

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:	)	Chapter 11
GROEB FARMS, INC.	)	Case No. 13-58200
Debtor.	)	Honorable Walter Shapero

**SECOND AMENDED DISCLOSURE STATEMENT FOR THE SECOND AMENDED  
PLAN OF REORGANIZATION OF GROEB FARMS, INC.  
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE  
DATED NOVEMBER 8, 2013**

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**DISCLOSURE STATEMENT WITH RESPECT TO THE  
FIRST AMENDED PLAN OF REORGANIZATION OF GROEB FARMS, INC.**

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Groeb Farms, Inc. (the “Debtor”) proposes the following disclosure statement (the “Disclosure Statement”) pursuant to Section 1125(b) of the Bankruptcy Code for use in the solicitation of votes on the First Amended Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”). A copy of the Plan accompanies this Disclosure Statement.

This Disclosure Statement has been prepared in accordance with Section 1125 of the Bankruptcy Code and not in accordance with federal or state securities laws or other applicable nonbankruptcy laws. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtor should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission or by any state securities commission or similar public, governmental or regulatory authority, and neither such commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

The Plan is a plan of reorganization. The Plan distributes all of the equity in the Reorganized Debtor to both the Debtor’s Senior Lender, HC Capital Holdings 0909A, LLC, as assignee of Wells Fargo Bank, National Association (“Wells”), and the Debtor’s DIP Lender, satisfies senior subordinated debts with new notes and warrants, pays certain vendor claims from the cash flow of the Debtor and distributes proceeds of Causes of Action to unsecured claims, including the claims of the vendors, after payment of a 10% distribution on general unsecured claims. The Plan cancels prior Existing Equity Interests and continues the business of the Debtor.

The Debtor is seeking final approval of this Disclosure Statement under Section 1125 of the Bankruptcy Code at a hearing (the “Disclosure Hearing”), scheduled to be heard on November 8, 2013, at Honorable Walter Shapero’s Courtroom 1042, located on the 10th Floor of the Theodore Levin Courthouse, 231 West Lafayette Street, Detroit, MI 48226. The Debtor is seeking Confirmation of the Plan at a hearing scheduled for December 20, 2013, which will also be held at Honorable Walter Shapero’s Courtroom 1042, located on the 10th Floor of the Theodore Levin Courthouse, 231 West Lafayette Street, Detroit, MI 48226.

At the Disclosure Hearing, the Bankruptcy Court will conduct a hearing to determine whether this Disclosure Statement contains adequate information to permit holders of Impaired Claims to make an informed judgment in exercising their rights to vote to accept or to reject the Plan. If this Disclosure Statement is approved as having “adequate information,” the Court will then schedule a hearing to consider Confirmation of the Plan.

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference should be made to the Plan and to such documents for the full and complete statements of such terms and provisions. All capitalized terms used herein, unless otherwise provided, have the meanings set forth in Article I of the Plan.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Existing Equity Interests in the Debtor under the Plan and will, upon the Effective Date of the Plan, be binding upon all holders of Claims against, and Existing Equity Interests in, the Debtor and its Estate, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan, or any other operative document, the terms of the Plan and such other operative document are controlling.

The Plan contains various bar dates for asserting Claims. Pursuant to the Claims Bar Date Order, the Court established a Claims Bar Date as follows: (a) with respect to Governmental Units holding Claims that arose prior to the Petition Date, March 31, 2014, at 4:00 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 unless otherwise set forth in the Claims Bar Date Order or the Order Extending Bar Date Including 503(b)(9) Claims as of Certain Creditors Only and Approving Form and Manner of Notice Thereof, November 4, 2013, at 4:00 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 or the Order Extending Bar Date Including 503(b)(9) Claims as of Certain Creditors Only and Approving Form and Manner of Notice Thereof which established November 18, 2013 at 4:00 p.m., prevailing Pacific Time, for those certain creditors described therein. The right to assert a Claim or bring an objection will be waived unless a creditor complies with the deadlines set by the Bankruptcy Court.

The Debtor believes that Confirmation of the Plan and Consummation of the reorganization provided for therein is in the best interests of the Debtor and its creditors. Accordingly, the Debtor urges each creditor that is Impaired under, and entitled to vote with respect to the Plan, to vote to accept the Plan. Detailed voting instructions are set forth in Article 14 of this Disclosure Statement.

To be counted, a ballot containing your acceptance or rejection of the Plan must be received by the Debtor's Notice and Claims Agent at **Groeb Farms Claims Processing Center, c/o KCC, 2335 Alaska Ave., El Segundo, CA 90245**, no later than the balloting deadline provided herein by first class U.S. mail or delivered by messenger or overnight courier. Ballots sent by facsimile, telecopy, or e-mail will not be accepted. **The balloting deadline is December 13, 2013.** To be considered, all ballots must be received by the Debtor's Notice and Claims Agent at **Groeb Farms Claims Processing Center, c/o KCC, 2335 Alaska Ave., El Segundo, CA 90245** by no later than 4:00 p.m., prevailing Pacific Time, on December 13, 2013. Ballots received after the balloting deadline will not be counted or otherwise considered.

THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE "COMMITTEE") STRONGLY URGE ACCEPTANCE OF THE PLAN.

NO PERSON IS AUTHORIZED BY THE DEBTOR IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS AND SCHEDULES ATTACHED HERETO. THE ACCURACY OF THE ACCOUNTING, FINANCIAL, ECONOMIC AND OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS THE EXCLUSIVE RESPONSIBILITY OF THE DEBTOR.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT AT ANY TIME AFTER THE DATE HEREOF



SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN ANY CHANGE IN THE INFORMATION STATED HEREIN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE INFORMATION REGARDING THE HISTORY, BUSINESS AND OPERATIONS OF THE DEBTOR AND THE HISTORICAL AND PROJECTED FINANCIAL INFORMATION REGARDING THE DEBTOR IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN.

**FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS.**

## **ARTICLE 1.**

### **INTRODUCTION**

#### **A. Overview of Chapter 11**

On October 1, 2013, the Debtor Filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

Chapter 11 may be used to effectuate a reorganization of a debtor's business and assets. The commencement of a chapter 11 case creates an Estate that is comprised of all of the legal and equitable interests of the Debtor as of the Filing date. The Bankruptcy Code contemplates that the Debtor, through its pre-bankruptcy management, will continue to operate its business in the ordinary course and remain in possession of its property during the case while it seeks to negotiate and implement a plan. The Bankruptcy Court must approve any activities that are not within the ordinary course of the Debtor's business.

The consummation of a plan is a principal objective of a chapter 11 case. A plan of reorganization provides for a reorganization of the Debtor's Estate. Confirmation of a plan of reorganization by the Bankruptcy Court makes the plan binding upon the debtor, any person or entity acquiring property under the plan and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder: (i) is impaired under or has accepted the plan; or (ii) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in the Plan itself or the Confirmation Order, the Confirmation Order will terminate all rights and Interests of Existing Equity Interests as of the date specified in the Plan.

## **ARTICLE 2.**

### **SUMMARY OF THE PLAN**

This section summarizes the major terms of the Plan. The Plan is attached to this Disclosure Statement as **Exhibit A**. Parties are encouraged to review the Plan in its entirety for a full understanding of its provision and impact on Creditors and Existing Equity Interests.

## O. Overview of the Plan

### 1. Unclassified Allowed Administrative Claims and Priority Tax 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 3 hereof.

Below is a summary of the unclassified Claims:

Claim Type	Description	Approximate Amount of Claims
DIP Facility Claims	Claims arising under the DIP Facility.	The DIP Facility Claims are approximately \$27,000,000, plus accrued but unpaid interest and fees due and owing as of the Effective Date.
Allowed Administrative Claims	Fee Claims are Claims for Accrued Professional Compensation.	Approximately \$5,000,000 in unpaid Fee Claims.
	U.S. Trustee Fees	Approximately \$30,000 in unpaid U.S. Trustee Fees.
	Other fees and expenses	This includes, without limitation, any operating expenses incurred since the Petition Date allowed under Section 503 of the Bankruptcy Code, in the approximate amount of \$2,200,000.
Priority Tax Claims	Any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.	Approximately \$6,800 in Allowed Priority Tax Claims.

#### 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.

Except as otherwise provided in Article II.A of the Plan 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 thirty (30) days after the Administrative Claims Bar Date.

*b. Professional Compensation.*

*i. Applications for and Payment of Fee Claims*

In accordance with Article II.B of the Plan, 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 Estate 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 after written notice by the Debtor of 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.

*ii. Final Fee Applications and Payment of Fee Claims*

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 shall be determined by the Court. The amount of Fee Claims owing to Professionals shall be paid in Cash to Professionals 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 of the Plan. After all Allowed Fee Claims have been paid in full to the extent required by Article II.B.2 of the Plan, any excess amounts in the Professional Fee Account shall be returned to or transferred to the Reorganized Debtor.

iii. 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 paid in Cash, as set forth in Article VII.B of the Plan, 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. A Secured Tax Claim shall be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

e. *Administrative Expense Claim Bar Date.*

No Administrative Expense Claim will be an Allowed Administrative Expense Claim and such Claim shall be forever barred and enjoined if it is not Filed by the Administrative Claims Bar Date.

2. Classification of Claims and Equity Interests

While the amount of distributions to certain Classes is currently unknown, the Debtor believes that the Plan provides the best and most prompt possible recovery for holders of Claims. Under the Plan, Claims against and Existing Equity Interests in the Debtor are divided into different Classes as follows:

Class	Description	Status	Voting
Class 1	Other Priority Claims	Unimpaired	Deemed to Accept

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

The following table is only a summary of the distribution to holders of Classified Claims. For a more detailed analysis, please refer to the discussion below:

<b>Class No.</b>	<b>Class Name</b>	<b>Approximate Amount of Claims</b>	<b>Treatment</b>
Class 1 (Unimpaired – Not entitled to vote)	Other Priority Claims	Approximately \$0 in total Other Priority Claims	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.
Class 2 (Unimpaired – Not entitled to vote)	Other Secured Claims	Approximately \$0 in Other Secured Claims	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

Class No.	Class Name	Approximate Amount of Claims	Treatment
			<p>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.</p> <p>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).</p>
Class 3 (Impaired – entitled to vote)	Senior Loan Claims	As of the Petition Date, approximately \$16,570,949.08 in Senior Loan Claims (to the extent any such amounts have not been previously satisfied pursuant to the DIP Facility)	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 pursuant to various pledge agreements executed by Argosy Investment Partners III, L.P., Marquette Capital Fund I, LP, Horizon Partners, Ltd., and Horizon Capital Partners III, L.P., to secure the Senior Loan Claims shall be released to its respective pledgers in accordance with their respective interests therein.

<b>Class No.</b>	<b>Class Name</b>	<b>Approximate Amount of Claims</b>	<b>Treatment</b>
Class 4 (Impaired – entitled to vote)	Senior Subordinated Note Claims	Approximately \$7 million in Senior Subordinated Note Claims, plus accrued but unpaid interest as of the Petition Date	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.
Class 5A (Impaired – Entitled to vote)	Trade Claims	The Debtor estimates the Trade Claims to be approximately \$14,500,000	<p>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:</p> <p>(i) if such holder and the Debtor enter into a New Trade Agreement, (a) a cash recovery equal to such holder's Trade Claim Distribution, which the Reorganized Debtor shall satisfy by paying: (i) for goods shipped or services delivered to the Debtor after the execution of the a New Trade Agreement, but before the Effective Date (A) where the invoice has been paid prior to the Effective Date, within 30 days after the Effective Date, 10% of each previously paid invoice, or (B) where the invoice has not been paid prior to the Effective Date, 110% of each invoice when such invoice is otherwise paid, and (ii) 110% on each invoice for goods shipped or services delivered to the Reorganized Debtor post-Effective Date; <i>provided, however,</i> that the Reorganized Debtor shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; and (b) the Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust on account of its Trade Deficiency Claim in accordance with the General</p>

<b>Class No.</b>	<b>Class Name</b>	<b>Approximate Amount of Claims</b>	<b>Treatment</b>
			Unsecured Claims Litigation Trust Waterfall; or (ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust in accordance with the General Unsecured Claims Litigation Trust Waterfall.
Class 5B (Impaired – Entitled to vote)	Other General Unsecured Claims	The Debtor estimates the Other General Unsecured Claims to be \$4,000,000 (this amount specifically excludes the Class Action Claims. If the Class Action Settlement is not Approved, then the Class Action Claims will be treated as Other General Unsecured Claims, and such claims could be in the multiple of millions of dollars. If the Class Action Settlement is not Approved, then the distribution to the Other General Unsecured Claims, could significantly be diluted).	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, 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 in accordance with the General Unsecured Claims Litigation Trust Waterfall.
Class 5C (Unimpaired– Note Entitled to Vote)	Unsecured Convenience Class Claims	The Debtor estimates the Unsecured Convenience Claims to be \$240,000	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



Class No.	Class Name	Approximate Amount of Claims	Treatment
			Convenience Class Claim pursuant to the Convenience Class Distribution.
Class 6 (Deemed to Reject the Plan and Not Entitled to Vote)	Section 510(b) Claims	The Debtor estimates the Section 510(b) Claims to be \$0	On the Effective Date, each Section 510(b) Claim shall be cancelled without any distribution and such holders of Section 510(b) Claims will receive no recovery.
Class 7 (Deemed to Reject the Plan and Not Entitled to Vote)	Existing Equity Interests	Not Applicable	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.

## P. Classified Claims

### 1. Class 1: Other Priority Claims

- a. *Classification:* Class 1 consists of Other Priority Claims.
- b. *Description:* Other Priority Claims include 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 Claim); or (b) Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Case.
- c. *Treatment:* Unimpaired. 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.
- d. *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 Other Secured Claims.

- b. *Description:* A holder of an Other Secured Claim is a holder of an Allowed prepetition Secured Claim other than a Senior Loan Claim.
- c. *Treatment:* Unimpaired. 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 Priority 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).
- d. *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 Senior Loan Claims.
- b. *Description:* Senior Loan Claims are the Claims arising under the Senior Loan Agreement. To the extent any such amounts have not been previously satisfied pursuant to the DIP Facility, the Senior Loan Claims shall be Allowed in an aggregate amount equal to approximately \$16,570,949.08, 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), which amount shall be subject to adjustment to an amount acceptable to the Senior Lender to the extent previously satisfied by the DIP Facility.
- c. *Treatment:* Impaired. 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 pursuant to various pledge agreements executed by Argosy Investment Partners III, L.P., Marquette Capital Fund I, LP,

Horizon Partners, Ltd., and Horizon Capital Partners III, L.P., 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 the Senior Subordinated Note Claims.
- b. *Description.* The Senior Subordinated Note Claims consist of any Claims arising under the Senior Subordinated Notes. The Senior Subordinated Notes means approximately \$7 million, plus accrued but unpaid interest as of the Petition Date, in issued and outstanding notes pursuant to those certain twelve-percent (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). 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:* Impaired. 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 the Trade Claims.
- b. *Description:* Class 5A Claims are Allowed General Unsecured Trade Claims.
- c. *Treatment:* Impaired. 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 an Allowed Trade Claim shall receive either:
  - (i) if such holder and the Debtor enter into a New Trade Agreement, (a) a cash recovery equal to such holder's Trade Claim Distribution, which the Reorganized Debtor shall satisfy by paying: (i) for goods shipped or services delivered to the Debtor after the execution of the a New Trade Agreement, but before the Effective Date (A) where the invoice has been paid prior to the Effective Date, within 30 days after the Effective

Date, 10% of each previously paid invoice, or (B) where the invoice has not been paid prior to the Effective Date, 110% of each invoice when such invoice is otherwise paid, and (ii) 110% on each invoice for goods shipped or services delivered to the Reorganized Debtor post-Effective Date; *provided, however*, that the Reorganized Debtor shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; and (b) the Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust on account of its Trade Deficiency Claim, in accordance with the General Unsecured Claims Litigation Trust Waterfall; or

(ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust in accordance with the General Unsecured Claims Litigation Trust Waterfall.

d. *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 5C consists of the Other General Unsecured Claims.

b. *Description:* Other General Unsecured Claims are Allowed General Unsecured Claims that are not Trade Claims, including, without limitation, General Unsecured Claims, Junior Subordinated Note Claims, Seller Note Claims, Opt-Out Claims, Class Action Claims only to the extent that the Class Action Settlement has not been Approved, and Claims that arise under Section 502(d) of the Bankruptcy Code.

c. *Treatment:* Impaired. 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, 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 in accordance with the General Unsecured Claims Trust Waterfall.

The General Unsecured Claims Litigation Trust Waterfall means that the General Unsecured Claims Litigation Trust Distributable Proceeds shall be distributed as follows after satisfying General Unsecured Claims Litigation Trust Expenses: (i) first, on a Pro Rata Basis, to General Unsecured Claims Litigation Trust Beneficiaries who are not holders of Trade Claims that entered into a New Trade Agreement until each such holder has recovered an amount equal to 10% of each such holder's Allowed General Unsecured Claim; and (ii) second, on a Pro Rata basis, to General Unsecured Claims Litigation Trust Beneficiaries on account of any unpaid Allowed General Unsecured Claim until such Allowed General Unsecured Claims have been paid in full.

d. *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 the Unsecured Convenience Class Claims.
- b. *Description:* Unsecured Convenience Class Claims include any Allowed General Unsecured Claim, other than Trade Claims that receive treatment pursuant to Article III.C.5(b)(i) of the Plan, that is \$7,500.00 or less.
- c. *Treatment:* Unimpaired. 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.
- d. *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. *Description:* Section 510(b) Claims include 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. Section 510(b) Claims specifically exclude the Senior Subordinated Note Claims and the Junior Subordinated Claims.
- c. *Treatment:* On the Effective Date, each Section 510(b) Claim shall be cancelled without any distribution and such holders of Section 510(b) Claims will receive no recovery.
- d. *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 the Existing Equity Interests.
- b. *Description:* The Existing Equity Interests are Allowed Existing Equity Interests in the Debtor, which may include, but are not limited to the following: Series A Common Stock, Series B Common Stock, Series C Common Stock, Series D Common Stock, Series E Common Stock, Series F Common Stock, Series G Common Stock, Series A 6% Convertible Preferred Stock, Series B Convertible

Preferred Stock, Series C 6% Convertible Preferred Stock, Common Stock C Warrants and Common Stock G Warrants.

- c. *Treatment:* Impaired. 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 cancelation or otherwise, and there shall be no distribution to holders of Allowed Existing Equity Interests on account of such Existing Equity Interests.
- d. *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.

#### **Q. Additional Claim Treatment Information**

The Claim treatment described in Classes 5A, 5B, and 5C reflects the negotiations between the Debtor, the Committee, and the Secured Lender to best balance the competing interests of creditors and to address the Debtor's present and future business needs. As more fully discussed below in Article 3.C.4., the Debtor faced significant difficulties with its trade creditors during the period preceding this case. The treatment afforded to Class 5A Claims is designed incentivize vendors to provide goods and related services to restore the Debtor's depleted inventory. Without these goods and services, the reorganization will not be possible. The treatment afforded to Class 5C ensures that the numerous small claims against the Debtor will be satisfied with minimal administrative expense to the estate.

The form of the New Trade Agreement is being negotiated with the Committee and will be filed with and be part of the Plan Supplement, which will be available from Kurtzman Carson Consultants at its website: [www.kccllc.net/groebfarms](http://www.kccllc.net/groebfarms) on December 6, 2013.

### **ARTICLE 3.**

#### **DESCRIPTION OF THE DEBTOR AND THE DEBTOR'S BUSINESS**

##### **A. Description of the Debtor<sup>1</sup>**

The Debtor was formed in 1981 and is the country's leading processor and packager of honey for food manufacturers and food service companies. The Debtor is headquartered in Onsted, Michigan, which also serves as the primary location of operation. The Debtor also operates a honey processing facility in San Bernardino, California, and maintains a testing lab in Belleview, Florida.

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's primary customers are the in the food service, industrial and retail segments.

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<sup>1</sup> The Debtor's Financial Statements for 2010 and 2011 are attached hereto as **Exhibit E**, and the Debtor's Financial Statements for 2012 are attached hereto as **Exhibit F**.

## **B. Description of the Principals**

The following is a summary of the principals that will manage the Debtor during its Chapter 11 Case, some of whom will be retained by the Reorganized Debtors. The identity and compensation of those who will be retained on the Effective Date will be disclosed no later than the Confirmation Hearing:

### **1. Rolf Richter**

Rolf Richter has been the Chief Executive Officer and President of the Debtor since June 2012. Mr. Richter is also a member of the Board of Directors of the Debtor. Mr. Richter is responsible for leading the strategic initiatives of the Debtor and leading the Debtor's corporate strategy. Mr. Richter holds a bachelor degree in Business Administration and a Diploma of Business Retailing from Ryerson Polytechnical University, Canada.

Previously, Mr. Richter was the President and Chief Executive Officer of AFA Foods, Inc., from June 2008 through July 2011. Mr. Richter was also the President and Chief Executive Officer at United Food Group LLC prior to the sale of the company to AFA Foods, Inc. Mr. Richter was the President of Conagra Foods Canada, Inc., from February 2004 through June 2008. Mr. Richter worked for Gruen Inc., in New York, NY as the Chief Operating Officer during the time period of 1999 through 2002, where he brokered a deal between the founder and venture capitalists. Mr. Richter also held the position of Vice President, General Manager – Europe of the Vlasic Division of Campbell Soup Company, as well as Managing Director for Freshbake Frozen Foods LTD., General Manager of the Dry Foods (Soup) Business Unit and Vice President / General Manager of the Frozen Foods, Food Service, and Refrigerated department during his employment.

### **2. Jack Irvin, Jr.**

Jack Irvin, Jr., has been the Chief Financial Officer and Vice President of the Debtor since January 2008. Mr. Irvin has over twenty (20) years of management experience in the food industry. Mr. Irvin is a certified public accountant. Mr. Irvin holds a Bachelor of Science degree in Accounting and minor in Finance from Pennsylvania State University, and he is a Certified Public Accountant in Pennsylvania and Maryland.

Most recently, Mr. Irvin was the President and Chief Financial Officer for Baltimore Spice, Inc., from 1991 through 1998, and 2002 through 2007. Mr. Irvin was the Vice President of Finance and Chief Financial Officer of Baltimore Spice, Inc., from 1989 through 2001.

### **3. John Wolf**

John Wolf has been a Vice President of Supply Chain & Management of the Debtor since October 2012. Mr. Wolf is also the Debtor's Corporate Compliance Officer. Mr. Wolf has a Bachelor of Arts in Business Administration from Grove City College.

Mr. Wolf has over twenty-four (24) years of experience in operations, purchasing and procurement with Kellogg's. Mr. Wolf was responsible for approximately \$2.5 Billion of spend across Kellogg America's internal manufacturing network, as well as the Kellogg North America contract manufacturing network. Mr. Wolf has managed up to seven direct reports and has been responsible for 97 facilities simultaneously. For four years, Mr. Wolf was the Vice President of Americas – Ingredients, Commodities, Risk Management at the Kellogg Company where he led the successful global procurement integration of the Pringles acquisition.

4. Craig Moore

Mr. Moore is the Vice President of Industrial and Retail Sales. Mr. Moore joined the Debtor in January 2009 and has over twenty (20) years of experience in the food industry. Previously, he was a Director of Specialty Products at Imperial Sugar Company. Mr. Moore graduated from Georgia Tech University, Atlanta, Georgia. Mr. Moore is responsible for all industrial and retail sales for the Debtor, and working with the brokers that handle those customers.

5. Michael Modjeski

Mr. Modjeski is a Vice President of Foodservice and Club Sales, and he joined the Debtor in February 2009. Mr. Modjeski holds a Bachelor of Science, Food Systems Economics and Management degree from Michigan State University, East Lansing, Michigan. Mr. Modjeski is responsible for all food service and club sales, and working with the brokers that handle those customers.

Mr. Modjeski has over twenty (20) years of food industry experience. From August 2007 through December 2008, Mr. Modjeski was a National Sales Manager at Yucatan Foods in Los Angeles, California, where he was responsible for 17 million in sales for the US, Canada, International and Club Stores. From May 2005 through August 2007, Mr. Modjeski was the National Sales Manager for the Deli Division of Nestle Foods in Glendale, California.

6. Joyce Schlachter

Ms. Schlachter is the Vice President of Technical Services. Ms. Schlachter joined the Debtor in 2005, and she is responsible for all aspects of quality control including quality assurance, quality specifications, and maintaining the Debtor's British Retail Consortium ("BRC") certification. Ms. Schlachter also handles honey supplier audits. Ms. Schlachter has a Bachelor of Science in Food Science from Michigan State University, East Lansing, Michigan. Ms. Schlachter worked at Little Caesar Enterprises/Blue Line Distributing from 1987 through 2004, and during the time period of 1994 through 2004, she served as the Senior Director of Quality Insurance and directed the Quality Assurance Program for the purchase of food and packaging for all domestic and international operations. During the time period of 1990 through 1994, Ms. Schlachter was the Director of Quality Assurance/Quality Assurance Manager. At Little Caesar Enterprises, she implemented, executed and directed all aspects of the Corporate Supplier Quality Assurance Program to include on-going supervision of the supplier audit program. Mr. Schlachter was an integral member of the procurement team that restructured Little Caesar's supplier base, upgraded product quality and supported new restaurant growth of 2000+ stores.

Ms. Schlachter maintains professional affiliations with the Institute of Food Technologists, International Association for Food Protection, National Council of Chain Restaurants – Food Safety Task Force and International Foodservice Distributors Association – Food Safety Task Force.

