrary provision shall be deemed null and void to the extent necessary to permit such funding.

12. Distributions to General Unsecured Claims Litigation Trust Beneficiaries.

The General Unsecured Claims Litigation Trustee may, in its discretion, distribute any portion of the General Unsecured Claims Litigation Trust Payment to the General Unsecured Claims Litigation Trust Beneficiaries at any time and/or use such funds, provided that such distribution or use is for any purpose permitted under the Plan, the General Unsecured Claims Litigation Trust Agreement, and applicable law.

13. Cash Investments.

The General Unsecured Claims Litigation Trustee may invest Cash (including any earnings thereon or proceeds therefrom); *provided, however*, that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the General Unsecured Claims Litigation Trust.

The General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the General Unsecured Claims Litigation Trustee determines that the pursuit of additional General Unsecured Claims Litigation Trust Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, and (b) all distributions of General Unsecured Claims Litigation Trust Distributable Proceeds required to be made by the General Unsecured Claims Litigation Trustee to the General Unsecured Claims Litigation Trust Beneficiaries under the Plan have been made, but in no event shall the General Unsecured Claims Litigation Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such

third anniversary (and, in the event of further extension by agreement of the Reorganized Debtor and the General Unsecured Claims Litigation Trustee, at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the General Unsecured Claims Litigation Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the General Unsecured Claims Litigation Trust Assets. Upon dissolution of the General Unsecured Claims Litigation Trust, any remaining General Unsecured Claims Litigation Trust Assets shall be distributed first to all General Unsecured Claims Litigation Trust Beneficiaries in accordance with the Plan and the General Unsecured Claims Litigation Trust Agreement as appropriate; *provided, however*, that if the General Unsecured Claims Litigation Trustee reasonably determines that such remaining General Unsecured Claims Litigation Trust Assets are insufficient to render a further distribution practicable, or exceed the amounts required to be paid under the Plan, the General Unsecured Claims Litigation Trustee may transfer such remaining funds to a charitable institution qualified as a not-for-profit corporation under applicable federal and state laws selected by the General Unsecured Claims Litigation Trustee.

E. Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date, the Debtor, as the Reorganized Debtor, shall continue to exist after the Effective Date as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other analogous formation documents) are amended by the Plan, replaced by the New Organizational Documents, or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

F. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date all property in the Estate, all Causes of Action, and any property acquired by the Debtor pursuant to the Plan shall vest in the Reorganized Debtor, free and clear of all liens, Claims, charges, or other encumbrances, except for Liens securing the Exit Facility, if applicable. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

G. Cancellation of Existing Securities

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtor under the DIP Agreement, the Senior Loan Agreement, the Senior Subordinated Notes, the Seller Notes, and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of or ownership interest in the Debtor giving rise to any Claim or Interest shall be cancelled solely as to the Debtor, and the Reorganized Debtor shall not have any continuing obligations thereunder; and (2) the obligations of the Debtor pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged; *provided, however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of enabling holders of Allowed Claims and Allowed Interests to receive distributions under the Plan as provided herein; *provided further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to the Reorganized Debtor, except to

the extent set forth in or provided for under the Plan. On and after the Effective Date, all duties and responsibilities of the DIP Lender under the DIP Facility and the Senior Lender under the Senior Loan Facility shall be discharged unless otherwise specifically set forth in or provided for under the Plan.

H. Corporate Action

Upon the Effective Date, or as soon thereafter as is reasonably practicable, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, as applicable: (1) the issuance of the New Equity; (2) selection of the directors and officers for the Reorganized Debtor; (3) execution and delivery of the Exit Facility Documents; (4) adoption of the Management Incentive Plan; (5) implementation of the restructuring transactions contemplated by this Plan; and (6) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtor, and any corporate action required by the Debtor or the Reorganized Debtor in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of the Debtor or the Reorganized Debtor. On or (as applicable) before the Effective Date, the appropriate officers of the Debtor or the Reorganized Debtor shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtor. The authorizations and approvals contemplated by this Article V.H shall be effective notwithstanding any requirements under nonbankruptcy law.

