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16 UNITED STATES BANKRUPTCY COURT

17 DISTRICT OF OREGON

18 In re

19 North Pacific Cannery & Packers, Inc.,
20 Hermiston Foods, LLC, and NPCP Quincy,
21 LLC,

22 Debtors.

Case No. 19-62584-pcm11

LEAD CASE

(Jointly Administered with Case
23 Nos. 19-33102-pcm11 and
24 19-33103-pcm11)

**DEBTORS' AND THE
COMMITTEE'S SECOND AMENDED
JOINT DISCLOSURE STATEMENT**

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1 **I. INTRODUCTION**

2 On August 22, 2019 (the “Petition Date”), North Pacific Cannery & Packers, Inc.
3 (formerly known as NORPAC Foods, Inc.) (“NORPAC”), Hermiston Foods, LLC, and
4 NPCP Quincy, LLC (formerly known as Quincy Foods, LLC), debtors and debtors-in-
5 possession (“Debtors”) filed voluntary petitions under Chapter 11 of Title 11 of the United
6 States Bankruptcy Code (the “Bankruptcy Code”). An official committee of unsecured
7 creditors (the “Committee”) was appointed in Debtors’ Chapter 11 Cases on August 30,
8 2019. An Official Committee for Grower-Producers (the “Growers Committee”) was
9 appointed in Debtors’ Chapter 11 Cases on February 25, 2020. On April 15, 2020, Debtors
10 and the Committee filed a Joint Disclosure Statement with the U.S. Bankruptcy Court for the
11 District of Oregon (the “Bankruptcy Court”) and a Joint Plan of Liquidation. On August 25,
12 Debtors and the Committee filed this Amended Joint Disclosure Statement (the “Disclosure
13 Statement”) with the Bankruptcy Court, along with an Amended Joint Plan of Liquidation
14 (the “Plan”). A copy of the Plan is attached to this Disclosure Statement as **Exhibit 1**.

15 Debtors are seeking acceptance of the Plan by Debtors’ creditors. A ballot has been
16 enclosed with this Disclosure Statement for use in voting on the Plan. Debtors believe
17 confirmation of the Plan is in the best interest of Debtors’ creditors and asks those parties
18 entitled to vote to vote to accept the Plan.

19 **II. PURPOSE OF THE DISCLOSURE STATEMENT**

20 The purpose of this Disclosure Statement is to provide you with adequate information
21 to enable you to make an informed judgment concerning whether to vote for or against the
22 Plan. Please review this Disclosure Statement and the Plan and, if appropriate, consult with
23 counsel about the Plan and its impact on your legal rights before voting on the Plan.

24 Capitalized terms used but not defined in this Disclosure Statement shall have the meanings
25 assigned to such terms in the Plan or the Bankruptcy Code.

1 This Disclosure Statement has been approved by Order of the Bankruptcy Court as
2 containing adequate information to permit parties in interest to make an informed judgment
3 as to whether to vote to accept or reject the Plan. The Bankruptcy Court's approval of this
4 Disclosure Statement, however, does not constitute a recommendation by the Bankruptcy
5 Court either for or against the Plan.

6 This Disclosure Statement is submitted in accordance with Section 1125 of the
7 Bankruptcy Code and Bankruptcy Rule 3016. The description of the Plan contained in this
8 Disclosure Statement is intended as a summary only and is qualified in its entirety by
9 reference to the Plan itself. This Disclosure Statement does not attempt to summarize or
10 discuss each and every section of the Plan. If any inconsistency exists between the Plan and
11 this Disclosure Statement, the terms of the Plan are controlling. Further, if any inconsistency
12 exists between the Member Settlement Agreement and the Plan, the Member Settlement
13 Agreement is controlling, *provided that* Members may continue to join the Member
14 Settlement Agreement by executing and returning the Member Settlement Agreement prior
15 to the Effective Date. This Disclosure Statement may not be relied on for any purpose other
16 than to determine how to vote on the Plan.

17 **The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to**
18 **commence on November 6, 2020 at 9:30 a.m. Pacific time. That hearing will be held**
19 **telephonically before the Honorable Peter C. McKittrick. The toll free telephone**
20 **number is 1-888-684-8852. Please enter the seven digit Access Code 1238244 followed**
21 **by the “#” key to participate.** The hearing on confirmation may be adjourned from time to
22 time by the Bankruptcy Court without further notice except for an announcement made at the
23 hearing on any adjournment thereof.

24 This Disclosure Statement has been prepared jointly by Debtors and the Committee in
25 good faith based upon information available to Debtors and the Committee and information
26 contained in Debtors' books and records. The information concerning the Plan has not been

1 subject to a verified audit. The statements contained in this Disclosure Statement are made
2 as of the date hereof unless another time is specified herein, and the delivery of this
3 Disclosure Statement shall not imply there has been no change in the facts set forth herein
4 since the date of this Disclosure Statement and the date the material relied on in preparation
5 of this Disclosure Statement was compiled.

6 **III. BRIEF EXPLANATION OF CHAPTER 11**

7 Chapter 11 of the Bankruptcy Code is the principal reorganization provision of the
8 Bankruptcy Code. A debtor may use Chapter 11 to facilitate an orderly liquidation of the
9 debtor's assets and an efficient distribution to the debtor's creditors.

10 The formulation and confirmation of a plan is the principal purpose of a Chapter 11
11 case. A plan sets forth a proposed method of compensating the debtor's creditors.
12 Chapter 11 does not require all holders of claims to vote in favor of the plan for the
13 Bankruptcy Court to confirm the plan. However, the Bankruptcy Court must find that the
14 plan meets a number of statutory tests before it may confirm, or approve, the plan. These
15 tests are designed to protect the interests of holders of claims who do not vote to accept the
16 plan, but who will nonetheless be bound by the plan's provisions if it is confirmed by the
17 Bankruptcy Court.

18 **IV. BRIEF SUMMARY OF THE PLAN**

19 All descriptions of the Plan in this Disclosure Statement are qualified in their entirety
20 by reference to the Plan. A more detailed summary of the Plan is set forth later in this
21 Disclosure Statement. Debtors urge each holder of a Claim to carefully review the entire
22 Plan, together with this Disclosure Statement, before voting on the Plan, and to consult their
23 own legal and tax counsel, if necessary.

24 Nearly all of Debtors' assets have been sold pursuant to sales approved by the
25 Bankruptcy Court. The proceeds of such sales have been primarily utilized to pay secured
26 creditors pursuant to orders entered by the Bankruptcy Court.

1 The Plan provides for the appointment of a Plan Agent for the purposes of
2 marshalling and liquidating all of Debtors' remaining assets, reconciling and compromising
3 Claims, making distributions to Creditors, and winding up Debtors' affairs. On the Effective
4 Date, the Plan Agent will administer Debtors' consolidated assets pursuant to the Plan and
5 make distributions in accordance with the Plan and the Confirmation Order.

6 The Plan provides that following the Effective Date, Debtors' Estates will be
7 substantively consolidated.

8 Except for the executory contracts listed on the Plan Supplement, which contracts
9 shall be treated as set forth in the Plan Supplement, the Plan provides for the rejection of any
10 and all of Debtors' executory contracts not previously assumed or rejected, and a process for
11 asserting Claims related to the same.

12 The Plan provides a mechanism for the allowance and administration of certain
13 undetermined Claims against Debtors.

14 The Plan provides that all Allowed Secured Claims, Allowed Administrative Expense
15 Claims, and Priority Tax Claims will be paid in full on the Effective Date.

16 The Plan provides that each holder of an Allowed Convenience Class Unsecured
17 Claim will receive, in full satisfaction of such Claim, Cash in an amount equal to 50% of
18 such holder's Claim as soon as practicable after the Effective Date. Debtors anticipate that
19 such distribution will be made before the end of 2020.

20 The Plan provides that on each Distribution Date, each holder of an Allowed General
21 Unsecured Claim will receive on account of such Claim such holder's pro rata share of
22 Available Cash. Distributions to holders of Allowed General Unsecured Claims shall be
23 made as soon as practicable following the Effective Date, as the Plan Agent may determine
24 in the Plan Agent's sole discretion, after consultation with the Committee, consistent with the
25 Plan. Debtors anticipate that there will be at least two Distributions to each holder of an
26 Allowed General Unsecured Claim, the first of which will likely be made before the end of

1 the year in the range of 20% to 30% of the total amount of such Allowed General Unsecured
2 Claim.

3 The Plan provides that Allowed Claims of Members who are not a party to the
4 Member Settlement Agreement are subordinate to the prior payment in full of all other
5 Allowed Claims. Because all other Allowed Claims will not be paid in full under the Plan,
6 Members who are not a party to the Member Settlement Agreement will not receive any
7 payment or Distribution on account of their Claims under the Plan. Members will only
8 receive compensation on their Claim if they execute the Member Settlement Agreement prior
9 to the Effective Date. Any Member holding a Claim that has not yet executed the Member
10 Settlement Agreement may execute the Member Settlement Agreement prior to the Effective
11 Date, and return it to Debtors prior to the Effective Date to receive their contemplated
12 compensation under the Member Settlement Agreement.

13 The Plan provides that all Interests in Debtors will be cancelled as of the Effective
14 Date.

15 **V. DEBTORS**

16 NORPAC was founded in 1924, headquartered in Salem, Oregon. NORPAC is a
17 cooperative organized under the Oregon Cooperative Corporation Act, with over 140
18 Members. Quincy and Hermiston are single-member limited liability companies whose sole
19 member is NORPAC. As of the Petition Date, Debtors owned and operated raw processing
20 plants in Brooks, Oregon, and Stayton, Oregon, a packaging plant in Salem, Oregon, and a
21 raw processing, packaging, and roasting facility in Quincy, Washington. Each of the plants
22 had associated cold storage facilities. Prior to the Petition Date, Debtors were the largest
23 processor of vegetables and fruits in the Pacific Northwest. Throughout the pendency of
24 these Chapter 11 Cases, Debtors ceased operations and sold substantially all of their assets
25 pursuant to sales approved by the Bankruptcy Court.

1 **VI. EVENTS LEADING TO THE BANKRUPTCY FILING**

2 For a number of years leading up to the filing of these Chapter 11 Cases, Debtors
3 accumulated significant operational losses. In May of 2018, Debtors engaged the investment
4 banking firm of D.A. Davidson & Co. to render financial advisory services to Debtors,
5 including assisting with a potential purchase, merger, consolidation, reorganization, or other
6 transaction of a like nature. D.A. Davidson contacted over 150 potential strategic and
7 financial investors, but was unable to conclude a transaction, and its engagement was
8 terminated in July of 2019.

9 In June of 2019, Debtors engaged SierraConstellation Partners, LLC (“Sierra”) as
10 Debtors’ Chief Restructuring Officer and financial consultant.

11 On August 12, 2019 (10 days prior to the Petition Date), with the assistance of Sierra,
12 after almost six weeks of negotiation, Debtors entered into an Asset Purchase Agreement
13 with Oregon Potato Company (“OPC”) to sell OPC substantially all of Debtors' assets, which
14 was amended by that certain First Amendment to Asset Purchase Agreement (collectively,
15 the “First OPC APA”).

16 The First OPC APA required Debtors to initiate the Chapter 11 Cases so that the First
17 OPC APA, and the transactions contemplated by the First OPC APA, could be approved by
18 the Bankruptcy Court. On August 22, 2019, Debtors filed these Chapter 11 Cases primarily
19 to consummate the sale with OPC and distribute the proceeds to creditors in accordance with
20 legal priorities.

