


Below is an order of the court.

  
PETER C. MCKITTRICK  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

In re

NORPAC Foods, Inc. [TIN 9330],  
Hermiston Foods, LLC [TIN 3927], and  
Quincy Foods, LLC [TIN 7444],

Debtors.

Case No. 19-62584-pcm11  
**LEAD CASE**

(Jointly Administered with Case  
Nos. 19-33102-pcm11 and 19-33103-pcm11)

**ORDER (I) APPROVING ASSET  
PURCHASE AGREEMENT AS  
AMENDED BY THIS ORDER; (II)  
APPROVING SALE OF ASSETS FREE  
AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS;  
(III) AUTHORIZING ASSUMPTION AND  
ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES; AND  
(IV) GRANTING RELATED RELIEF**

On December 19, 2019, the above-captioned debtors (each, a “Debtor” and collectively, “Debtors”)<sup>1</sup>, filed a “Notice of Intent to Sell Real or Personal Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor’s Fees and Costs; Motion for Authority to Sell

<sup>1</sup> All capitalized terms used in this Order that are not otherwise defined in this Order shall have the definitions given to them in the Sale Notice and/or the APA.

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Property” (ECF No. 506; hereafter, the “Sale Notice”). The Sale Notice provided notice of Debtors’ intent to sell certain of their assets (“Assets”) free and clear of all liens, claims, encumbrances, and interests to Lineage Master RE, LLC (“Lineage”) pursuant to an Asset Purchase Agreement dated as of December 18, 2019 (the "Lineage APA"), a copy of which was filed with the Court as ECF No. 510, subject to higher bids, as described in the Sale Notice, and set a deadline of January 9, 2020 for objections to the proposed sale.

Also on December 19, 2019, Debtors filed a “Motion to Assume and Assign Executory Contracts to Lineage Master RE, LLC” (ECF No. 508) that are to be included in the proposed sale to Lineage (the “Assignment Motion”) and a related “Notice of Intent to Assume and Assign Executory Contracts, and Related Cure Amounts to Lineage Master RE, LLC” (ECF No. 509), setting a deadline of January 10, 2020 for contract counterparties to object to the proposed assumption/assignment and proposed cure amounts with respect to their contracts.

The Court held a hearing on January 14, 2020 (the “Sale Hearing”) to consider the relief requested in the Sale Notice and the Assignment Motion, and any objections thereto.

Upon consideration of the pleadings and papers filed in respect to the Sale Notice and the Assignment Motion, as well as evidence and argument presented at the Sale Hearing, and after due deliberation,

IT IS HEREBY FOUND AND CONCLUDED that:

- A. Debtors provided timely and sufficient notice of the proposed sale of assets and assignment of executory contracts to Lineage (collectively, the “Sale”), and the Sale Hearing to creditors and interested persons in compliance with the Bankruptcy Code and Bankruptcy Rules.
- B. Prior to and after the Petition Date, Debtors conducted a good-faith, full, fair, and complete marketing process with respect to the Assets, and Debtors received no better alternative offers for the Assets. Debtors' marketing efforts, including the methodology for selecting Lineage as the buyer and the auction process, were conducted in a manner that was reasonably

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calculated to achieve the highest and best offer for the Assets, as well as reasonable alternative offers.

C. Approval of the Lineage APA, subject to the modifications set forth in this Order, and consummation of the Sale are in the best interests of Debtors' estates, their creditors, and other parties-in-interest.

D. Debtors have demonstrated sound business reasons for the Sale pursuant to Section 363(b) of the Bankruptcy Code. Such business reasons include, without limitation, the following: (i) the Lineage APA constitutes the best offer for the Assets after extensive prepetition and postpetition marketing, and (ii) the Sale presents the best opportunity to realize the highest value of the Assets and avoid decline and devaluation of the Assets.

E. Debtors and Lineage entered into the Lineage APA without collusion, in good faith, and from arm's length bargaining positions, in that: (i) the Lineage APA enabled Debtors to accept a higher or better offer in respect of the Sale, and Debtors were free to deal with any other party interested in a transaction regarding the Assets; (ii) Debtors solicited bids from other potential bidders; (iii) Lineage made the highest or best bid in respect of the Sale; and (iv) Lineage is not an "insider" or "affiliate" of Debtors as those terms are defined in the Bankruptcy Code. The purchase price for the Assets was not controlled by an agreement among any bidders. Accordingly, Lineage is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

F. The Lineage APA provides that Lineage will assume certain "Assumed Liabilities" and take title to the Assets subject to certain "Permitted Encumbrances" as defined in the Lineage APA. Otherwise, Lineage will take title to the Assets free and clear of all:

1. security interests, encumbrances, liens, and other interests, including, without limitation, rights arising under the Perishable Agricultural Commodities Act ("PACA"), judicial liens, and tax liens (collectively the "Liens").