I. New Management Incentive Plan

Subject to the terms of the New Management Incentive Plan, a form of which shall be included in the Plan Supplement, as soon as reasonably practicable after the Effective Date, the new board of directors of Reorganized Debtor shall be authorized to adopt the New Management Incentive Plan pursuant to which options, warrants, or another form of consideration to acquire up to 10% of the New Equity of the Reorganized Debtor shall be allocable at the discretion of the New Board of the Reorganized Debtor.

To the extent required under the Plan or applicable nonbankruptcy law, the Reorganized Debtor will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in the state, province, or country of incorporation in accordance with applicable corporate laws. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents of the Reorganized Debtor will prohibit the issuance of non-voting equity securities and provide for the other restrictions required therein. After the Effective Date, the Reorganized Debtor may amend and restate its New Organizational Documents and other constituent documents as permitted by applicable corporate laws and the New Organizational Documents.

J. Directors and Officers of the Reorganized Debtor

As of the Effective Date, the term of the current members of the board of directors of the Debtor shall expire, and the initial boards of directors, including the New Board, as well as the officers of the Reorganized Debtor, shall be appointed in accordance with the New Organizational Documents and other constituent documents of the Reorganized Debtor.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the initial Reorganized Debtor Board, as well as those Persons that will serve as an officer of the Reorganized Debtor. To the extent any such director or officer is an "insider" under the Bankruptcy Code, the nature of any compensation to be paid to such director or officer will also be disclosed. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtor.

K. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtor, and the officers and members of the New Board, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, including the New Equity, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorization, or consents except those expressly required pursuant to the Plan. In furtherance of the foregoing, any New Organizational Documents which is contractual in nature (such as a stockholders agreement or limited liability company agreement) shall, upon the Effective Date, be deemed to become valid, binding and enforceable in accordance with its terms as to all Persons intended to be bound thereby.

L. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.²

M. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article IX and Article V.E hereof, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and such rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtor. **To the fullest extent permitted by applicable law, no Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against it. The Debtor or the Reorganized Debtor, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Debtor or Reorganized Debtor, as applicable, expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise set forth herein, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtor. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action, except to the extent transferred to the General Unsecured Claims Litigation Trust hereunder. Subject to Article V.D, hereof, the Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Court.

² Foley note: Consider deleting this due to 6th Circuit law.

N. Release of Avoidance Actions

On the Effective Date, except as otherwise set forth herein, in the Plan Supplement, or in the Confirmation Order, the Debtor shall release any and all Avoidance Actions against the Released Parties, the Debtor and the Reorganized Debtor, and any of their successors or assigns and any Entity acting on behalf of the Debtor or the Reorganized Debtor shall be deemed to have waived the right to pursue any and all Avoidance Actions.

**ARTICLE VI.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases will be deemed rejected, other than those that are identified on the Schedule of Assumed Executory Contracts and Unexpired Leases or are the subject of pending motions to assume on the Effective Date.

Entry of the Confirmation Order shall constitute a Court order approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan or the Schedule of Assumed Executory Contracts and Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or set forth in a motion or order relating to the same, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Court authorizing and providing for its assumption under applicable federal law. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Court within thirty (30) days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection; *provided, however*, that any such Rejection Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be subject to the cap on rejection damages imposed by section 502(b) of the Bankruptcy Code. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Reorganized Debtor, the Estate, or property of the foregoing parties, without the need for any objection by the Debtor or the Reorganized Debtor, as applicable, or further notice to, or action, order, or approval of the Court. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as Other General Unsecured Claims and shall be treated in accordance with Article III.C.5 of the Plan, as applicable.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any Cure Claims under an Executory Contract and Unexpired Lease, as reflected on the Cure Notice shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the such Cure Claim in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any Cure Claims, (2) the ability of the Reorganized Debtor or any assignee, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, payments on Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

At least fourteen (14) days before the Confirmation Hearing, the Debtor shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be Filed, served and actually received by the Debtor at least three (3) Business Days before the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or amount of the Cure Claim in the Cure Notice will be deemed to have assented to such assumption or amount of the Cure Claim. Notwithstanding anything herein to the contrary, in the event that any Executory Contract or Unexpired Lease is removed from the Schedule of Rejected Executory Contracts and Unexpired Leases after such 14-day deadline, a Cure Notice of proposed assumption and proposed amounts of Cure Claims with respect to such Executory Contract or Unexpired Lease will be sent promptly to the counterparty thereof and a noticed hearing set to consider whether such Executory Contract or Unexpired Lease can be assumed.