21 **VII. SIGNIFICANT POSTPETITION EVENTS**

22 **A. APPOINTMENT OF UNSECURED CREDITORS COMMITTEE**

23 On August 30, 2019, the United States Trustee appointed a committee of unsecured
24 creditors (the “Committee”) pursuant to 11 U.S.C. § 1102(a) and 11 U.S.C. § 1102(b)(1).
25 The Committee was appointed to generally represent the interests of General Unsecured
26 Creditors and to participate in Debtors’ Chapter 11 Cases with respect to, among other

1 things, the sale of Debtors' assets and the formulation of a plan of reorganization. The
2 Committee is represented by Lowenstein Sandler LLP as lead co-counsel and by Leonard
3 Law Group LLP as local co-counsel. The Committee, with authority from the Bankruptcy
4 Court, engaged Alvarez & Marsal North America, LLC as financial advisors to the
5 Committee.

6 **B. APPOINTMENT OF GROWERS' COMMITTEE**

7 On February 25, 2020, the United States Trustee appointed an Official Unsecured
8 Committee of Co-Op Member Produce Suppliers (the "Growers' Committee") pursuant to
9 11 U.S.C. § 1102(a). The Growers' Committee is represented by K&L Gates LLP.

10 **C. ENGAGEMENT OF PROFESSIONALS BY DEBTORS**

11 Pursuant to a series of applications and orders, Debtors obtained authorization from
12 the Bankruptcy Court to employ various professionals. These professionals include
13 (i) Tonkon Torp LLP as attorneys for Debtors; (ii) SierraConstellation Partners LLC as chief
14 restructuring officer; and (iii) Kurtzman Carson Consultants LLC as noticing and claims
15 agent. The Court also entered an Order Authorizing Debtors to Retain, Employ, and
16 Compensate Ordinary Course Professionals [ECF No. 217], pursuant to which, to date,
17 Debtors have the retained and compensated the following ordinary course professionals:
18 Gress Clark Young & Schoepper; Cable Huston; Bullard Law; Aldrich CPAs + Advisors;
19 Independent Actuaries, Inc.; Saalfeld Griggs, P.C.; Sather Byerly & Holloway LLP;
20 Tolleson, Conratt, Nielsen, Maher & Replogle LLP; AKT Services LLP;
21 PricewaterhouseCoopers LLP; Martyn and Associates; Littler Mendelson, P.C.; Buchanan
22 Angeli Altschul & Sullivan LLP; Ogletree, Deakins, Nash, Smoak & Stewart P.C.; and
23 Klarquist Sparkman, LLP.

24 **D. POSTPETITION OPERATIONS**

25 Early in the case, Debtors entered into an agreement with their prepetition lender,
26 CoBank, ACB ("CoBank"), for CoBank to provide Debtors with postpetition financing.

1 Utilizing such financing (approved pursuant to a series of Bankruptcy Court orders), and
2 utilizing cash generated from Debtors' continued operations, Debtors continued to operate
3 their core business during the pendency of the Bankruptcy Cases until Debtors completed the
4 sale of their assets to OPC (discussed below). As Debtors have now sold substantially all of
5 their assets, Debtors are no longer operating, other than to wind down their Estates. CoBank
6 has been paid in full.

7 **E. TERMINATED FIRST OPC APA**

8 As discussed above, Debtors filed these Bankruptcy Cases 10 days after executing the
9 First OPC APA so Debtors could complete the sale of their assets pursuant to a process
10 approved by the Bankruptcy Court.

11 On August 27, 2019 (five days after the Petition Date), Debtors filed their Motion for
12 Order Approving (a) Bid and Sale Procedures, Including Expense Reimbursement Fee, to
13 Oregon Potato Company; (b) Sale of Assets Free and Clear of Liens, Claims, and
14 Encumbrances; and (c) Assumption and Assignment of Executory Contracts [ECF No. 56].
15 A copy of the First OPC APA was attached to the motion.

16 Under the First OPC APA, as amended, Debtors agreed to sell substantially all of
17 their assets to OPC for a purchase price of \$155,500,000, plus an agreed value for accounts
18 receivable, with an adjustment for any change in the value of Debtors' inventory, less the
19 amount due to growers at the closing of the 2019 crop, which, pursuant to the First OPC
20 APA, OPC would pay to the growers. Under Section 2.02 of the First OPC APA (Assumed
21 Liabilities), OPC would assume all of NORPAC's obligations to growers for 2019 crops.
22 This assumed liability was inclusive of both Member and non-member grower obligations.
23 The amount of the assumed liability was scheduled based on grower payable balances as of
24 July 31, 2019, and was to be updated immediately prior to the closing to reflect projected
25 grower payables as of the closing date. Any variance between the projected grower payables
26

1 balance at closing and the actual grower payables balance at closing was to be reconciled and
2 trued up through a purchase price adjustment mechanism post-closing.

3 On September 25, 2019, Debtors served their Notice of Motion to Approve Sale of
4 Assets to OPC or Higher and Better Bidder at Auction, Auction, Bidding Procedures, Sale
5 Hearing, and Objection Deadlines [ECF No. 204], which set a deadline of October 18, 2019
6 for competing bidders to submit competing bids.

7 No competing bids were received by the October 18, 2019 deadline.

8 Approximately 20 minutes prior to expiration of the deadline for competing bids,
9 OPC terminated the First OPC APA (see Notice of Termination of Asset Purchase
10 Agreement filed by OPC [ECF No. 303]).

11 Consequently, Debtors and OPC did not consummate the First OPC APA. Debtors
12 contested OPC's termination of the First OPC APA and reserved all rights and remedies
13 available to Debtors as a result of OPC's termination of the First OPC APA. Such claims
14 were ultimately released as part of the National Settlement (defined below).

15 **F. SALE OF ASSETS UNDER SECOND OPC APA**

16 After OPC terminated the First OPC APA, Debtors and Sierra continued to market
17 Debtors' assets and continued to negotiate with OPC.

18 On November 15, 2019, Debtors entered into a second Asset Purchase Agreement
19 with OPC (a copy of which was filed with the Court, see ECF No. 405) (the "Second OPC
20 APA") to sell certain assets to OPC.

21 Pursuant to the Second OPC APA, Debtors agreed to sell their Quincy plant and
22 related Quincy assets; certain assigned contracts; intellectual property assets, brands, and
23 trademark; Debtors' bulk product and packaging materials (not including Debtors' finished
24 goods inventory); certain machinery and equipment; and Debtors' book of business.

25 The purchase price under the Second OPC APA for the purchased assets was
26 \$21,500,000 plus estimated inventory value (estimated to be approximately \$72,000,000; so

1 the total estimated purchase price at closing was \$93,500,000), with the purchase price to be
2 trued up within 45 days after the closing date.

3 On November 15, 2019, Debtors filed their Notice of Intent to Sell Real or Personal
4 Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs;
5 Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing [ECF
6 No. 403], which set a December 9, 2019 deadline for competing bidders to submit competing
7 bids.

8 On December 9, 2019, JRS Properties III LLLP and Simplot Frozen Vegetables, LLC
9 (together, "Simplot") submitted a competing bid.

10 Debtors held an auction with OPC and Simplot as competing bidders on December 10
11 and 11, 2019. After several rounds of bidding, OPC's last bid was deemed the highest and
12 best bid by Debtors, and approved by the Bankruptcy Court. The auction resulted in an
13 increase in the purchase price of \$13,600,000.

14 On December 18, 2019, Debtors closed the sale with purchaser PNW Veg Co., LLC,
15 an affiliate and assignee of OPC ("VegCo"), as more fully disclosed in the Report of Sale
16 filed by Debtor [ECF No. 522].

17 Debtors received \$109,103,235.37 from the sale, including tax proration. From the
18 \$109,103,235.37, \$2,002,500 was paid to an escrow agent to fund a true-up escrow account
19 in accordance with the Second OPC APA. An additional \$253,234.60 was paid for various
20 closing costs and expenses (excluding legal fees), leaving a total of \$106,847,500.77
21 available for distribution in accordance with the Court's sale order. From that
22 \$106,847,500.77, \$19,750,000 went to Tonkon Torp's trust account as a reserve amount to
23 fund payment of any unpaid PACA claims and to pay any Secured Claims senior in priority
24 to CoBank's security interest, and \$87,097,500.77 went to CoBank as partial payment on the
25 balance owing to CoBank on the postpetition loan and on CoBank's secured prepetition
26 claim. Following closing, Debtors were able to resolve or settle all Secured Claims senior in

1 priority to CoBank’s security interest, and utilized the reserved funds in Tonkon Torp’s trust
2 account to pay such secured claims.

3 **G. DISPUTES WITH OPC FOLLOWING SECOND OPC APA**

4 Following closing of the Second OPC APA, Debtors sold their finished goods
5 inventory to National Frozen Foods Corporation (“National”), an affiliate of OPC, for
6 \$10,262,443.32 (\$10,251,842.38 after agreed upon reconciliations), evidenced by a
7 December 19, 2019 invoice submitted to National (the “Finished Goods Invoice”) payable on
8 or before January 19, 2019. National does not dispute the purchase price for the finished
9 goods, but has failed to pay the Finished Goods Invoice, which is past due.

10 Meanwhile, following closing of the Second OPC APA, Debtors and VegCo (the
11 OPC affiliate to which OPC assigned its rights and interests under the APA) worked to
12 reconcile the categorization of certain inventory sold to VegCo under the Second OPC APA.
13 VegCo asserted that certain inventory sold to VegCo should have been categorized as “hold”
14 inventory as opposed to “bulk” inventory, and thus assigned a lesser value under the Second
15 OPC APA. Debtors disputed such assertion.

16 On March 3, 2020, Debtors sent National a demand letter for payment of the Finished
17 Goods Invoice.

18 The following day, VegCo purportedly assigned its interest under the Second OPC
19 APA to National, and on March 6, 2020, National filed an adversary proceeding with the
20 Bankruptcy Court (*National Frozen Foods Corporation v. North Pacific Cannery & Packers,*
21 *Inc., fka NORPAC Foods, Inc.*, Adv. Proc. No. 20-06012-pcm). In the adversary proceeding,
22 National seeks a declaration that (i) it is entitled to not less than \$7,121,707 for VegCo’s
23 claim under the Second OPC APA for the inventory dispute, and (ii) it can set off that
24 amount against the unpaid Finished Goods Invoice.

25 On April 6, 2020, NORPAC filed its answer, affirmative defenses, and counterclaims
26 in the adversary proceeding. In its answer, NORPAC contended, among other things, that

1 (i) Debtors properly categorized the inventory under the Second OPC APA; (ii) even if some
2 inventory should have been categorized differently, the damages are capped at \$2 million
3 under the Second OPC APA; and (iii) for multiple reasons, the asserted claim under the
4 Second OPC APA cannot be set off by National against the Finished Goods Invoice. In its
5 answer, NORPAC, among other things, requested that the Court enter an order directing
6 National to pay the Finished Goods Invoice, plus interest, plus attorneys' fees.

7 On June 3, 2020, National paid the \$10,251,842.38 principal of the Finished Goods
8 Invoice to NORPAC.

9 Following mediation with the Honorable Bankruptcy Judge David Hercher, Debtors,
10 the Creditors Committee, National, OPC, and VegCo, the parties entered into a settlement
11 agreement (the "National Settlement") which, among other things, provided for:

- 12 • Release of a \$2 million escrow to National that was formed under the Second
13 OPC APA;
- 14 • Mutual releases among Debtors and National, OPC, and VegCo, with the
15 Creditors Committee releasing National, OPC, and VegCo to the extent the
16 Creditors Committee holds any claims; and
- 17 • Dismissal of the adversary proceeding with prejudice.

18 **H. SALE OF ASSETS TO LINEAGE**

19 On December 18, 2019, Debtors entered into an Asset Purchase Agreement with
20 Lineage Master RE, LLC ("Lineage") (a copy of which was filed with the Court, see ECF
21 No. 510) (the "Lineage APA") to sell substantially all of Debtors' remaining assets to OPC
22 for \$49 million. These assets included the Brooks campus, the Salem campus, the Stayton
23 facility, the Quincy field shop, and certain tangible personal property associated with those
24 properties.