Information regarding the six above-described principals' compensation and fringe benefits for the one-year time period prior to the Petition Date is attached hereto as **Exhibit B**.

**C. Events Leading to Chapter 11.**

1. The Debtor's Debt Financing

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 "Senior Loan Agreement"), by and between the Debtor as borrower,



and Wells, as the lender. The Senior Loan Agreement sets forth the terms and obligations regarding an aggregate revolving commitment of a maximum of \$25,000,000 and a five-year term loan of \$1,120,000 (collectively the “Loans”). On September 18, 2013, Senior Lender purchased Wells’ position in the Loans and became the senior secured lender with respect to the Loans. As Security for the indebtedness under the Loans, and pursuant to Section 3.1 of the Senior Loan Agreement, the Debtor granted to Senior 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 Senior 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”).

In addition to the Loans, 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 of senior subordinated secured debt consisting of the Senior Subordinated Notes. Ernest L. Groeb, a former officer of the Debtor, is the shareholder representative with respect to \$1,500,000 of junior subordinated debt consisting of the Junior Subordinated Notes. The Debtor also has an unsecured note obligation in the approximate amount of \$423,762 to the Olesanik Family Living Trust, defined as the Seller Note, and unsecured trade debt of approximately \$14,500,000.

## 2. Government Investigations into the Debtor’s Business

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.

Following an extensive DOJ investigation, in February 2013, the Debtor entered into a deferred prosecution agreement (the “Deferred Prosecution Agreement”) with the DOJ as a global resolution for 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 Deferred Prosecution Agreement acknowledged that two former, unnamed executives (Executive A and Executive B) had misled the Debtor’s board, the Debtor’s customers and the public.

Both before and after execution of the Deferred Prosecution Agreement, the Debtor took a number of steps to remediate issues regarding potentially transshipped honey. In January 2012, the Debtor retained Foley & Lardner LLP (“Foley”) 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 purchased Datamyne software that would facilitate verification of container numbers and countries of origin for the honey that the Debtor purchases. The Debtor continues to carry BRC certification, which subjects it to stringent audit testing by third parties. The Debtor also has strengthened its supplier audit 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.

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.

The Debtor had hoped that the Deferred Prosecution Agreement 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 Deferred Prosecution Agreement 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 Deferred Prosecution Agreement. While none of the claims make a specific damage demand, RICO and Lanham Act cases carry a potential for treble damages. The claims include requests for attorneys' fees. These claims could amount to multiple millions of dollars. A Claim arising on account of the Putative Class Action against the Debtor is a "Class Action Claim," and a holder of a Class Action Claim who does not opt-out from being a member of the certified class (in the event the class is certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure) is a "Class Action Claim Holder".

As a result of the Deferred Prosecution Agreement, 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.

Although the Debtor has significant defenses to the allegations in the Putative Class Action and ultimately could prevail, the attorneys' fees and litigation 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 company outside of a bankruptcy proceeding and impedes potential buyers from purchasing the company at a maximized value to resolve the Debtor's financial issues.

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 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.

### 3. The Debtor Defaulted on the Loans

On June 18, 2013, Wells issued a Notice of Default because the Debtor fell below the average excess availability amount required by the Senior Loan Agreement (the "Excess Availability Default"). As a result of the Excess Availability Default, Wells assessed default interest on the Loans at a rate of 3.0% per annum above the rate in the Senior Loan Agreement.

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 Senior Loan Agreement (the "EBITDA Default"). As a result of the EBITDA Default, Wells restated that the Loans would accrue interest at a rate of 3.0% per annum above the rate in the Senior Agreement.

On July 23, 2013, Wells unilaterally implemented a \$750,000 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. Discussions regarding a Forbearance Agreement continued and the parties entered into a revised Forbearance Agreement and Fourth Amendment to the Senior Loan Agreement on August 15, 2013 (the "Forbearance Agreement"). Pursuant to the Forbearance Agreement, among other things: (a) Wells agreed to consider making discretionary advances during the period of August 15, 2013 through September 6, 2013 (the "Initial Forbearance Period"); (b) reduced the maximum revolver amount to \$17,250,000 as of September 6, 2013, and reduced the inventory sublimit from \$15,000,000 to \$12,500,000; and (c) required the Debtor to release Wells from any claims against it. The Debtor also hired Conway Mackenzie, Inc., to provide Wells various reports, a Chapter 11 budget and a Chapter 11 restructuring strategy.

On September 9, 2013, the Debtor and Wells entered into the revised Forbearance Agreement and Fifth Amendment to Credit Security Agreement ("Amended Forbearance Agreement"), which among other things (a) continued the Forbearance Period through September 27, 2013 (the "Second Forbearance Period"); (b) further reduced the Debtor's borrowing base from \$12,500,000 to \$7,500,000; (c) required the Debtor to continue to engage a consultant to assist the Debtor in assessing, restructuring and marketing a sale of the Debtor's business or assets and determining the Debtor's financial strategy; and (d) included various marketing milestones for a potential sale of the Debtor's business or assets.

### 4. Marketing Efforts by the Debtor's Consultants and the Sale of the Loans

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.

During the marketing process, the Debtor's liquidity was limited to the point that the Debtor's vendors were concerned about the ability to receive payment for previously delivered goods and services.

As a result, the Debtor experienced considerable difficulty procuring additional product deliveries. Certain vendors required the Debtor to pay old invoices as well as cash-on-delivery for new deliveries, further exacerbating the Debtor's liquidity issues. The Debtor's inventory has also been strained by the competition for the limited supply of honey in the marketplace. Vendors have multiple avenues for sale of their product, and due to the Debtor's limited ability to pay for product, vendors can and have chosen not to sell to the Debtor when there are other willing customers.

Houlihan continued to market the Debtor's business notwithstanding the difficult liquidity situation and encouraged all interested parties to proceed quickly. In addition to considering alternative sources of financing and methods to procure additional raw honey in support of the operations, the Debtor and Houlihan also encouraged interested parties to consider funding the business on an interim basis.

The Debtor received eight written IOIs, including a proposal from Honey Financing Company, LLC ("Honey Financing" or "Senior Lender Affiliate"), an affiliate of Peak Rock Capital, to restructure the obligations of the Debtor and acquire the equity of the Reorganized Debtor pursuant to the Plan filed contemporaneously herewith. After reviewing the IOIs, the Debtor determined that the proposal from Senior Lender Affiliate 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 Senior Lender Affiliate. The Debtor entered into the Restructuring Support Agreement in connection with the offer (the "Honey Financing RSA").

On September 18, 2013, Senior Lender, an affiliate of Honey Financing, purchased the Wells debt, and became the Debtor's senior secured lender.

## 5. The Restructuring Support Agreements

### *a. The Honey Financing RSA*

On or about October 1, 2013, the Debtor, Senior Lender Affiliate, and Senior Lender entered into a Restructuring Support Agreement (the "Honey Financing RSA"). Through various Restructuring Support Agreements, Debtor agreed to restructuring and recapitalization transactions between the Debtor, Senior Lender Affiliate, the Senior Lender, the Interim CA Counsel, and certain holders of the Senior Subordinated Notes (the "Restructuring Transactions"). Pursuant to the Honey Financing RSA, the Debtor agreed to commence the Chapter 11 Case in order to implement the Restructuring Transactions. Pursuant to the Honey Financing RSA, the Debtor agreed to, among other things: (i) commence the Chapter 11 Case on or before October 1, 2013; (ii) provide the Senior Lender Affiliate and Senior Lender, and their counsel, the final forms of the "first day pleadings" at least two days before the anticipated petition date, and the documents must be in a form acceptable to Senior Lender Affiliate prior to the bankruptcy filing; (iii) file the Plan and this Disclosure Statement on the Petition Date; (iv) move to have the hearing to approve the Disclosure Statement and the solicitation materials no later than thirty-six (36) days after the Petition Date; (v) obtain interim approval of the DIP Financing no later than two business days following the Petition Date, and a final order approving the DIP Financing no later than thirty-six days after the Petition Date.

Pursuant to the Honey Financing RSA, the Senior Lender Affiliate agreed, among other things, to provide the DIP Facility to the Debtor, to provide the Exit Facility upon the Effective Date of the Plan, and as applicable, vote to accept the Plan by balloting in favor of the Plan.

### *b. The Senior Subordinated Debt RSA*

On or about October 1, 2013, the Debtor, the Senior Lender Affiliate, the Senior Lender and certain holders of the Senior Subordinated Notes entered into a Restructuring Support Agreement (the “Senior Subordinated Debt RSA”), pursuant to which certain holders of the Senior Subordinate Notes agreed to, among other things: (i) support the Restructuring Transactions; (ii) consent to the Debtor’s continued use of cash collateral during the Chapter 11 case and to the proposed DIP Facility, and provided that the Debtor provides the acknowledgements, adequate replacement liens and the reporting described therein, the holders of the Senior Subordinated Notes agreed that they are not entitled to any additional adequate protection on account of any diminution in value of their security interest based on the Debtor’s use of cash collateral or entry into the DIP Facility during the pendency of the Chapter 11 Case; (iii) provided that the Senior Subordinated Debt RSA was not terminated, they would vote to accept the Plan by balloting in favor of the Plan; (iv) not object to, delay, impede or take any other action to interfere with acceptance or implementation of the Plan; (v) not propose, file, support, or vote for any restructuring, workout, plan of arrangement or plan of reorganization for the Debtor other than the Plan; (vi) not directly or indirectly cause any other Entity to take any action contemplated in clauses (iv) or (v); and (vii) would execute at the request of Senior Lender Affiliate agreed upon deposit account control agreements in respect of funds pledged as collateral pursuant to the Senior Loan Agreement.

Pursuant to the Senior Subordinated Debt RSA, the Debtor agreed to, among other things: (a) support and implement the Restructuring Transactions and all transactions set forth in the Plan and the Senior Subordinated Debt RSA, including, without limitation, the proposed treatment of Senior Subordinated Note Claims as set forth in the “Term Sheet” attached thereto; (b) take any and all necessary and appropriate actions in furtherance of the Plan and the Senior Subordinated Debt RSA; (c) complete the Restructuring Transactions and all transactions set forth in the Plan; and (d) obtain any and all required regulatory and/or third-party approvals for the Restructuring Transactions; and (e) not object to the Claims or Liens, or seek or take any action to avoid the Claims or Liens of the holders of certain Senior Subordinated Notes, and seek appropriate orders of the Bankruptcy Court regarding the same.

*c. The Putative Class Action RSA*

Prior to the Petition Date, the Debtor engaged in negotiations with the court-appointed interim class counsel (“Interim CA Counsel”) for the Class Action Claim Holders. As of the Petition Date, the Debtor and the Interim CA Counsel reached a settlement of the Putative Class Action resulting in the execution of a Restructuring Support Agreement (the “Putative Class Action RSA”). Pursuant to the Putative Class Action RSA, the Interim CA Counsel agreed to (i) settle the Putative Class Action against the Debtor for \$1.75 million, in consideration for a release of the Class Action Released Parties (defined below), subject to Insurer (defined below) approval and Court approval (the “Class Action Settlement”); (ii) support, and encourage each of the Class Action Claimants (as defined therein) to support the Restructuring Transactions; (iii) support the Plan; (iv) vote on behalf of all of the Class Action Claimants to accept the Plan by voting in favor of the Plan, provided however, the Interim CA Counsel’s ballot shall not count as an acceptance of the Plan with respect to any Class Action Claimant that appropriately opts-out of the class; (v) not object to, delay, impede or take any other action to interfere with acceptance or implementation of the Plan; (vi) not propose, file, support, or vote for any restructuring, workout, plan of arrangement or plan of reorganization for the Debtor other than the Plan; (vii) not directly or indirectly cause any other Entity take any action contemplated in clauses (v) or (vi); and (viii) support the Debtor’s efforts to obtain entry of one or more orders in the Chapter 11 Case approving the Class Action Settlement, pursuant to which the Debtor would make \$1.75 million of proceeds of the D&O Policy (defined below) available to the Class Action Claimants upon the emergence from chapter 11.

The \$1.75 million to be paid pursuant to the Class Action Settlement was to be funded from the proceeds of the Debtor’s insurance policy (the “D&O Policy”) with Chubb Group of Insurance Companies (the “Insurer”). The D&O policy covers the period of May 1, 2011 through May 1, 2012, and

covers certain Claims against the Debtor and directors and officers of the Debtor, along with their respective defense costs. The D&O Policy has a combined maximum aggregate limit of liability in the amount of \$5,000,000, plus an additional \$500,000 in Side A coverage, which is dedicated to officer and director defense costs, for a total of \$5,500,000. Because the Insurer has a duty to defend the insureds under the D & O Policy, if settlements of the claims insured thereunder are not obtained, the proceeds of the D & O Policy may be dissipated by defense costs.

The Putative Class Action RSA requires the Class Action Settlement to be “Approved”: (a) by the Insurer on or before October 10, 2013; and (b) by the Bankruptcy Court, and (c) a United States District Court, on a final basis, both on or before February 7, 2014 (120 days from October 10, 2013). The holder of a Class Action Claim who chooses to opt-out from being a member of the certified class, in the event the class is certified pursuant to Federal Rules of Civil Procedure Rule 23(b)(3), will have an “Opt-Out Claim,” which will be treated as a General Unsecured Claim under Class 5B of the Plan. **If the Class Action Settlement is Approved, then the Class Action Claims, excluding any applicable Opt-Out Claims, will not be administered under the Plan. If the Class Action Settlement is not Approved as required by the Putative Class Action RSA, then the Class Action Claims will be administered as Class 5B Claims in accordance with Article III of the Plan and will be deemed General Unsecured Claims.** If the Class Action Settlement is not Approved, then the distribution to the Other General Unsecured Claims in Class 5B, could be significantly diluted due the inclusion of the Class Action Claims in Class 5B.

The Class Action Released Parties are the Debtor’s current and former officers, directors, agents and employees and their affiliates, successors and assigns, including 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) other than the Excepted Parties (defined below) (the “Class Action Released Parties”). The “Excepted Parties” are Ernest Groeb, Troy Troeb, Horizon Partners Ltd., and any affiliate of the Class Action Released Parties who is engaged in the business of shipping, purchasing, processing or producing honey other than the Organized Debtor.

To date, the Class Action Settlement has not been Approved by the Insurer, due to the lack of consent of Ernest Groeb and Troy Groeb to the Class Action Settlement. Ernest and Troy Groeb have not consented to the Class Action Settlement because they are not included in the Class Action Released Parties. As a result, discussions have ensued to determine whether and for what price the Putative Class Action can be settled in a manner that includes Ernie and Troy Groeb, and simultaneously settles any derivative claims against former and current officers and directors covered by the D&O Policy. In the event of such a settlement: (a) the settlement will be subject to the approval of the Bankruptcy Court, upon motion of the Debtor, (b) the settlement of the Putative Class Action will be subject to final approval of a United States District Court, and (c) the Claims of the holders of a Class Action Claim will be satisfied by such settlement unless they have an Opt-Out Claim. In the event that no such settlement occurs, the Class Action Claims will be administered as Class 5B Claims in accordance with Article III of the Plan and will be deemed General Unsecured Claims.

The Honey Financing RSA, the Senior Subordinated Debt RSA, and Putative Class Action RSA are attached as exhibits to the *Declaration of Jack M. Irvin, Jr., in Support of Chapter 11 Petition and First Day Motions*, docket number 15 (the “First Day Declaration”).

## ARTICLE 4.

### SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASES

#### A. Petition Date

The Debtor Filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code on October 1, 2013, thereby commencing the Bankruptcy Case. Since that date, the Debtor has been operating as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. As a consequence of the Debtor's commencement of the Bankruptcy Case, all actions and proceedings against the Debtor and all acts to obtain property from the Debtor have been stayed under section 362 of the Bankruptcy Code.

#### B. First Day Filings and Motions

In order for the Debtor to continue to operate its business and to implement the terms of the Restructuring Support Agreement, on the Petition Date the Debtor Filed the following with the Bankruptcy Court:

1. Declaration of Jack Irvin, Jr., in Support of Chapter 11 Petition and First Day Motion.
2. 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 "DIP Motion").
3. Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code.
4. Debtor's First Day Motion for 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, and (III) Continued Use of Existing Cash Management.
5. 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.
6. Debtor's First Day Motion for Order Pursuant to Sections 366 and 105 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.
7. Debtor's First Day Motion for an Order Establishing Bar Date for Filing Proofs of Claim, Including Section 503(b)(9) Claims and Approving Form and Manner of Notice Thereof.
8. Debtor's Motion for an Order (I) Approving the Disclosure Statement; (II) Approving the Form and Manner of notice of Confirmation Hearing (III) Establishing Procedures For Filing Objections to Confirmation of Debtor's Plan; (IV) Approving the Balloting Agents and Subscription Agents; (V) Approving Solicitation Package and Related Procedures;

(VI) Setting the Voting and Subscription Record Dates; (VII) Approving Forms of Ballots; (VIII) Establishing the Voting Deadline; (IX) Approving procedures for Vote Tabulation; (X) Establishing a Deadline and Procedures for Temporary Allowance of Claims for; (XI) Approving Certain Other Related Matters.

9. 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.
10. 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 Section 503(b)(9) Claims on an Immediate Basis, and (II) Confirming Administrative Expense Priority for Goods Delivered Post-Petition.
11. Debtor's First Day Motion for an Order Authorizing the Debtor to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business.

### **C. The DIP Facility**

On the Petition Date, the Debtor Filed its *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*, pursuant to which it sought, among other things, interim approval of the DIP Facility, which consists of senior secured \$25 million debtor-in-possession financing provided by the DIP Lender. The terms of the DIP Facility are set forth in the DIP Motion. Some of the salient terms of the DIP Facility include, but are not limited to, the following: (i) the DIP Lender has agreed to provide the DIP Facility with a maximum credit amount of up to \$27,000,000, by way of a debtor-in-possession revolving line of credit facility; (ii) the Debtor may use the DIP Facility to: (a) refinance the obligations of the Senior Loan Agreement; (b) pay fees and expenses associated with the DIP Facility; and (c) the working capital needs of the Debtor, subject to the budget approved by the DIP Lender; and (iii) the DIP Facility shall terminate at the earliest of: (x) the date that is one hundred ten (110) days after the Petition Date; (y) three (3) days following the Petition Date, unless the Interim Order has been entered by that date and is in full force and effect, and not stayed; (z) thirty-six (36) days following the Petition Date unless the Final Order has been entered and is in full force and effect, and not stayed; (aa) the date the Borrower terminates the DIP Facility; or (bb) the date the DIP Facility terminates pursuant to any event of default.

### **D. Retention of Professionals**

#### **1. Debtor's Counsel**

The Debtor has retained Foley as their bankruptcy counsel. On the Petition Date, the Debtor Filed its 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, Bankruptcy Rules 2014(a) & 2016(b) of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2014-1 (the "Foley Employment Application"), pursuant to which the Debtor seeks to employ Foley as its general bankruptcy counsel, and in the alternative, special counsel during the term of the Chapter 11 Case. Because of issues concerning: (a) the existence of a large pre-petition unsecured Claim ("Foley Claims"); and (b) payments (other than



retainers) made in the pre-petition preference period, the Debtor hired Clark Hill PLC (“Clark Hill”) to advise the Debtor on settlement of the potential preferences. A settlement was reached pursuant to the advice of Clark Hill, and Foley repaid all settled amounts to the Debtor prior to the Filing of the Bankruptcy Case. In addition, Foley waived all Foley Claims.

2. Debtor’s Financial Consultant

On October 14, 2013, the Debtor Filed its Application of the Debtor for an Order Authorizing The Retention and Employment of Conway Mackenzie, Inc. Pursuant to 11 U.S.C. §§ 327(a) and 1107(a) as Financial Advisor to the Debtor *Nunc Pro Tunc* to the Petition Date, pursuant to which the Debtor seeks the entry of an order authorizing the retention and employment of Conway MacKenzie, Inc., as its financial consultant.

3. Debtor’s Financial Advisor & Investment Banker

On October 11, 2013, the Debtor Filed its Application to Employ Houlihan Lokey Capital, Inc., as Financial Advisor and Investment Banker Pursuant to 11 U.S.C §§ 327(a) and 328(a), Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2014-1, pursuant to which, the Debtor seeks the entry of an order authorizing the retention and employment of Houlihan as its financial advisor and investment banker.

4. Debtor’s Notice and Claims Agent

On the Petition Date, the Debtor Filed its First Day Motion for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002 Authorizing the Engagement of Kurtzman Carson Consultants LLC as Claims, Noticing, and Balloting Agent *Nunc Pro Tunc* to the Petition Date, pursuant to which, the Debtor seeks the entry of an order authorizing the retention and employment Kurtzman Carson Consultants, LLC as its claims, noticing and balloting agent.

**E. Litigation Pending During the Chapter 11 Case**

As further discussed above in Article 3(C)(2), the Putative Class Action is pending as of the Petition Date, and remains pending post-petition.

**F. The Appointment of an Official Committee of Unsecured Creditors**

On October 9, 2013, the Office of the U.S. Trustee appointed an official committee of unsecured creditors (the “Committee”) in this Chapter 11 Case pursuant to 11 U.S.C. § 1102(a) & (b). The Committee consists of the following: (i) Denise Willi for Bees Brothers, LLC; (ii) Brian Buoye for Buoye Honey; (iii) Parvinder Thapar for Little Bee Impex; (iv) Jose Alfonso Salazar Montalvo for Citrofruit SA de CV; and (v) Jeffrey Dong for Delta Food International Inc.

## ARTICLE 5.

### ASSETS AND LIABILITIES

#### A. Assets

##### 1. Cash

The Debtor's cash balance includes balances in each of its two petty cash accounts as well as its Wells operating and collateral accounts.

##### 2. Accounts Receivable

The Debtor has valued accounts receivable based on management's expected realization net of costs to collect based on management experience with the customer base and age of the receivable. As of August 30, 2013, over eighty-five percent (85%) of the Debtor's account receivables are current or within terms. This is due to the credit pressures imposed by vendors on the Debtor. Accounts receivable may be collected at amounts less than the projected value for a variety of reasons, including, without limitation, because account debtors may assert setoffs, account debtors may be uncollectible, or the costs to collect the receivables may be higher than projected.

##### 3. Inventory

The Debtor's inventory consists of raw honey, other raw material food commodities, packaging materials, and finished goods such as honey packaged for retail and food service customers. The majority of the Debtor's raw inventory is received in 55-gallon drums or large totes and is stored on site at either the Debtor's California or Michigan facilities. There is no useable or merchantable inventory at the Debtor's Florida facility. Due to the nature of the Debtor's production process, there is no work in process inventory. The Debtor has valued inventory based management's expected realizable value. Inventory may be realized at amounts less than projected because the selling price may be lower than expected and the cost of obtaining possession of inventory may be higher than expected.

##### 4. Leased Premises

The Debtor has three leased facilities located in (i) Onsted, Michigan (the "Michigan Facility"), (ii) Belleview, Florida (the "Florida Facility"), and (iii) San Bernardino, California (the "California Facility").

The Michigan Facility is located at 10464 Bryan Highway, Onsted, Michigan. The Michigan Facility is leased from Ernest L. Groeb, Jr. Trust B, United Bank & Trust, Successor Trustee. The Debtor initially entered into an original Lease on February 1, 2006, then a First Amendment to Lease dated March 19, 2007, and Lease Extension Agreement dated March 15, 2012 (collectively, the "Michigan Lease"). The Michigan Lease term is April 1, 2012 through March 31, 2017, with an option to extend the lease for an additional five years. The annual rent for the Michigan Facility is \$97,200. The Michigan Facility is 31,698 square feet, and it has the annual capacity of blending approximately 36 million pounds of honey, and the daily capacity to blend approximately 120,000 pounds of honey per day. The Michigan Facility is currently operating at approximately ninety percent (90%) capacity. The Michigan Facility includes a main production building with administrative offices, a finished warehouse and a maintenance / storage facility.

The California Facility is located at 1455 E. Riverview Drive, San Bernardino, CA. The California Facility is leased from GT 94 LP, by GTI Management Co., LP, pursuant to a Standard Industrial / Commercial Single-Tenant Lease dated May 2, 2012 (the "California Lease"). The California Lease term is from July 1, 2012 through November 30, 2017, with an option to extend for an additional two years. The annual base rent for the California Facility is \$363,936 (\$30,328 per month). The warehouse area of the California Facility conducts all operations of storage, processing, production and shipping. The California Facility is 116,645 square feet, and has a 16,000 square foot office space with a reception area, conference room, employee offices and a lab. The California Facility has an annual capacity of blending approximately 40 million pounds of honey per day, but it is currently operating approximately 20 million pounds, or fifty-percent (50%) capacity. The Debtor's management believes that the daily output could be double with limited investment that would increase the daily oven cycles.

The Florida Facility is located at 3220 SW Highway 484, Belleview, Florida. The Florida Facility is leased from Ernest Leland Groeb, Troy L. Groeb, and E. Jeanne Groeb, as tenants in common and doing business as Groeb Farms. The Debtor initially entered into an original Lease on or about January 1, 2003, then a First Amendment to Lease dated March 16, 2007, and finally a Lease Extension on March 15, 2012 (collectively, the "Florida Lease"). The lease term is from April 2012 through March 2017. The annual rent for the Florida Facility is \$59,400 (\$4,950 per month). The Florida Facility is 116,000 square feet. The Florida Facility has the capacity to blend 85,000 pounds of honey per day; however, the Debtor idled the Florida Facility in May 2013 except for lab operations, which are continued for the Debtor's Michigan and California operations. The Debtor does not currently use a majority of the Florida Facility and is no longer blending honey at this facility. The Debtor will likely File a motion with the Bankruptcy Court seeking permission to reject the Florida Lease.