In any case, if the Court determines that the Allowed Cure Claim with respect to any Executory Contract or Unexpired Lease is greater than the amount set forth in the applicable Cure Notice, the Debtor or the Reorganized Debtor, at the direction of the Senior Lender Affiliate, will have the right to add such Executory Contract or Unexpired Lease to the Schedule of Assumed Executory Contracts and Unexpired Leases, in which case such Executory Contract or Unexpired Lease will be deemed rejected as the Effective Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and for which the Cure Claim has been paid shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Court.

D. Insurance Policies

All of the Debtor's insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, unless otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, the Debtor shall be deemed to have rejected all insurance policies and any agreements, documents, and instruments related thereto.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan, or subject to a motion to reject such agreement.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

F. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor, or, after the Effective Date, the

Reorganized Debtor shall have twenty-eight (28) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

G. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

H. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Deferred Prosecution Agreement

Nothing herein, in the Confirmation Order, or in any other document or order in this Chapter 11 Case shall affect the respective rights and obligations of the United States and the Debtor under the Deferred Prosecution Agreement. In accordance with the requirement set forth in section 17 of the Deferred Prosecution Agreement, the Debtor obligations under the Deferred Prosecution Agreement shall be binding upon the Reorganized Debtor and the rights and benefits of the Debtor under the Deferred Prosecution Agreement shall bestow to the benefit of the Reorganized Debtor.

**ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim (or such holder's Affiliate) shall receive the full amount of the distributions that the Plan provides for Allowed Claims in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII of the Plan. Except as otherwise provided in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Debtor shall have no obligation to recognize any transfer of Claims occurring on or after the Effective Date.

B. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions

(a) Delivery of Distributions to DIP Lender

Except as otherwise provided in the Plan, all distributions to holders of Allowed DIP Facility Claims shall be governed by the DIP Agreement and shall be deemed completed when made to the DIP Lender.

(a) Delivery of Distributions to Senior Lender

Except as otherwise provided in the Plan, all distributions to holders of Senior Loan Claims shall be governed by the Senior Loan Agreement and shall be deemed completed when made to the Senior Lender.

(b) Delivery of Distributions in General

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims (other than holders of DIP Facility Claims and Senior Loan Claims) shall be made to: (1) to the signatory set forth on any of the Proofs of Claim Filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (2) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtor after the date of any related Proof of Claim; (3) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Reorganized Debtor has not received a written notice of a change of address; or (4) on any counsel that has appeared in the Chapter 11 Case on the holder's behalf. Subject to this Article VII, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor, the Reorganized Debtor and the General Unsecured Claims Litigation Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

2. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtor has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date; *provided further* that undeliverable distributions to holders of General Unsecured Claims Litigation Trust Beneficiaries shall revert back to the General Unsecured Claims Litigation Trust. After such date, all unclaimed property or interests in property shall be redistributed Pro Rata (it being understood that, for purposes of this Article VII.B.2, "Pro Rata" shall be determined as if the Claim underlying such unclaimed distribution had been Disallowed) without need for a further order by the Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property or Interest in property shall be discharged and forever barred.

C. *Securities Registration Exemption*

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of securities, including the New Equity, as contemplated by Article III.B of the Plan, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. In addition, under section 1145 of the Bankruptcy Code, such New Equity will be freely tradable in the U.S. by the recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, any applicable terms and limitations set forth in the New Organizational Documents and the New Warrants, and compliance with applicable securities laws and any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any transfer of such Securities or instruments.