25 On December 19, 2019, Debtors filed their Notice of Intent to Sell Real or Personal
26 Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs;

1 Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing [ECF
2 No. 506], which set a deadline of January 10, 2020 for competing bids.

3 No qualified competing bids were received, and on January 31, 2020, Debtors closed
4 the Sale with Lineage, as more fully disclosed in the Report of Sale filed by Debtors [ECF
5 No. 632].

6 Debtors received a total of \$49,486,974.10 from the Lineage sale, including tax
7 prorations. From that, \$2,500 was paid to the title company as an escrow fee and \$50,000
8 was paid into Tonkon Torp's trust account to fund a true-up escrow to resolve any potential
9 disputes with Lineage, leaving a total of \$49,434,474.10 available for distribution in
10 accordance with the Court's sale order. From that \$49,434,474.10, \$191,744 went to Olsson
11 Industrial as payment on a prior lien claim secured by the assets sold to Lineage. An
12 additional \$27,521,152.68 went to CoBank as payment on CoBank's secured claim, which
13 paid off all of CoBank's prepetition and postpetition claims (excluding attorney fees and
14 expenses). The remaining \$21,721,577.42 was distributed to Debtors.

15 **I. POST-CLOSING COLLECTION OF ACCOUNTS RECEIVABLE**

16 Debtors retained approximately \$20 million in customer accounts receivable as of the
17 closing of the Second OPC APA. As of March 31, 2020, Debtors, with the assistance of
18 Sierra, have been successful in collecting approximately \$19.5 million of such accounts
19 receivable.

20 **J. PAYMENT OF PACA CLAIMS AND SECURED CLAIMS**

21 From the proceeds of the sale of Debtors' assets to OPC and Lineage, Debtors paid all
22 or substantially all Claims of Creditors that were secured by such assets, and the sale
23 proceeds, including all PACA claims, the Secured Claim of Debtors' prepetition and
24 postpetition lender, CoBank, and the Secured Claims of non-Member growers and others
25 holding valid and perfected lien claims under state law.

1 **K. DISPUTE AND RESOLUTION WITH SEED VENDORS OVER**
2 **SECURED CLAIMS**

3 Three of Debtors’ seed vendors asserted secured claims under various Oregon and
4 Washington agricultural lien statutes and various other theories: (i) HM.Clause, Inc.
5 (“HM.Clause”) asserted a secured claim in the amount of approximately \$1.8 million,
6 (ii) Syngenta Seeds, LLC (“Syngenta”) asserted a secured claim in the amount of
7 approximately \$900,000, and (iii) Seminis Vegetable Seed, Inc. (“Seminis”) asserted a
8 secured claim in the amount of approximately \$1 million. Debtors disputed the secured
9 claim amounts of HM. Clause, Syngenta, and Seminis.

10 Debtors and HM.Clause agreed to resolve HM.Clause's claim as an Allowed Secured
11 Claim in the amount of \$1,150,000.

12 Debtors and Syngenta agreed to resolve Syngenta's claim as an Allowed Secured
13 Claim in the amount of \$650,000, and an Allowed General Unsecured Claim in the amount
14 of \$100.

15 Debtors and Seminis agreed to resolve Seminis’ claim as an Allowed Secured Claim
16 in the amount of \$340,000, and an Allowed General Unsecured Claim in the amount of
17 \$633,441.83.

18 **L. OMNIBUS CLAIM OBJECTIONS**

19 On May 7, 2020, Debtors filed Debtors’ Motion for Entry of an Order Approving
20 (1) Omnibus Claims Objections Procedures and (2) Settlement Procedures [ECF No. 797]
21 (the “Omnibus Claims Objections and Settlement Procedures Motion”). The Omnibus
22 Claims Objections and Settlement Procedures Motion sought court approval of procedures by
23 which Debtors could object to multiple different claims in one filing and resolve claims
24 consensually with creditors without further order of the court. The contemplated procedures
25 streamline the claims reconciliation process to save time and costs for the estates and their
26 creditors. Debtors worked with the Creditors Committee and the Growers Committee to

1 submit a consensual order and, on May 29, 2020, the Court entered the Omnibus Claim
2 Objection and Settlement Procedures Order. To date, Debtors have successfully objected to
3 approximately 150 different claims under the Omnibus Claims Objection and Settlement
4 Procedures Order.

5 **M. REJECTION OF EXECUTORY CONTRACTS**

6 In connection with the sales of substantially all of their assets, Debtors rejected
7 substantially all of their executory contracts and unexpired non-residential real property
8 leases, other than contracts with Members and those contracts specifically assumed and
9 assigned in relation to the sales of Debtors' assets to OPC and Lineage.

10 **N. MEMBER-GROWER DISPUTE AND RESOLUTION**

11 Over the course of the Bankruptcy Cases, Members filed more than \$16 million in
12 administrative, other priority, secured lien claims and general unsecured claims. In
13 coordination with various Member-representatives, on April 17, 2020, Debtors filed an
14 adversary proceeding in the Bankruptcy Cases (Case No. 20-06018-pcm) (the "Grower
15 Adversary") against 10 named Members (the "Named Member-Defendants") seeking, among
16 other things, (i) a declaratory judgment that the Named Member-Defendants' various claims
17 asserted against Debtors were subordinated to the payment in full of all other claims against
18 Debtors pursuant to the terms of certain organizational documents, and (ii) a declaration that
19 all Member lien claims were invalid and should be disallowed. The Named Member-
20 Defendants denied Debtors' allegations in the Grower Adversary and sought allowance and
21 payment on all their Claims.

22 Both the Creditors Committee and the Growers' Committee sought to intervene to
23 assert various claims and counterclaims.

24 Following mediation with Judge Hercher, Debtors, the Creditors Committee, the
25 Growers Committee, the Named Member-Defendants, and several other Members
26

1 determined to resolve all of their issues through an Agreement (the “Member Settlement
2 Agreement”), which generally provides as follows:

- 3 • Debtors pay a total amount of \$4,500,000 on account of 2019 crop deliveries
4 by all Members (the “Member Settlement Payment”), which is allocated
5 among the Members (as determined by the Members) based on the economic
6 value of the crops delivered by each Member during the 2019 crop year, net of
7 advances and charges, and irrespective of the type of Claim each Member had
8 asserted in the Bankruptcy Cases;
- 9 • Only Members that are a party to the Member Settlement Agreement may
10 receive a distribution of the Member Settlement Payment, and such payment
11 is made outside the Plan;
- 12 • Mutual releases by Debtors (including any party acting derivatively on their
13 behalf, including, but not limited to, the Creditors Committee) on the one
14 hand, and the Members and the Growers’ Committee on the other, including
15 expungement of all Filed Claims by Members from Debtors’ claims register,
16 provided that the release does not include claims Debtors may have against a
17 Member that serves or served as Debtors’ present or former officers or
18 directors for actions or omissions undertaken solely in their capacity as a an
19 officer or director;
- 20 • Any Member who has not yet executed the Member Settlement Agreement
21 may execute a joinder (attached to the Member Settlement Agreement as
22 Exhibit C) prior to entry of an order approving such agreement and submitting
23 it to counsel for Debtors or the Growers’ Committee. After the date of entry
24 of that Order, additional Members may continue to join the Member
25 Settlement Agreement, but only with the consent of Debtors and the
26 Creditors’ Committee, up until the Effective Date; and

- Dismiss the Grower Adversary with prejudice.

On September 11, 2020 the Bankruptcy Court approved the Member Settlement Agreement.

VIII. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN

Below is a general summary of the Plan's classification and treatment of Claims. It is intended as a general summary only and is qualified in its entirety by reference to the Plan.

A. GENERAL

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, a Plan of Reorganization must designate classes of Claims and classes of Interests. The Plan classifies all Claims and Interests into six classes. The classification of Claims and Interests is made for the purpose of voting on the Plan and making distributions thereunder, and for ease of administration of the Plan. A Claim or Interest is classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in a different Class to the extent the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is entitled to vote in a particular Class and to receive distributions in such Class only to the extent such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid prior to the Effective Date. Under the Plan, a Claim or Interest is an Allowed Claim against, or an Allowed Interest in, Debtors to the extent that (i) a proof of the Claim or Interest was (a) timely filed or (b) deemed filed under applicable law by reason of an order of the Bankruptcy Court; or (ii) scheduled by Debtors on their Schedules of Liabilities as neither contingent, unliquidated, or disputed; and (iii) (a) no party-in-interest has filed an objection within the time fixed by the Bankruptcy Court, (b) the Claim or Interest is allowed by Final Order; or (c) with respect to an application for compensation or reimbursement of an Administrative Expense Claim, the amount of the Administrative Expense Claim has been approved by the Bankruptcy Court.

1 **B. UNCLASSIFIED CLAIMS**

2 Administrative Expense Claims and Priority Tax Claims are not classified under the
3 Plan.

4 The Plan provides that each holder of an Allowed Administrative Expense Claim will
5 be paid in full, in Cash, on or as soon as practicable after the later of (i) the Effective Date or
6 (ii) the Allowance Date, unless the holder of such Claim agrees in writing to a different
7 treatment of such Claim (including, without limitation, any different treatment that may be
8 provided for in any documentation, statute, or regulation governing such Claim). Debtors
9 will include a schedule of all Allowed Section 503(b)(9) Claims in the Plan Supplement.

10 With respect to Administrative Expense Claims for professional services, the Plan
11 provides that each provider of professional services seeking an award by the Bankruptcy
12 Court of compensation for services rendered or reimbursement of expenses incurred through
13 and including the Effective Date pursuant to Sections 330, 331, and 503(b)(2) of the
14 Bankruptcy Code shall (i) file their respective final applications for allowance of
15 compensation for services rendered and reimbursement of expenses incurred through the
16 Effective Date by the date that is no later than 60 days after the Effective Date, or such other
17 date fixed by the Bankruptcy Court; and (ii) if granted a professional fee administrative
18 Claim by the Bankruptcy Court, shall be paid in Cash in such amounts as are allowed by the
19 Bankruptcy Court within 14 days from the date of allowance, after deducting any amounts
20 paid to the professional by Debtors prior to the Effective Date.

21 A Priority Tax Claim is a claim of a governmental unit of the kind entitled to priority
22 under Section 507(a)(8) of the Bankruptcy Code. Under the Plan, each holder of a Priority
23 Tax Claim will receive payment of such Claim in full in Cash on the later of (i) the Effective
24 Date or (ii) the date on which such Claim becomes an Allowed Claim, unless such holder
25 agrees in writing to a different treatment of such Claim.

26

1 **C. CLASSIFIED CLAIMS**

2 The Plan divides all Claims (other than the unclassified Claims addressed above) into
3 the following six Classes.

4 **1. Class 1 (Secured Claims)**

5 Class 1 consists of Allowed Secured Claims. The Plan provides that a holder of an
6 Allowed Secured Claim with outstanding amounts owed as of the Effective Date shall be
7 paid in full, in Cash, on or as soon as practicable after the later of (a) the Effective Date or
8 (b) the Allowance Date, unless such holder agrees, or has agreed, in writing to a different
9 treatment of such Claim.

10 Class 1 is not impaired by the Plan and, accordingly, holders of Allowed Secured
11 Claims are not entitled to vote for or against the Plan.

12 **2. Class 2 (Priority Claims)**

13 Class 2 consists of Allowed Priority Claims. The Plan provides that each holder of an
14 Allowed Priority Claim within Class 2 shall be paid in full, in cash, on or as soon as
15 practicable after the later of (a) the Effective Date or (b) the Allowance Date, unless such
16 holder agrees, or has agreed, in writing to a different treatment of such Claim.