#### 5. Property, Plant & Equipment

The Debtor's Property, Plant and Equipment consists of mostly physical plant equipment such as processing equipment, warming ovens, bottling lines, laboratory and testing equipment, and various leasehold improvements to the Debtor's processing facilities. In addition, the Debtor has both owned and leased vehicles and trucks. The Debtor has a nominal amount of furniture and fixtures.

#### 6. Promissory Note Receivables

In about December 2009, three executives of the Debtor executed promissory notes in favor of the Debtor as follows: (i) Jack Irvin, Jr. executed an Unconditional Promissory Note dated December 2009 in the principal amount of \$50,000 (the "Irvin Note"); (ii) Joyce D. Schlachter executed an Unconditional Promissory Note dated December 2009 in the principal amount of \$30,000 (the "Schlachter Note"); and (iii) Michael R. Modjeski executed an Unconditional Promissory Note dated December 2009 in the principal amount of \$37,420 (the "Modjeski Note"). These three promissory notes were for the deferred purchase price of the Debtor's stock in the amounts indicated in the respective Executive Investment/Shareholder Agreements between each shareholder and the Debtor. The notes are payable over fifteen (15) years, with a balloon payment due in 2014. However, in about April 2013, acting on the authority of the Debtor's board of directors, the Debtor's Chief Executive Officer cancelled the obligations under these promissory notes. No payments have been made on the notes since that time.

On or about February 1, 2012, Ernest L Groeb and Troy Groeb executed a Promissory Note in favor of the Debtor in the original principal amount of \$185,000, which currently has principal and interest outstanding in the approximate amount of \$204,000.

7. Preferences/Fraudulent Transfer

The Debtor has potential preference Avoidance Actions against various vendors of the Debtor for payments on past due invoices within the ninety (90) day pre-petition period. The list of such payments during the ninety-day (90) day pre-petition period is included in the Debtor's Statement of Financial Affairs. The Debtor estimates that the value for such Causes of Action is approximately \$4.7 million. However, the Debtor anticipates that certain holders of Allowed Trade Claims will enter into a New Trade Agreement, pursuant to which, the Debtor will release such holders from certain Avoidance Actions, as set forth in the New Trade Agreement, but at this time, the Debtor is unable to estimate the percentage of such holders that will enter into a New Trade Agreement. If all holders of Allowed Trade Claims enter into a New Trade Agreement, then the estimated recovery based on these Causes of Action will be \$0.

As indicated in the Foley Employment Application, Foley received payments from the Debtor in the 90 days prior to the bankruptcy. In order to avoid any potential preference issues related to those payments, as more fully set forth in the Foley Employment Application, Foley paid \$320,000 to the Debtor to resolve such potential preferential transfers based on payments to Foley in the amount of \$476,550 during the prepetition preference period. The process employed by the Debtor to settle these issues is more fully set forth in the Foley Employment Application.

The Debtor has potential preference Avoidance Actions against former insiders for severance and other compensation payments made during the one-year pre-petition time period. The Debtor estimates that the value for such Causes of Action is approximately \$62,500, and that the estimated recovery is \$20,000.

8. Causes of Action

The Debtor may have potential claims for breaches of fiduciary duty against certain officers and directors in connection with the facts set forth in the Deferred Prosecution Agreement concerning the transshipping of honey (the "Derivative Claims"). The Debtor believes the D&O Policy covers these claims if brought on behalf of creditors. The Debtor is negotiating with the Insurer to resolve these claims as set forth above, in conjunction with obtaining Approval of the Class Action Settlement. It is anticipated that the proceeds of the D&O Policy used to settle these claims will be a significant asset in the General Unsecured Claims Litigation Trust. Any such settlement will be approved by the Court upon a motion of the Debtor or the General Unsecured Claims Litigation Trustee, as applicable. In the event these claims are not settled prior to the Effective Date of the Plan, these claims will be transferred to the General Unsecured Claims Litigation Trust pursuant to the Plan.

**B. Liabilities**

The projected amount of priority, administrative and unsecured Claims is reflected in Article II above.

1. Accounts Payable

The Debtor's accounts payable primarily relate to trade credit for raw honey and other food commodity products. Additional accounts payable include trade credit for packaging, prior professional services, and certain marketing expenses, among other items.

2. Accrued Expenses

Accrued expenses as of the Petition Date include accrued interest, accrued customer rebates, accrued brokerage payments, accrued trade payables not vouchered, and an accrual allowance for prior honey purchases that were deemed to be non-useable and non-merchantable. Accrued expenses also include accrued payroll and related employee obligations, including the accrued liability under the Litigation Settlement.

3. The Senior Loan Facility

The Senior Loan Facility includes indebtedness under (i) the Senior Loan Agreement, 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), together with related loan, security, collateral, and other documents; (ii) the full amount drawn by the Debtor on the working capital facility to facilitate the Debtor's operations; (iii) a letter of credit for approximately \$50,000. The Senior Lender and the Debtor entered into a Waiver Agreement and Sixth Amendment to Credit and Security Agreement dated September 26, 2013, which provided the Debtor, among other things, an overadvance of \$3 million and a waiver of existing defaults. The Debtor paid a 4% amendment fee in connection with such amendment.

4. Sr. Subordinated Notes

The Senior Subordinated Notes include approximately \$7,000,000 in issued and outstanding secured 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).

5. Jr. Subordinated Notes

The Jr. Subordinated Notes includes approximately \$1,500,000 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). The Junior Subordinated Notes are unsecured.

6. The Seller Note

The Seller Note is 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.

**C. Letters of Credit**

As noted above, the Debtor's Senior Loan Facility includes a letter of credit for approximately \$50,000 relating to the Debtor's P-Card account.

**D. Lease Rejections**

The Debtor will likely reject the Florida Lease. The Debtor expects rejection damage claims of \$48,000.

## **E. Other Obligations**

The Debtor has various indemnification obligations to defend its officers and directors, including Executive A and Executive B for breach of fiduciary duty claims pursuant to numerous documents, including but not limited to its bylaws.

In connection with the Seller Note discussed above, the Debtor has certain obligations related to the Debtor's purchase of Miller's American Honey, Inc. ("MAH"), pursuant to which the Debtor assumed the obligations under the Seller Note. Previously, MAH entered into an Asset Purchase Agreement with Resurgence Corporation, d/b/a E.F. Lane and Son ("E.F. Lane"), in which MAH agreed to pay E.F. Lane certain royalty payments and covenant not to compete payments. After the Debtor purchased MAH, MAH assigned to George T. Murdock ("Murdock") the Asset Purchase Agreement and Murdock assumed the obligations to pay the royalty payments. The Debtor has been paying the obligation under the Seller Note and has been paying the covenant not to compete payments to E.F. Lane.

## **ARTICLE 6.**

### **DETAILS REGARDING IMPLEMENTATION OF 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 or formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to the Bankruptcy Code or applicable state law; (iv) if requested by the Senior Lender Affiliate prior to the Effective Date, the Debtor will form Holdings and if Holdings is formed, each holder of any shares of New Equity issued by Groeb Farms, Inc. shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute each such share of New Equity issued to such holder pursuant to the Plan to Holdings in exchange for the issuance by Holdings to each such holder of such holder's Pro Rata share of New Equity issued by Holdings as of the Effective Date (which shall be subject to immediate dilution by the issuance of the New Warrants and the Management Incentive Plan) (such transactions, a "Holding Company Restructuring") and if a Holding Company Restructuring is implemented, Holdings shall be deemed to be "Reorganized Parent" and the New Equity issued by Holdings shall be deemed to be the "New Equity," in each case for all purposes under the Plan, (v) if requested by the Senior Lender Affiliate prior to the Effective Date, the Debtor will convert into a Delaware entity; and (vi) 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.

Pursuant to the Plan, upon the Effective Date, the Reorganized Debtor is projected to have the following capitalization:

A. Exit Facility Revolver with approximately \$15 million of funded debt;

- B. \$5 million Exit Facility Term Loan;
- C. \$3 million of New Subordinated Notes;
- D. An obligation of \$4.8 million to holders of Class 5A Trade Claims that have entered into a New Trade Agreement with the Debtors (to the extent if that the full amount is not payable to holders of Class 5A Claims, such excess will be drawn on the exit facility and funded into the General Unsecured Claims Litigation Trust pursuant to the Plan); and
- E. Equity interests resulting from the conversion of DIP Facility Claims and Senior Loan Claims in a total amount of \$10 million.

In total the capitalization of the Reorganized Debtor is forecast to be approximately \$37.8 million. In addition to the above items, the Plan contemplates the distribution of additional equity related interests from both the New Warrants and the Management Incentive Plan. The Plan contemplates that the Debtor's Secured Lender, who is funding this reorganization, will receive the majority of the equity of the Reorganized Debtor. As part of the Plan negotiations, the Secured Lender determined that \$10 million of equity is the appropriate balance between debt and equity for the ongoing capitalization of the business.

## **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 Parent 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.C of the Plan (and subject to a Holding Company Restructuring being implemented). The issuance of the New Equity, and, if applicable, the Holding Company Restructuring, 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 in the Plan, 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 Reorganized Parent shall issue 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 of the Plan; *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. Contingent Third Lien in Favor of Holders of Trade Claims that Enter into a New Trade Agreement**

For a period of 12 months starting upon the Effective Date, the Reorganized Debtor shall provide holders of Trade Claims that enter into a New Trade Agreement with a Trade Claim Contingent Third Lien to the extent that the Reorganized Debtor's new working capital falls below \$2,000,000 (tested on a quarterly basis, with the first test conducted following the three-month period starting with the first full month after the Effective Date). The Reorganized Debtor shall provide such reporting to the General Unsecured Claims Litigation Trustee within 30 days following the conclusion of each quarter. Any such Trade Claim Contingent Third Lien shall be deemed perfected automatically.



## **E. 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 General Unsecured Claims Litigation Trust the General Unsecured Claims Litigation Trust Assets include (i) the General Unsecured Claims Litigation Trust Payment, (ii) the General Unsecured Claims Litigation Trust Causes of Action, and all proceeds of the foregoing, (iii) all proceeds under the D&O Policy, subject to all rights of covered parties to the D&O Policy to assert claims against the D&O Policy, (iv) the Trade Claim Remaining Amount, and (v) all rights of setoff and other defenses against General Unsecured Claims held by General Unsecured Claims Litigation Trust Beneficiaries. The General Unsecured Claims Litigation Trust Payment means (a) pending receipt by the General Unsecured Claims Litigation Trust of the D&O Trust Payment, a one-time payment of \$25,000 in Cash by the Debtors, which shall be funded to the General Unsecured Claims Litigation Trust on the Effective Date, provided that such amount shall be refunded to the Reorganized Debtor upon receipt by the General Unsecured Claims Litigation Trust of the D&O Trust Payment, and (b) the D&O Trust Payment. Payments under (a) and (b) shall be used either (i) to fund a distribution to holders of General Unsecured Claims Litigation Trust Interests (as General Unsecured Claims Litigation Trust Distributable Proceeds), (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, including to satisfy General Unsecured Claims Litigation Trust Expenses. The General Unsecured Claims Litigation Trust Assets do not include any Cause of Action to the extent released by the Debtor pursuant to a New Trade Agreement.

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. 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 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 Article V.E of the Plan, subject to any required reporting to the General Unsecured Claims Litigation Trust Oversight Committee as may be set forth in the General Unsecured Claims Litigation Trust Agreement. 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 Trust 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 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 Trust pursuant to the General Unsecured Claims Litigation Trust Agreement, distributing the General Unsecured Claims Litigation Trust Proceeds 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, subject to reporting and oversight by the General Unsecured Claims Litigation Trust Oversight Committee.

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 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.

The General Unsecured Claims Litigation Trust Agreement may include reasonable and customary provisions that allow for indemnification by the General Unsecured Claims Litigation Trust in

favor of the General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust Oversight Committee. 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, subject to reporting and oversight by the General Unsecured Claims Litigation Trust Oversight Committee: (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 sole 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) 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.
- (c) 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 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 rights shall be subject to the execution of joint interest, common interest, or other similar agreements 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 Estate and shall 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.

For the avoidance of doubt, the General Unsecured Litigation Trust Assets shall not include any Claim or Cause of Action against a Released Party, including the holder of a Trade Claim that enters into a New Trade Agreement to the extent of Causes of Action released under a New Trade Agreement. 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 in accordance with the General Unsecured Litigation Trust Waterfall.

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, in its sole discretion, its net income plus all net proceeds from the sale of assets in accordance with the General Unsecured Litigation Trust Waterfall, 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 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 consistent with the General Unsecured Litigation Trust Waterfall and 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 five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth 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.

#### **F. 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 (or, if applicable, Delaware) 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).

#### **G. 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.

#### **H. 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.

## **I. 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 and, if applicable, the Holding Company Restructuring; (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 6.H and Article V.I of the Plan shall be effective notwithstanding any requirements under nonbankruptcy law.

## **J. Management Incentive Plan**

Subject to the terms of the 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 Parent shall be authorized to adopt the 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 Parent shall be allocable at the discretion of the New Board of the Reorganized Parent.

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 (or, if applicable, Delaware) in accordance with applicable corporate laws. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents of Groeb Farms, Inc. 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.

**K. 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 New 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.

**L. 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.

**M. 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.

**N. 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.O of the Plan, 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 of the Plan, 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.

#### **O. Release of Avoidance Actions**

On the Effective Date, except as otherwise set forth in the Plan, 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.

#### **P. Treatment of Executory Contracts and Unexpired Leases**

##### **1. 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.

The D&O Policy shall be assumed as of the Effective Date and assigned by the Debtor to the General Unsecured Claims Litigation Trust as of the Effective Date. Nothing in this Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, any exhibit to the Plan or any other Plan document (including any provision that purports to be preemptory or supervening), shall in any way

limit the General Unsecured Claims Litigation Trustee from asserting a right or claim to the proceeds of any D&O insurance policy that insures the Debtor, was issued to the Debtor, or was transferred to the General Unsecured Claims Litigation Trust by operation of the Plan.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 7.**

**VOTING PROCEDURES**

**A. Voting Procedures**

Under the Bankruptcy Code, the only Classes that are entitled to vote to accept or reject a plan are Classes of Claims, or equity Interests, that are Impaired under the plan. Accordingly, Classes of Claims or Interests that are not Impaired are not entitled to vote on the plan.

Creditors that hold Claims in more than one Impaired Class are entitled to vote separately in each Class. Such a creditor will receive a separate ballot for all of its Claims in each Class (in accordance with the records of the Clerk of the Court) and should complete and sign each ballot separately. A creditor who asserts a Claim in more than one Class and who has not been provided with sufficient ballots may photocopy the ballot received and File multiple ballots.

Votes on the Plan will be counted only with respect to Claims: (a) that are listed on the Debtor's Schedules of Assets and Liabilities other than as Disputed, contingent or unliquidated; or (b) for which a Proof of Claim was Filed on or before the bar date set by the Court for the filing of proofs of Claim (except for certain Claims expressly excluded from that bar date or which are allowed by Court order). However, any vote by a holder of a Claim will not be counted if such Claim has been Disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such Claim for voting purposes pursuant to 11 U.S.C. § 502 and Bankruptcy Rule 3018.

Voting on the Plan by each holder of a Claim or Interest in an Impaired Class is important. After carefully reviewing the Plan and Disclosure Statement, each holder of such a Claim or Interest should vote on the enclosed ballot either to accept or to reject the plan, and then return the ballot by mail to the Debtor's attorney by the deadline previously established by the Court.

Any ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the Debtor's attorney.

**B. Acceptance**

The Bankruptcy Code defines acceptance of a plan by an Impaired Class of Claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the Claims of

that Class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an Impaired Class of equity Interests as acceptance by holders of at least two-thirds in number of the equity Interests of that Class that actually cast ballots. If no creditor or Interest holder in an Impaired Class votes, then that Class has not accepted the plan.

### **C. Confirmation**

11 U.S.C. § 1129(a) establishes conditions for the Confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the Chapter 11 process.

Among the several conditions for Confirmation of a plan under 11 U.S.C. § 1129(a) are these:

1. Each Class of Impaired creditors and interests must accept the plan, as described in paragraph B, above.
2. Either each holder of a Claim or Interest in a Class must accept the Plan, or the Plan must provide at least as much value as would be received upon liquidation under Chapter 7 of the Bankruptcy Code.

### **D. Modification**

The Debtor reserves the right to modify or withdraw the Plan at any time before Confirmation, subject to 11 U.S.C. § 1127.

### **E. Effect of Confirmation**

If the Plan is confirmed by the Court:

1. Its terms are binding on the Debtor, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.
2. Except as provided in the Plan and in 11 U.S.C. § 1141(d):
  - a. In the case of a corporation that is reorganizing and continuing business:
    - i. All Claims and Interests will be discharged.
    - ii. Creditors and shareholders will be prohibited from asserting their Claims against or interests in the Debtor or its assets.
  - b. In the case of a corporation that is liquidating and not continuing its business:
    - i. Claims and Interests will not be discharged.
    - ii. Creditors and shareholders will not be prohibited from asserting their Claims against or Interests in the Debtor or its assets.
  - c. In the case of an individual or husband and wife:

- i. Claims will be discharged, except as provided in 11 U.S.C. §§ 523 and 1141(d). Unless the Court orders otherwise, the discharge will be entered only after completion of plan payments as provided in § 1141(d)(5)(a). It is the usual practice of the Court to close Chapter 11 cases after Confirmation, then the individual Debtor Files a motion to reopen the case for entry of discharge upon completion of plan payments.
- ii. Creditors will be prohibited from asserting their Claims except as to those debts which are not discharged or dischargeable under 11 U.S.C. §§ 523 and 1141(d).

See Article 3(A) of this Disclosure Statement to determine which of the above paragraphs applies in this case.

## **ARTICLE 8.**

### **CRAMDOWNS AND THE ABSOLUTE PRIORITY RULE**

If one or more of the Impaired Classes of Claims does not accept the Plan, it may nevertheless be confirmed and be binding upon the non-accepting Impaired Class through the “cram-down” provisions of the Bankruptcy Code, if the Plan does not “discriminate unfairly” and is “fair and equitable” with respect to the non-accepting Impaired Classes.

#### **A. Discriminate Unfairly**

The Bankruptcy Code requirement that a plan not “discriminate unfairly” means that a dissenting Class must be treated equally with respect to other Classes of equal rank. The Debtor believes that the Plan does not “discriminate unfairly” with respect to any Class of Claims or Existing Equity Interests because no Class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank, and the treatment under the Plan follows the distribution scheme dictated by the Bankruptcy Code.

#### **B. Fair and Equitable Standard**

This test applies to Classes of different priority and status and includes the general requirement that no Class of Claims receives more than 100% of the Allowed amount of the Claims in that Class. As to the treatment that must be afforded to each rejecting Class, the test sets different standards, depending on the type of Claims or Existing Equity Interests in that Class:

##### **1. Secured Claims**

Each holder of an Impaired Other Secured Claim must either (i) retain its Liens on the property, to the extent of the Allowed amount of its Other Secured Claim, and receive deferred Cash payments having a value, as of the Effective Date, of at least the Allowed amount of the Claim, or (ii) have the right to credit bid the amount of its Claim if its collateral security is sold and retain its Liens against the net proceeds of the sale, or (iii) receive the “indubitable equivalent” of its Allowed Other Secured Claim.

##### **2. Unsecured Claims.**

Either (i) each holder of an Impaired Other General Unsecured Claim must receive or retain under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of Claims

and Existing Equity Interests that are junior to the Claims of the dissenting Class must not receive any property under the Plan.

### 3. Existing Equity Interests.

Either (i) each Existing Equity Interest holder must receive or retain under the Plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of the stock and (b) the value of the stock, or (ii) the holders of Interests that are junior to the Existing Equity Interests of the dissenting Class must not receive or retain any property under the Plan.

The Debtor reserves the right to seek Confirmation of the Plan, notwithstanding the rejection of the Plan by any Class entitled to vote. If one or more Classes votes to reject the Plan, the Debtor may request the Bankruptcy Court to rule that the Plan meets the requirements specified in section 1129(b) of the Bankruptcy Code with respect to the rejecting Class or Classes. The Debtor will seek such a ruling with respect to each Class that is deemed to reject the Plan.

## **ARTICLE 9.**

### **BEST INTERESTS TEST**

As described above, the Bankruptcy Code requires that each holder of an Impaired Claim or Existing Equity Interest either (i) accepts the Plan or (ii) receives or retains under the Plan property of a value, as of the Effective Date, not less than the value the holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on that date.

The Debtor's liquidation analysis is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of the Debtor (the "Liquidation Analysis"). The analysis is based on a number of significant assumptions that are described in the Liquidation Analysis attached hereto as **Exhibit C**. The Liquidation Analysis does not purport to be a valuation of the Debtor's assets and is not necessarily indicative of the values that may be realized in an actual liquidation.

In determining whether this test has been satisfied, the Debtor determined the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The Liquidation Analysis estimates the realizable value of the Debtor's assets, in the event the Debtor is liquidated. The gross amount of Cash that would be available for satisfaction of Claims would be the sum of the proceeds resulting from the disposition of the unencumbered assets and properties of the Debtor, including any unencumbered Cash to the extent it exists.

The Debtor then reduced that gross amount by the costs and expenses of the chapter 7 liquidation itself and by such additional administrative and priority Claims that are projected to result from the liquidation of the Debtor under a hypothetical chapter 7 case. Any remaining net Cash would be allocated to creditors and stockholders in strict payment priority in accordance with section 726 of the Bankruptcy Code. Finally, the Debtor compared the present value of those allocations (taking into account the time necessary to accomplish the liquidation) to the value of the property proposed to be distributed under the Plan on the Effective Date.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other Professionals that the trustee might engage for purposes of liquidating the Debtor. Other liquidation costs include the expenses incurred during the Chapter 11 Cases and allowed in the chapter 7 case, such as compensation for

attorneys, financial advisors, appraisers, accountants, and other Professionals for the Debtor, as well as other compensation Claims.

The foregoing types of Claims, costs, expenses, fees, and other similar charges that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 Claims.

The Debtor believes that holders of Impaired Claims in each Impaired Class under the Plan are receiving more than what each holder of a Claim in such Class would receive under a chapter 7 liquidation. Indeed, the Debtor believes such Claims would receive less because the Debtor would be less likely to recover the full amount of its account receivables and other receivables, its inventory, and net PP&E under a chapter 7 liquidation scenario. Therefore, under a chapter 7 liquidation, the Senior Lender would be Impaired by approximately 18% and no other Classes of Claims would recognize any recovery, other than the proceeds of Avoidance Actions and Causes of Action. Accordingly, the Interests of the creditors are best served by confirming the Plan and allowing the Debtor to continue in possession to reorganize pursuant to the terms of the Plan, which the Debtor believes would result in the maximize the return to creditors.

## **ARTICLE 10.**

### **FEASIBILITY**

The Bankruptcy Code requires that the Bankruptcy Court determine that Confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor. The Debtor believes the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code, as evidenced by the Financial Projections of future performance of the Reorganized Debtor, as set forth in **Exhibit D** to this Disclosure Statement. At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan is feasible.

## **ARTICLE 11.**

### **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**

**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; *provided further, however*, that the foregoing release shall not limit any counterclaims or defenses to Claims asserted against the Debtor by any Released Party; *provided further, however*, that the foregoing release shall not apply to any conduct by a Released Party determined by a court of law to have arisen from acts of gross negligence, willful misconduct or bad faith, or (ii) any Causes of Action (derivative or otherwise) transferred to the General Unsecured Claims Litigation Trust under Article V.D of the Plan, including the Transshipping Claims.

#### **E. Third Party Release**

As of the Effective Date, each Released Party and each holder of a Claim against or an Interest in the Debtor that votes in favor of the Plan (or is deemed to accept under the Plan) 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, 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, or to any Causes of Action (derivative or otherwise) transferred to the General Unsecured Claims Litigation Trust under Article V.D of the Plan, including the Transshipping Claims.

#### **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 OF THE PLAN, 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 OF THE PLAN.**

**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 VIIL.D OR ARTICLE VIIL.E OF THE PLAN, DISCHARGED PURSUANT TO ARTICLE VIIL.B OF THE PLAN, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIIL.F OF THE PLAN, 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 PURSUANT TO THE PLAN 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 ITS ASSETS, PROPERTY, OR ESTATE. 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, THE GENERAL UNSECURED CLAIMS LITIGATION TRUSTEE, THE GENERAL UNSECURED CLAIMS LITIGATION TRUST, 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 12.**

#### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed, the potential alternatives include (a) an alternative plan of under chapter 11, (b) dismissal of the case, or (c) conversion of this case to a case under chapter 7 of the Bankruptcy Code.

#### **A. Alternative Plan**

The Debtor does not believe that there are any alternative plans. Houlihan's marketing efforts revealed that the Plan, as described herein, enables holders of Claims to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

#### **B. Liquidation under Chapter 7**

If the Plan is not confirmed, the Bankruptcy Case may be converted to a chapter 7 liquidation case. In a chapter 7 case, a trustee would be elected or appointed to liquidate the assets of the Debtor. The proceeds of the liquidation would be distributed to the holders of Claims and Existing Equity Interests in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in a diminution in the value of the Debtor's assets and increased administrative costs to the Estate which would result in significantly less distributions to creditors and an increased delay in distribution.