D. *Compliance with Tax Requirements*

In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the General Unsecured Claims Litigation Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made from the General Unsecured Claims Litigation Trust under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of

information necessary to facilitate such distributions or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtor and the General Unsecured Claims Litigation Trustee reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

E. Allocations

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed herein.

F. No Postpetition Interest on Claims

Unless otherwise specifically provided for in the DIP Order, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

G. Setoffs and Recoupment

The Debtor or the Reorganized Debtor may (with the Senior Lender Affiliate's consent), but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtor or the Reorganized Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such Claim it may have against the holder of such Claim.

H. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

The Debtor or the Reorganized Debtor, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the Reorganized Debtor to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such holder to timely repay or return such distribution shall result in the holder owing the Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers

under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VIII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims or Interests

After the Effective Date, the Debtor or the Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Case allowing such Claim. Any Claim or Interest that is subject to the Claims Bar Date and as of the Claims Bar Date has been listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Proof of Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Court.

Notwithstanding anything to the contrary herein, a Class Action Claim shall not be an Allowed Class Action Claim at any time prior to a final determination as to Approval of the Class Action Settlement. If the Class Action Settlement is denied on a final basis, the Debtor, the General Unsecured Claims Litigation Trustee, or the Reorganized Debtor, as applicable, shall have thirty (30) days following the date upon which the Class Action Settlement was denied on a final basis to object to any Proofs of Claim filed in respect to Class Action Claims.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Reorganized Debtor, by order of the Court, shall have the sole authority to: (1) File, withdraw, or litigate to judgment objections to Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court.

C. Estimation of Claims.

Before or after the Effective Date, the Debtor or the Reorganized Debtor may (but are not required to) at any time request that the Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Court has ruled on any such objection, and the Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Court. In the event that the Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), absent an objection to the same by the Claim holder prior to the Voting Deadline, and the Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims or Interests without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Reorganized Debtor without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Deadline.

F. Disallowance of Claims or Interests

Any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor, the Reorganized Debtor or the General Unsecured Claims Litigation Trustee, as applicable. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Court.

Except as provided herein or otherwise agreed, any and all Proofs of Claim or Proofs of Interest filed after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Court, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests, unless on or before the Confirmation Hearing such late Filed Claim or Interest has been deemed timely Filed by a Final Order.

G. Amendments to Claims or Interests

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Interest may not be Filed or amended without the prior authorization of the Court and the Reorganized Debtor and any such new or amended Claim or Interest Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Court.

H. No Distributions Pending Allowance

If an objection to a Claim Interest or portion thereof is Filed as set forth in Article VIII no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

I. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Court allowing any Disputed Claim becomes a Final Order, the Reorganized Debtor shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in Article III.C.

**ARTICLE IX.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that

a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, the Estate, and holders of Claims and Interests, and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtor may compromise and settle Claims against them and Causes of Action against other Persons.

B. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action that arose prior to the Effective Date of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

C. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan (including the Plan Supplement documents), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns. In addition, the DIP Lender and the Senior Lender shall execute and deliver all documents reasonably requested by the administrative agent(s) for the Exit Facility to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Reorganized Debtor to file UCC-3 termination statements (to the extent applicable) with respect thereto.

D. Debtor Release

To the fullest extent permitted by applicable law and pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released by the Debtor, the Reorganized Debtor, and the Estate from any and all claims, obligations, rights, suits, damages, Causes of Action (including Avoidance Actions), remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of the Debtor and/or the Reorganized Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities law, or otherwise, that the Debtor, the Reorganized Debtor, or their Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any

Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the other restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

E. Third Party Release

As of the Effective Date, to the fullest extent permitted by applicable law, each Released Party and each holder of a Claim against or an Interest in the Debtor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged each Released Party from any and all claims, equity interests, obligations, debts, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of a debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, existing or hereafter arising, in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the restructuring transactions contemplated herein, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of claims and equity interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence, in each case, taking place on or before the Effective Date; *provided, however*, the foregoing release shall not apply to any obligations arising under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments, releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing; *provided, however*, that the foregoing release shall not apply to any obligations arising on account of the Transshipping Claims, except as provided in the Confirmation Order, nor shall the foregoing release apply to any obligations under the Confirmation Order, the Plan, the Plan Supplement, the Exit Facility Documents, and any contracts, instruments releases, and other agreements or documents delivered in connection with, or contemplated by, the foregoing.