17 Class 2 is not impaired by the Plan and, accordingly, holders of Allowed Priority
18 Claims are not entitled to vote for or against the Plan.

19 **3. Class 3 (Convenience Class Unsecured Claims)**

20 Class 3 consists of Convenience Class Unsecured Claims. A Convenience Class
21 Unsecured Claim is any General Unsecured Claim in an amount that is equal to or less than
22 \$10,000. Any Creditor holding a General Unsecured Claim in excess of \$10,000 may
23 “opt in” to Class 3 by marking a special “opt in” election on the ballot for voting for or
24 against the Plan. Creditors holding Claims in excess of \$10,000 who elect to “opt in” to
25 Class 3 shall agree to reduce their Claim to \$10,000 and to consent to the treatment of their
26 reduced Claim as called for within Class 3. The Plan provides that a holder of an Allowed

1 Class 3 Unsecured Claim will receive Cash in an amount equal to 50% of such holder's
2 Claim as soon as practicable after the Effective Date. Debtors currently estimate that there
3 are approximately 600 holders of claims in Class 3 with total Unsecured Claims of
4 approximately \$1,150,000, who would receive a total distribution of approximately \$575,000
5 promptly following the Effective Date.

6 Class 3 is impaired and, therefore, holders of Class 3 Convenience Class Unsecured
7 Claims are entitled to vote to accept or reject the Plan.

8 **4. Class 4 (General Unsecured Claims)**

9 Class 4 consists of Allowed General Unsecured Claims. A General Unsecured Claim
10 is a Claim that is not a Secured Claim, an Administrative Expense Claim, a Priority Claim, a
11 Member Claim, or a Convenience Class Unsecured Claim.

12 The Plan provides that on each Distribution Date, Debtors shall make pro rata
13 distributions of Available Cash to the holders Allowed Class 4 General Unsecured Claims.
14 Distributions to holders of Allowed Class 4 General Unsecured Claims shall be made as soon
15 as practicable, as the Plan Agent may determine in the Plan Agent's sole discretion, after
16 consultation with the Committee, consistent with the Plan. Debtors estimate that the
17 percentage recovery on General Unsecured Claims may range between 25% and 35%.
18 Debtors further estimate that, absent unforeseen delays, an Initial Distribution to each holder
19 of a General Unsecured Claim in the range of 20% to 30% of the total amount of such
20 Allowed General Unsecured Claim, will be made before the end of 2020.

21 Class 4 is impaired and, therefore, holders of Class 4 General Unsecured Claims are
22 entitled to vote to accept or reject the Plan.

23 **5. Class 5 (Member Claims)**

24 Class 5 consists of Allowed Claims of Members that are not resolved through the
25 Member Settlement Agreement. Thus, the Plan provides that Allowed Claims of Members
26 are subordinate to the prior payment in full of all other Allowed Claims. Because all other

1 Allowed Claims will not be paid in full, holders of Allowed Class 5 Claims will not receive
2 any payment or Distribution on account of such Claim, are deemed to have rejected the Plan,
3 and are not entitled to vote to accept or reject the Plan. Attached to this Disclosure Statement
4 as **Exhibit 2** is a list of Claims of Members that are not resolved through the Member
5 Settlement Agreement, and, accordingly, Debtors believe such Claims are Class 5 Claims,
6 subordinated to all other Claims, and will receive no payment or Distribution on account of
7 such Claim.

8 For the avoidance of doubt, Members who are eligible for payment under the Member
9 Settlement Agreement and that become a party to the Member Settlement Agreement prior to
10 the Effective Date will receive the treatment agreed to in the Member Settlement Agreement.

11 **6. Class 6 (Interests Held in Debtors)**

12 Interests in each of Debtors shall be deemed extinguished, without further action by
13 Debtors, upon the Effective Date. Holders of Class 6 Interests are deemed to have rejected
14 the Plan, and are not entitled to vote to accept or reject the Plan.

15 **IX. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

16 The Plan provides that only Claims that are Allowed Claims, and not subject to an
17 action described in 11 U.S.C. § 502(d), shall be entitled to distributions under the Plan.

18 The Plan further provides that unless otherwise ordered by the Bankruptcy Court, all
19 objections to Claims shall be Filed and served on or before the later of (a) 60 days after the
20 Effective Date and (b) 30 days after the date (if any) on which a Proof of Claim is Filed in
21 respect of a Rejection Claim, whichever is later, or such other date as the Bankruptcy Court
22 may approve.

23 The Plan also provides that the holder of a Disputed Claim that becomes an Allowed
24 Claim in full or in part subsequent to the Effective Date shall receive Distributions (including
25 any make-up Distributions) on the next applicable Distribution Date following the allowance
26 of such Disputed Claim

1 **X. MEANS OF IMPLEMENTATION OF THE PLAN**

2 The means of implementation of the Plan are set forth fully in the Plan. The
3 summary below is intended as a general summary only, and is qualified in its entirety by
4 reference to the Plan. Set forth below is a general summary.

5 **A. FUNDING PLAN OBLIGATIONS**

6 The Plan provides that, on and after the Effective Date, Debtors will fund the Plan
7 obligations and their ongoing expenses and liabilities from Cash on hand as of the Effective
8 Date and Cash available to Debtors from and after the Effective Date from, among other
9 things, any further liquidation of assets.

10 **B. CONTINUATION OF DEBTORS; WINDING UP AFFAIRS;**
11 **DISSOLUTION**

12 The Plan provides that from and after the Effective Date, Debtors shall continue in
13 existence solely for purposes of (1) administering the Plan and winding up their affairs as
14 expeditiously as reasonably possible; (2) liquidating, by conversion to Cash or other
15 methods, the remaining assets of Debtors' estates, if any, as expeditiously as reasonably
16 possible; (3) reconciling Claims and resolving Disputed Claims; (4) filing appropriate tax
17 returns; (5) pursuing and resolving claims and litigation that Debtors may have against third
18 parties, and (6) taking such other actions as may be necessary or appropriate in connection
19 with any of the above or to otherwise effectuate the Plan. The Plan provides that Debtors
20 may incur and pay any and all reasonable and necessary expenses in performing the
21 foregoing functions, and may hire agents and professionals to assist with the foregoing
22 functions. The Plan further provides that on the Final Distribution Date, Debtors shall be
23 deemed dissolved under applicable law without the need for any corporate or other actions,
24 consents, or approvals other than filing articles of dissolution with the Oregon Secretary of
25 State. Additionally, the Plan provides that on or promptly following the Final Distribution
26

1 Date, Debtors may, without the need for any further actions, consents, or approvals, dispose
2 of or destroy any and all records maintained by Debtors.

3 **C. PLAN AGENT**

4 **1. Plan Agent as Sole Shareholder, Director, and Officer**

5 The Plan provides that from and after the Effective Date, Debtors shall each be
6 managed by the Plan Agent, as a one-person Board of Directors of each Debtor. The Plan
7 Agent shall be, without any required corporate or other action, the sole shareholder, director,
8 and officer of each Debtor, and shall serve in such capacity until the Plan has been fully
9 effectuated and Debtors' affairs have been fully wound up. The initial Plan Agent shall be
10 SierraConstellation Partners, LLC. Such initial Plan Agent shall continue to serve as the Plan
11 Agent until the earlier of (a) the date on which the Plan has been fully effectuated and
12 Debtors' affairs have been fully wound up or (b) the date on which such Plan Agent is
13 removed, resigns, or is unable to serve as Plan Agent. In the event the initial Plan Agent (or
14 any future Plan Agent) is removed, resigns, or is unable to serve as Plan Agent, the
15 Committee shall name the replacement Plan Agent without the need for Court approval or
16 any corporate action.

17 **2. Duties and Rights of Plan Agent**

18 The Plan provides that the Plan Agent shall use its best efforts to cause Debtors to
19 fulfill all of their duties and obligations under the Plan. Without limiting the rights set forth
20 in Section VIII.C.1 above, the Plan Agent shall have broad and exclusive power to manage
21 Debtors. The Plan Agent shall have full power, authority, and responsibility to take any and
22 all such actions as the Plan Agent, in its good faith discretion, deems necessary or
23 appropriate to cause Debtors to fulfill their duties and obligations under the Plan. In addition
24 to all rights and powers given to the Plan Agent under the Plan, the Plan Agent shall have all
25 of the rights and powers given to directors and officers under Oregon law and shall have all
26 rights and powers of a trustee appointed pursuant to Section 1104 of the Bankruptcy Code.

1 Without limiting any rights the Plan Agent may have pursuant to law or the Plan, the
2 Plan Agent is empowered, on behalf of Debtors, to (a) sell, hold, manage, administer, and
3 distribute assets and Cash in accordance with the Plan or any Orders entered by the Court,
4 and take such actions as may be necessary or appropriate to effect distributions to be made by
5 Debtors under the Plan or any Orders entered by the Court; (b) establish bank accounts;
6 (c) engage and pay professionals, including attorneys, accountants, actuaries, appraisers,
7 brokers, and others, to assist Debtors in fulfilling their obligations under the Plan (such
8 professionals may include, but are not limited to, any professionals engaged by Debtors or
9 the Committee at any time prior to the Effective Date); (d) object to Claims and resolve
10 Disputed Claims; (e) initiate and pursue all Rights of Action retained by Debtors under the
11 Plan, and compromise and settle such Rights of Action; (f) obtain and pay for directors' and
12 officers' liability insurance in such amounts and with such carriers as determined by the Plan
13 Agent in its good faith discretion; (g) obtain and pay for liability insurance policies,
14 including polices providing errors and omissions coverage (including "tail" coverage) to the
15 Plan Agent and any agents employed by the Plan Agent or Debtors; (h) exercise, post-
16 Confirmation, any post-Confirmation duties or obligations imposed on Debtors pursuant to
17 any agreements entered into by Debtors in connection with the Case or any Orders entered by
18 this Court, including any orders approving settlements; (i) enter into and effectuate
19 settlements with Creditors; (j) incur and repay debt; and (k) exercise such other powers and
20 take such other actions as the Plan Agent, in its sole discretion, deems reasonably necessary
21 or appropriate to effectuate the Plan or Orders entered by this Court.

22 3. Compensation of Plan Agent

23 The Plan provides that the Plan Agent shall receive, as compensation for its services
24 under the Plan, a reasonable hourly rate as agreed by the Committee. The initial Plan Agent
25 has proposed a blended hourly rate not to exceed \$450 per hour for its services as Plan Agent
26 and related services (e.g., as financial consultant), and the Committee has agreed that a

1 blended hourly rate not to exceed \$450 per hour is a reasonable hourly rate for such services.
2 The fees, costs, and expenses of the Plan Agent shall be paid by on a monthly basis in
3 arrears. Prior to making any payment to itself under the Plan, the Plan Agent shall submit its
4 invoice for such payment to the Committee, which shall have 10 days to object to the invoice
5 (or any portion thereof). If no objection is made within such 10-day period, the Plan Agent
6 may make the payment. Any objections of the Committee that cannot be resolved by the
7 Plan Agent and the Committee shall be resolved by the Court.

8 **4. Settlement or Abandonment of Claims**

9 The Plan provides that the Plan Agent may not settle, compromise, dismiss, abandon,
10 or elect not to pursue, any Rights of Action having a stated value in excess of \$50,000
11 without giving 15 days' notice to the Committee.

12 **5. Fees and Expenses of Agents and Professionals**

13 The Plan provides that the Plan Agent shall pay the reasonable fees and expenses of
14 all professional persons and agents employed by the Plan Agent in connection with the Plan,
15 as well as the reasonable post-Effective Date fees and expenses of any professional employed
16 by the Committee in connection with the Plan. Any such professional person or agent
17 seeking a payment from the Plan Agent shall submit an invoice to the Plan Agent, which
18 (absent an objection by the Plan Agent), the Plan Agent shall promptly pay. Any objection
19 that cannot be resolved by the Plan Agent and the party seeking such payment shall be
20 resolved by the Court.