## **ARTICLE 13.**

### **CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

#### **A. Introduction**

The following discussion is a summary of certain U.S. federal income tax consequences of the consummation of the Plan to the Debtor and to certain Holders of Claims. The following summary does not address the U.S. federal income tax consequences to Holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"), the U.S. Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS") and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtor does not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the Bankruptcy Courts. No assurance can be given that the IRS would not assert, or that a Bankruptcy Court would not sustain, a different position than any position discussed herein. This summary does not apply to Holders of Claims that are not "U.S. persons" (as such phrase is defined in the IRC). This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtor or to certain Holders in light of their individual circumstances. This discussion does not address tax issues with respect to such Holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, subchapter S corporations, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, foreign taxpayers, persons who are related to the Debtor within the meaning of the IRC, persons using a mark-to-market method of accounting, Holders of Claims who are themselves in bankruptcy, and regulated investment companies and those holding, or who will hold, Claims, the Exit Facility, or New Equity, as part of a hedge, straddle, conversion, or other integrated transaction). No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. Furthermore, this summary assumes that a Holder of a Claim holds only Claims in a single Class and holds a Claim as a "capital asset" (within the meaning of Section 1221 of the Tax Code). Except as stated otherwise, this summary also assumes that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form.

**ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL**

**HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.**

**INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE:** TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES UNDER THE IRC. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

**B. Certain U.S. Federal Income Tax Consequences of the Plan to the Debtor**

**1. Cancellation of Debt and Reduction of Tax Attributes**

In general, absent an exception, a debtor will realize and recognize cancellation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash paid, (y) the issue price of any new indebtedness of the taxpayer issued and (z) the fair market value of any new consideration (including New Equity) given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a Bankruptcy Court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income. In general, tax attributes will be reduced in the following order: (a) NOLs; (b) most tax credits; (c) capital loss carryovers; (d) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (e) passive activity loss and credit carryovers; and (f) foreign tax credits. A debtor with COD Income may elect first to reduce the basis of its depreciable assets pursuant to Section 108(b)(5) of the IRC. In the context of a consolidated group of corporations, the tax rules provide for a complex ordering mechanism in determining how the tax attributes of one member can be reduced by the COD Income of another member.

Because the Plan provides that holders of certain Claims will receive New Equity, the amount of COD Income, and accordingly the amount of tax attributes required to be reduced, will depend in part on the fair market value of the New Equity. This value cannot be known with certainty until after the Effective Date. The Debtor expects that, subject to the limitations discussed herein, it will be required to make material reductions in its tax attributes.

**2. Limitation of Tax Attributes**

The amount of tax attributes that will be available to the Reorganized Debtor at emergence is based on a number of factors and is impossible to calculate at this time. Some of the factors that will impact the amount of available tax attributes include: (a) the amount of tax losses incurred by the Debtors in 2012 and 2013; (b) the fair market value of the New Equity; and (c) the amount of COD Income incurred by the Debtor in connection with consummation of the Plan. Following consummation of the

Plan, the Debtor anticipates that any remaining NOLs may be subject to limitation under Section 382 of the IRC by reason of the transactions pursuant to the Plan.

Under Section 382 of the IRC, if a corporation undergoes an “ownership change,” the amount of its NOLs and built-in losses (collectively, “Pre-Change Losses”) that may be utilized to offset future taxable income generally is subject to an annual limitation. As discussed in greater detail herein, the Debtor anticipates that the issuance of the New Equity pursuant to the Plan will result in an “ownership change” of the Reorganized Debtor for these purposes, and that the Debtor’s use of its Pre-Change Losses will be subject to limitation unless an exception to the general rules of Section 382 of the IRC applies. This limitation is independent of, and in addition to, the reduction of tax attributes described in the preceding section resulting from the exclusion of COD Income.

*a. General Section 382 Annual Limitation*

This discussion refers to the limitation determined under Section 382 of the IRC in the case of an “ownership change” as the “Section 382 Limitation.” In general, the annual Section 382 Limitation on the use of Pre-Change Losses in any “post-change year” is equal to the product of (1) the fair market value of the stock of the corporation immediately before the “ownership change” (with certain adjustments) multiplied by (2) the “long-term tax-exempt rate” (which is the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the “ownership change” occurs, currently approximately 3.5%). The Section 382 Limitation may be increased to the extent that the Debtor recognizes certain built-in gains in its assets during the five-year period following the ownership change, or are treated as recognizing built-in gains pursuant to the safe harbors provided in IRS Notice 2003-65. Section 383 of the IRC applies a similar limitation to capital loss carryforwards and tax credits. Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. As discussed below, however, special rules may apply in the case of a corporation which experiences an ownership change as the result of a bankruptcy proceeding.

*b. Special Bankruptcy Exceptions*

An exception to the foregoing annual limitation rules generally applies when so-called “qualified creditors” of a debtor company in chapter 11 receive, in respect of their claims, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the “382(l)(5) Exception”). Under the 382(l)(5) Exception, a debtor’s Pre-Change Losses are not limited on an annual basis but, instead, the debtor’s NOLs are required to be reduced by the amount of any interest deductions claimed during any taxable year ending during the three-year period preceding the taxable year that includes the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the debtor undergoes another ownership change within two years after consummation, then the debtor’s Pre-Change Losses effectively are eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the “382(l)(6) Exception”). When the 382(l)(6) Exception applies, a debtor corporation that undergoes an ownership change generally is permitted to determine the fair market value of its stock after taking into account the increase in value resulting from any surrender or cancellation of creditors’ claims in the bankruptcy. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an ownership change to be determined before the events giving rise to the change. The 382(l)(6) Exception differs from the 382(l)(5) Exception in that the debtor corporation is not

required to reduce its NOLs by interest deductions in the manner described above, and the debtor may undergo a change of ownership within two years without triggering the elimination of its Pre-Change Losses.

The Debtor does not expect to qualify for, or utilize, the 382(l)(5) Exception. However, as mentioned above, if the Debtor does utilize the 382(l)(5) Exception and if another ownership change were to occur within the two-year period after consummation, then the Debtor's Pre-Change Losses would effectively be eliminated.

Because the Debtor does not expect to qualify for or utilize the 382(l)(5) exception, the Debtor expects that its use of the Pre-Change Losses after the Effective Date will be subject to limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception. Regardless of whether the Reorganized Debtor takes advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtor's use of its Pre-Change Losses after the Effective Date may be adversely affected if an "ownership change" within the meaning of Section 382 of the IRC were to occur after the Effective Date. In order to prevent such a subsequent ownership change, the New Certificate of Incorporation of Reorganized Debtors may contain restrictions on trading of New Equity that are intended to prevent such a change. The specific terms of any such restrictions have not yet been determined.

### 3. Alternative Minimum Tax

In general, an alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, except for alternative tax NOLs generated in or deducted as carryforwards in taxable years ending in certain years, which can offset 100% of a corporation's AMTI, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. Additionally, under Section 56(g)(4)(G) of the IRC, an ownership change (as discussed above) that occurs with respect to a corporation having a net unrealized built-in loss in its assets will cause, for AMT purposes, the adjusted basis of each asset of the corporation immediately after the ownership change to be equal to its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of the corporation, as determined under Section 382(h) of the IRC, immediately before the ownership change.

## **C. Certain U.S. Federal Income Tax Consequences of the Plan to Holders of Allowed Claims**

### 1. Consequences to Holders of Class 3 Senior Loan Claims

Pursuant to the Plan, each holder of an Allowed Senior Loan Claim will receive such holder's Pro Rata share of the New Equity, and in certain instances Cash.

Whether a holder of an Allowed Senior Loan Claim recognizes gain or loss as a result of the exchange of its claim for the New Equity depends, in part, on whether the exchange qualifies as a tax-free recapitalization, which in turn depends on whether the debt underlying the Allowed Senior Loan Claim surrendered is treated as a "security" for purposes of the reorganization provisions of the IRC.

#### *a. Treatment of a Debt Instrument as a "Security"*

Whether a debt instrument constitutes a "security" for U.S. federal income tax purposes is determined based on all the relevant facts and circumstances, but most authorities have held that the



length of the term of a debt instrument is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable or contingent, and whether such payments are made on a current basis or accrued. The Senior Loan had an initial term of approximately five years. While not free from doubt, the Debtor expects to take the position that the debt underlying the Senior Loan Claims are “securities.”

*b. Treatment of a Holder of an Allowed Senior Loan Claim if the Exchange of its Claim is Treated as a Reorganization*

If a debt instrument constituting a surrendered Allowed Senior Loan Claim is treated as a “security” for U.S. federal income tax purposes, the exchange of a Holder’s allowed Senior Loan Claim for the New Equity would be treated as a recapitalization, and therefore a reorganization, under the IRC. In such case, a holder would recognize gain to the extent of any Cash received, but no loss; *provided, however*, that to the extent that a portion of the New Equity or Cash received is allocable to accrued but untaxed interest, the holder may recognize ordinary income (see discussion below, “*Accrued Interest*”). Such holder’s tax basis in its New Equity would be equal to the tax basis of the obligation constituting the Allowed Senior Loan Claim surrendered therefor, increased by any gain recognized and decreased by any Cash received, and a holder’s holding period for its New Equity would include the holding period for the obligation constituting the surrendered allowed Senior Loan Claim; *provided* that the tax basis of the New Equity treated as received in satisfaction of accrued but untaxed interest would equal the amount of such accrued but untaxed interest, and the holding period for any such New Equity would not include the holding period of the debt instrument constituting the surrendered allowed Senior Loan Claim.

*c. Treatment of a Holder of an Allowed Senior Loan Claim if the Exchange of its Claim is not Treated as a Reorganization*

If a debt instrument constituting a surrendered allowed Senior Loan Claim is not treated as a “security” for U.S. federal income tax purposes, a holder of such a Claim would be treated as exchanging its allowed Senior Loan Claim for the New Equity and/or Cash in a fully taxable exchange. A holder of an Allowed Senior Loan Claim who is subject to this treatment would recognize gain or loss equal to the difference between (1) the fair market value of the New Equity and Cash that is not allocable to accrued but untaxed interest, and (2) the holder’s adjusted tax basis in the obligation constituting the surrendered allowed Senior Loan Claim. Any such gain or loss should be capital in nature (subject to the “market discount” rules described below) and should be long term capital gain or loss if the Senior Loan Claims were held for more than one year by the holder. To the extent that a portion of the New Equity received in the exchange is allocable to accrued interest, the holder may recognize ordinary income. See the discussions of accrued interest and market discount below. A holder’s tax basis in the New Equity received in exchange for such holder’s Allowed Senior Loan Claims would equal its fair market value. A holder’s holding period for the New Equity would begin on the day following the Effective Date.

**The tax consequences of the Plan and to the holders of Allowed Senior Loan Claims are uncertain. Holders of Allowed Senior Loan Claims should consult their tax advisors regarding whether such Claims be treated as “securities” for U.S. federal income tax purposes.**

2. Consequences to Holders of Class 4 Senior Subordinated Notes Claims

Pursuant to the Plan, each holder of an Allowed Senior Subordinated Notes Claim will receive such holder's Pro Rata share of the New Subordinated Notes and New Warrants.

Whether a holder of an Allowed Senior Subordinated Notes Claim recognizes gain or loss as a result of the exchange of its claim for the New Subordinated Notes and New Warrants depends, in part, on whether the exchange qualifies as a tax-free recapitalization, which in turn depends on whether the Senior Subordinated Notes or the New Subordinated Notes are treated as "securities" for purposes of the reorganization provisions of the IRC (see discussion above). The Senior Subordinated Notes had an initial term of five years and the New Subordinated Notes are expected to have a term of five years. While not free from doubt, the Debtor expects to take the position that both the Senior Subordinated Notes and the New Subordinated Notes are "securities."

*a. Treatment of a Holder of an Allowed Senior Subordinated Notes Claim if the Exchange of its Claim is Treated as a Reorganization*

If both the Senior Subordinated Notes and the New Subordinated Notes are treated as "securities" for U.S. federal income tax purposes, the exchange of a holder's Allowed Senior Subordinated Notes Claim for the New Subordinated Notes and New Warrants would be treated as a recapitalization, and therefore a reorganization, under the IRC. In such case, a holder would recognize no gain or loss, provided that to the extent that a portion of the New Subordinated Notes and New Warrants received is allocable to accrued but untaxed interest such holder may recognize ordinary income (see discussion of "Accrued Interest" below). Such holder's tax basis in its New Warrants and New Subordinated Notes would be equal to the tax basis of the Senior Subordinated Notes surrendered therefor, and such holder's holding period for its New Warrants and New Subordinated Notes would include the holding period for the surrendered Senior Subordinated Notes; *provided* that the tax basis of any New Warrants and New Subordinated Notes treated as received in satisfaction of accrued but untaxed interest would equal the amount of such accrued but untaxed interest, and the holding period for any such New Warrants and New Subordinated Notes would not include the holding period of the surrendered Senior Subordinated Notes.

If the Senior Subordinated Notes are treated as securities but the New Subordinated Notes are not, the exchange of a holder's Allowed Senior Subordinated Notes Claims for the New Subordinated Notes and New Warrants would still be treated as a recapitalization. In such case a holder would still recognize no loss, but would recognize gain to the extent of the issue price of the New Subordinated Notes. As mentioned above, to the extent that a portion of the New Warrants and New Subordinated Notes received is allocable to accrued but untaxed interest such holder may also recognize ordinary income (see discussion of "Accrued Interest" below). Such holder's tax basis in its New Warrants would be equal to the tax basis of the Senior Subordinated Notes surrendered therefor increased by any gain recognized on the exchange and decreased by the issue price of the New Subordinated Notes) and such holder's holding period for its New Warrants would include the holding period for the surrendered Senior Subordinated Notes; *provided* that the tax basis of any New Warrants treated as received in satisfaction of accrued but untaxed interest would equal the amount of such accrued but untaxed interest, and the holding period for any such New Warrants would not include the holding period of the surrendered Senior Subordinated Notes. Such holder's tax basis in the New Subordinated Notes would equal their issue price and such holder's holding period for such New Subordinated Notes would begin on the day following the Effective Date.

*b. Treatment of a Holder of an Allowed Senior Subordinated Notes Claim if the Exchange of its Claim is not Treated as a Reorganization*

If the Senior Subordinated Notes are not treated as "securities" for U.S. federal income tax purposes, a holder of an Allowed Senior Subordinated Notes Claim would be treated as exchanging its

Allowed Senior Subordinated Notes Claim for New Subordinated Notes and New Warrants in a fully taxable exchange. Similarly, even if the Senior Subordinated Notes are treated as securities but the New Subordinated Notes are not and the holder only receives New Subordinated Notes (and no New Warrants), such exchange would be fully taxable. A holder of an allowed Senior Subordinated Notes Claim who is subject to this treatment would recognize gain or loss equal to the difference between (1) the sum of (A) the fair market value of the New Warrants (if any) that are not allocable to accrued but untaxed interest, and (B) the issue price of the New Subordinated Notes that are not allocable to accrued but untaxed interest, and (2) the holder's adjusted tax basis in the Senior Subordinated Notes. Any such gain or loss should be capital in nature (subject to the "market discount" rules described below) and should be long term capital gain or loss if the Senior Subordinated Notes were held for more than one year by the holder. To the extent that a portion of the New Subordinated Notes or New Warrants received in the exchange is allocable to accrued interest, the holder may recognize ordinary income. See the discussions of accrued interest and market discount below. A holder's tax basis in any New Warrants received in the exchange would equal their fair market value, and such holder's tax basis in any New Warrants received in the exchange would equal their issue price. A holder's holding period for both the New Subordinated Notes and the New Warrants would begin on the day following the Effective Date.

**The tax consequences of the Plan and to the holders of Allowed Senior Subordinated Note Claims are uncertain. Holders of allowed Senior Subordinated Note Claims should consult their tax advisors regarding whether such Claims be treated as "securities" for U.S. federal income tax purposes.**

3. Consequences to Holders of Class 5A Trade Claims, Class 5B Other Unsecured Claims and Class 5C Unsecured Convenience Class Claims

Pursuant to the Plan, each holder of an Allowed Class 5A Trade Claim, Allowed Class 5B Other Unsecured Claim or an Allowed Class 5C Unsecured Convenience Class Claim will receive Cash and/or an interest in the General Unsecured Claims Litigation Trust in exchange for such holder's Claim. Holders of such Claims would recognize gain or loss equal to the difference between (1) the amount of such Cash and/or the fair market value of the General Unsecured Claims Litigation Trust interests received in exchange for such holder's Claim, and (2) the holder's adjusted tax basis in such Claim. Any such gain should be capital in nature (subject to the "market discount" rules described below) and should be long term capital gain or loss if the Claims were held for more than one year by the holder. To the extent that a portion of the Cash or Litigation Trust interests received in the exchange is allocable to accrued interest, the holder may recognize ordinary income. See the discussions of accrued interest and market discount below. A holder's tax basis in the Litigation Trust interests received in exchange for such holder's Claims would equal their fair market value. A holder's holding period for such Litigation Trust interests would begin on the day following the Effective Date. See discussion of Receipt of Interests in Litigation Trust, below.

A portion of the Cash received by holders of Class 5A Trade Claims may be received over a period of up to eighteen months and as a consequence may be treated in part as a payment of interest. Holders of Class 5A Trade Claims should consult their tax advisors as to whether and to what extent a portion of the Cash received over time may be treated as the payment of interest.

It is plausible that a holder receiving the Litigation Trust interests could treat the transaction as an "open" transaction for United States federal tax purposes, in which case the recognition of any gain or loss on the transaction might be deferred pending the determination of the amount of the proceeds ultimately received from the Litigation Trust. The United States federal income tax consequences of an open transaction are uncertain and highly complex, and a holder should consult with its own tax advisor if it believes open transaction treatment might be appropriate.

#### 4. Accrued Interest

To the extent that any amount received by a holder of a surrendered allowed claim under the Plan is attributable to accrued but unpaid interest and such amount has not previously been included in the holder's gross income, such amount will be taxable to the holder as ordinary interest income. Conversely, a holder of a surrendered allowed claim will generally recognize a deductible loss to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the holder's gross income but was not paid in full by the Debtor.

The extent to which the consideration received by a holder of a surrendered allowed claim will be attributable to accrued interest on the debts constituting the surrendered allowed claim is unclear. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but untaxed interest. Application of this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear. Pursuant to the Plan, distributions in respect of allowed claims will be allocated first to the principal amount of such claims (as determined for U.S. 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. However, the provisions of the Plan are not binding on the IRS nor a Bankruptcy Court with respect to the appropriate tax treatment for creditors.

#### 5. Market Discount

Under the "market discount" provisions of Sections 1276 through 1278 of the IRC, some or all of any gain realized by a holder exchanging the debt instruments constituting its Allowed Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt constituting the surrendered allowed claim.

In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if its holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or, (b) in the case of a debt instrument issued with "original issue discount," its adjusted issue price, by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a holder on the taxable disposition (determined as described above) of debts that it acquired with market discount will generally be treated as ordinary income to the extent of the market discount that accrued thereon while such debts were considered to be held by the holder (unless the holder elected to include market discount in income as it accrued). To the extent that the surrendered debts that had been acquired with market discount are exchanged in a tax-free or other reorganization transaction for other property (as may occur here), any market discount that accrued on such debts but was not recognized by the holder may be required to be carried over to the property received therefor and any gain recognized on the subsequent sale, exchange, redemption or other disposition of such property may be treated as ordinary income to the extent of the accrued but unrecognized market discount with respect to the exchanged debt instrument.

#### **D. Receipt of Interests in the Litigation Trust**

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, pursuant to Treasury Regulation section 301.7701-4(d) and related regulations, the Debtor believes that the Trustee of the Litigation Trust intends to take a position on the Litigation Trust's tax return that the Litigation Trust should be treated as a grantor trust set up for the benefit of the Litigation Trust Beneficiaries. Holders of Allowed General Unsecured Claims that receive a beneficial interest in the Litigation Trust in exchange for such Claims will be treated for United States federal income tax purposes as receiving their Pro Rata shares of the Litigation Trust Assets from the Debtor in a taxable exchange and then depositing them in the Litigation Trust in exchange for beneficial interests in the Litigation Trust. Holders of Allowed General Unsecured Claims that receive a beneficial interest in the Litigation Trust will be required to report on their United States federal income tax returns their share of the Litigation Trust's items of income, gain, loss, deduction, and credit in the year recognized by the Litigation Trust. This requirement may result in such holders being subject to tax on their allocable share of the Litigation Trust's taxable income prior to receiving any cash distributions from the Litigation Trust. Holders of Allowed General Unsecured Claims that receive a beneficial interest in the Litigation Trust are urged to consult their tax advisors regarding the tax consequences of the right to receive and of the receipt (if any) of property from the Litigation Trust.

#### **E. Withholding and Reporting**

The Debtor will withhold all amounts required by law to be withheld from payments of interest. The Debtor will comply with all applicable reporting requirements of the IRC. In general, information reporting requirements may apply to distributions or payments made to a holder of a claim. Additionally, backup withholding, currently at a rate of 28%, will generally apply to such payments if a holder fails to provide an accurate taxpayer identification number or otherwise fails to comply with the applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund from the IRS, provided that the required information is provided to the IRS.

In addition, from an information reporting perspective, U.S. Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

## ARTICLE 14.

### VOTING INSTRUCTIONS

#### A. How to Vote

Each holder of a Claim in a voting Class should read this Disclosure Statement, together with the Plan and other exhibits hereto, in their entirety. After carefully reviewing the Plan and this Disclosure Statement and their respective exhibits, please complete the ballot, including indicating your vote thereon with respect to the Plan, and return it as provided below.

If you are a member of a voting Class and did not receive a ballot, if your ballot is damaged or lost, or if you have any questions concerning voting procedures, please call Judy O'Neill or Tamar Dolcourt, counsel for the Debtor, at (313) 234-7113 or (313) 234-7161, respectively, or the Debtor's Notice and Claims Agent, at (877) 725-7539 for calls from within the United States or Canada, or (424) 236-7247, for international calls.

YOU SHOULD COMPLETE AND SIGN THE ENCLOSED BALLOT AND RETURN IT AS DESCRIBED BELOW. IN ORDER TO BE COUNTED, BALLOTS MUST BE DULY COMPLETED AND EXECUTED AND RECEIVED BY NO LATER THAN 4:00 P.M., PREVAILING PACIFIC TIME, ON THE BALLOT DATE DEADLINE OF DECEMBER 13, 2013, UNLESS SUCH DEADLINE IS EXTENDED BY COURT ORDER.

All ballots should be returned and delivered by first class U.S. mail or delivered by messenger or overnight courier, ballots sent by facsimile, telecopy, or e-mail will not be accepted. Ballots must be received on or before the ballot deadline by the Debtor's Notice and Claims Agent follows:

**Groeb Farms Claims Processing Center  
c/o KCC  
2335 Alaska Ave.  
El Segundo, CA 90245**

As the holder of an Allowed Claim in the voting Classes, your vote on the Plan is extremely important. In order for the Plan to be accepted and thereafter confirmed by the Court without resorting to the "cram-down" provisions of Section 1129(b) of the Bankruptcy Code as to other Classes of Allowed Claims, votes representing at least two-thirds in amount and more than one-half in number of Allowed Claims of each Impaired Class of Claims that are voting must be cast for the acceptance of the Plan. The Debtor is soliciting acceptances only from members of the voting Classes. You may be contacted with regard to your vote on the Plan.

#### B. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on Confirmation of a Plan. The Bankruptcy Court has ordered that the hearing on Confirmation of the Plan will begin at [ ] (prevailing Eastern Time) on \_\_\_\_\_ before the Honorable Walter Shapero, United States Bankruptcy Judge, at Honorable Walter Shapero's Courtroom 1042, located on the 10th Floor of the Theodore Levin Courthouse, 231 West Lafayette Street, Detroit, MI 48226. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

The Plan will not constitute a valid and binding contract between the Debtor and its Creditors unless and until the Bankruptcy Court has issued a Final Order confirming the Plan. The Bankruptcy Court must hold a Confirmation Hearing before deciding whether to confirm the Plan.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of a Plan. Any objection to Confirmation of the Plan must be in writing, must conform to the Federal Rules of Bankruptcy Procedure, must set forth the name of the objector, the nature and amount of Claims or Existing Equity Interests held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds therefore, and must be Filed with the Clerk of the Bankruptcy Court, 211 W. Fort St., Detroit, MI 48226, together with proof of service thereof, and served upon and received no later than 4:00 p.m., prevailing Pacific Time on December 13, 2013, by counsel for the Debtor, Judy A. O'Neill, Esq. and John A. Simon, Esq., Foley & Lardner LLP, One Detroit Center, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226. Notice of any objection must also be served on: (a) Joe Mack, Esq. and Kelley Callard, Esq., Office of the United States Trustee, 211 West Fort Street, Suite 700, Detroit, MI 48226; (b) Counsel to the Debtor's DIP Lender, Ray Schrock, Esq., Kirkland & Ellis, LLP, 601 Lexington Avenue New York, NY 10022, Jeffrey Pawlitz, Esq., Kirkland & Ellis, LLP, 300 North LaSalle, Chicago, IL 60654, and Robert Hertzberg, Esq., Pepper Hamilton LLP, 4000 Town Center, Suite 1800, Southfield, MI 48075; and (c) Counsel the Committee of Unsecured Creditors, Bradford J. Sandler, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 and Sheryl Toby, Dykema Gossett PLLC, 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304.

Unless an objection to Confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

## **ARTICLE 15.**

### **SUMMARY, RECOMMENDATION, AND CONCLUSION**

The Debtor believes that the Plan is in the best interests of all holders of Claims, even though holders of Claims in Class 3, Class 4, and Class 5A may not be paid in full. In the event of a liquidation of the Debtor's Assets under chapter 7 of the Bankruptcy Code, the Debtor believes that holders of Claims in these Classes and other Classes would receive less than they would under the Plan. For these reasons, the Debtor urges that the Plan is in the best interests of all holders of Claims and that the Plan be accepted.