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2. liabilities and “claims” (as defined by Section 101 of the Bankruptcy Code) now existing or hereafter arising, fixed or contingent, asserted or unasserted, legal or equitable, liquidated or unliquidated, including, but not limited to, those arising under, related to, or based on successor or transferee liability, express or implied warranties, environmental laws, union contracts, pension or other retiree benefit plans, or for any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to Closing, except to the extent that “claims” relate to any of the Assumed Liabilities or Permitted Encumbrances (collectively, the “Claims”). For the avoidance of doubt, the Liens do not include the Permitted Encumbrances and the Claims do not include the Assumed Liabilities.

G. Debtors may transfer the Assets free and clear of the Liens and Claims because in respect to each such Lien or Claim, one or more of the standards set forth in Bankruptcy Code Section 363(f)(1)-(5) has been satisfied. Debtors’ primary secured creditor, CoBank, ACB, has specifically represented to the Court that it consents to the Sale free and clear of its Liens and Claims so long as the proceeds are distributed in accordance with this Order. All Liens that are not Permitted Encumbrances will attach to the sale proceeds.

H. Lineage would not have entered into the Lineage APA and would not consummate the Sale (i) if the transfer of the Assets were not free and clear of all Liens and Claims; or (ii) if Lineage would, or in the future could, be liable for the Liens or Claims.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The findings of fact and conclusions of law set forth above and stated on the record at the hearing constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

## I. Approval of the Sale and Lineage APA

2. The Sale is authorized and approved, provided however that the Sale shall not close unless one of the following conditions has been satisfied:

(a) The Teamsters' Local Unions withdraw their objection to the Sale (ECF No. 544) or otherwise consent in writing to the closing of the Sale in a filing in Debtors' bankruptcy case; or

(b) The Court enters an Order approving Debtors' rejection of Local 670 Collective Bargaining Agreement pursuant to 11 U.S.C. § 1113; or

(c) The Court enters an order determining that Article 12—Successor Clause—of the Local 670 Collective Bargaining Agreement is inapplicable to the Sale transaction.

3. Subject to paragraph 2 above, Debtors are authorized, but not directed, to close and consummate the Sale with Lineage pursuant to and in accordance with the terms and conditions of this Order and the Lineage APA, as modified below, and to execute and deliver all instruments, documents, and other agreements required under the APA or otherwise reasonably necessary to implement the APA and close the Sale.

4. The Lineage APA is deemed amended as follows:

(a) Section 8.01 of the Lineage APA (Survival) is amended such that the "**Survival Period**" shall be 90 days from the Closing Date and the "**Cap**" shall be \$3,500,000; and

(b) Clause (i) of Section 8.02(b) of the Lineage APA (Seller Default) is amended to read in its entirety as follows: "(i) terminate this Agreement, obtain the return of the Earnest Deposit, and/or seek any and all additional damages from Debtors that are available under applicable law; or".

## II. Sale Free and Clear of Liens and Claims

5. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, upon Closing, all of Debtors' rights, title, and interests in the Assets shall be transferred to Lineage, (hereafter, "Purchaser"), free and clear of all Liens and Claims, including, without limitation the following liens:

Lienholder	Amount	Property	Recording Information
PermaCold Engineering, Inc.	\$37,268.26	Stayton	Instrument No. 2019 00043509 recorded in Marion County, Oregon on September 13, 2019
Olsson Industrial Electric, Inc.	\$191,744.00	Stayton	Instrument No. 2019 00049910 recorded in Marion County, Oregon on October 14, 2019
Santiam Water Control District	\$36,439.15	Stayton	Instrument No. 2019-00051746 recorded in Marion County, Oregon on October 22, 2019
CoBank, ACB	\$382,750,000.00	Salem, Brooks & Stayton (Marion County)	Instrument No. 2017-00059587 recorded in Marion County, Oregon on November 16, 2017
CoBank, ACB	\$382,750,000.00	Stayton(Linn County, Parcels XVI and XVII)	Instrument No. 2017-20802 recorded in Linn County, Oregon on November 16, 2017
CoBank, ACB	\$382,750,000.00	Stayton(Linn County, Parcel XVIII)	Instrument No. 2018-02900 recorded in Linn County, Oregon on February 20, 2018
The Kings Roofing Company, Inc.	\$15,543.20	Brooks	Instrument No. 2019 00043055 recorded in Marion County, Oregon on September 11, 2019
CoBank, ACB	\$382,750,000.00	Brooks (Parcels I & II)	Instrument No. 2018 00008179 recorded in Marion County, Oregon on February 20, 2018
CoBank, ACB	\$382,750,000.00	Quincy Field Shop	Auditor's File No. 1390203 recorded in Grant County, Washington on February 20, 2018

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6. The transfer will vest Purchaser with all rights, title, and interests in and to the Assets.