F. Exculpation

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any (1) Exculpated Claim and (2) any obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Securities pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

G. Injunction

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE VIII HEREOF, ALL ENTITIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VIII HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO ARTICLE VIII.D OR ARTICLE VIII.E HEREOF, DISCHARGED PURSUANT TO ARTICLE VIII.B HEREOF, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIII.F HEREOF, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE RELEASED PARTIES OR THE EXCULPATED PARTIES: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SUBROGATION, SETOFF, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE INTERESTS, PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR EXCULPATED PURSUANT TO THE PLAN.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR OR ANY OF THEIR ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTOR'S LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE ESTATE, THE REORGANIZED DEBTOR, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS

BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

H. Subordination Rights

Any distributions under the Plan to holders shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**ARTICLE X.
CONDITIONS PRECEDENT TO CONFIRMATION
AND CONSUMMATION OF THE PLAN**

A. Conditions Precedent to the Confirmation Date

It shall be a condition to Confirmation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have been approved by the Court in form and substance reasonably acceptable to the Senior Lender Affiliate;
2. The Court shall have found that adequate information and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan have been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017, 9019 and 3020(b);
3. There shall be no pending defaults under the DIP Facility; and
4. The Plan and the Plan Supplement, including any exhibits, schedules, amendments, modifications, or supplements thereto, each in form and substance reasonably acceptable to the Senior Lender Affiliate, shall have been Filed subject to the terms hereof.

B. Conditions Precedent to the Effective Date

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article X.C hereof):

1. The Confirmation Order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
2. There shall be no pending defaults under the DIP Facility;
3. The Exit Facility Documents shall be in full force and effect;
4. The Plan, including any amendments, modifications, or supplements thereto, and inclusive of any amendments, modifications, or supplements made after the Confirmation Date but prior to the Effective Date, shall be in form and substance reasonably acceptable to the Debtor and the Senior Lender Affiliate and made in accordance with Article X.A of the Plan;

5. The Exit Facility Documents shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation of the Exit Facility, other than the occurrence of the Effective Date of the Plan, shall have been waived or satisfied in accordance with the terms thereof;

6. The General Unsecured Claims Litigation Trust shall have been established pursuant to the General Unsecured Claims Litigation Trust Agreement.

7. All governmental and material third party approvals and consents, including Court approval, necessary in connection with the transactions contemplated by this Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

8. All documents and agreements necessary to implement this Plan shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;

9. All conditions precedent to the issuance of the New Equity, other than any conditions related to the occurrence of the Effective Date, shall have occurred;

10. The Professional Fee Account shall have been funded; and

11. The Effective Date shall have occurred on or before December 31, 2013.

C. Waiver of Conditions

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in this Article X may be waived only by written consent of the Debtor and the Senior Lender Affiliate (except to the extent a condition requires only Senior Lender Affiliate approval, in which case only written consent of the Senior Lender Affiliate shall be required); *provided, however*, that the Debtor may not waive entry of the Order approving the Disclosure Statement and the Confirmation Order.

D. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any holders of a Claim or Interest or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any holders, or any other Entity in any respect.

**ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modification and Amendments

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves the rights to alter, amend, or modify materially the Plan (provided that such alterations, amendments, or modifications are in form and substance acceptable to the Senior Lender Affiliate) with respect to the Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtor (with the consent of the Senior Lender Affiliate) reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation and Consummation do not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtor or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XII.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Case and all matters, arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Claims pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) the Reorganized Debtor amending, modifying, or supplementing, after the Confirmation Date, pursuant to Article VI hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired;
4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
6. adjudicate, decide, or resolve any and all matters related to Causes of Action, including, without limitation, any of the Transshipping Claims;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or Interest for amounts not timely repaid pursuant to Article VII.H.1 hereof;

13. resolve any cases, controversies, suits, disputes related to the General Unsecured Claims Litigation Trust, including the General Unsecured Claims Litigation Trust Assets;

14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Chapter 11 Case, the Plan, the Disclosure Statement, the Confirmation Order;

16. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

17. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20. hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

21. enforce all orders previously entered by the Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;

23. enter an order concluding or closing the Chapter 11 Case; and

24. enforce the injunction, release, and exculpation provisions set forth in Article IX hereof.