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

Dated: November 8, 2013  
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ Tamar N. Dolcourt  
Judy A. O'Neill (P32142)  
John A. Simon (P61866)  
Tamar N. Dolcourt (P73425)  
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500 Woodward Ave., Suite 2700  
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(313) 234-2800 (Facsimile)  
*Counsel for the Debtor and Debtor in  
Possession*



# **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:	)	
	)	Chapter 11
GROEB FARMS, INC.	)	
	)	Case No. 13-58200 (WS)
Debtor.	)	
	)	Tax I.D. No. 38-2778390

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**SECOND AMENDED PLAN OF REORGANIZATION OF GROEB FARMS, INC.,  
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

---

Judy A. O'Neill (P32142)  
John A. Simon (P61866)  
Tamar N. Dolcourt (P73425)  
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*Counsel for the Debtor and  
Debtor in Possession*

Dated: November 8, 2013

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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 or 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 applicable non-bankruptcy law or 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) March 31, 2014, at 4:00 p.m., prevailing Pacific Time, with respect to Governmental Units holding Claims that arose prior to the Petition Date, or such other date established by the Court by which Proofs of Claims must have been Filed, and (b) November 4, 2013, at 4:00 p.m., prevailing Pacific Time, with respect to all General Unsecured Claims arising prior to the Petition Date unless otherwise set forth in the Claims Bar Date Order, as well as Claims arising under section 503(b)(9) of the Bankruptcy Code, (c) November 18, 2013, at 4:00 p.m., prevailing Pacific Time, with respect to certain creditors identified in the *Order Extending Bar Date Including 503(b)(9) Claims as of Certain Creditors Only and Approving Form and Manner of Notice Thereof* [Docket No. 147], or such other date established by the Court by which Proofs of Claims must have been Filed.

17. “*Claims Bar Date Order*” means the 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* and the *Order Extending Bar Date Including 503(b)(9) Claims as of Certain Creditors Only and Approving Form and Manner of Notice Thereof* [Docket No. 147].

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.

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. “*Class Action Settlement Amount*” means the amount of proceeds of the D&O Policy payable to holders of Class Action Claims in the event that a Class Action Settlement occurs.

25. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code, as may be reconstituted from time to time.

26. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.

27. “*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.

28. “*Confirmation Hearing*” means the hearing held by the Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

29. “*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.

30. “*Consummation*” means the occurrence of the Effective Date.



31. “*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.

32. “*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.

33. “*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.

34. “*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.

35. “*D&O Policy*” means any insurance policy of the Debtors provided by the Insurer or any other insurance company that provides coverage against director and officer liability claims.

36. “*D&O Trust Payment*” means at least \$1.5 million in proceeds from the D&O Policy.

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

38. “*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.

39. “*DIP Agreement*” means that certain senior secured debtor-in-possession financing agreement, dated as of October 4, 2013, by and among the Debtor and the DIP Lenders, as amended, supplemented, or otherwise modified from time to time.

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

41. “*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.

42. “*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.

43. “*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.

44. “*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.

45. “*Disclosure Statement*” means the *Disclosure Statement for the Second Amended Plan of Reorganization of Groeb Farms, Inc. Pursuant to Chapter 11 of the Bankruptcy Code*, filed on the Petition Date (as amended, supplemented, or modified from time to time), 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.

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

47. “*Effective Date*” means, with respect to the Plan, the date that is a Business Day selected by the Debtor and the Senior Lender Affiliate (in consultation with the Committee) 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.

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

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

50. “*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.

51. “*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 a Trade Claim that executes a New Trade Agreement to the extent released under such New Trade Agreement, unless such New Trade Agreement is terminated due to a breach by such holder of a Trade Claim; (g) the Exit Facility Lender; (h) the Debtor, the Reorganized Parent, and the Reorganized Debtor; and (i) with respect to each of the foregoing entities in clauses (a) through (h), 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).

52. “*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.

53. “*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.

54. “*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.

55. “*Exit Facility Commitment Fee Order*” means the order entered approving the *Debtor’s Motion for Entry of an Order Authorizing Debtor to Incur and Pay Exit Facility Commitment Fee and Perform Obligations Associated with Exit Financing*.

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

57. “*Exit Fees*” mean the fees payable under the Exit Facility Documents and the Exit Facility Commitment Fee Order.

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

59. “*Fee Claim*” means a Claim for Accrued Professional Compensation.

60. “*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.

61. “*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.

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

63. “*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, (h) a Section 510(b) Claim, or, for the avoidance of doubt, (i) an Existing Equity Interest. General Unsecured Claims specifically include the Junior Subordinated Note Claims and the Seller Note Claims, subject to all rights and defenses of the General Unsecured Claims Litigation Trust with respect to such Claims, including to recharacterize or subordinate such Claims.

64. “*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.

65. “*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.

66. “*General Unsecured Claims Litigation Trust Assets*” means the (i) General Unsecured Claims Litigation Trust Payment, (ii) the General Unsecured Claims Litigation Trust Causes of Action, and all proceeds of

the foregoing, (iii) all proceeds under the D&O Policy, subject to all rights of covered parties to the D&O Policy to assert claims against the D&O Policy, (iv) the Trade Claim Remaining Amount, and (v) all rights of setoff and other defenses against General Unsecured Claims held by General Unsecured Claims Litigation Trust Beneficiaries.

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

68. “*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) any of the foregoing to the extent released under a New Trade Agreement. For the avoidance of doubt, General Unsecured Claims Litigation Trust Causes of Action shall include Transshipping Claims unless such Transshipping Claims are released by the Debtor pursuant to a settlement approved by the Court.

69. “*General Unsecured Claims Litigation Trust Distributable Proceeds*” means all actual proceeds of the General Unsecured Claims Litigation Trust Causes of Action and other Cash on hand.

70. “*General Unsecured Claims Litigation Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by 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.

71. “*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 all Allowed General Unsecured Claims and Trade Deficiency Claims pursuant to the terms of the Plan.

72. “*General Unsecured Claims Litigation Trust Payment*” means (a) pending receipt by the General Unsecured Claims Litigation Trust of the D&O Trust Payment, a one-time payment of \$25,000 in Cash by the Debtors, which shall be funded to the General Unsecured Claims Litigation Trust on the Effective Date, provided that such amount shall be refunded to the Reorganized Parent upon receipt by the General Unsecured Claims Litigation Trust of the D&O Trust Payment, and (b) the D&O Trust Payment. Payments under (a) and (b) shall be used either (i) to fund a distribution to holders of General Unsecured Claims Litigation Trust Interests (as General Unsecured Claims Litigation Trust Distributable Proceeds), (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, including to satisfy General Unsecured Claims Litigation Trust Expenses.

73. “*General Unsecured Claims Litigation Trust Oversight Committee*” shall consist of the three members of the Committee as of the Effective Date.

74. “*General Unsecured Claims Litigation Trust Waterfall*” means that the General Unsecured Claims Litigation Trust Distributable Proceeds shall be distributed as follows after satisfying General Unsecured Claims Litigation Trust Expenses: (i) First, on a Pro Rata basis, to General Unsecured Claims Litigation Trust Beneficiaries who are not holders of Trade Claims that entered into a New Trade Agreement until each such holder has recovered an amount equal to 10% of each such holder’s Allowed General Unsecured Claim; and (ii) Second, on a Pro Rata basis, to General Unsecured Claims Litigation Trust Beneficiaries on account of any unpaid Allowed General Unsecured Claim until such Allowed General Unsecured Claims have been paid in full.

75. “*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 who shall be selected by the Committee and reasonably acceptable to the Debtor, and any successor thereto appointed pursuant to the General Unsecured Claims Litigation Trust Agreement.

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

77. “*Holding Company Restructuring*” means the restructuring transactions described in Article V.A hereof.

78. “*Holdings*” means, in connection with a Holding Company Restructuring, one or more entities established to hold, directly or indirectly, 100% of the equity securities of Groeb Farms, Inc. on or after the Effective Date.

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

80. “*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.

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

82. “*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.

83. “*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).

84. “*Interim Compensation Order*” means an order by the Bankruptcy Court establishing interim compensation procedures for Professionals.

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

86. “*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).

87. “*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..

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

89. “*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.

90. “*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.

91. “*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.

92. “*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.

93. “*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).

94. “*New Organizational Documents*” means the form of the certificates or articles of incorporation, certificate of formation, bylaws, limited liability company agreement, stockholders agreement, or such other applicable formation documents of the Reorganized Debtor (each of which shall be acceptable to the Senior Lender Affiliate), which forms shall be included in the Plan Supplement.

95. “*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).

96. “*New Trade Agreement*” means a uniform trade agreement reasonably acceptable to the Debtor, the Senior Lender Affiliate, and the Committee, a form of which shall be included in the Plan Supplement, which shall be executed no later than the Voting Deadline.

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

98. “*New Warrants*” means the warrants that the Reorganized Parent shall cause to be issued on the Effective Date for 13% of New Equity, 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).

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

100. “*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.

101. “*Other General Unsecured Claims*” means General Unsecured Claims that are not Trade Claims or Unsecured Convenience Class Claims, including, without limitation, Junior Subordinated Note Claims, Seller Note Claims, Opt-Out Claims, and Class Action Claims.

102. “*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.

103. “*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.

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

105. “*Petition Date*” means October 1, 2013, the date on which the Debtor’s Chapter 11 Case commenced.

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

107. “*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); *provided further, however*, that any amendments to (d) must be reasonably satisfactory to the Committee.

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

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

110. “*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.

111. “*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) awarded compensation pursuant to section 503(b)(4) of the Bankruptcy Code.

112. “*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.

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

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

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

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

117. “*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) 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 a Trade Claim that executes a New Trade Agreement to the extent released under such New Trade Agreement, unless such New Trade Agreement is terminated due to a breach by such holder of a Trade Claim; (g) the Exit Facility Lender; (h) the Debtor, the Reorganized Parent, and the Reorganized Debtor, and (i) with respect to each of the foregoing entities in clauses (a) through (h) 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).

118. “*Reorganized Debtor*” means the Debtor on and after the Effective Date and/or, if applicable, the Reorganized Parent.

119. “*Reorganized Parent*” means (a) Groeb Farms, Inc., (b) any successor thereto, by merger, consolidation, transfer of substantially all of its assets, conversion to another jurisdiction, or otherwise, in each case on or after the Effective Date, or (c) if a Holding Company Restructuring Transaction is implemented, Holdings.

120. “*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.

121. “*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.

122. “*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.

123. “*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.

124. “*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.

125. “*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.

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

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

128. “*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.



129. “*Seller Note Claims*” means Claims arising on account of the Seller Note.<sup>1</sup>
130. “*Senior Lender*” means HC Capital Holding 0909A, LLC.
131. “*Senior Lender Affiliate*” means Honey Financing Corporation.
132. “*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).
133. “*Senior Loan Claims*” means any Claim arising under the Senior Loan Agreement.
134. “*Senior Loan Facility*” means the Senior Loan Agreement, together with related loan, security, collateral, and other documents.
135. “*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.
136. “*Senior Subordinated Note Claims*” means any Claim arising under the Senior Subordinated Notes.
137. “*Trade Claim*” means a General Unsecured Claim of a holder 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.
138. “*Trade Claim Distribution*” means the distribution made to holders of Trade Claims that enter into a New Trade Agreement in amount equal to the greater of (a) 40% of such holder’s Allowed Trade Claim and (b) each such holder’s pro rata share of \$4.8 million (up to 60% of such holder’s Allowed Trade Claim), provided that, in the case of (b) any remaining amount after a 60% recovery shall be placed into the General Unsecured Claims Litigation Trust (the “*Trade Claim Remaining Amount*”).
139. “*Trade Claim Contingent Third Lien*” shall mean a third priority lien on the assets securing obligations under the Exit Facility and the New Subordinated Notes.
140. “*Trade Deficiency Claim*” means the Allowed Trade Claim of the holder of a Trade Claim that enters into a New Trade Agreement less the Trade Claim Distribution made to such holder pursuant to this Plan.
141. “*Trade Claim Remaining Amount*” shall have the meaning set forth in the definition of Trade Claim Distribution.
142. “*Transshipping Claims*” means any Claim in favor of the Debtor arising from or relating to transshipping, the facts set forth in the Deferred Prosecution Agreement, or the facts set forth in the information filed with the Deferred Prosecution Agreement.
143. “*U.S. Trustee*” means the Office of the United States Trustee for the Eastern District of Michigan.

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

144. “*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.

145. “*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.

146. “*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.

147. “*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.

148. “*Voting Deadline*” means December 13, 2013 at 4:00 p.m., prevailing Pacific 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 after written notice by the Debtor of 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.

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 shall be determined by the Court. The amount of Fee Claims owing to Professionals shall be paid in Cash to Professionals 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 this 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 paid in Cash, as set forth in Article VII.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:

<b>Class</b>	<b>Claim/Interest</b>	<b>Status</b>	<b>Voting Rights</b>
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

<b>Class</b>	<b>Claim/Interest</b>	<b>Status</b>	<b>Voting Rights</b>
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 and the Debtor enter into a New Trade Agreement, (a) a cash recovery equal to such holder's Trade Claim Distribution, which the

Reorganized Debtor shall satisfy by paying: (i) for goods shipped or services delivered to the Debtor after the execution of a New Trade Agreement, but before the Effective Date (A) where the invoice has been paid prior to the Effective Date, within 30 days after the Effective Date, 10% of each previously paid invoice, or (B) where the invoice has not been paid prior to the Effective Date, 110% of each invoice when such invoice is otherwise paid, and (ii) 110% on each invoice for goods shipped or services delivered to the Reorganized Debtor post-Effective Date; *provided, however*, that the Reorganized Debtor shall satisfy the Trade Claim Distribution by no later than the date that is 18 months after the Effective Date; and (b) the Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust on account of its Trade Deficiency Claim, in accordance with the General Unsecured Claims Litigation Trust Waterfall; or

(ii) its Pro Rata share of the proceeds from the General Unsecured Claims Litigation Trust in accordance with the General Unsecured Claims Litigation Trust Waterfall.

(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, 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 in accordance with the General Unsecured Claims Trust Waterfall.

(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 or formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to the Bankruptcy Code or applicable state law; (iv) if requested by the Senior Lender Affiliate prior to the Effective Date, the Debtor will form Holdings and if Holdings is formed, each holder of any shares of New Equity issued by Groeb Farms, Inc. shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute each such share of New Equity issued to such holder pursuant to this Plan to Holdings in exchange for the issuance by Holdings to each such holder of such holder's Pro Rata share of New Equity issued by Holdings as of the Effective Date (which shall be subject to immediate dilution by the issuance of the New Warrants and the Management Incentive Plan) (such transactions, a "Holding Company Restructuring") and if a Holding Company Restructuring is implemented, Holdings shall be deemed to be "Reorganized Parent" and the New Equity issued by Holdings shall be deemed to be the "New Equity," in each case for all purposes under this Plan, (v) if requested by the Senior Lender Affiliate prior to the Effective Date, the Debtor will convert into a Delaware entity, and (vi) 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 Parent 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 (and subject to a Holding Company Restructuring being implemented). The issuance of the New Equity and, if applicable, the Holding Company Restructuring, 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 Reorganized Parent shall issue 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. Contingent Third Lien in Favor of Holders of Trade Claims that Enter into a New Trade Agreement.*

For a period of 12 months starting upon the Effective Date, the Reorganized Debtor shall provide holders of Trade Claims that enter into a New Trade Agreement with a Trade Claim Contingent Third Lien to the extent that the Reorganized Debtor's new working capital falls below \$2,000,000 (tested on a quarterly basis, with the first test conducted following the three-month period starting with the first full month after the Effective Date). The Reorganized Debtor shall provide such reporting to the General Unsecured Claims Litigation Trustee within 30 days following the conclusion of each quarter. Any such Trade Claim Contingent Third Lien shall be deemed perfected automatically.

*E. 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. 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.E., subject to any required reporting to the General Unsecured Claims Litigation Trust Oversight Committee as may be set forth in the General Unsecured Claims Litigation Trust Agreement. 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 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 Proceeds 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, subject to reporting and oversight by the General Unsecured Claims Litigation Trust Oversight Committee.

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 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.

The General Unsecured Claims Litigation Trust Agreement may include reasonable and customary provisions that allow for indemnification by the General Unsecured Claims Litigation Trust in favor of the General Unsecured Claims Litigation Trustee and the General Unsecured Claims Litigation Trust Oversight Committee. 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, subject to reporting and oversight by the General Unsecured Claims Litigation Trust Oversight Committee: (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 sole 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) 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.
- (c) 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 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 rights shall be subject to the execution of joint interest, common interest, or other similar agreements 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 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.

For the avoidance of doubt, the General Unsecured Litigation Trust Assets shall not include any Claim or Cause of Action against a Released Party, including the holder of a Trade Claim that enters into a New Trade Agreement to the extent of Causes of Action released under a New Trade Agreement. 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 in accordance with the General Unsecured Litigation Trust Waterfall.

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, in its sole discretion, its net income plus all net proceeds from the sale of assets in accordance with the General Unsecured Litigation Trust Waterfall, 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 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 consistent with the General Unsecured Litigation Trust Waterfall and 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 five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth 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.

*F. 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 (or, if applicable, Delaware) 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).

*G. 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.

*H. 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 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.

*I. 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 and, if applicable, the Holding Company Restructuring; (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.I shall be effective notwithstanding any requirements under nonbankruptcy law.

*J. Management Incentive Plan*

Subject to the terms of the 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 Parent shall be authorized to adopt the 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 Parent shall be allocable at the discretion of the New Board of the Reorganized Parent.

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 (or, if applicable, Delaware) in accordance with applicable corporate laws. Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents of Groeb Farms, Inc. 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.

*K. 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 New 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.

*L. 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.

*M. 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.

*N. 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.O 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.

*O. 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.

**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.

The D&O Policy shall be assumed as of the Effective Date and all rights to payments thereunder assigned by the Debtor to the General Unsecured Claims Litigation Trust as of the Effective Date. Nothing in the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, any exhibit to the Plan or any other Plan document (including any provision that purports to be preemptory or supervening), shall in any way limit the general Unsecured Claims Litigation Trustee from asserting a right or claim to the proceeds of any D&O insurance policy that insures the Debtor, was issued to the Debtor or was transferred to the General Unsecured Claims Litigation Trust by operation of the Plan.

*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. 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.

*E. 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.

*F. 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.

*G. 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.

*H. 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 and the General Unsecured Claims Litigation Trustee 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.

(b) 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.

(c) 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) 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) 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 or the General Unsecured Claims Litigation Trustee after the Effective Date in the case of Claims subject to the General Unsecured Claims Litigation Trust; (3) 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) 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 made on account of a Claim not subject to the General Unsecured Claims Litigation Trust 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. 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.

In the event that any distribution made from the General Unsecured Claims Litigation Trust on account of a Claim subject to the General Unsecured Claims Litigation Trust is returned as undeliverable, no distribution to such holder shall be made unless and until such holder has provided evidence satisfactory to the General Unsecured Claims Litigation Trustee of such holder's then current address, at which time such distribution shall be made to such holder without interest; *provided, however*, that such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of 90 days after such distribution. After such date, all unclaimed property or interests in property shall revert back to the General Unsecured Claims Litigation Trust to 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.

Each Person holding an Allowed Claim is required to provide any information necessary to effect the necessary information reporting and withholding of applicable taxes with respect to distributions to be made under the Plan. The Reorganized Debtor or the General Unsecured Claims Litigation Trustee, as applicable, shall be entitled in its sole discretion to withhold any distributions to a holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing to such holder of an Allowed Claim, which timeframe shall not be less than 30 days.

*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) and the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, 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 a Reorganized Debtor or the General Unsecured Claims Litigation Trustee. In addition, Class Action Claims that are not Opt-Out Claims and that are paid by any Class Action Settlement shall be deemed paid by a third party for all purposes under the Plan. 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 or the General Unsecured Claims Litigation Trustee on account of such Claim, such holder shall, within two (2) weeks of receipt thereof, repay or return the distribution to the Reorganized Debtor or the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, as applicable, 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 or the General Unsecured Claims Litigation Trustee, as applicable, 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**

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; *provided further, however*, that the foregoing release shall not limit any counterclaims or defenses to Claims asserted against the Debtor by any Released Party; *provided further, however*, that the foregoing release shall not apply to any conduct by a Released Party determined by a court of law to have arisen from acts of gross negligence, willful misconduct or bad faith, or (ii) any Causes of Action (derivative or otherwise) transferred to the General Unsecured Claims Litigation Trust under this Article V.D of the Plan, including the Transshipping Claims.

**E. Third Party Release**

As of the Effective Date, each Released Party and each holder of a Claim against or an Interest in the Debtor that votes in favor of the Plan (or is deemed to accept under the Plan) 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, 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, or to any Causes of Action (derivative or otherwise) transferred to the General Unsecured Claims Litigation Trust under this Article V.D of the Plan, including the Transshipping Claims.

*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 VIIL.D OR ARTICLE VIIL.E HEREOF, DISCHARGED PURSUANT TO ARTICLE VIIL.B HEREOF, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIIL.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, THE GENERAL UNSECURED CLAIMS LITIGATION TRUSTEE, THE GENERAL UNSECURED CLAIMS LITIGATION TRUST, 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; *provided, however*, that any modifications to the General Unsecured Claims Litigation Trust or modifications to the Plan treatment of General Unsecured Claims that materially affect recovery to holders of such Claims shall be reasonably acceptable to the Committee.

For the avoidance of doubt, it shall not be a condition to Confirmation that a Class Action Settlement occur or that the D&O Trust Payment be made.

*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; *provided, however*, that any modifications to the General Unsecured Claims Litigation Trust or modifications to the Plan treatment of General Unsecured Claims that materially affect recovery to holders of such Claims after the Confirmation Date but prior to the Effective Date shall be reasonably acceptable to the Committee;
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.

For the avoidance of doubt, it shall not be a condition to Consummation that a Class Action Settlement occur or that the D&O Trust Payment be made.

*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 and, with respect to the General Unsecured Claims Litigation Trust and provisions materially affecting Plan treatment of General Unsecured Claims, reasonably acceptable to the Committee) 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, acknowledgment, 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, including disputes under a New Trade Agreement;

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 D&O Policy, and no indemnified Person shall seek, or be entitled to receive, any of the foregoing from (directly or indirectly) the Reorganized Debtor or the General Unsecured Claims Litigation Trust. 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.

Dated: November 8, 2013  
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ Tamar N. Dolcourt

Judy A. O'Neill (P32142)

John A. Simon (P61866)

Tamar N. Dolcourt (P73425)

One Detroit Center

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Detroit, MI 48226-3489

(313) 234-7100 (Telephone)

(313) 234-2800 (Facsimile)

*Counsel for the Debtor and Debtor in  
Possession*

# **EXHIBIT B**

**PRIOR YEAR COMPENSATION / BENEFITS FOR PRINCIPALS OF THE DEBTOR**

<b>Name</b>	<b>Position</b>	<b>Total Compensation October 2, 2012 – October 1, 2013</b>
Rolf B. Richter	President and Chief Executive Officer	\$387,999.40
Jack M. Irvin, Jr.	Vice President and Chief Financial Officer	\$227,862.54
John Wolf	Vice President, Supply Chain & Operations	\$281,076.18
Michael Modjeski	Vice President Business Development Foodservice and Mass Merchandise	\$163,235.84
Craig Moore	Vice President Business Development Retail & Industrial	\$192,594.08
Joyce D. Schlachter	Vice President Technical Services	\$148,942.28

	<b>Additional Information Regarding Total Compensation Listed Above</b>
Rolf B. Richter	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013, and it includes \$60,000.00 of relocation expenses and \$13,000.00 of automobile allowance.
Jack M. Irvin, Jr.	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013, and it includes \$36,000.00 for travel and housing allowance.
John Wolf	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013, and a sign-on bonus of \$25,000.00 and \$15,000.00 for automobile and housing allowance.
Michael Modjeski	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013.
Craig Moore	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013.
Joyce D. Schlachter	The compensation reported covers salary received during the pay period of October 2, 2012 – October 1, 2013.