7. Except as otherwise specifically provided in the APA and this Order, Purchaser, and Purchaser's successors and assigns, shall have no liability of any kind or character for the Liens or Claims, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, successor employer liability, de facto merger or joint venture, fraudulent conveyance, mere continuation, or substantial continuity, whether known or unknown, as of the Closing. Without limiting the breadth of the foregoing in any way, Purchaser and Purchaser's successors and assigns shall have no liability of any kind or character under any of Debtors' collective bargaining agreements, including, but not limited to that certain Labor Agreement between North Pacific Cannery & Packers, Inc., formerly known as Norpac Foods, Inc., and Teamster Local Union 670 covering the period of April 1, 2017 to March 31, 2020.

8. After Closing, all persons and entities (as defined by Section 101 of the Bankruptcy Code) are forever barred, estopped, and permanently enjoined from asserting Liens or Claims against the Assets or Purchaser, or any of Purchaser's successors or assigns. Following Closing, no holder of a Lien or Claim shall interfere with Purchaser's title to, or use and enjoyment of, the Assets based on or related to such Lien or Claim.

### **III. Filing and Recording Releases of Liens**

9. This Order shall be effective as a determination that, upon Closing, all Liens on or in respect to the Assets are deemed to be unconditionally released, discharged, and terminated.

10. Upon Closing, each of Debtors' secured creditors is authorized and directed to execute such termination statements, reconveyances, and other documents, and take all other actions as may be necessary to release their Liens on the Assets, and if they fail to timely do so, Debtors may do so in their stead.

11. This Section III of this Order shall be binding upon all filing agents, filing officers, title agents, title companies, recorders and registrars of mortgages and deeds, administrative agencies, Departments of Motor Vehicles, and other federal, state, and local officials who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

#### **IV. Sale Proceeds**

12. The Liens shall attach to the cash proceeds of the Sale with the same priority, validity, force, and effect they now have as against the Assets, subject to any claims and defenses, setoffs, or rights of recoupment Debtors may possess with respect thereto. The Sale proceeds shall be distributed as follows:

- (a) first, to pay Closing costs and expenses incurred by Debtors in connection with the Sale (excluding legal fees);
- (b) second, to pay allowed secured claims that are senior in priority to CoBank's security interests, and to reserve in escrow an amount sufficient to pay any asserted lien claims that are senior in priority to CoBank's security interests (whether or not disputed by Debtors, Purchaser, CoBank, or any other party-in-interest) until such time as those asserted lien claims are allowed or disallowed;
- (c) third, to repay the balance owed to CoBank on the DIP loan and CoBank's secured prepetition claim;
- (d) fourth, to pay allowed secured claims against the Assets junior in priority to CoBank; and
- (e) fifth, to Debtors, to be distributed pursuant to a Chapter 11 Plan or in accordance with further orders of the Court.



## V. Assumption and Assignment of Assigned Contracts

13. Debtors are authorized to assume and assign the Assigned Contracts to Purchaser on the terms set forth in the Assumption Notice or as otherwise agreed by Purchaser and the contract counterparties, effective at Closing. Purchaser may remove particular contracts from the list of Assigned Contracts any time prior to Closing and those removed contracts will not be assumed or assigned to Purchaser.

14. To the extent any counterparty to an Assigned Contract failed to timely object to the terms for assumption and assignment of such contract, such counterparty is deemed to consent to the assumption and assignment of such contract on such terms to Purchaser at Closing.

15. Because Purchaser has sufficient assets to continue performance under the Assigned Contracts, Purchaser's agreement to perform is adequate assurance of future performance under the Assigned Contracts.

16. Upon the assignment of an Assigned Contract to Purchaser, Purchaser shall be deemed to be substituted for Debtors as a party to such contract and Debtors shall be released, pursuant to Section 365(k) of the Bankruptcy Code, from any liability for breach of such contract occurring after such assignment.

## VI. Additional Provisions

17. Section 363(b)(1)(A) of the Bankruptcy Code (regarding personally identifiable information about individuals) is not applicable to the Sale.

18. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006, or any applicable provisions of the Local Bankruptcy Rules, this Order shall not be stayed for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry.

19. This Court retains exclusive jurisdiction, regardless of whether a Chapter 11 plan has been confirmed and consummated and irrespective of the provisions of any such plan or order confirming such plan to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to Purchaser in accordance with the terms of the APA; (b) resolve any other dispute arising under or related to the APA, or the breach thereof; and (c) interpret, implement, and enforce the provisions of this Order and resolve any disputes related thereto.

20. Purchaser is a good faith purchaser of the Assets and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code. Accordingly, any reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser.

21. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented in accordance with the terms thereof without further order of this Court if it would not have an adverse impact on the consideration to be paid to creditors and would not alter the distribution waterfall in paragraph 12 above.

22. This Order shall be binding in all respects upon (a) each Debtor, (b) its estate, (c) all creditors and other holders of Liens and Claims, (d) all counterparties to Assigned Contracts, (e) Purchaser and all successors and assigns of Purchaser, and (f) any trustees subsequently appointed upon conversion of this case to a case or cases under Chapter 7 of the Bankruptcy Code.

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I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By /s/ Michael W. Fletcher

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