21 **6. Continuing Creditors Committee**

22 The Plan provides that, on and after the Effective Date, the Committee shall oversee
23 the Plan Agent's implementation of the Plan. The Committee shall have access to the Plan
24 Agent and the right to consult with and, to the extent provided in the Plan and the
25 Confirmation Order, direct the Plan Agent in connection with the administration and
26 implementation of the Plan on and after the Effective Date. The Committee may retain

1 professionals, whose reasonable fees and expenses shall be paid without the need for
2 Bankruptcy Court approval, after giving 15 days' notice of such professional's invoice to the
3 Plan Agent. In the event of the resignation, death, or incapacity of a member of the
4 Committee, the remaining members of the Committee shall designate another individual to
5 serve on the Committee. Such replacement member shall be deemed a member of the
6 Committee as of the date of such designation, without any further act or need for an order of
7 the Bankruptcy Court. Such replacement member need not have served on the Committee.
8 The Committee shall be deemed dissolved on the date the last of the Chapter 11 Cases is
9 closed.

10 **7. Form of Payments**

11 The Plan provides that Distributions to be made by the Plan Agent under the Plan
12 shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank,
13 at the sole election of the Plan Agent.

14 **8. Delivery of Distributions**

15 The Plan provides that, except as otherwise agreed to by the Plan Agent in writing,
16 Distributions under the Plan may be delivered by regular mail, postage prepaid, in an
17 envelope addressed as directed in a written request served on the Plan Agent, but if no such
18 request is made, to the address shown on Debtors' Schedules, as they may from time to time
19 be amended in accordance with Bankruptcy Rule 1009, or, if a different address is stated in a
20 proof of claim duly filed with the Court, to such address stated in the proof of claim.

21 **9. Distributions of Cash**

22 The Plan provides that:

23 (a) If any portion of a Claim is Disputed, no payment or
24 Distribution provided under the Plan shall be made on account of such Claim unless and until
25 such Disputed Claim becomes an Allowed Claim. To the extent a Disputed Claim ultimately
26 becomes an Allowed Claim, Distributions (if any) shall be made to the holder of such

1 Allowed Claim in accordance with the provisions of the Plan. Upon allowance, the holder of
2 such Claim shall receive any Distributions that would have been made up to the date of
3 allowance on account of such claim had the Disputed Claim been an Allowed Claim on the
4 Effective Date.

5 (b) The Plan Agent shall not be required to make Distributions of
6 fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Plan
7 would otherwise be required, the actual Distribution made shall reflect a rounding of such
8 fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

9 (c) The Plan Agent shall have no duty to make a Distribution on
10 account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to
11 be made on such date is less than \$30,000, in which case such Distributions shall be deferred
12 to the next Distribution date; (ii) if the amount to be distributed to the Claim holder on the
13 particular Distribution date is less than \$100, unless such Distribution constitutes the final
14 Distribution to such Claim holder; or (iii) if the amount of the final Distribution to such
15 Claim holder is \$50 or less, in which case no Distribution will be made to such holder and
16 such distribution shall revert for Distribution on account of other Allowed Claims.

17 (d) If a Distribution to the holder of any Claim is returned to the
18 Consolidated Debtors as undeliverable, no further Distributions shall be made to such holder
19 unless and until the Plan Agent is notified in writing of such holder's then-current address.
20 Undeliverable Distributions shall remain in the possession of the Plan Agent until the earlier
21 of (i) such time as the Distribution becomes deliverable or (ii) such undeliverable
22 Distribution becomes an Unclaimed Distribution.

23 **10. Distribution of Unclaimed Cash**

24 Any Cash to be distributed under the Plan shall revert to Debtors if it is not claimed
25 by such Claim's holder within three months after the date of such Distribution. If such Cash
26 is not claimed on or before such date, the Distribution to such holder shall be deemed to be

1 reduced to zero and such returned, undeliverable, or Unclaimed Distribution shall be deemed
2 unclaimed property under Section 347(b) of the Bankruptcy Code and the Allowed Claim
3 upon which the Cash was originally distributed shall be deemed waived, discharged, and
4 forever barred without further order of the Bankruptcy Court.

5 **11. Withholding and Reporting Requirements**

6 The Plan provides that the Plan Agent shall provide to the Committee reports that set
7 forth: (i) a budget; (ii) beginning and ending cash, with the variations between actual versus
8 budget; (iii) reserve amounts, if any; (iv) receipts received and disbursements made on a
9 claim by claim or vendor by vendor basis, including bank statements; (v) updates concerning
10 progress on claims reconciliation, claims paid, and remaining unpaid claims; (vi) quarterly
11 professional fees paid; (vii) any pending or settled Rights of Action; and (viii) such other
12 reports and information as the Committee from time to time may reasonably request.

13 **12. Bond**

14 The Plan provides that the Plan Agent shall not be required to post a fiduciary bond
15 unless the Committee submits a request to the Plan Agent that the Plan Agent obtain such a
16 bond. If such a request is made, then within 15 business days after such request the Plan
17 Agent shall obtain a fiduciary bond and evidence of such bond shall be filed with the Court.
18 Unless the Committee agrees to a lower amount, the face amount of the bond shall at all
19 times be in an amount not less than 125% of the total amount of Cash under the Plan Agent's
20 control. The cost of such bond shall be paid out of the Assets.

21 **13. Event of Default; Remedy**

22 The Plan provides that in the event the Plan Agent shall default in the performance of
23 any of its obligations under the Plan and shall not have cured such a default within 20 days
24 after receipt of written notice of default from the Creditor to whom the performance is due,
25 then such Creditor may seek an Order from the Bankruptcy Court to compel such
26

1 performance. An event of default occurring with respect to one Claim or Interest shall not be
2 an event of default with respect to any other Claim or Interest.

3 **14. Corporate Action**

4 Upon the Effective Date, all actions contemplated by the Plan shall be authorized and
5 approved in all respects (subject to the provisions of the Plan), including, without limitation,
6 the execution, delivery, and performance of all documents and agreements relating to the
7 Plan. On the Effective Date, Debtors and the Plan Agent are authorized and directed to
8 execute and deliver any agreements, documents, or instruments contemplated by the Plan and
9 Disclosure Statement in the name of and on behalf of Debtors and the Plan Agent.

10 **15. Final Order**

11 Any requirement in the Plan for a Final Order may be jointly waived by Debtors and
12 the Committee; provided, however, that nothing contained herein shall prejudice the right of
13 any party-in-interest to seek a stay pending appeal with respect to such Final Order.

14 **D. SUBSTANTIVE CONSOLIDATION**

15 The Plan provides that entry of the Confirmation Order shall constitute the
16 Bankruptcy Court's approval, pursuant to Sections 105(a) and 1123(a)(5)(C) of the
17 Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of
18 Debtors' Estates (the "Consolidated Debtors") for the purposes of confirming and
19 consummating the Plan, including, without limitation, voting, confirmation, reconciliation of
20 Claims, and Distributions.

21 On and after the Effective Date (i) all assets and liabilities of Debtors shall be treated
22 as though they were pooled; (ii) each Claim filed or to be filed against a Debtor, as to which
23 one or more Debtors are liable as a legal or contractual matter, shall be deemed filed as a
24 single Claim against, and a single obligation of, Debtors; (iii) all Claims held by a Debtor
25 against one or more other Debtors shall be cancelled or extinguished; (iv) no Distributions
26 shall be made under this Plan on account of any Claim held by a Debtor against one or more

1 other Debtors; (v) all guarantees of any Debtor of the obligation of one or more other Debtors
2 shall be eliminated so that any Claim against any Debtor, and any Claim based upon a
3 guarantee thereof executed by one or more other Debtors, shall be treated as one Claim
4 against the Consolidated Debtors; and (vi) any joint or several liability of one or more
5 Debtors shall be one obligation of the Consolidated Debtors, and any Claims based upon
6 such joint or several liability shall be treated as one Claim against the Consolidated Debtors.

7 The substantive consolidation of Debtors under the Plan shall not (other than for
8 purposes related to funding Distributions) affect (i) the legal and organizational structure of
9 Debtors; (ii) executory contracts or unexpired leases entered into during the Chapter 11
10 Cases or that have been or will be rejected; (iii) any agreements entered into by the
11 Consolidated Debtors on or after the Effective Date; (iv) the Plan Agent's or Consolidated
12 Debtors' ability to subordinate or otherwise challenge Claims on an entity-by-entity basis;
13 (v) any Rights of Action or defenses thereto, which in each case shall survive entry of the
14 Confirmation Order as if there had been no substantive consolidation of Debtors' Estates;
15 and (vi) distributions to the Consolidated Debtors from any insurance policies or the
16 proceeds thereof.

17 The substantive consolidation of Debtors under the Plan is permissible under
18 *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 at 766 (9th Cir. 2000) because
19 numerous creditors dealt with all three Debtors as a single economic unit and did not rely on
20 their separate identity in extending credit, and (2) the affairs of Debtors were and are so
21 entangled that consolidation will benefit all creditors. Indeed, a large portion of the value of
22 claims that were filed in the Bankruptcy Cases are filed against all three Debtors. For
23 example, and most importantly, all three Debtors were joint and severally liable for the
24 approximately \$140 million of first-lien secured debt to CoBank that had to be paid in these
25 cases. Moreover, the pension claims, including claims of Pension Benefit Guaranty
26 Corporation ("PGBC") and the Western Conference of Teamsters—accounting for

1 approximately half of all unsecured claims—are filed against all three Debtors. And Debtors
2 all sold goods in the marketplace under NORPAC Foods, Inc.’s tradenames and marks and
3 other intellectual property; the Debtors were inseparable to the marketplace. Debtors held
4 one set of books and records for sales, and all inventory was run through and sold through
5 NORPAC. Debtors shared a single common senior management team. Administrative and
6 operational business functions (such as purchasing, sales and marketing, financing, capital
7 investment, financial and tax reporting, cash management, human resources, risk
8 management, etc.) were centrally managed and shared by and among all three Debtors.
9 Debtors’ financial statements were consolidated at the parent entity for audit purposes and no
10 outside party, when viewing Debtors’ books and records for credit verification purposes,
11 would have ever received unconsolidated financials.

12 **XI. ASSETS AND LIABILITIES**

13 **A. ASSETS**

14 Debtors estimate that as of the Effective Date, Debtors will have liquidated all of their
15 assets and will have cash on hand of approximately \$28,000,000. Debtors still hold Class A
16 shares of CoBank, ACB, including all the rights to receive all dividends, distributions, any
17 undistributed patronage refunds, and rights to patronage surplus, and all rights to have the
18 common stock redeemed and the right to receive the proceeds therefrom. Debtors are
19 working to sell such CoBank shares and anticipate that such shares will be sold prior to or
20 soon after the Effective Date. Debtors also have retained certain claims against:

21 (i) Infor (US), Inc. (“Infor”) for breach of contract, among other things, related to a
22 Services Work Order, Software License Agreement, Software Services Agreement,
23 Software Support Agreement, and related agreements as between Debtors and Infor.
24 Despite an initial contract price of approximately \$1.5 million, over time, NORPAC
25 paid approximately \$4.2 million to Infor, and Infor never delivered anything usable,
26 which caused significant consequential damages that contributed to the problems

1 leading to these Bankruptcy Cases. The value of such claims is unknown at this
2 time; and

3 (ii) NORPAC's former officers and directors for breach of fiduciary duties and
4 similar causes of action relating to: (a) payments authorized by NORPAC that were
5 paid to Member-Growers on account of patronage refunds that were inconsistent
6 with NORPAC's organizational documents governing such payments and deviated
7 from NORPAC's historical payment practices; and (b) NORPAC's failure to
8 properly monitor and maintain adequate inventory tracking, reporting and control
9 systems for its business operations. Debtors estimate that the value of such claims
10 range from \$0 to over \$5 million.