# **EXHIBIT C**

**Groeb Farms, Inc.**  
**Chapter 7 Liquidation Analysis**

	<b>Book Balance</b>	<b>Forced Liquidation Value</b>	
		<b>Rate</b>	<b>Recovery</b>
Cash (Petty Cash)	5,045	0%	-
Cash Collateral	2,997,915	100%	2,997,915
Receivables	8,418,134	70%	5,892,694
Other Receivables	75,720	0%	-
<b>Total Receivables</b>	<b>8,493,854</b>		<b>5,892,694</b>
Inventory	10,668,769	39%	4,204,968
Net PP&E	4,417,779	18%	800,000
<b>Gross Asset Recovery</b>	<b>27,128,361</b>		<b>13,895,576</b>
Incremental Liquidation / Wind Down Expenses			(870,867)
<b>Net Asset Recovery</b>			<b>13,024,709</b>
Line of Credit	15,072,138		15,072,138
LT Note and Equip. Note	879,473		879,473
Total Secured Obligations	15,951,611		15,951,611
<b>Recovery % to Senior Lender</b>			<b>81.7%</b>
<b>Net Recovery After Wells Fargo Obligations</b>			-
Cash Collateral Balance	2,997,915		2,997,915
<b>Recovery % to Cash Collateral Providers</b>			<b>0.0%</b>
<b>Net Recovery After Cash Collateral</b>			-
Subordinated Debt - Senior	7,000,000		7,000,000
Accrued Interest	509,083		509,083
Subordinated Debt - Senior	7,509,083		7,509,083
<b>Recovery % to Subordinated Debt - Senior</b>			<b>0.0%</b>
<b>Net Recovery After Subordinated Debt - Senior</b>			-
Total Unsecured Claims	19,784,083		19,784,083
<b>Net Recovery After Unsecured Claims (to Equity)</b>			-
<b>Recovery % to Unsecured Claims</b>			<b>0.0%</b>



### **Liquidation Analysis Assumptions**

The Debtor's Liquidation Analysis was prepared under the following assumptions:

- It is assumed there is no unencumbered Cash as of the date of liquidation; all petty Cash is assumed to be used in the wind down of the business.
- Accounts receivable as of the date of liquidation are assumed to be diluted by thirty-percent (30%). This dilution factor includes allowances for customer short-pays, entitled deductions, and other credits not typically experienced during ordinary course operation of the Debtor's business.
- The Debtor's inventory is assumed to experience a gross 39% recovery. This recovery includes discounts required to sell both finished goods and raw inventory on a bulk sale basis via significantly discounted pricing. It is assumed that an outside liquidation firm would be required to facilitate the sale of the inventory, and the costs associated with the process are included in the gross recovery assumption. In determining the inventory recovery, the Debtor took into account its recent inventory appraisal prepared by Gordon Brothers Asset Advisers, LLC, as adjusted to reflect current market conditions for the Debtor's on-hand inventory.
- The majority of the Debtor's fixed assets relate to equipment processing and related equipment. The recovery assumption for these assets was based on a review of the fixed asset recovery in a forced liquidation scenario as prepared by Gordon Brothers Asset Advisers, LLC.
- Liquidation expenses include assumptions for site and inventory security during the liquidation process, trustee fees, fees for ordinary course professionals that may be authorized to work on the liquidation, and certain estate "burial" costs necessary under a chapter 7 liquidation.
- Given the Senior Lender's impairment under the associated Liquidation Analysis, it is assumed that the Senior Lender is entitled to full use of the cash collateral and that such collateral is not released to the original contributing creditors.
- It is assumed that the DIP Facility has been approved by the Bankruptcy Court providing for a lien on all Avoidance Actions and Causes of Action so that any proceeds of the Avoidance Actions and Causes of Action are used to pay the DIP Facility in full.

# **EXHIBIT D**

## **FINANCIAL PROJECTIONS**

### **A. INTRODUCTION**

In conjunction with formulating the Plan, the Bankruptcy Code requires that the Bankruptcy Court determine that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization of the debtor. The Debtor believes the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code, as evidenced by the financial projections of future performance of the Reorganized Debtor, as set forth hereafter. At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan is feasible.

### **B. PROJECTIONS**

The projections detailed herein reflect the Debtor's best estimate of the expected results of operations and Cash flows of the Debtor for fiscal years 2014 – 2018 (the "Projections"). Accordingly, the Projections reflect management's judgment of expected future operating and business conditions, which are subject to change.

Estimates and assumptions shown in the Projections were developed by management with assistance from various professionals. The assumptions disclosed herein are those that the Debtor believes to be significant to the Projections. Although the Debtor is of the opinion that these assumptions are reasonable under the circumstances, such assumptions are subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond the control of management. Despite the Debtor's efforts to foresee and plan for the effects of changes in these circumstances, the Debtor cannot predict their impact with certainty. Consequently, actual financial results could vary significantly from projected results.

**THE PROJECTIONS SHOULD NOT BE REGARDED AS A REPRESENTATION OR WARRANTY BY THE DEBTOR OR ANY OTHER PERSON AS TO THE ACCURACY OF THE PROJECTIONS OR THAT ANY PROJECTIONS SET FORTH HEREIN WILL BE REALIZED. THE PROJECTED FINANCIAL INFORMATION WAS PREPARED BY THE DEBTOR AND HAS NOT BEEN AUDITED OR REVIEWED BY INDEPENDENT ACCOUNTANTS. THE PROJECTIONS SHOULD BE READ IN CONJUNCTION WITH THE SIGNIFICANT ASSUMPTIONS AND QUALIFICATIONS CONTAINED HEREIN. WHILE THE MANAGEMENT BELIEVES THE ASSUMPTIONS UNDERLYING THE PROJECTIONS, WHEN CONSIDERED ON AN OVERALL BASIS, ARE REASONABLE IN LIGHT OF CURRENT CIRCUMSTANCES AND EXPECTATIONS, NO ASSURANCE CAN BE GIVEN THAT ANY PROJECTIONS WILL BE REALIZED.**

## C. GENERAL ASSUMPTIONS

The Business Plan assumes certain economic and business conditions for the FY 2014 – 2018 period, including a stable margin in an environment with increasing raw material costs, sales volume growth in retail and foodservice segments and cost savings and efficiencies.

### General:

- *Methodology*: Based on a “bottoms-up” approach from customer and segment level detail based on best available current information on each customer
- *Effective Date*: Based on a transaction effective date of December 31, 2013

### Significant Assumptions:

- *Revenues*: Capacity held constant, increased retail and foodservice product mix, continued successful launch of new retail products
- *Material Margin*: Based on customer and segment specific assumptions, generally held constant relative to historical experience
- *Total Operating Cost*: Includes costs related to payroll, transport and logistics, general and administrative expenses as well as manufacturing overhead which are anticipated to decline due to lease and other contract cost cancellation and restructuring savings, manufacturing efficiencies, procurement savings and other projects that do not require significant cash outlays to effectuate
- *Working Capital*: Continue to acquire and grow inventory levels cost efficiently as the liquidity position improves over the projection period, maintain accounts receivable and accounts payable reflective of stable operations
- *Capital Expenditures*: Includes maintenance capital expenditures; no significant growth capital expenditures are expected

**Projected Statement of Operations:**

	<b>Projected Fiscal Year Ending December 31,</b>				
	2014	2015	2016	2017	2018
<b>Total Pounds Sold</b>	<b>60.3</b>	<b>61.7</b>	<b>62.5</b>	<b>63.2</b>	<b>64.0</b>
Revenue	\$ 116.1	\$ 123.7	\$ 130.3	\$ 136.8	\$ 143.6
Material Cost	(97.4)	(103.1)	(108.2)	(113.3)	(118.9)
Other COGS	(10.3)	(10.6)	(10.8)	(11.1)	(11.4)
Gross Profit	8.4	10.1	11.4	12.4	13.3
SG&A Expenses	(7.6)	(7.7)	(7.8)	(7.9)	(8.0)
Other Income / (Expenses)	0.6	0.6	0.6	0.6	0.6
EBIT	1.4	3.0	4.2	5.1	5.9
D&A	1.9	1.9	1.9	2.0	2.0
<b>EBITDA</b>	<b>\$ 3.2</b>	<b>\$ 4.9</b>	<b>\$ 6.1</b>	<b>\$ 7.1</b>	<b>\$ 7.9</b>

**Projected Working Capital:**

	<b>Projected Fiscal Year Ending December 31,</b>				
	2014	2015	2016	2017	2018
Accounts Receivable, net	\$ 10.3	\$ 11.0	\$ 11.6	\$ 12.2	\$ 12.9
Total Inventory	13.0	18.9	19.8	22.3	23.0
Prepaid Expenses	0.5	0.5	0.5	0.5	0.5
Accounts Payable <sup>(1)</sup>	(9.8)	(10.4)	(10.9)	(11.4)	(12.0)
Accrued Expenses	(2.3)	(2.4)	(2.6)	(2.7)	(2.8)
<b>Total Working Capital</b>	<b>\$ 11.7</b>	<b>\$ 17.6</b>	<b>\$ 18.4</b>	<b>\$ 20.9</b>	<b>\$ 21.6</b>
<b>Net Change in Working Capital</b>	<b>\$ 3.4</b>	<b>\$ (5.9)</b>	<b>\$ (0.8)</b>	<b>\$ (2.5)</b>	<b>\$ (0.6)</b>

(1) Accounts payable terms are based on assumptions in the Plan of Reorganization

**Projected Statement of Cash Flows:**

	<b>Projected Fiscal Year Ending December 31,</b>				
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
EBITDA	\$ 3.2	\$ 4.9	\$ 6.1	\$ 7.1	\$ 7.9
Changes in Working Capital	3.4	(5.9)	(0.8)	(2.5)	(0.6)
Taxes	(0.1)	(0.6)	(1.1)	(1.4)	(1.7)
<b>Operating Cash Flow</b>	<b>6.5</b>	<b>(1.7)</b>	<b>4.2</b>	<b>3.2</b>	<b>5.6</b>
<b>Investing Cash Flow</b>	<b>(0.4)</b>	<b>(0.4)</b>	<b>(0.4)</b>	<b>(0.4)</b>	<b>(0.4)</b>
Interest <sup>(1)</sup>	(1.1)	(1.1)	(1.1)	(1.2)	(1.0)
Change in Debt	(5.1)	3.1	(2.8)	(1.7)	(4.2)
<b>Financing Cash Flow</b>	<b>(6.2)</b>	<b>2.0</b>	<b>(3.8)</b>	<b>(2.9)</b>	<b>(5.2)</b>
Net Cash Flow	0.0	0.0	0.0	(0.0)	(0.0)
Beginning Cash Balance	-	0.0	0.0	0.0	0.0
<b>Ending Cash Balance</b>	<b>\$ 0.0</b>	<b>\$ 0.0</b>	<b>\$ 0.0</b>	<b>\$ 0.0</b>	<b>\$ 0.0</b>

(1) Interest and credit facility terms are based on assumptions in the Plan of Reorganization and market terms for interest rates and other terms

# **EXHIBIT E**



# FINANCIAL REPORT

DECEMBER 31, 2011



# **Groeb Farms, Inc.**

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## **Financial Report December 31, 2011**

# Groeb Farms, Inc.

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## Independent Auditor's Report

To the Board of Directors  
Groeb Farms, Inc.

We have audited the accompanying balance sheet of Groeb Farms, Inc. (the "Company") as of December 31, 2011 and 2010 and the related statements of operations, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Groeb Farms, Inc. at December 31, 2011 and 2010 and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

*Plante & Moran, PLLC*

February 16, 2012



# Groeb Farms, Inc.

## Balance Sheet

	December 31, 2011	December 31, 2010
<b>Assets</b>		
<b>Current Assets</b>		
Cash	\$ 228,773	\$ 66,307
Accounts receivable - Net	9,176,552	10,393,750
Inventory (Note 3)	17,570,753	19,266,753
Prepaid expenses and other current assets:		
Prepaid expenses	446,395	380,310
Refundable taxes	1,054,194	432,208
Deferred tax recovery (Note 8)	136,687	110,739
Total current assets	28,613,354	30,650,067
<b>Property and Equipment - Net (Note 4)</b>	5,465,167	4,853,234
<b>Goodwill (Note 5)</b>	8,350,593	8,350,593
<b>Intangible Assets - Net (Note 5)</b>	12,098,474	13,076,786
<b>Debt Issuance Costs</b>	81,170	152,498
<b>Related Party Note Receivable (Note 11)</b>	191,475	-
Total assets	<b>\$ 54,800,233</b>	<b>\$ 57,083,178</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current Liabilities</b>		
Checks issued in excess of bank balance	\$ -	\$ 601,635
Trade accounts payable	14,037,693	9,563,090
Related party payable under product financing arrangement (Note 11)	2,935,833	-
Current portion of long-term debt (Note 6)	13,328,001	12,833,642
Disputed trade accounts payable (Note 12)	4,472,979	3,750,095
Accrued and other current liabilities:		
Accrued compensation	103,099	326,761
Accrued interest	239,274	95,119
Other accrued liabilities	399,219	428,531
Total current liabilities	35,516,098	27,598,873
<b>Long-term Debt - Net of current portion (Note 6)</b>	8,818,712	9,589,848
<b>Deferred Tax Liabilities (Note 8)</b>	853,816	3,562,727
<b>Stockholders' Equity (Note 7)</b>	9,611,607	16,331,730
Total liabilities and stockholders' equity	<b>\$ 54,800,233</b>	<b>\$ 57,083,178</b>

See Notes to Financial Statements.

## Groeb Farms, Inc.

### Statement of Operations

	Year Ended	
	December 31, 2011	December 31, 2010
<b>Net Sales</b>	\$ 145,297,383	\$ 124,033,831
<b>Cost of Sales</b>	<u>143,067,895</u>	<u>112,366,960</u>
<b>Gross Profit</b>	2,229,488	11,666,871
<b>Operating Expenses</b>	<u>11,529,600</u>	<u>9,076,517</u>
<b>Operating (Loss) Income</b>	(9,300,112)	2,590,354
<b>Nonoperating Income (Expenses)</b>		
Interest income	13,817	4,727
Other income	1,038,914	541,523
Interest expense	(1,900,123)	(1,438,554)
Transaction costs relating to Miller's American Honey acquisition (Note 2)	<u>(585,126)</u>	<u>(751,405)</u>
Total nonoperating expenses	<u>(1,432,518)</u>	<u>(1,643,709)</u>
<b>(Loss) Income - Before income taxes</b>	(10,732,630)	946,645
<b>Income Tax (Recovery) Expense (Note 8)</b>	<u>(4,008,075)</u>	<u>253,418</u>
<b>Net (Loss) Income</b>	<u><u>\$ (6,724,555)</u></u>	<u><u>\$ 693,227</u></u>

See Notes to Financial Statements.

# Groeb Farms, Inc.

## Statement of Stockholders' Equity

	Common Stock	Preferred Stock	Additional Paid-in Capital	Common Stock Purchase Warrants	Stock Subscription Receivable	Retained Earnings	Total
<b>Balance - January 1, 2010</b>	\$ 34,335	\$ 7,850,000	\$ 444,760	\$ 10,507	\$ (117,420)	\$ 3,366,462	\$ 11,588,644
Net income	-	-	-	-	-	693,227	693,227
Issuance - Common voting	2,364	-	212,760	-	-	-	215,124
Issuance - Warrants	-	-	-	285,000	-	-	285,000
Issuance - Preferred voting	-	3,545,240	-	-	-	-	3,545,240
Stock subscription receivable payments	-	-	-	-	4,495	-	4,495
<b>Balance - December 31, 2010</b>	36,699	11,395,240	657,520	295,507	(112,925)	4,059,689	16,331,730
Net loss	-	-	-	-	-	(6,724,555)	(6,724,555)
Stock subscription receivable payments	-	-	-	-	4,432	-	4,432
<b>Balance - December 31, 2011</b>	\$ 36,699	\$ 11,395,240	\$ 657,520	\$ 295,507	\$ (108,493)	\$ (2,664,866)	\$ 9,611,607

# Groeb Farms, Inc.

## Statement of Cash Flows

	Year Ended	
	December 31, 2011	December 31, 2010
<b>Cash Flows from Operating Activities</b>		
Net (loss) income	\$ (6,724,555)	\$ 693,227
Adjustments to reconcile net (loss) income to net cash from operating activities:		
Depreciation	637,536	446,855
Loss on disposal of property and equipment	21,022	19,705
Bad debt expense	50,000	-
Amortization of debt discount related to warrants	71,464	62,622
Amortization	1,049,640	932,443
Deferred income taxes - Net	(2,734,859)	(273,826)
Changes in operating assets and liabilities which (used) provided cash, net of effects of business acquisitions:		
Accounts receivable	1,167,198	(2,595,026)
Inventory	1,696,000	1,354,412
Prepaid expenses and other assets	(879,546)	(593,796)
Accounts payable	8,136,377	465,752
Accrued and other current liabilities	(111,876)	(316,615)
Net cash provided by operating activities	2,378,401	195,753
<b>Cash Flows from Investing Activities</b>		
Purchase of property and equipment	(1,275,300)	(1,688,665)
Proceeds from disposition of property and equipment	4,809	39,717
Cash paid for business acquisition - Net of cash acquired	-	(13,365,598)
Net cash used in investing activities	(1,270,491)	(15,014,546)
<b>Cash Flows from Financing Activities</b>		
Net change in checks issued in excess of bank balance	(601,635)	601,635
Net borrowings from line of credit	573,073	8,064,481
Payments on debt	(921,314)	(1,071,831)
Proceeds from long-term debt	-	3,500,000
Payments of debt issuance costs	-	(152,049)
Proceeds from issuance of equity interests	-	3,760,364
Payments received on stock subscriptions	4,432	4,495
Net cash (used in) provided by financing activities	(945,444)	14,707,095
<b>Net Increase (Decrease) in Cash</b>	162,466	(111,698)
<b>Cash - Beginning of year</b>	66,307	178,005
<b>Cash - End of year</b>	<b>\$ 228,773</b>	<b>\$ 66,307</b>
<b>Supplemental Cash Flow Information - Cash paid for</b>		
Interest expense	\$ 1,759,025	\$ 1,370,354
Income taxes	14,908	1,030,000

See Notes to Financial Statements.

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# Groeb Farms, Inc.

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## Notes to Financial Statements December 31, 2011 and 2010

### Note 1 - Nature of Business and Significant Accounting Policies

Groeb Farms, Inc. (the "Company") is a processor of honey and molasses, and a distributor of peanut butter, agave, and honey powder. The Company's products are used as ingredients in food manufacturers' products, the food service industry, and the retail industry throughout the United States. The Company's headquarters is located in Onsted, Michigan. It has manufacturing facilities in Onsted, Michigan, Belleview, Florida, and Colton, California.

**Trade Accounts Receivable** - Accounts receivable are stated at net invoice amounts. An allowance for doubtful accounts is established based on a specific assessment of all invoices that remain unpaid following normal customer payment periods. All amounts deemed to be uncollectible are charged against the allowance for doubtful accounts in the period that determination is made. The Company's allowance for doubtful accounts was \$150,000 and \$100,000 as of December 31, 2011 and 2010, respectively. The Company has an additional allowance for approved customer deductions not yet taken as of December 31, 2011 and 2010 of approximately \$361,000 and \$504,000, respectively.

**Inventory** - Inventory is stated at the lower of cost or market, with cost determined on the first-in, first-out (FIFO) method. The Company's inventory valuation allowance at December 31, 2011 and 2010 was \$115,000 and \$35,000, respectively.

**Property and Equipment** - Property and equipment are recorded at cost. Both straight-line and accelerated methods are used for computing depreciation and amortization. Assets are depreciated over their estimated useful lives. Costs of maintenance and repairs are charged to expense when incurred.

**Goodwill** - The recorded amounts of goodwill from business combinations are based on management's best estimates of the fair values of assets acquired and liabilities assumed at the date of acquisition. Goodwill is not amortized, but rather is assessed at least on an annual basis for impairment.

No impairment charge was recognized during the years ended December 31, 2011 and 2010.

**Intangible Assets** - Intangible assets consist of customer relationships, trade names, and noncompete agreements. The Groeb Farms, Inc. and Miller American Honey, Inc. customer relationships are amortized on the straight-line basis over their estimated useful lives of 15 years and 10 years, respectively. The trade names have indefinite lives. The noncompete agreement will be amortized on the straight-line basis over the estimated useful life of seven years. Assets that are not subject to amortization are tested for impairment at least annually. Intangible assets that are subject to amortization are reviewed for potential impairment whenever events or circumstances indicate that carrying amounts may not be recoverable.



**Note 1 - Nature of Business and Significant Accounting Policies  
(Continued)**

**Debt Issuance Costs** - Debt issuance costs were incurred by the Company in connection with obtaining the debt to complete the stock purchases. These costs are amortized over the term of the related debt. The gross carrying value was approximately \$260,000 at December 31, 2011 and 2010. Amortization expense was approximately \$72,000 and \$58,000 for the years ended December 31, 2011 and 2010, respectively. The related accumulated amortization at December 31, 2011 and 2010 was approximately \$180,000 and \$108,000, respectively.

**Income Taxes** - A current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the year. Deferred tax liabilities or assets are recognized for the estimated future tax effects of temporary differences between financial reporting and tax accounting.

**Checks Issued in Excess of Bank Balance** - By arrangement with its financial institution, collected funds are adjusted daily between the Company's checking account and the available line of credit. As a result, the recorded book balance of the Company's checking account may reflect a negative cash balance although the bank balance remains positive.

**Discounts and Rebates** - The cost of discounts and rebates is recognized at the later of the date at which the related sale is recognized or the date at which the incentive is offered. The cost of these incentives is estimated using a number of factors including historical utilization and redemption rates. Substantially all cash incentives of this type are included in the determination of net sales. Incentives offered in the form of free product are included in the determination of cost of sales.

**Use of Estimates** - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**Major Suppliers** - Five vendors in 2011 and 2010 accounted for approximately 59 percent and 53 percent of raw honey purchases, respectively. These vendors also accounted for approximately 58 and 45 percent of accounts payable at December 31, 2011 and 2010, respectively.

**Reclassification** - Certain 2010 amounts have been reclassified to conform to the 2011 presentation.

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2011 and 2010

### Note 1 - Nature of Business and Significant Accounting Policies (Continued)

**Subsequent Events** - The financial statements and related disclosures include evaluation of events up through and including February 16, 2012, which is the date the financial statements were available to be issued.

### Note 2 - Business Combination

On March 31, 2010, the Company purchased the stock of Miller's American Honey, Inc., a California corporation. The primary reasons for the acquisition were to expand the Company's product offering through an integration of the retail product line and expansion to the west coast region. Groeb Farms, Inc. contracted a third-party consultant to assist management in assigning values to the goodwill and intangible assets purchased. The goodwill arising from the acquisition consists largely of the synergies and economies of scale expected from combining the operations of the Company and Miller's American Honey, Inc. The agreed-upon purchase price was \$16,389,154. An escrow account with a balance of \$2,000,000 of the proceeds was held and subjected to final adjustments to be agreed upon by October 1, 2011. Prior to October 1, 2011, the Company filed a notice of claims under the purchase agreement. Currently, the claims, as well as a counter claim by the seller, are in negotiation. If a resolution is unable to be agreed upon, the claims will proceed to arbitration. As of December 31, 2011, approximately \$460,000 of the original proceeds were being held in escrow and the remaining amount was disbursed in October 2011. Any adjustments will be recorded when finalized.

The transaction was financed through the issuance of debt and equity and assumption of a note payable. The balance of the proceeds was derived from the Company's line of credit.

The following table summarizes the acquisition date fair values of the assets acquired and liabilities assumed:

Cash	\$ 3,023,556
Accounts receivable	1,935,962
Inventory	6,521,516
Prepaid expenses and other current assets	34,355
Property and equipment	1,461,305
Goodwill	1,710,422
Intangibles	4,387,000
Total assets	19,074,116
Accounts payable	(1,706,752)
Accrued liabilities	(246,590)
Long-term debt	(731,620)
Total net assets acquired	\$ 16,389,154

## Groeb Farms, Inc.

### Notes to Financial Statements December 31, 2011 and 2010

#### Note 2 - Business Combination (Continued)

Of the total amount of goodwill and intangibles recognized, approximately \$6,027,000 is expected to be deductible for tax purposes.

#### Note 3 - Inventory

Inventory at December 31, 2011 and 2010 consists of the following:

	2011	2010
Raw materials	\$ 10,464,555	\$ 14,791,706
Finished goods	4,247,433	4,475,047
Inventory related to product financing arrangement (Note 11)	2,858,765	-
Total inventory	<u>\$ 17,570,753</u>	<u>\$ 19,266,753</u>

#### Note 4 - Property and Equipment

Property and equipment are summarized as follows:

	2011	2010	Depreciable Life - Years
Leasehold improvements	\$ 2,638,473	\$ 1,975,783	10-15
Machinery and equipment	3,663,599	1,950,562	2-10
Transportation equipment	773,097	773,097	5-10
Construction in progress	31,247	1,159,944	-
Total cost	7,106,416	5,859,386	
Accumulated depreciation	<u>1,641,249</u>	<u>1,006,152</u>	
Net property and equipment	<u>\$ 5,465,167</u>	<u>\$ 4,853,234</u>	

Depreciation expense was \$637,536 and \$446,855 for the years ended December 31, 2011 and 2010, respectively.

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2011 and 2010

### Note 5 - Acquired Intangible Assets and Goodwill

Intangible assets of the Company at December 31, 2011 and 2010 are summarized as follows:

	2011		2010	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Amortized intangible assets:				
Groeb Farms, Inc. customer relationships	\$ 8,441,000	\$ 2,698,267	\$ 8,441,000	\$ 2,135,527
Miller American Honey, Inc. customer relationships	2,860,000	714,976	2,860,000	306,400
Miller American Honey, Inc. noncompete agreement	70,000	12,283	70,000	5,287
Total	<u>\$ 11,371,000</u>	<u>\$ 3,425,526</u>	<u>\$ 11,371,000</u>	<u>\$ 2,447,214</u>

	2011		2010	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Gross Carrying Amount
Unamortized intangible assets:				
Groeb Farms, Inc. trade name	\$ 2,696,000	\$ -	\$ 2,696,000	\$ -
Miller American Honey, Inc. trade name	1,457,000	-	1,457,000	-
Goodwill	8,350,593	-	8,350,593	-
Total	<u>\$ 12,503,593</u>	<u>\$ -</u>	<u>\$ 12,503,593</u>	<u>\$ -</u>

Amortization expense for intangible assets totaled approximately \$978,000 and \$875,000 for the years ended December 31, 2011 and 2010, respectively.