**ARTICLE XIII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Subject to Article X.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtor may File with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtor (prior to or on the Effective Date) or the Reorganized Debtor (after the Effective Date) for each quarter (including any fraction thereof) until the Chapter 11 Case are converted, dismissed, or closed, whichever occurs first.

D. Dissolution of the Committee

On the Effective Date, the Committee (if any) shall dissolve and all members, employees, or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Case.

E. Indemnification Provisions

The Indemnification Provisions shall not be discharged or impaired by Confirmation, shall survive Confirmation and shall remain unaffected thereby after the Effective Date; *provided, however*, that, notwithstanding the foregoing, the right of an indemnified Person to receive any indemnities, reimbursements, advancements, payments, or other amounts arising out of, relating to, or in connection with the Indemnification Provisions shall be limited to, and an indemnified Person's sole and exclusive remedy to receive any of the foregoing shall be exclusively from, the director and officer insurance policies of the Debtor in effect on the Effective Date, and no indemnified Person shall seek, or be entitled to receive, any of the foregoing from (directly or indirectly) the Reorganized Debtor. Entry of the Confirmation Order will constitute the Court's approval of the Debtor's foregoing assumption of each of the Indemnification Provisions.

F. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

G. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

H. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtor or Reorganized Debtor shall be served on:

the Debtor:

Groeb Farms, Inc.:
10464 Bryan Highway
Onsted, Michigan 492657313
Attn.: Rolf Richter

with copies to:

Foley & Lardner, LLP
One Detroit Center
500 Woodward Avenue
Suite 2700
Detroit, Michigan 48226-3489
Attn: Judy A. O'Neill

the Senior Lender Affiliate:

c/o Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Ray Schrock, P.C.

and

c/o Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Jeffrey D. Pawlitz

I. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

J. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, the Plan Supplement, and the Exit Facility Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

K. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Court to be invalid, void, or unenforceable, the 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 original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's consent; and (3) nonseverable and mutually dependent.

Respectfully submitted, as of the date first set forth above,

GROEB FARMS, INC.

By: /s/ DRAFT

Name: Rolf Richter

Title: President and CEO of Groeb Farms, Inc.

EXHIBIT B
CLASS ACTION SETTLEMENT TERMSⁱ

I. Obligations of Interim CA Counsel. Interim CA Counsel agrees to do the following:

1. Take the actions set forth in Section 2.01 of the RSA.
2. Notwithstanding any other term of this Class Action Settlement or the RSA, upon receipt of all documents that the Company produced to the United States Department of Justice in connection with any investigation into honey transshipping (the “DOJ Documents”), hereby agrees to limit the use of the DOJ Documents to use by the Interim CA Counsel only, and to not use the DOJ Documents and any information contained therein against the Company, its current and former officers, directors, agents, and employees, and their affiliates, successors and assigns, other than the Excepted Parties, as defined below (collectively, the “Released Parties”), until the Termination Date. The Excepted Parties shall mean: (i) Ernest Groeb, (ii) Troy Groeb, (iii) Horizon Partners Ltd., and (iv) any affiliate or successor of the Released Parties who is engaged in the business of shipping, purchasing, processing, or producing honey, but shall not include the Reorganized Debtor (as defined in the Plan).

For the avoidance of doubt, the Released Parties shall include, without limitation, Michael Bailey, Thomas Jenkins, Jack Irvin, Rolf Richter, Joyce Schlacter, Paul Centorbi, Frank Barker, Robert Bush, George Cawman, Kim Packard, J. William Petty, Eric Plott, Alison Tringale, Craig Moore, John Wolf, Marquette Capital Fund, I L.P., Argosy Investment Partners III, L.P. and Robert Feerick (solely in his capacity as an officer, director, employee, or agent of the Company).