11 **B. LIABILITIES**

12 Debtors estimate that as of the Effective Date all Secured Claims will have been paid
13 in full.

14 Debtors estimate that as of the Effective Date unpaid Administrative Expense Claims
15 will total approximately \$5,000,000, Class 3 Convenience Class Unsecured Claims will total
16 approximately \$1,150,000, and Class 4 General Unsecured Claims will total approximately
17 \$67,000,000.

18 Debtors estimate that the percentage recovery on Class 4 General Unsecured Claims
19 may range between 25% and 35%. Debtors further anticipate that an initial Distribution will
20 be made prior to the end of 2020 to each holder of a Class 4 General Unsecured Claim and
21 estimate that such Distribution will range between 20% and 30% of the total amount of such
22 Class 4 General Unsecured Claim. The above numbers and percentages are estimates only
23 and are based on assumptions that may change. The actual percentage recovery on General
24 Unsecured Claims may vary materially from the above estimates.

1 **XII. EXECUTORY CONTRACTS**

2 The Bankruptcy Code gives Debtors the right, after commencement of their
3 Chapter 11 Cases, subject to approval of the Bankruptcy Court, to assume or reject executory
4 contracts and unexpired leases. Generally, an “executory contract” is a contract under which
5 material performance (other than the payment of money) is still due by each party. Except
6 for the executory contracts listed on the Plan Supplement, which contracts shall be treated as
7 set forth in the Plan Supplement, all executory contracts or unexpired leases with respect to
8 which Debtors have not previously assumed or rejected or have not Filed a motion seeking
9 authority to assume, shall be deemed rejected as of the Effective Date. Any Claims for
10 damages arising by reason of the rejection of any such executory contract or unexpired lease
11 as of the Effective Date will be disallowed and the holder thereof barred from receiving
12 Distributions under the Plan unless a Proof of Claim for such damages on account of
13 rejection is Filed with the Court within 30 days after the Effective Date.

14 **XIII. VOTING PROCEDURES**

15 **A. BALLOTS AND VOTING DEADLINE**

16 A ballot to be used for voting to accept or reject the Plan is enclosed with each copy
17 of this Disclosure Statement. After carefully reviewing this Disclosure Statement and its
18 exhibits, including the Plan, please indicate your acceptance or rejection of the Plan by
19 voting in favor or against the Plan on the enclosed ballot as directed below.

20 To be counted for voting purposes, ballots for the acceptance or rejection of the Plan
21 must be received by Debtors no later than **4:00 p.m. Pacific time on October 30, 2020** at the
22 following address:

23 North Pacific Cannery & Packers, Inc.
24 Ballot Processing Center
25 c/o KCC _____
26 222 N. Pacific Coast Highway Suite 300
El Segundo, CA 90245

1 or via electronic online transmission solely through a customized online balloting portal
2 (“eBallot”) on the Debtors’ case website: www.kccllc.net/norpacfoods. eBallots shall be
3 deemed to contain an original signature. Ballots submitted by facsimile, email or other
4 means of electronic transmission aside from eBallots will not be counted.

5 Holders of each Claim scheduled by Debtors or with respect to which a Proof of
6 Claim has been filed will receive ballots and are permitted to vote based on the amount of the
7 Proof of Claim, except as discussed below. If no Proof of Claim has been filed, then the vote
8 will be based on the amount scheduled by Debtors in their Schedules (unless scheduled as
9 disputed, contingent, or unliquidated, in which case the amount for voting purposes will be
10 zero). The Bankruptcy Code provides that such votes will be counted unless the Claim has
11 been disputed, disallowed, disqualified, or suspended prior to computation of the vote on the
12 Plan. A Claim to which an objection has been filed is not allowed to vote unless and until the
13 Bankruptcy Court rules on the objection, except that, to the extent the objection does not
14 dispute certain amounts of a Claim, the Claimant shall be entitled to vote in the amount of the
15 undisputed amount of the Claim as of the voting record date, which is the date of the Order
16 approving this Disclosure Statement. Holders of disputed Claims who have settled their
17 dispute with Debtors are entitled to vote the settled amount of their Claim. The Bankruptcy
18 Code and rules provide that the Bankruptcy Court may, if timely requested to do so by the
19 holder of such Claim, estimate or temporarily allow a disputed Claim for the purposes of
20 voting on the Plan.

21 If a Claim is filed as entirely unliquidated, or in the amount of \$0.00 or the amount
22 was left blank, the holder of such Claim shall not be entitled to vote on account of such
23 Claim. If a Claim is filed as partially liquidated and partially unliquidated, such Claim will
24 be Allowed for voting purposes only in the liquidated amount.

1 If a person holds Claims in more than one Class entitled to vote on the Plan, such
2 person will be entitled to complete and return a ballot for each Class. If you do not receive a
3 ballot or if a ballot is damaged or lost, please contact:

4 North Pacific Cannery & Packers, Inc.
5 Ballot Processing Center
6 c/o KCC
7 222 N. Pacific Coast Highway Suite 300
8 El Segundo, CA 90245
9 Telephone: (877) 634-7180 (U.S./Canada)
10 (424) 236-7225 (International)
11 Email: NorpacFoodsInfo@kcellc.com

12 or contact Debtors by calling Spencer Fisher at (503) 802-2167.

13 All persons entitled to vote on the Plan may cast their vote for or against the Plan by
14 completing, dating, and signing the enclosed ballot and returning it, by First Class mail,
15 Overnight mail, or hand delivery, to Debtors at the address indicated above. In order to be
16 counted, all ballots must be executed and received at the above address no later than
17 **4:00 p.m. Pacific time on October 30, 2020.** Any ballots received after 4:00 p.m. Pacific
18 time on October 30, 2020 will not be included in any calculation to determine whether the
19 parties entitled to vote on the Plan have voted to accept or reject the Plan.

20 Ballots may also be received by eBallot. eBallots submitted through the online
21 balloting portal will be counted if received by **4:00 p.m. Pacific time on October 30, 2020.**

22 When a ballot is signed and returned without further instruction regarding acceptance
23 or rejection of the Plan, the signed ballot shall be counted as a vote accepting the Plan. When
24 a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the
25 unsigned ballot will not be included in any calculation to determine whether parties entitled
26 to vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without
indicating the amount of the Claim or an amount different from a timely filed Proof of Claim,

1 then the amount shall be as set forth on Debtors' Schedules or any Proof of Claim timely
2 filed with respect to such Claim or Order of the Bankruptcy Court.

3 **B. PARTIES ENTITLED TO VOTE**

4 Pursuant to Section 1126 of the Bankruptcy Code, any holder of an Allowed Claim
5 that is in an impaired Class under the Plan, and whose Class is not deemed to reject the Plan,
6 is entitled to vote. A Class is "impaired" unless the legal, equitable, and contractual rights of
7 the holders of claims in that Class are left unaltered by the Plan or if the Plan reinstates the
8 Claims held by members of such Class by (i) curing any defaults; (ii) reinstating the maturity
9 of such claim; (iii) compensating the holder of such claim for damages that result from the
10 reasonable reliance on any contractual provision of law that allows acceleration of such
11 claim; and (iv) otherwise leaving unaltered any legal, equitable, or contractual right of which
12 the Claim entitles the holder of such Claim. Because of their favorable treatment, Classes
13 that are not impaired are conclusively presumed to accept the Plan. Accordingly, it is not
14 necessary to solicit votes from the holders of Claims in Classes that are not impaired.

15 Classes of Claims or interests that will not receive or retain any money or property
16 under a Plan on account of such Claims or interests are deemed, as a matter of law under
17 Section 1126(g) of the Bankruptcy Code, to have rejected the Plan and are likewise not
18 entitled to vote on the Plan.

19 Classes 1 and 2 are not impaired under the Plan and are deemed to have accepted the
20 Plan.

21 Classes 3 and 4 are impaired under the Plan and are entitled to vote to accept or reject
22 the Plan.

23 Classes 5 and 6 will not receive or retain any money or property under the Plan on
24 account of such Claims or interests and are deemed to have rejected the Plan.

1 **XIV. CONFIRMATION OF THE PLAN**

2 **A. CONFIRMATION HEARING**

3 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to
4 commence on **November 6, 2020, at 9:30. a.m. Pacific time.** The confirmation hearing will
5 be held telephonically before the Honorable Peter C. McKittrick, United States Bankruptcy
6 Judge. **The toll free telephone number is 1-888-684-8852. Please enter the seven digit**
7 **Access Code 1238244 followed by the “#” key to participate.** At the hearing, the
8 Bankruptcy Court will consider whether the Plan satisfies the various requirements of the
9 Bankruptcy Code, including whether it is feasible and whether it is in the best interests of
10 Debtors’ Creditors. Prior to the hearing, Debtors will submit a report to the Bankruptcy
11 Court concerning the votes for acceptance or rejection of the Plan by the persons entitled to
12 vote thereon.

13 Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may
14 object to confirmation of the Plan. Any objections to confirmation of the Plan must be made
15 in writing and filed with the Bankruptcy Court and received by counsel for Debtors no later
16 than **4:00 p.m. Pacific time on October 30, 2020.** Unless an objection to confirmation is
17 timely filed and received, it will not be considered by the Bankruptcy Court.

18 **B. VOTES REQUIRED FOR CLASS ACCEPTANCE OF THE PLAN**

19 As a condition to confirmation, the Bankruptcy Code requires that each impaired
20 Class of Claims or Interests accept the Plan, subject to the exceptions described below in the
21 section entitled “Cramdown of the Plan.” In a “Cramdown,” at least one impaired Class of
22 Claims must accept the Plan in order for the Plan to be confirmed.

23 For a Class of Claims to accept the Plan, Section 1126 of the Bankruptcy Code
24 requires acceptance by Creditors that hold at least two-thirds in dollar amount and a majority
25 in number of the Allowed Claims of such Class, in both cases counting only those Claims
26 actually voting to accept or reject the Plan. The holders of Claims who fail to vote are not

1 counted as either accepting or rejecting the Plan. If the Plan is confirmed, the Plan will be
2 binding with respect to all holders of Claims and Interests in each Class, including Classes
3 and members of Classes that did not vote or that voted to reject the Plan.

4 **C. “CRAMDOWN” OF THE PLAN**

5 If the Plan is not accepted by all of the impaired Classes of Claims and Interests of
6 Debtors, the Plan may still be confirmed by the Bankruptcy Court pursuant to
7 Section 1129(b) of the Bankruptcy Code’s “Cramdown” provision if the Plan has been
8 accepted by at least one Impaired Class of Claims, without counting the acceptances of any
9 Insiders of Debtor, and the Bankruptcy Court determines, among other things, that the Plan
10 “does not discriminate unfairly” and is “fair and equitable” with respect to each
11 non-accepting Impaired Class of Claims or Interests. Debtors believe the Plan can be
12 confirmed even if it is not accepted by all impaired Classes of Claims and hereby request the
13 Bankruptcy Court confirm the Plan in accordance with Section 1129(6) of the Bankruptcy
14 Code or otherwise modify the Plan in the event any Class of Creditors does not accept the
15 Plan.

16 **D. BEST INTERESTS TEST**

17 At the hearing on confirmation, the Bankruptcy Court will determine whether the
18 provisions of Section 1129 of the Bankruptcy Code have been satisfied. If all the provisions
19 of Section 1129 are met, the Bankruptcy Court may enter an order confirming the Plan.
20 Debtors believe the Plan satisfies all the requirements of Chapter 11 of the Bankruptcy Code,
21 that it has complied or will have complied with all the requirements of Chapter 11, and that
22 the Plan has been proposed and is made in good faith.