Estimated amortization expense for the years ending December 31 are as follows:

2012	\$ 978,312
2013	978,312
2014	978,312
2015	978,312
2016	978,312
Thereafter	<u>3,053,914</u>
Total	<u>\$ 7,945,474</u>

**Note 6 - Debt**

As of December 31, 2011 and 2010, the Company had a line of credit agreement with Comerica Bank, whereby the Company could borrow, subject to the outstanding indebtedness, up to \$20,000,000 based upon qualifying inventory and accounts receivable. Interest was payable monthly at a rate of 4.50 and 3.25 percent above the London Interbank Offered Rate (LIBOR) (an effective rate of 5.50 and 3.50 percent) at December 31, 2011 and 2010, respectively. The line of credit is collateralized by all property and assets of the Company. At December 31, 2011 and 2010, \$12,485,778 and \$11,912,705, respectively, had been drawn on the line of credit.

The terms of the line of credit require the Company to, among other things, meet certain financial ratios and limit restricted payments. The Company was in compliance with these financial covenants as of December 31, 2010. At December 31, 2011, the Company was in violation of certain financial covenants and was under a forbearance agreement with Comerica Bank through January 31, 2012.

Subsequent to year end, on January 30, 2012, the Company refinanced its bank debt by entering into a revolving credit facility with Wells Fargo Bank, N.A. The revolving credit agreement is in the amount of \$25,000,000, bearing interest at LIBOR plus 2.25 percent. The interest rate may adjust quarterly beginning on April 1, 2012, based on the Company's average availability as defined in the loan agreement. Payments of interest only are due monthly, with the balance due at maturity on January 31, 2017. Borrowings are limited to formulas based on the Company's eligible accounts receivable and inventory, as defined in the agreement.

The revolving credit agreement is subject to the terms and conditions of an inter-credit agreement between and among the Company, the bank, and holders of the subordinated debt, and require the Company to maintain compliance with certain financial and other covenants. The bank debt is collateralized by substantially all of the assets of the Company, in addition to the assignments of all leases and subleases.

The terms of the senior subordinated debt and junior subordinated debt to stockholders were restructured as part of the refinancing agreement. Principal payments were extended from a two-year period to a four-year period. Principal payments will begin June 30, 2013 and will be made quarterly until the final payment is made at maturity on March 31, 2017. The interest rates and collateral on the subordinated debt remained consistent with existing agreements.

As part of the refinancing, the Company also acquired a term note in the amount of \$1,120,000, bearing interest at LIBOR plus 2.50 percent. The note is subject to substantially the same terms and conditions as the revolving credit facility. Payments of principal and interest are due monthly, with the balance due at maturity on January 31, 2017.

## Groeb Farms, Inc.

### Notes to Financial Statements December 31, 2011 and 2010

#### Note 6 - Debt (Continued)

Classification of the outstanding bank debt as of December 31, 2010, as follows, reflects the terms that were in place prior to receiving subsequent financing. Classification of the outstanding debt as of December 31, 2011, as follows, reflects subsequent financing terms for bank debt as described above.

	<u>2011</u>	<u>2010</u>
Senior secured term notes to Comerica Bank, with monthly principal installments of \$83,333 effective through May 2011, \$62,500 through May 2012 and \$41,667 thereafter, plus interest at 4.00 percent and 2.75 percent above LIBOR (an effective interest rate of 5.00 and 3.00 percent at December 31, 2011 and 2010, respectively). The note was collateralized by all property and assets of the Company. Subsequent to December 31, 2011, this note was repaid in full. The future maturities on this note reflect subsequent financing terms as described above	\$ 749,998	\$ 1,583,330
Senior subordinated debt to stockholders, principal payments of \$218,750 to commence on June 30, 2013 and at the end of each three months thereafter with final payment due on March 31, 2017, with monthly interest-only payments at 12 percent. The debt is recorded net of an unamortized discount of \$9,952 at December 31, 2011 and 2010 with an effective rate of approximately 1 percent. The note is collateralized by all property and assets of the Company. The future maturities on this note reflect subsequent financing terms as described above	3,490,048	3,490,048

## Groeb Farms, Inc.

### Notes to Financial Statements December 31, 2011 and 2010

#### Note 6 - Debt (Continued)

	<u>2011</u>	<u>2010</u>
Senior subordinated debt to stockholders, principal payments of \$218,750 to commence on June 30, 2013 and at the end of three months thereafter with final payment due on March 31, 2017, with monthly interest-only payments at 12 percent. The debt is recorded net of an unamortized discount of \$159,938 and \$231,402 at December 31, 2011 and 2010, respectively, with an effective rate of approximately 8 percent. The note is collateralized by all property and assets of the Company. The future maturities on this note reflect subsequent financing terms as described above	\$ 3,340,062	\$ 3,268,598
Junior subordinated debt to stockholders, principal payments of \$93,750 to commence on June 30, 2013 and at the end of each three months thereafter with final payment due on March 31, 2017, with monthly interest-only payments at 8 percent. The note is unsecured. The future maturities on this note reflect subsequent financing terms as described above	1,500,000	1,500,000
Unsecured debt assumed with the acquisition of Miller's American Honey, Inc. Monthly principal and interest payments of \$10,000 at 5.2 percent maturing on July 1, 2017	580,827	668,809
Borrowings under the revolving line of credit agreement denoted above, reflecting subsequent refinancing terms	<u>12,485,778</u>	<u>11,912,705</u>
Total	22,146,713	22,423,490
Less current portion	<u>13,328,001</u>	<u>12,833,642</u>
Long-term portion	<u>\$ 8,818,712</u>	<u>\$ 9,589,848</u>

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2011 and 2010

### Note 6 - Debt (Continued)

The balance of the above debt matures as follows:

2012	\$ 13,328,001
2013	1,690,838
2014	2,227,208
2015	2,232,598
2016	2,306,708
Thereafter	531,250
Less unamortized debt discount	<u>(169,890)</u>
Total	<u>\$ 22,146,713</u>

Interest expense for the years ended December 31, 2011 and 2010 was approximately \$1,900,000 and \$1,439,000, respectively. For the years ended December 31, 2011 and 2010, there is approximately \$71,000 and \$63,000, respectively, of amortization on the warrants included in interest expense.

### Note 7 - Stockholders' Equity

Capital stock at December 31, 2011 and 2010 is as follows:

	2011	2010
Common stock:		
Series D, voting, common stock, \$1 par value, 10,864 shares authorized, 10,864 shares issued and outstanding at December 31, 2011 and 2010	\$ 10,864	\$ 10,864
Series E, voting, common stock, \$1 par value, 13,134 shares authorized, 13,134 shares issued and outstanding at December 31, 2011 and 2010	13,134	13,134
Series F, voting, common stock, \$1 par value, 24,201 shares authorized, 12,701 shares issued and outstanding at December 31, 2011 and 2010	12,701	12,701
Series G, voting, common stock, \$1 par value, 35,947 shares authorized, 0 issued and outstanding at December 31, 2011 and 2010	-	-



# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2011 and 2010

### Note 7 - Stockholders' Equity (Continued)

	<u>2011</u>	<u>2010</u>
Preferred stock:		
Series A, voting, 6 percent convertible preferred stock, \$100 par value, 69,110 shares authorized, 69,110 shares issued and outstanding at December 31, 2011 and 2010	\$ 6,911,000	\$ 6,911,000
Series B, voting, convertible preferred stock, \$100 par value, 9,390 shares authorized, 9,390 shares issued and outstanding at December 31, 2011 and 2010	939,000	939,000
Series C, voting, 6 percent convertible preferred stock, \$130 par value, 27,271 shares authorized, 27,271 shares issued and outstanding at December 31, 2011 and 2010	3,545,240	3,545,240
Common stock purchase warrants	295,507	295,507
Stock subscription receivable	(108,493)	(112,925)
Additional paid-in capital	657,520	657,520
(Accumulated deficit) retained earnings	<u>(2,664,866)</u>	<u>4,059,689</u>
Total	<u>\$ 9,611,607</u>	<u>\$ 16,331,730</u>

The convertible preferred stock ranks senior to the common stock with respect to payment of dividends and distribution of assets upon liquidation. The Series C preferred stock is senior to the Series A preferred stock which is senior to the Series B preferred stock with respect to payment of dividends and distribution of assets upon liquidation.

The holders of Series A 6 percent convertible preferred stock are entitled to receive, if declared by the board of directors of the Company at its sole discretion, cumulative dividends at the rate of \$6.00 per annum on each share of convertible preferred stock payable quarterly of each year commencing on March 16, 2007. As of December 2011 and 2010, total dividends of approximately \$1,987,000 and \$1,572,000, respectively, were in arrears.

The holders of the Series B convertible preferred stock are not entitled to receive dividends.

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2011 and 2010

### Note 7 - Stockholders' Equity (Continued)

The holders of Series C 6 percent convertible preferred stock are entitled to receive, if declared by the board of directors of the Company at its sole discretion, cumulative dividends at the rate of \$6.00 per annum on each share of convertible preferred stock payable quarterly of each year commencing on March 31, 2010. As of December 31, 2011 and 2010, total dividends of approximately \$371,000 and \$158,000, respectively, were in arrears.

The common stock ranks junior to the convertible preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation. The Series D, E, and F common stock ranks on parity with respect to payment of dividends. The Series D, E, and F common stock ranks in order with respect to distribution of assets upon liquidation.

In connection with the senior subordinated notes in Note 6, the Company issued 10,507 warrants to purchase shares of Series C common stock to certain stockholders. These warrants can be exercised at any time prior to the expiration date of March 16, 2019 at an exercise price of \$1.00 per share. The warrants, valued at \$10,507, are reflected in the stockholders' equity section of the balance sheet with a corresponding reduction recorded against debt. As of December 31, 2011 and 2010, none of the warrants have been exercised.

On March 31, 2010, 35,947 shares of \$1.00 par value Series G common stock were authorized. In connection with the senior subordinated notes in Note 6, the Company issued 9,024 warrants to purchase shares of Series G common stock to certain stockholders. These warrants can be exercised at any time prior to the expiration date of March 31, 2022 at an exercise price of \$1.00 per share. The warrants, valued at \$285,000, are reflected in the stockholders' equity section of the balance sheet with a corresponding reduction recorded against debt. As of December 31, 2011 and 2010, none of the warrants have been exercised.

During 2010, 27,271 shares of Series C preferred stock and 2,364 shares of Series D common stock were issued.

### Note 8 - Income Taxes

The provision for income taxes for the years ended December 31, 2011 and 2010 consists of the following:

	2011	2010
Current income tax (recovery) expense	\$ (1,273,216)	\$ 527,244
Deferred tax benefit	(2,734,859)	(273,826)
Total income tax (recovery) expense	<u>\$ (4,008,075)</u>	<u>\$ 253,418</u>

## Groeb Farms, Inc.

### Notes to Financial Statements December 31, 2011 and 2010

#### Note 8 - Income Taxes (Continued)

A reconciliation of the provision for income taxes to income taxes computed by applying the statutory United States federal rate to income before taxes is as follows:

	2011	2010
Income tax (recovery) expense, computed at 34 percent of pretax (loss) income	\$ (3,650,000)	\$ 340,000
Effect of permanent differences - Net	11,788	(36,909)
Effect of adjustments of prior year estimates and other	(369,863)	(49,673)
Total income tax (recovery) expense	<u>\$ (4,008,075)</u>	<u>\$ 253,418</u>

The details of the deferred tax liability are as follows:

	2011	2010
Total deferred tax liabilities	\$ (4,197,221)	\$ (3,755,140)
Total deferred tax assets	<u>3,480,092</u>	<u>303,152</u>
Net deferred tax liability	<u>\$ (717,129)</u>	<u>\$ (3,451,988)</u>

Deferred tax liabilities result principally from accelerated methods of depreciation and amortization. Deferred tax assets result from recognition of expenses for financial reporting purposes that are not deductible for tax purposes until paid.

The Company has approximately \$8,900,000 of net operating loss carryforwards available to reduce future income taxes, expiring in 2031.

As of December 31, 2011 and 2010, the Company's unrecognized tax liabilities were not significant. There were no significant penalties or interest recognized during the year or accrued at year end. The Company files income tax returns in U.S. federal and various state jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal or state income tax examinations by tax authorities for years before 2007.

#### Note 9 - Operating Leases

The Company is obligated under related party operating leases for rent of the Michigan and Florida locations, as well as operating leases for the rent of the California and Texas buildings, expiring at various dates through September 30, 2013 with renewal options. The leases require the Company to pay taxes, insurance, utilities, and maintenance costs. Total rent expense under these leases was approximately \$443,000 and \$325,000 for the years ended December 31, 2011 and 2010, respectively.

The Company has several other operating leases relating to office equipment, freightliners, and vehicles. Total rent expense under these leases was approximately \$393,000 and \$334,000 for the years ended December 31, 2011 and 2010, respectively.

## Groeb Farms, Inc.

### Notes to Financial Statements December 31, 2011 and 2010

#### Note 9 - Operating Leases (Continued)

Future minimum annual commitments under these operating leases are as follows:

<u>Years Ending December 31</u>	<u>Related Party</u>	<u>Other</u>	<u>Total</u>
2012	\$ 36,270	\$ 521,130	\$ 557,400
2013	-	234,067	234,067
2014	-	63,663	63,663
2015	-	31,818	31,818
2016	-	17,431	17,431
Total	<u>\$ 36,270</u>	<u>\$ 868,109</u>	<u>\$ 904,379</u>

#### Note 10 - Retirement Plan

The Company maintains a retirement plan for substantially all full-time employees established pursuant to Internal Revenue Code Section 401(k). The plan does not provide for a matching contribution.

#### Note 11 - Related Party Transactions

The following is a description of transactions between the Company and related parties:

**Notes Receivable** - The Company and certain stockholders entered into a note receivable in April 2011. Interest is payable at 3.5 percent. Total interest income for 2011 is \$6,475. The note stipulates that the principal plus accrued interest shall be paid in full when substantially all of the assets or equities of the Company are sold. The balance of the note receivable was \$191,475 as of December 31, 2011.

**Payable Under Product Financing Arrangement** - During 2011, the Company sold excess inventory to a related entity controlled by certain stockholders of the Company for \$2,935,833, which includes approximately \$77,000 of inventory used in production in 2011. Interest is payable at 10 percent and total interest incurred as of December 31, 2011 was approximately \$123,000 and is included in accrued interest on the balance sheet.

**Notes Payable** - The terms and balances of the notes payable to stockholders are described in Note 6. Total related party interest expense relating to the stockholder notes payable for the years ended December 31, 2011 and 2010 was approximately \$975,000 and \$869,500, respectively.

**Management Fee Expense** - For the years ended December 31, 2011 and 2010, the Company incurred expenses relating to management fees to a stockholder of \$102,500.

## **Groeb Farms, Inc.**

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### **Notes to Financial Statements December 31, 2011 and 2010**

#### **Note 12 - Contingencies**

The Company has various contracts with suppliers for the purchase and delivery of honey. During the last quarter of 2010, the Company had delinquent/late raw honey deliveries in excess of 8 million pounds. During 2011, the Company had two suppliers default on contracts in excess of 12 million pounds of honey deliveries.

As of December 31, 2011 and 2010, the Company had payables of approximately \$4,500,000 and \$3,700,000, respectively, to these vendors. The Company is currently in the process of pursuing legal action against both suppliers discussed above. Based upon the Company's counsel, a suit against these suppliers for nonperformance may result in settlement or an award by the court in favor of the Company; however, no benefit was recognized as of December 31, 2011 and 2010.

# **EXHIBIT F**

# **Groeb Farms, Inc.**

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## **Financial Report December 31, 2012**

# Groeb Farms, Inc.

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## Independent Auditor's Report

To the Board of Directors  
Groeb Farms, Inc.

### Report on the Financial Statements

We have audited the accompanying financial statements of Groeb Farms, Inc. (the "Company"), which comprise the balance sheet as of December 31, 2012 and 2011 and the related statements of operations, stockholders' equity, and cash flows for the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Groeb Farms, Inc. as of December 31, 2012 and 2011 and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

A handwritten signature in dark ink that reads "Plante & Moran, PLLC".

April 30, 2013

# Groeb Farms, Inc.

## Balance Sheet

	December 31, 2012	December 31, 2011
<b>Assets</b>		
<b>Current Assets</b>		
Cash	\$ 559,457	\$ 228,773
Accounts receivable - Net	7,070,183	9,176,552
Inventory (Notes 2 and 12)	21,508,026	17,570,753
Prepaid expenses and other current assets:		
Prepaid expenses	423,231	446,395
Refundable taxes	52,764	1,054,194
Deferred tax recovery (Note 7)	1,068,890	136,687
Total current assets	30,682,551	28,613,354
<b>Property and Equipment - Net (Note 3)</b>	4,892,903	5,465,167
<b>Goodwill (Note 4)</b>	8,350,593	8,350,593
<b>Intangible Assets - Net (Note 4)</b>	11,120,162	12,098,474
<b>Deferred Tax Recovery (Note 7)</b>	475,557	-
<b>Debt Issuance Costs</b>	379,744	81,170
<b>Related Party Note Receivable (Note 10)</b>	198,177	191,475
Total assets	<b>\$ 56,099,687</b>	<b>\$ 54,800,233</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current Liabilities</b>		
Trade accounts payable	\$ 15,652,000	\$ 14,037,693
Related party payable under product financing arrangement (Note 10)	-	2,935,833
Current portion of long-term debt (Note 5)	19,371,114	13,328,001
Disputed trade accounts payable (Notes 11 and 12)	6,865,360	4,472,979
Accrued and other current liabilities:		
Accrued compensation	647,738	103,099
Accrued interest	101,778	239,274
Other accrued liabilities	216,457	399,219
Total current liabilities	42,854,447	35,516,098
<b>Long-term Debt - Net of current portion (Note 5)</b>	9,575,725	8,818,712
<b>Deferred Tax Liabilities (Note 7)</b>	-	853,816
<b>Stockholders' Equity (Note 6)</b>	3,669,515	9,611,607
Total liabilities and stockholders' equity	<b>\$ 56,099,687</b>	<b>\$ 54,800,233</b>

# Groeb Farms, Inc.

## Statement of Operations

	Year Ended	
	December 31, 2012	December 31, 2011
<b>Net Sales</b>	\$ 137,852,596	\$ 145,297,383
<b>Cost of Sales</b>	128,218,391	143,067,895
<b>Gross Profit</b>	9,634,205	2,229,488
<b>Operating Expenses</b>	17,695,158	11,529,600
<b>Operating Loss</b>	(8,060,953)	(9,300,112)
<b>Nonoperating Income (Expenses)</b>		
Interest income	12,311	13,817
Other income	1,233,569	1,038,914
Interest expense	(1,616,392)	(1,900,123)
Transaction income (costs) relating to Miller's American Honey 2010 acquisition	309,495	(585,126)
Total nonoperating expenses	(61,017)	(1,432,518)
<b>Loss - Before income taxes</b>	(8,121,970)	(10,732,630)
<b>Income Tax Recovery</b> (Note 7)	(2,190,829)	(4,008,075)
<b>Net Loss</b>	<u><u>\$ (5,931,141)</u></u>	<u><u>\$ (6,724,555)</u></u>

# Groeb Farms, Inc.

## Statement of Stockholders' Equity

	Common Stock	Preferred Stock	Additional Paid-in Capital	Common Stock Purchase Warrants	Stock Subscription Receivable	Retained Earnings	Total
<b>Balance - January 1, 2011</b>	\$ 36,699	\$ 11,395,240	\$ 657,520	\$ 295,507	\$ (112,925)	\$ 4,059,689	\$ 16,331,730
Net loss	-	-	-	-	-	(6,724,555)	(6,724,555)
Stock subscription receivable payments	-	-	-	-	4,432	-	4,432
<b>Balance - December 31, 2011</b>	36,699	11,395,240	657,520	295,507	(108,493)	(2,664,866)	9,611,607
Net loss	-	-	-	-	-	(5,931,141)	(5,931,141)
Stock subscription receivable payments	-	-	-	-	4,498	-	4,498
Redemption of common stock	(15,449)	-	-	-	-	-	(15,449)
<b>Balance - December 31, 2012</b>	<b>\$ 21,250</b>	<b>\$ 11,395,240</b>	<b>\$ 657,520</b>	<b>\$ 295,507</b>	<b>\$ (103,995)</b>	<b>\$ (8,596,007)</b>	<b>\$ 3,669,515</b>

# Groeb Farms, Inc.

## Statement of Cash Flows

	Year Ended	
	December 31, 2012	December 31, 2011
<b>Cash Flows from Operating Activities</b>		
Net loss	\$ (5,931,141)	\$ (6,724,555)
Adjustments to reconcile net loss to net cash from operating activities:		
Depreciation	806,027	637,536
Loss on disposal of property and equipment	1,090,606	21,022
Bad debt expense	121,144	50,000
Amortization of debt discount related to warrants	71,464	71,464
Amortization	1,114,031	1,049,640
Deferred income tax recovery	(2,261,576)	(2,734,859)
Changes in operating assets and liabilities which provided (used) cash:		
Accounts receivable	1,985,225	1,167,198
Inventory	(3,937,273)	1,696,000
Prepaid expenses and other assets	1,017,892	(879,546)
Accounts payable	1,070,855	8,136,377
Accrued and other current liabilities	224,381	(111,876)
Net cash (used in) provided by operating activities	(4,628,365)	2,378,401
<b>Cash Flows from Investing Activities</b>		
Purchase of property and equipment	(1,426,069)	(1,275,300)
Proceeds from disposition of property and equipment	101,700	4,809
Net cash used in investing activities	(1,324,369)	(1,270,491)
<b>Cash Flows from Financing Activities</b>		
Net change in checks issued in excess of bank balance	-	(601,635)
Net borrowings from line of credit	6,475,820	573,073
Payments on debt	(1,044,023)	(921,314)
Proceeds from long-term debt	1,296,865	-
Payments of debt issuance costs	(434,293)	-
Redemption of common stock	(15,449)	-
Payments received on stock subscriptions	4,498	4,432
Net cash provided by (used in) financing activities	6,283,418	(945,444)
<b>Net Increase in Cash</b>	330,684	162,466
<b>Cash - Beginning of year</b>	228,773	66,307
<b>Cash - End of year</b>	<b>\$ 559,457</b>	<b>\$ 228,773</b>
<b>Supplemental Cash Flow Information - Cash paid (received) for</b>		
Interest expense	\$ 1,753,888	\$ 1,759,025
Income taxes	(980,682)	1,030,000

### **Note 1 - Nature of Business and Significant Accounting Policies**

Groeb Farms, Inc. (the "Company") is a processor of honey and molasses, and a distributor of peanut butter, agave, and honey powder. The Company's products are used as ingredients in food manufacturers' products, the food service industry, and the retail industry throughout the United States. The Company's headquarters is located in Onsted, Michigan. It has manufacturing facilities in Onsted, Michigan, Belleview, Florida, and San Bernardino, California.

**Trade Accounts Receivable** - Accounts receivable are stated at net invoice amounts. An allowance for doubtful accounts is established based on a specific assessment of all invoices that remain unpaid following normal customer payment periods. All amounts deemed to be uncollectible are charged against the allowance for doubtful accounts in the period that determination is made. The Company's allowance for doubtful accounts was \$250,000 and \$150,000 as of December 31, 2012 and 2011, respectively. The Company has an additional allowance for approved customer deductions not yet taken as of December 31, 2012 and 2011 of approximately \$350,000 and \$361,000, respectively.

**Inventory** - Inventory is stated at the lower of cost or market, with cost determined on the first-in, first-out (FIFO) method. The Company's inventory valuation allowance at December 31, 2012 and 2011 was \$1,412,000 and \$115,000, respectively. The valuation allowance increased in 2012 due to the Deferred Prosecution Agreement (DPA) described in Note 12.

**Property and Equipment** - Property and equipment are recorded at cost. Both straight-line and accelerated methods are used for computing depreciation and amortization. Assets are depreciated over their estimated useful lives. Costs of maintenance and repairs are charged to expense when incurred.

**Goodwill** - The recorded amounts of goodwill from business combinations are based on management's best estimates of the fair values of assets acquired and liabilities assumed at the date of acquisition. Goodwill is not amortized, but rather is assessed at least on an annual basis for impairment.

No impairment charge was recognized during the years ended December 31, 2012 and 2011.

**Note 1 - Nature of Business and Significant Accounting Policies  
(Continued)**

**Intangible Assets** - Intangible assets consist of customer relationships, trade names, and a noncompete agreement. Groeb Farms, Inc. and Miller American Honey, Inc. customer relationships are amortized on the straight-line basis over their estimated useful lives of 15 years and 10 years, respectively. The trade names have indefinite lives. The noncompete agreement will be amortized on the straight-line basis over the estimated useful life of seven years. Assets that are not subject to amortization are tested for impairment at least annually. Intangible assets that are subject to amortization are reviewed for potential impairment whenever events or circumstances indicate that carrying amounts may not be recoverable.

**Debt Issuance Costs** - Debt issuance costs were incurred by the Company in connection with obtaining the debt to complete the stock purchases. These costs are amortized over the term of the related debt. During 2012, additional debt issuance costs were incurred by the Company in conjunction with transferring its financing requirement to the Company's new lender (see Note 5). Previous debt issuance costs from the prior lender are included in amortization expense and were written off during 2012. The gross carrying value was approximately \$515,000 and \$260,000 at December 31, 2012 and 2011, respectively. Amortization expense was approximately \$136,000 and \$72,000 for the years ended December 31, 2012 and 2011, respectively. The related accumulated amortization at December 31, 2012 and 2011 was approximately \$135,000 and \$180,000.

**Income Taxes** - A current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the year. Deferred tax liabilities or assets are recognized for the estimated future tax effects of temporary differences between financial reporting and tax accounting.