3. Until the Termination Date, shall not sue or cause to be sued any of the Released Parties, for any reason, including without limitation, for reasons based on information contained in the DOJ Documents.

4. Keep the DOJ Documents confidential and not deliver to or provide any information contained in the DOJ Documents to any other person until the Termination Date, provided, however, that (a) Interim CA Counsel may release such documents to the extent required by order of a court or applicable law, provided that they have provided the Company

at least five (5) business days prior notice of any such requirements, unless immediate release is required by such order or law; (b) Plaintiffs may use the documents in their Consolidated Amended Complaint in the Pending Class Action against anyone other than the Released Parties; and (c) after the Termination Date, Plaintiffs may use the documents in discovery against parties other than the Released Parties, subject to an agreed upon Protective Order agreed to by such parties and the Company in that litigation.

5. Upon final approval of the Class Action Settlement, provide a full, class-wide release on behalf of the settlement class fully and unconditionally of all of the Released Parties from all claims and causes of action, of any kind or nature, including without limitations, such Claims or Causes of Action that were asserted or could have been asserted in the Pending Class Action.

6. Take all actions necessary to support the Plan and the restructuring transactions in the timeframes required by the Restructuring Support Agreement between the Company, the Senior, and the Senior Lender Affiliate, including without limitation, voting in favor of the Plan, provided that the Plan treats the Class Action Claimants as GUCs, and not take adverse actions or otherwise impede the confirmation of the Plan.

II. Company Obligations. The Company agrees to do the following:

1. Deliver the DOJ Documents to Interim Class Action Counsel on the date of execution of the RSA (the “Execution Date”).

2. Use its best efforts to obtain Insurer approval and Bankruptcy Court Approval of Class Action Settlement on or before the Preliminary Approval Deadline.

3. Support certification of the class for purposes of settlement and voting only and agree that such certification shall be without prejudice of the rights of Interim CA Counsel to seek certification of the class for purposes of distribution.

III. Mutual Obligations. The Company and Interim CA Counsel agree as follows:

1. If and only if final approval of the Class Action Settlement is not obtained by the Final Approval Deadline, Interim CA Counsel may seek certification of the class for purposes of distribution under the Plan, provided however that: (a) Interim Counsel shall do so in a manner that shall not impede confirmation of the Plan on the timetable set forth in the Company RSA, and (b) any such action shall be without prejudice of any kind to the rights of

the Company, Senior Lender, or Senior Lender Affiliate, or any other party to contest the same.

2. This Agreement shall not be offered or received into evidence in any proceeding, except as necessary to enforce its terms.

3. The period of time from the date of execution of the RSA through the Termination Date (the “Tolling Period”) shall not be counted in computing the running of time under any limitation periods applicable to any Claims that Plaintiffs may have against Released Parties in connection with aiding and abetting, conspiring with, or assisting others in honey transshipping, including limitation periods relating to statutes of limitation, statutes of repose, prescription, laches and any other rule or doctrine concerning the timeliness of the claims.

4. Except as otherwise expressly provided in the RSA, including exhibits and addenda thereto, the Parties shall have all of their rights to take discovery and to object to and defend discovery in the Pending Class Action.

ⁱ Certain capitalized terms used and not otherwise defined herein shall have the meaning set forth in the Restructuring Support Agreement (the “RSA”), by and among Honey Financing Company, LLC (the “Senior Lender Affiliate”), HC Capital Holdings 0909A, LLC (the “Senior Lender”); Groeb Farms, Inc. (the “Company” or the “Debtor”), and Interim Co-lead Counsel on behalf of the named plaintiffs and the other members of the proposed class (the “Interim CA Counsel”) in the consolidated class action lawsuits pending against the Company in the United States District Court for the Northern District of Illinois, captioned *In re Honey Transshipment Litigation*, Case No. 13 C 2905 (N.D. Ill.) (JBG) (the “Pending Class Action”)