23 Among other requirements for confirmation, to confirm the Plan the Bankruptcy
24 Court must determine that the Plan meets the requirements of Section 1129(a)(7) of the
25 Bankruptcy Code; that is, that the Plan is in the best interests of each holder of a Claim in an
26 impaired Class that has not voted to accept the Plan. Accordingly, if an impaired Class does

1 not unanimously accept the Plan, the “best interests” test requires that the Bankruptcy Court
2 find that the Plan provides to each holder of a Claim in such impaired Class a recovery on
3 account of the holder's Claim that has a value at least equal to the value of the distribution
4 each such holder would receive if a Debtor were liquidated under Chapter 7 of the
5 Bankruptcy Code.

6 For numerous reasons, Debtors believe a Chapter 7 liquidation would result in lower
7 distributions to Creditors. Substantially all of Debtors’ assets have already been liquidated.
8 Conversion to a case under Chapter 7 would result in (i) additional costs being borne by the
9 estate above those the estate would incur under the Plan, (ii) lower distributions being
10 received by Creditors, and (iii) delays in distributions to Creditors.

11 **XV. EFFECT OF CONFIRMATION**

12 **A. BINDING EFFECT**

13 The treatment of, and consideration received by, holders of Allowed Claims and
14 Interests pursuant to the Plan will be in full satisfaction of their respective Claims against or
15 Interests in Debtors. The Confirmation Order shall bind Debtors and any Creditor, and
16 discharge Debtors from any liability that arose before the Effective Date as provided in
17 Sections 524 and 1141 of the Bankruptcy Code, and any debt and liability of a kind specified
18 in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of
19 claim based on such Creditor’s debt or liability is Filed or deemed Filed under Section 501 of
20 the Bankruptcy Code, (ii) a Claim based on such debt or liability is Allowed, or (iii) the
21 holder of the Claim based on such debt or liability has accepted the Plan.

22 **B. INJUNCTION**

23 The effect of confirmation shall be as set forth in Section 1141 of the Bankruptcy
24 Code. Except as otherwise provided in the Plan or in the Confirmation Order, confirmation
25 of the Plan shall act as a permanent injunction applicable to entities against (i) the
26 commencement or continuation, including the issuance or employment of process, of a

1 judicial, administrative, or other action or proceeding against Debtors, or any of Debtors, or
2 the Released Parties, that was or could have been commenced against Debtors or the
3 Released Parties before the entry of the Confirmation Order; (ii) the enforcement against the
4 Released Parties, or Debtors or their assets, of a judgment obtained before the Petition Date;
5 and (iii) any act to obtain possession of or to exercise control over, or to create, perfect, or
6 enforce a lien upon all or any part of the assets of the Consolidated Debtors.

7 C. RELEASES

8 The Plan further provides that upon entry of the Confirmation Order, the Released
9 Parties are deemed expressly, unconditionally, generally, and individually and collectively,
10 acquitted, released, and discharged from any and all Claims, obligations, rights, suits,
11 damages, Causes of Action, remedies, and liabilities whatsoever that were, or could have
12 been, commenced by Debtors against the Released Parties before the entry of the
13 Confirmation Order. Released Parties are defined as the following: (i) SierraConstellation
14 Partners; (ii) Alvarez & Marsal North America, LLC; (iii) counsel to Debtors; (iv) counsel to
15 the Committee; (v) individual Committee members; (vi) individual Growers Committee
16 members, *provided that* this release expressly does not include claims that the Debtors or
17 their estates may have against a Member that serves or served as the Debtors' present or
18 former officers or directors *only* for alleged actions or omissions undertaken *solely* in their
19 capacity as an officer or director, it being understood that all such claims are expressly
20 preserved by the Debtors' estates; (vii) counsel to the Growers Committee; (viii) FTI
21 Consulting, Inc.; and (ix) with respect to each of the foregoing Entities in clauses (i) through
22 (viii), such entity's current and former affiliates and such entity's and such affiliates' current
23 and former directors, managers, officers, chief restructuring officers, and equity holders.
24 Preference Actions are expressly released by Debtors and Debtors' Estates.

25 The Plan further provides that none of the Released Parties shall have or incur any
26 liability to any person for any act or omission in connection with, relating to or arising out of

1 the Chapter 11 Cases, the formulation, negotiation, implementation, confirmation, or
2 consummation of this Plan, the Disclosure Statement, or any contract, instrument, release, or
3 other agreement or document entered into during the Chapter 11 Cases or otherwise created
4 in connection with this Plan, including, but not limited to, reconciliation and resolution of
5 Claims.

6 Nothing in the Plan or in the Confirmation Order shall in any way be construed to
7 discharge, release, limit, or relieve any party for a fiduciary breach related to the pension
8 plan. The PBGC and NORPAC Foods, Inc. Defined Benefit Plan shall not be enjoined or
9 precluded from enforcing such liability or responsibility by any of the provisions of the Plan
10 or the Confirmation Order.

11 **D. MODIFICATION, REVOCATION, OR WITHDRAWAL OF PLAN**

12 Subject to Section 1127 of the Bankruptcy Code, Debtors and the Committee reserve
13 the right to alter, amend, modify, or withdraw the Plan before its substantial consummation
14 so long as the treatment of holders of Claims and Interest Holders under the Plan are not
15 adversely affected.

16 **E. RETENTION OF JURISDICTION**

17 Notwithstanding entry of the Confirmation Order, the Court shall retain jurisdiction
18 of this Chapter 11 Case pursuant to and for the purposes set forth in Section 1127(b) of the
19 Bankruptcy Code and other issues and disputes discussed in the Plan.

20 **F. UNITED STATES TRUSTEE FEES**

21 Fees payable by Debtors under 28 U.S.C. § 1930, or to the Clerk of the Bankruptcy
22 Court, will be paid in full in Cash on the Effective Date. All quarterly fees due to the United
23 States Trustee pursuant to 28 U.S.C. § 1930(a), including fees due for any partial quarter,
24 accruing after the Effective Date shall be paid by the Plan Agent as and when they become
25 due and will be based on the Plan Agent's total disbursements, including ordinary course of
26 business disbursements as well as disbursements made to Claimants under the Plan. Such fee

1 obligations will not terminate until this Case is converted or dismissed, or until this Case is
2 no longer pending upon entry of a Final Order closing this Case, whichever first occurs, and
3 all United States Trustee fees, including any such fees accrued in any partial quarter, shall be
4 paid as a condition precedent prior to entry of an order closing the case. All United States
5 Trustee fees, including any such fees accrued in any partial quarter, shall also be paid as a
6 condition precedent prior to entry of a Final Decree.

7 **XVI. GENERAL TAX CONSEQUENCES ON CREDITORS**

8 The effect of the Plan on specific creditors will depend on specific financial
9 information relative to such creditor, and that is unknown to Debtors. As a result, the tax
10 implications to specific creditors cannot be completely described herein.

11 EACH HOLDER IS URGED TO CONSULT SUCH HOLDER'S OWN TAX
12 ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO SUCH HOLDER UNDER
13 FEDERAL AND APPLICABLE STATE, LOCAL, AND FOREIGN TAX LAWS.
14 DEBTORS AND DEBTORS' COUNSEL EXPRESS NO OPINION AS TO THE TAX
15 CONSEQUENCES OF THE PLAN OR THE EFFECT THEREOF ON ANY CLAIMANT.

16 **XVII. MISCELLANEOUS PROVISIONS**

17 In addition to the provisions discussed above, the Plan contains a number of
18 administrative and miscellaneous provisions. Those provisions are not restated or
19 summarized in this Disclosure Statement. Please review the Plan carefully.

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2 **XVIII. CONCLUSION**

3 Please read this Disclosure Statement and the Plan carefully. After reviewing all the
4 information and making an informed decision, please vote by using the enclosed ballot.

5 Debtors and the Committee urge you to vote in support of the Plan.

6 DATED: September 11, 2020.

7 NORTH PACIFIC CANNERS & PACKERS,
8 INC., HERMISTON FOODS, LLC, AND
9 NPCP QUINCY, LLC

10 By /s/ Winston Mar
11 Winston Mar, Chief Restructuring Officer

12 OFFICIAL COMMITTEE OF UNSECURED
13 CREDITORS OF NORTH PACIFIC
14 CANNERS & PACKERS, INC., HERMISTON
15 FOODS, LLC, AND NPCP QUINCY, LLC

16 Syngenta Seeds, LLC, solely in its capacity as
17 Committee Chairperson and not in its individual
18 capacity

19 By /s/ David Conaway
20 David Conaway, Counsel to Syngenta
21 Seeds, LLC

22 Presented by:

23 TONKON TORP LLP

24 By /s/ Albert N. Kennedy
25 Albert N. Kennedy, OSB NO. 821429
26 Attorneys for Debtors

LOWENSTEIN SANDLER LLP

By /s/ Bruce S. Nathan
Bruce S. Nathan, *Admitted Pro Hac Vice*
Attorneys for Official Committee of
Unsecured Creditors

1 LEONARD LAW GROUP LLC

2 By /s/ Timothy A. Solomon
3 Timothy A. Solomon, OSB No. 072573
4 Attorneys for Official Committee of
Unsecured Creditors

5 **EXHIBITS ATTACHED:**

6 Exhibit 1: The Plan
7 Exhibit 2: Schedule of Class 5 Member Claims

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EXHIBIT 1

DEBTORS' AND THE COMMITTEE'S SECOND AMENDED JOINT PLAN OF LIQUIDATION

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One Lowenstein Drive

9 Roseland, NJ 07068

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13 One SW Columbia Street, Suite 1010

Portland, OR 97258

14 Attorneys for Official Committee of

15 Unsecured Creditors

16
17 UNITED STATES BANKRUPTCY COURT

18 DISTRICT OF OREGON

19 In re

20 North Pacific Cannery & Packers, Inc.,
21 Hermiston Foods, LLC, and NPCP Quincy,
22 LLC,

Debtors.

Case No. 19-62584-pcm11

LEAD CASE

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

**DEBTORS' AND THE
COMMITTEE'S SECOND AMENDED
JOINT PLAN OF LIQUIDATION**

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DEBTORS' AND THE COMMITTEE'S SECOND AMENDED JOINT PLAN OF LIQUIDATION

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1 **ARTICLE 1 - OVERVIEW**

2 **1.1 Definitions**

3 Definitions of certain terms used in the Plan and the Disclosure Statement are
4 attached as **Exhibit A**. Other terms are defined in the text of the Plan. In either case, when a
5 defined term is used, the first letter of each word in the defined term is capitalized. Terms
6 used and not defined in the Plan and the Disclosure Statement shall have the meanings given
7 in the Bankruptcy Code or Bankruptcy Rules.

8 **1.2 Primary Structure of the Plan**

9 The key elements of the Plan are as follows:

10 (a) **Payment Managed by the Plan Agent.** The Plan provides for the
11 appointment of a Plan Agent for the reconciling and compromising of claims, making
12 distributions to Creditors, and winding up Debtors' affairs.

13 (b) **Substantive Consolidation of Debtors' Estates.** The Plan provides
14 that following the Effective Date, Debtors' Estates will be substantively consolidated.

15 (c) **Rejection of All Executory Contracts.** Except for executory
16 contracts listed on the Plan Supplement, if any, which contracts shall be treated as set
17 forth in the Plan Supplement, the Plan provides for the rejection of any and all
18 executory contracts of Debtors that have not previously been assumed and a process
19 for asserting Claims related to the same.

20 (d) **Resolution of Undetermined Claims.** The Plan provides a
21 mechanism for the allowance and administration of undetermined Claims against
22 Debtors.