**Transaction Income (Costs)** - On March 31, 2010, the Company purchased the stock of Miller's American Honey, Inc., a California corporation. An escrow account with a balance of \$2,000,000 of the proceeds was held and subjected to final adjustments to be agreed upon by October 1, 2011. Prior to October 1, 2011, the Company filed a notice of claims under the purchase agreement. The claims, as well as a counter claim by the seller, were in negotiation. As of December 31, 2011, the Company recorded their expected final purchase adjustments. A resolution was unable to be agreed upon by both parties, so the claims proceeded to arbitration. During 2012, arbitration was settled and the Company received a favorable outcome resulting in approximately \$309,000 of income recorded for the year ended December 31, 2012.

**Revenue Recognition** - Revenue is recognized by the Company upon shipment to customers when the customer takes ownership and assumes the risk of loss, collection of the relevant receivable is probable, persuasive evidence of an arrangement exists, and the sale price is fixed and determinable.

**Note 1 - Nature of Business and Significant Accounting Policies  
(Continued)**

**Discounts and Rebates** - The cost of discounts and rebates is recognized at the later of the date at which the related sale is recognized or the date at which the incentive is offered. The cost of these incentives is estimated using a number of factors including historical utilization and redemption rates. Substantially all cash incentives of this type are included in the determination of net sales.

**Use of Estimates** - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**Major Suppliers** - Five vendors in 2012 and 2011 accounted for approximately 54 percent and 59 percent of raw honey purchases, respectively. These vendors also accounted for approximately 21 and 58 percent of accounts payable at December 31, 2012 and 2011, respectively.

**Subsequent Events** - The financial statements and related disclosures include evaluation of events up through and including April 30, 2013, which is the date the financial statements were available to be issued.

**Note 2 - Inventory**

Inventory at December 31, 2012 and 2011 consists of the following:

	<u>2012</u>	<u>2011</u>
Raw materials	\$ 15,969,872	\$ 10,464,555
Finished goods	5,538,154	4,247,433
Inventory related to product financing arrangement (Note 10)	<u>-</u>	<u>2,858,765</u>
Total inventory	<u>\$ 21,508,026</u>	<u>\$ 17,570,753</u>



# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 3 - Property and Equipment

Property and equipment are summarized as follows:

	2012	2011	Depreciable Life - Years
Leasehold improvements	\$ 1,400,646	\$ 2,638,473	5-15
Machinery and equipment	3,616,248	3,663,599	2-10
Transportation equipment	732,620	773,097	5-10
Construction in progress	1,209,899	31,247	-
Total cost	6,959,413	7,106,416	
Accumulated depreciation	2,066,510	1,641,249	
Net property and equipment	<u>\$ 4,892,903</u>	<u>\$ 5,465,167</u>	

Depreciation expense was \$806,027 and \$637,536 for the years ended December 31, 2012 and 2011, respectively.

### Note 4 - Acquired Intangible Assets and Goodwill

Intangible assets of the Company at December 31, 2012 and 2011 are summarized as follows:

	2012		2011	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Amortized intangible assets:				
Groeb Farms, Inc. customer relationships	\$ 8,441,000	\$ 3,261,007	\$ 8,441,000	\$ 2,698,267
Miller American Honey, Inc. customer relationships	2,860,000	1,123,552	2,860,000	714,976
Miller American Honey, Inc. noncompete agreement	70,000	19,279	70,000	12,283
Total	<u>\$ 11,371,000</u>	<u>\$ 4,403,838</u>	<u>\$ 11,371,000</u>	<u>\$ 3,425,526</u>

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 4 - Acquired Intangible Assets and Goodwill (Continued)

	2012		2011	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Unamortized intangible assets:				
Groeb Farms, Inc. trade name	\$ 2,696,000	\$ -	\$ 2,696,000	\$ -
Miller American Honey, Inc. trade name	1,457,000	-	1,457,000	-
Goodwill	8,350,593	-	8,350,593	-
Total	<u>\$ 12,503,593</u>	<u>\$ -</u>	<u>\$ 12,503,593</u>	<u>\$ -</u>

Amortization expense for intangible assets totaled approximately \$978,000 for the years ended December 31, 2012 and 2011.

Estimated amortization expense for the years ending December 31 are as follows:

2013	\$ 978,312
2014	978,312
2015	978,312
2016	978,312
2017	978,312
Thereafter	<u>2,075,602</u>
Total	<u>\$ 6,967,162</u>

### Note 5 - Debt

As of December 31, 2011, the Company had a line of credit agreement with Comerica Bank, whereby the Company could borrow, subject to the outstanding indebtedness, up to \$20,000,000 based upon qualifying inventory and accounts receivable. Interest was payable monthly at a rate of 4.50 percent above the London Interbank Offered Rate (LIBOR) (an effective rate of 5.50 percent) at December 31, 2011. The line of credit was collateralized by all property and assets of the Company. At December 31, 2011, \$12,485,778 had been drawn on the line of credit.

**Note 5 - Debt (Continued)**

On January 30, 2012, the Company refinanced its bank debt by entering into a revolving credit facility with Wells Fargo Bank, N.A. The revolving credit agreement allows borrowings up to \$25,000,000 based upon qualifying inventory and accounts receivable. Interest is payable monthly at a rate of 2.50 percent above LIBOR (an effective rate of 3.00 at December 31, 2012). The interest rate may adjust quarterly beginning on April 1, 2012, based on the Company's average availability as defined in the loan agreement. The line of credit is collateralized by all property and assets of the Company. At December 31, 2012, \$18,961,598 had been drawn on the line of credit. In March 2013, the line of credit availability was increased by \$2,000,000 and guaranteed by a bank deposit of \$2,000,000 made by certain stockholders of the Company until the end of the compliance period (see Note 12). In April 2013, the line of credit availability was increased by approximately \$1,000,000 and guaranteed by an additional bank deposit of approximately \$1,000,000 made by certain stockholders of the Company until certain criteria are met after September 30, 2013.

The revolving credit agreement is subject to the terms and conditions of an inter-credit agreement between and among the Company, the bank, and holders of the subordinated debt, and require the Company to maintain compliance with certain financial and other covenants. The bank debt is collateralized by substantially all of the assets of the Company, in addition to the assignments of all leases and subleases.

The terms of the line of credit require the Company to, among other things, meet certain financial ratios and limit restricted payments. At December 31, 2012, the Company was in violation of certain financial covenants and obtained a waiver from Wells Fargo Bank upon entering into an amended agreement. This amendment (Amendment II) changed the maturity date of the revolving line of credit to April 30, 2015, established additional financial covenants, and deferred repayment of subordinated debt principal until the end of the compliance period (see Note 12). Principal payments are further limited in aggregate to \$437,500 per quarter thereafter.

The terms of the senior subordinated debt and junior subordinated debt to stockholders were restructured as part of the debt amendment noted above. Principal payments will begin March 31, 2015 and will be made quarterly until the final payment is made at maturity on March 31, 2017. The interest rates and collateral on the subordinated debt remained consistent with existing agreements.

As part of the 2012 refinancing, the Company also acquired a term note in the amount of \$1,120,000, bearing interest at LIBOR plus 2.50 percent. The note is subject to substantially the same terms and conditions as the revolving credit facility. Payments of principal and interest are due monthly, with the balance due at maturity on April 30, 2015.

**Note 5 - Debt (Continued)**

During 2012, the Company amended its agreement with Wells Fargo (Amendment I) to include an equipment facility, whereby the Company can draw loans collateralized by eligible equipment placed in service by the Company, up to \$1,000,000. The Company entered into one equipment note during 2012. The note is subject to substantially the same terms and conditions as the revolving credit facility. Payments of principal and interest are due monthly.

Classification of the outstanding debt as of December 31, 2012 and 2011, as follows, reflects the subsequent amendments to the bank debt as described above.

	<u>2012</u>	<u>2011</u>
Senior secured term notes to Comerica Bank, with monthly principal installments of \$83,333 effective through May 2011, \$62,500 through May 2012 and \$41,667 thereafter, plus interest at 4.00 percent and 2.75 percent above LIBOR (an effective interest rate of 5.00 percent at December 31, 2011). The note was collateralized by all property and assets of the Company. During 2012, this note was repaid in full	\$ -	\$ 749,998
Senior secured term notes to Wells Fargo Bank, with monthly principal installments of \$18,667 effective through January 2017, plus interest at 2.50 percent above LIBOR (an effective interest rate of 3.00 percent at December 31, 2012). The note is collateralized by all property and assets of the Company	933,333	-
Senior secured equipment note to Wells Fargo Bank, with monthly principal installments of \$7,369 plus interest at 2.50 percent above LIBOR (an effective interest rate of 3.00 percent at December 31, 2012). The note is collateralized by eligible equipment placed in service by the Company	162,127	-

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 5 - Debt (Continued)

	2012	2011
Senior subordinated debt to stockholders, principal payments of \$218,750 to commence on March 31, 2015 and at the end of each three months thereafter with final payment due on March 31, 2017, with monthly interest-only payments at 12 percent. The debt is recorded net of an unamortized discount of \$9,952 at December 31, 2012 and 2011 with an effective rate of approximately 12.1 percent. The note is collateralized by all property and assets of the Company	\$ 3,490,048	\$ 3,490,048
Senior subordinated debt to stockholders, principal payments of \$218,750 to commence on March 31, 2015 and at the end of three months thereafter with final payment due on March 31, 2017, with monthly interest-only payments at 12 percent. The debt is recorded net of an unamortized discount of \$88,474 and \$159,938 at December 31, 2012 and 2011, respectively, with an effective rate of approximately 13.14 percent. The note is collateralized by all property and assets of the Company	3,411,526	3,340,062
Junior subordinated debt to stockholders, principal payments of \$93,750 to commence no earlier than March 31, 2015 and at the end of each three months thereafter with final payment due on March 31, 2017, subject to the aggregate principal repayment limitations as part of subsequent financing terms, described above. Interest-only payments are due monthly at 8 percent. The note is unsecured	1,500,000	1,500,000
Unsecured debt assumed with the acquisition of Miller's American Honey, Inc. Monthly principal and interest payments of \$10,000 at 5.2 percent maturing on July 1, 2017	488,207	580,827

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 5 - Debt (Continued)

	<u>2012</u>	<u>2011</u>
Borrowings under the revolving line of credit agreement denoted above, reflecting subsequent refinancing terms	<u>\$ 18,961,598</u>	<u>\$ 12,485,778</u>
Total	28,946,839	22,146,713
Less current portion	<u>19,371,114</u>	<u>13,328,001</u>
Long-term portion	<u>\$ 9,575,725</u>	<u>\$ 8,818,712</u>

The balance of the above debt matures as follows:

2013	\$ 19,371,114
2014	399,907
2015	342,930
2016	1,863,272
2017	5,068,042
Less unamortized debt discount	<u>(98,426)</u>
Total	<u>\$ 26,946,839</u>

Interest expense for the years ended December 31, 2012 and 2011 was approximately \$1,616,000 and \$1,900,000, respectively. For the years ended December 31, 2012 and 2011, there is approximately \$71,000 each year of amortization on the warrants included in interest expense.

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 6 - Stockholders' Equity

Capital stock at December 31, 2012 and 2011 is as follows:

	2012	2011
Common stock:		
Series D, voting, common stock, \$1 par value, 10,864 shares authorized, 5,266 and 10,864 shares issued and outstanding at December 31, 2012 and 2011, respectively	\$ 5,266	\$ 10,864
Series E, voting, common stock, \$1 par value, 13,134 shares authorized, 13,134 shares issued and outstanding at December 31, 2012 and 2011	13,134	13,134
Series F, voting, common stock, \$1 par value, 24,201 shares authorized, 2,850 and 12,701 shares issued and outstanding at December 31, 2012 and 2011, respectively	2,850	12,701
Series G, voting, common stock, \$1 par value, 35,947 shares authorized, 0 issued and outstanding at December 31, 2012 and 2011	-	-
Preferred stock:		
Series A, voting, 6 percent convertible preferred stock, \$100 par value, 69,110 shares authorized, 69,110 shares issued and outstanding at December 31, 2012 and 2011	6,911,000	6,911,000
Series B, voting, convertible preferred stock, \$100 par value, 9,390 shares authorized, 9,390 shares issued and outstanding at December 31, 2012 and 2011	939,000	939,000
Series C, voting, 6 percent convertible preferred stock, \$130 par value, 27,271 shares authorized, 27,271 shares issued and outstanding at December 31, 2012 and 2011	3,545,240	3,545,240
Common stock purchase warrants	295,507	295,507
Stock subscription receivable	(103,995)	(108,493)
Additional paid-in capital	657,520	657,520
Accumulated deficit	(8,596,007)	(2,664,866)
Total	\$ 3,669,515	\$ 9,611,607

**Note 6 - Stockholders' Equity (Continued)**

The convertible preferred stock ranks senior to the common stock with respect to payment of dividends and distribution of assets upon liquidation. The Series C preferred stock is senior to the Series A preferred stock which is senior to the Series B preferred stock with respect to payment of dividends and distribution of assets upon liquidation.

The holders of Series A 6 percent convertible preferred stock are entitled to receive, if declared by the board of directors of the Company at its sole discretion, cumulative dividends at the rate of 6 percent per annum on each share of convertible preferred stock payable quarterly of each year commencing on March 16, 2007. As of December 31, 2012 and 2011, total dividends of approximately \$2,402,000 and \$1,987,000, respectively, were in arrears.

The holders of the Series B convertible preferred stock are not entitled to receive dividends.

The holders of Series C 6 percent convertible preferred stock are entitled to receive, if declared by the board of directors of the Company at its sole discretion, cumulative dividends at the rate of 6 percent per annum on each share of convertible preferred stock payable quarterly of each year commencing on March 31, 2010. As of December 31, 2012 and 2011, total dividends of approximately \$583,000 and \$371,000, respectively, were in arrears.

The common stock ranks junior to the convertible preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation. The Series D, E, and F common stock ranks on parity with respect to payment of dividends. The Series D, E, and F common stock ranks in order with respect to distribution of assets upon liquidation.

In connection with the senior subordinated notes in Note 5, the Company issued 10,507 warrants to purchase shares of Series C common stock to certain stockholders. These warrants can be exercised at any time prior to the expiration date of March 16, 2019 at an exercise price of \$1.00 per share. The warrants, valued at \$10,507, are reflected in the stockholders' equity section of the balance sheet with a corresponding reduction recorded against debt. As of December 31, 2012 and 2011, none of the warrants have been exercised.

On March 31, 2010, 35,947 shares of \$1.00 par value Series G common stock were authorized. In connection with the senior subordinated notes in Note 5, the Company issued 9,024 warrants to purchase shares of Series G common stock to certain stockholders. These warrants can be exercised at any time prior to the expiration date of March 31, 2022 at an exercise price of \$1.00 per share. The warrants, valued at \$285,000, are reflected in the stockholders' equity section of the balance sheet with a corresponding reduction recorded against debt. As of December 31, 2012 and 2011, none of the warrants have been exercised.



**Note 7 - Income Taxes**

The provision for income taxes for the years ended December 31, 2012 and 2011 consists of the following:

	2012	2011
Current income tax expense (recovery)	\$ 70,747	\$ (1,273,216)
Deferred income tax recovery	<u>(2,261,576)</u>	<u>(2,734,859)</u>
Total income tax recovery	<u>\$ (2,190,829)</u>	<u>\$ (4,008,075)</u>

A reconciliation of the provision for income taxes to income taxes computed by applying the statutory United States federal rate to income before taxes is as follows:

	2012	2011
Income tax recovery, computed at 34 percent of pretax loss	\$ (2,762,000)	\$ (3,650,000)
Effect of permanent differences - Net	29,265	11,788
Effect of Department of Justice penalty (Note 12)	680,000	-
Effect of adjustments of prior year estimates and other	<u>(138,094)</u>	<u>(369,863)</u>
Total income tax recovery	<u>\$ (2,190,829)</u>	<u>\$ (4,008,075)</u>

The details of the deferred tax asset (liability) are as follows:

	2012	2011
Total deferred tax liabilities	\$ (3,685,492)	\$ (4,197,221)
Total deferred tax assets	<u>5,229,939</u>	<u>3,480,092</u>
Net deferred tax asset (liability)	<u>\$ 1,544,447</u>	<u>\$ (717,129)</u>

Deferred tax liabilities result principally from accelerated methods of depreciation and amortization. Deferred tax assets result primarily from net operating loss carryforwards and from recognition of expenses for financial reporting purposes that are not deductible for tax purposes until paid.

The Company has approximately \$10,965,000 of net operating loss carryforwards available to reduce future income taxes, expiring in 2032.

As of December 31, 2012 and 2011, the Company's unrecognized tax liabilities were not significant. There were no significant penalties or interest recognized during the year or accrued at year end. The Company files income tax returns in U.S. federal and various state jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal or state income tax examinations by tax authorities for years before 2008.

# Groeb Farms, Inc.

## Notes to Financial Statements December 31, 2012 and 2011

### Note 7 - Income Taxes (Continued)

The Company's 2010 tax return is currently under examination by the Internal Revenue Service. Management does not anticipate any substantial adjustments.

### Note 8 - Operating Leases

The Company is obligated under related party operating leases for rent of the Michigan and Florida locations, as well as operating leases for the rent of the California and Texas buildings, expiring at various dates through November 30, 2017 with renewal options. The leases require the Company to pay taxes, insurance, utilities, and maintenance costs. Total rent expense under these leases was approximately \$446,000 and \$443,000 for the years ended December 31, 2012 and 2011, respectively.

The Company has several other operating leases relating to office equipment, freightliners, and vehicles. Total rent expense under these leases was approximately \$390,000 and \$393,000 for the years ended December 31, 2012 and 2011, respectively.

Future minimum annual commitments under these operating leases are as follows:

<u>Years Ending December 31</u>	<u>Related Party</u>	<u>Other</u>	<u>Total</u>
2013	\$ 144,953	\$ 709,952	\$ 854,905
2014	144,953	612,711	757,664
2015	144,953	596,614	741,567
2016	144,953	494,885	639,838
2017	-	423,467	423,467
Total	<u>\$ 579,812</u>	<u>\$ 2,837,629</u>	<u>\$ 3,417,441</u>

### Note 9 - Retirement Plan

The Company maintains a retirement plan for substantially all full-time employees established pursuant to Internal Revenue Code Section 401(k). The plan does not provide for a matching contribution.

### Note 10 - Related Party Transactions

The following is a description of transactions between the Company and related parties:

**Notes Receivable** - The Company and certain stockholders entered into a note receivable in April 2011. Interest is payable at 3.5 percent. Total interest income is \$6,702 and \$6,475 for the years ended December 31, 2012 and 2011, respectively. The note stipulates that the principal plus accrued interest shall be paid in full when substantially all of the assets or equities of the Company are sold. The balance of the note receivable was \$198,177 and \$191,475 as of December 31, 2012 and 2011, respectively.

**Note 10 - Related Party Transactions (Continued)**

**Payable Under Product Financing Arrangement** - During 2011, the Company sold excess inventory to a related entity controlled by certain stockholders of the Company for \$2,935,833, which included approximately \$77,000 of inventory used in production in 2011. Interest was payable at 10 percent and total interest incurred for the years ended December 31, 2012 and 2011 was approximately \$188,000 and \$123,000, respectively. During 2012, the Company used the inventory in production and paid the liability in full. There was no such arrangement at December 31, 2012.

**Notes Payable** - The terms and balances of the notes payable to stockholders are described in Note 5. Total related party interest expense relating to the stockholder notes payable for the years ended December 31, 2012 and 2011 was approximately \$976,000 and \$975,000, respectively.

**Consulting Fee Expense** - For the years ended December 31, 2012 and 2011, the Company incurred expenses relating to consulting fees to a stockholder of \$109,580 and \$102,500, respectively.

**Note 11 - Disputed Trade Accounts Payable (Honey Contracts)**

The Company had various contracts with suppliers for the purchase and delivery of honey. During the last quarter of 2010, the Company had delinquent/late raw honey deliveries in excess of 8 million pounds. During 2011, the Company had two suppliers default on contracts in excess of 12 million pounds of honey deliveries.

As of December 31, 2012 and 2011, the Company had payables of approximately \$4,500,000 to these vendors. The Company is currently in the process of pursuing legal action against both suppliers discussed above. Based upon the Company's counsel, a suit against these suppliers for nonperformance may result in settlement or an award by the court in favor of the Company; however, no benefit was recognized as of December 31, 2012 and 2011.

The Company was the plaintiff in a lawsuit against a supplier for alleged breach of contract and fraud in failing to deliver raw honey. The suit asked for damages from the supplier in the amount of \$4,000,000. The defendant filed a counterclaim requesting payment of \$1,600,000 for materials previously delivered to the Company. In April 2013, the Company entered into a confidential settlement and general release with a vendor that defaulted on certain contracts as described above. The execution of the document will result in the Company eliminating the disputed payables in 2013.

**Note 11 - Disputed Trade Accounts Payable (Honey Contracts)  
(Continued)**

The Company is the defendant in an arbitration proceeding brought by a supplier for alleged breach of contract in failing to pay for delivered raw honey in the amount of \$2,900,000. The Company has filed a counter-demand alleging damages, due to nondelivery, in the amount of \$3,200,000. The Company has disputed accounts payable of approximately \$2,900,000 recorded at December 31, 2012 and 2011 as described above. The arbitration is scheduled for 2013 and the Company believes it will be successful.

**Note 12 - Litigation**

The Company is a party to several legal proceedings as described below:

In February 2013, the Company entered into a Deferred Prosecution Agreement (DPA) with the Department of Justice to resolve claims by the government alleging the Company purchased illegal honey from China and purchased honey declared as a product other than honey. The Company agreed to pay a fine of \$2,000,000, which is accrued for in accounts payable at December 31, 2012. In light of remedial and compliance measures taken by the Company, the government will not pursue prosecution for a period of two years. At that time, if the Company is in compliance with the DPA, the matter will be dismissed in its entirety. As part of this agreement, the Company agreed to dispose of any illegally-entered Chinese-origin honey in its possession. This product, valued at \$1,362,000, was fully reserved in 2012 (see Note 1) and associated disposal costs of \$50,000 were accrued as of December 31, 2012. The Company anticipates the disposal of these products will be completed in 2013 with no additional expense incurred.

In March 2013, the Company entered into a Confidential Settlement and General Release with a vendor related to disputes regarding honey delivered to the Company. The execution of this document will result in the Company eliminating the disputed payable of approximately \$2,400,000 included in disputed trade accounts payable at December 31, 2012. The Company will recognize this amount in income during 2013 as a result of this settlement.

In April 2013, the Company, along with certain former executives and another entity, was named as a defendant in two lawsuits alleging past practices had caused damages to the domestic honey industry. The Company intends to defend itself vigorously against these claims.

### Note 13 - Management's Plans

The accompanying financial statements have been prepared in conformity with generally accepted accounting principles, which contemplate continuation of the Company. The Company has sustained substantial operating losses in recent years as a result of supply chain disruptions, abnormally high attorney expenses dealing with ongoing legal issues related to the Department of Justice, and costs associated with implementing significant management changes.

Management believes the following actions presently being taken to revise the Company's operating performance provide the opportunity for the Company to continue as a going concern:

- Entered into a Deferred Prosecution Agreement with the Department of Justice, which will significantly reduce future legal expenditures on this matter going forward (Note 12)
- Amended line of credit agreement, including financial covenants (Note 5)
- Re-focusing the Company's priorities toward retail business, which is the Company's highest margin product group. This effort entails leveraging the West Coast-based Miller's brand to create incremental sales and profit. The Miller's brand with its full product range of consumer-based honey products will build new distribution sales points with both existing and new customers via category leadership and a national broker network.
- Established an "innovation pipeline" for new products. First results will be bringing Smokey the Bear® products into retail distribution in 2013, with gross sales projected at \$4,000,000. A health and wellness product line is also planned for market introduction late in 2013.
- Creation of a new position of Vice President of Supply Chain and Operations, filled with a food industry leader with a significant record of success at a top 25 food manufacturer
- Implemented a cost reduction plan in the third quarter of 2012, including workforce reductions to enhance operational productivity. This resulted in a 20 percent decrease to payroll expense, and approximately \$1,000,000 in annualized savings.
- In the fourth quarter of 2012, the Company relocated its California production to a new facility with significantly larger and more cost-effective production capacity. This strategic move enables the Company to reduce production labor costs, improve line efficiencies approximately 10 percent, and effectively doubles production capacity. This enables the Company to cost-effectively source and service new customers and develop new products for the retail sector.

**Note 13 - Management's Plans (Continued)**

- Implemented continuous improvement programs in the areas of quality and operational efficiency. The Company has evaluated opportunities to improve and streamline manufacturing processes, logistics, and strategic procurement to improve its competitive position and secure volume and margin growth.
- Undergoing an evaluation of current production facilities and their utilization requirements to ensure they are contributing an adequate financial return. It is anticipated that the Company will be able to effectively reduce fixed manufacturing costs.
- Modification of purchasing sourcing strategy to minimize future disruptions and business risks. This effort also entails tightening incoming product specification tolerances and heightened diligence on adherence to inbound product quality standards.
- Initiated study of production efficiencies through review of various products for profitability and process improvements
- Commenced product consolidation and SKU rationalization review to focus business on core product codes and enable production efficiencies
- Developing an overall logistics strategy
- Developed minimum material margin criteria to ensure adequate profitability
- Implemented credit limits for all new customers and initiated a review of existing customer limits. The Company's largest industrial customer has already agreed to revised terms allowing improved cash flow.
- Strengthen customers' adherence to payment terms and develop a "days outstanding" level