23 **ARTICLE 2 - DISCLOSURE STATEMENT**

24 Debtors and the Committee have jointly Filed the Disclosure Statement, which
25 Debtors and the Committee contend satisfy the requirements of 11 U.S.C. §§ 1125 and 1126
26 and Bankruptcy Rule 3016(c). Prior to mailing the Plan to Creditors for voting, the Court

1 will have considered and approved the Disclosure Statement. The Disclosure Statement
2 provides useful information to assist Creditors in voting on the Plan. A copy of the
3 Disclosure Statement accompanies the Plan and should be considered in conjunction with the
4 Plan.

5 **ARTICLE 3 - ASSETS**

6 All property of Debtors' Estates shall vest in and become the property of the
7 Consolidated Debtors on the Effective Date.

8 **ARTICLE 4 - UNCLASSIFIED CLAIMS**

9 **4.1 Administrative Expense Claims**

10 Each holder of an Allowed Administrative Expense Claim shall be paid in full, in
11 Cash, on or as soon as practicable after the later of (a) the Effective Date or (b) the
12 Allowance Date, unless such holder shall agree in writing to a different treatment of such
13 Claim (including, without limitation, any different treatment that may be provided for in any
14 documentation, statute, or regulation governing such Claim). Debtors shall include a
15 schedule of all Allowed Section 503(b)(9) Claims in the Plan Supplement.

16 **4.2 Priority Tax Claims**

17 Each holder of an Allowed Priority Claim shall be paid in full, in Cash, on or as soon
18 as practicable after the later of (a) the Effective Date or (b) the Allowance Date, unless such
19 holder shall agree in writing to a different treatment of such Claim.

20 **4.3 Bankruptcy Fees**

21 Fees payable by Debtors under 28 U.S.C. § 1930, or to the Clerk of the Bankruptcy
22 Court, will be paid in full, in Cash, on or as soon as practicable after the Effective Date.
23 Thereafter, the Plan Agent shall continue to pay quarterly fees of the Office of the United
24 States Trustee and to file quarterly reports with the Office of the United States Trustee for
25 each of the Chapter 11 Cases until the applicable Chapter 11 Case is closed by the Court,
26 dismissed, or converted.

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4.4 Professional Fee Administrative Claims

Each provider of professional services seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date pursuant to Sections 330, 331, and 503(b)(2) of the Bankruptcy Code shall (a) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the date that is no later than 60 days after the Effective Date, or such other date fixed by the Bankruptcy Court; and (b) if granted a professional fee administrative Claim by the Bankruptcy Court, shall be paid in Cash in such amounts as are allowed by the Bankruptcy Court within 14 days from the date of allowance, first from that portion of the retainer held by such professional that is not required for any post-Effective Date services to be performed on behalf of Debtors' Estates, and then by the Plan Agent, after deducting any amounts paid to the professional by Debtors prior to the Effective Date.

ARTICLE 5 - CLASSIFICATION OF CLAIMS

For purposes of this Plan, Claims (except those treated under Article 4) are classified as provided below. A Claim is classified in a particular Class only to the extent such Claim qualifies within the description of such Class, and is classified in a different Class to the extent such Claim qualifies within the description of such different Class.

5.1 Secured Creditors

Class 1 consists of Allowed Secured Claims.

5.2 Priority Creditors

Class 2 consists of Allowed Priority Claims.

5.3 Unsecured Creditors

Class 3 - Convenience Class Unsecured Creditor Claims

Class 3 consists of Allowed Convenience Class Unsecured Claims.

1 **Class 4 - General Unsecured Claims**

2 Class 4 consists of Allowed Unsecured Claims not otherwise classified and treated
3 under the Plan.

4 **5.4 Member Creditors**

5 Class 5 consists of Allowed Claims of Members that are not resolved through that
6 certain settlement agreement dated August 17, 2020 and approved by Order of the
7 Bankruptcy Court entered on September [11], 2020 (the “Member Settlement Agreement”).
8 For the avoidance of doubt, Members who have executed and delivered to Debtors the
9 Member Settlement Agreement (or a joinder to the Member Settlement Agreement) prior to
10 the Effective Date will receive the treatment agreed to in the Member Settlement Agreement.

11 **5.5 Interests**

12 Class 6 consists of Interests held in each of Debtors.

13 **ARTICLE 6 -TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

14 **6.1 Class 1 - Secured Creditors**

15 A holder of an Allowed Secured Claim with outstanding amounts owed as of the
16 Effective Date shall, at the option of Debtors (a) be paid in full, in Cash, on or as soon as
17 practicable after the later of (i) the Effective Date or (ii) the Allowance Date, unless such
18 holder shall agree, or has agreed, in writing to a different treatment of such Claim; or (b) be
19 distributed the Collateral securing such Allowed Secured Claim in satisfaction of such
20 Secured Claim. Class 1 Secured Claims are unimpaired and deemed to accept the Plan.
21 Holders of Class 1 Secured Claims are not entitled to vote to accept or reject the Plan.

22 **6.2 Class 2 - Priority Creditors**

23 Class 2 Priority Claims are entitled to priority over Class 3 Convenience Class
24 Unsecured Claims and Class 4 General Unsecured Claims. Each holder of an Allowed
25 Priority Claim shall be paid in full, in cash, on or as soon as practicable after the later of
26 (a) the Effective Date or (b) the Allowance Date, unless such holder shall agree, or has

1 | agreed, in writing, to a different treatment of such Claim. Class 2 is unimpaired and deemed
2 | to accept the Plan. Holders of Class 2 Priority Claims are not entitled to vote to accept or
3 | reject the Plan.

4 | **6.3 Unsecured Creditors**

5 | **6.3.1 Class 3 - Convenience Class Unsecured Creditors**

6 | A holder of an Allowed Class 3 Convenience Class Unsecured Claim shall receive
7 | Cash in an amount equal to 50% of such holder's Claim as soon as practicable after the
8 | Effective Date. Any Creditor holding a General Unsecured Claim in excess of \$10,000 may
9 | "opt in" to Class 3 by marking a special "opt in" election on the ballot for voting for or
10 | against the Plan. Creditors holding Claims in excess of \$10,000 who elect to "opt in" to
11 | Class 3 shall have been deemed to reduce their Claims to \$10,000 and to have consented to
12 | the treatment of their reduced Claim as called for within Class 3. Class 3 is impaired and,
13 | therefore, holders of Class 3 Convenience Class Unsecured Claims are entitled to vote to
14 | accept or reject the Plan.

15 | **6.4 Class 4 - General Unsecured Creditors**

16 | Subject to the minimum Distribution provision set forth in Section 8.3.9 of this Plan,
17 | on each Distribution Date Debtors shall make Pro Rata distributions of Available Cash to the
18 | holders of Allowed Class 4 General Unsecured Claims. Distributions to holders of Allowed
19 | Class 4 General Unsecured Claims shall be made as soon as practicable, as the Plan Agent
20 | may determine in the Plan Agent's sole discretion, after consultation with the Committee,
21 | consistent with the Plan. Class 4 is impaired and, therefore, holders of Class 4 General
22 | Unsecured Claims are entitled to vote to accept or reject the Plan.

23 | A final Distribution shall be made to the holders of Allowed Claims in Class 4
24 | promptly following the later to occur of (a) the date on which all assets have been reduced to
25 | Cash or abandoned by Debtors; (b) the date on which all Disputed Claims have been
26 | withdrawn or resolved; (c) the date on which all required income tax returns for the tax year

1 in which all material asset sales giving rise to the Cash referenced in subsection (a) above are
2 filed; or (d) the date on which any and all claims Debtors may have against Debtors' present
3 or former directors and officers are fully and finally resolved; provided, however, that in no
4 event shall Debtors be obligated to make such a Distribution if the Plan Agent, in its sole
5 discretion, determines that there is insufficient Available Cash to make a cost efficient
6 Distribution, taking into account the size of the Distribution to be made and the number of
7 recipients of such Distribution, in which event such Available Cash shall, at the sole
8 discretion of the Plan Agent, either be paid into the Court and disposed of under Chapter 129
9 of Title 28 of the United States Code or donated to one or more Section 501(c)(3)
10 organizations, which shall be selected by the Plan Agent in its sole discretion. In no event
11 shall the foregoing impair the right of Debtors to use such excess funds to satisfy the costs of
12 administering this Plan.

13 **6.5 Class 5 - Member Creditors**

14 Pursuant to Debtors' organizational documents and applicable law, Allowed Class 5
15 Member Claims are subordinate to the prior payment in full of all other Allowed Claims.
16 Because all other Allowed Claims will not be paid in full, holders of Allowed Class 5 Claims
17 will not receive any payment or Distribution on account of such Claim, are deemed to have
18 rejected the Plan, and are not entitled to vote to accept or reject the Plan.

19 For the avoidance of doubt, Members who have executed the Member Settlement
20 Agreement (or a joinder to the Member Settlement Agreement) prior to the Effective Date
21 will receive the payment agreed to under the Member Settlement Agreement. Such payment
22 is not impaired or otherwise impacted by the Plan. Further, if any inconsistency exists
23 between the Member Settlement Agreement and the Plan, the Member Settlement Agreement
24 is controlling, *provided that* Members may continue to join the Member Settlement
25 Agreement by executing and returning the Member Settlement Agreement prior to the
26 Effective Date.

1 **6.6 Class 6 - Interests Held in Debtors**

2 Interests in each of Debtors shall be deemed extinguished, without further action by
3 Debtors, upon the Effective Date. Holders of Class 6 Interests are deemed to have rejected
4 the Plan, and are not entitled to vote to accept or reject the Plan.

5 **ARTICLE 7 - DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

6 **7.1 Disputed Claims; Objections to Claims**

7 Only Claims that are Allowed Claims, and not subject to an action described in
8 11 U.S.C. § 502(d), shall be entitled to distributions under the Plan.

9 Unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be
10 Filed and served on or before the later of (a) 60 days after Effective Date and (b) 30 days
11 after the date (if any) on which a Proof of Claim is Filed in respect of a Rejection Claim,
12 whichever is later, or such other date as the Bankruptcy Court may approve.

13 **7.2 Subsequent Allowance of Disputed Claims**

14 The holder of a Disputed Claim that becomes an Allowed Claim in full or in part
15 subsequent to the Effective Date shall receive Distributions (including any make-up
16 Distributions) on the next applicable Distribution Date following the allowance of such
17 Disputed Claim.

18 **7.3 No Distributions on Unspecified Scheduled Claims**

19 Any Claim that is listed in the Schedules in an unspecified or unknown amount, or is
20 listed in the Schedules as contingent, or unliquidated, as of the Effective Date, and for which
21 no timely proof of claim has been filed shall receive nothing under the Plan.

22 **ARTICLE 8 - IMPLEMENTATION OF THE PLAN**

23 **8.1 Funding Plan Obligations and Ongoing Expenses**

24 Debtors will fund the Plan obligations and their ongoing expenses and liabilities from
25 Cash on hand as of the Effective Date and Cash available to Debtors from and after the
26 Effective Date from, among other things, the liquidation of assets.

1 **8.2 Continuation of Debtors; Winding Up Affairs; Dissolution**

2 From and after the Effective Date, Debtors shall continue in existence solely for
3 purposes of (a) administering this Plan and winding up their affairs as expeditiously as
4 reasonably possible; (b) liquidating, by conversion to Cash or other methods, the remaining
5 assets of Debtors' estates, if any, as expeditiously as reasonably possible; (d) reconciling
6 Claims and resolving Disputed Claims; (e) filing appropriate tax returns; and (g) taking such
7 other actions as may be necessary or appropriate in connection with any of the above or to
8 otherwise effectuate this Plan. Debtors may incur and pay any and all reasonable and
9 necessary expenses in performing the foregoing functions, and may hire agents and
10 professionals to assist with the foregoing functions. On the Final Distribution Date, Debtors
11 shall be deemed dissolved under applicable law without the need for any corporate or other
12 actions, consents, or approvals other than filing articles of dissolution with the Oregon
13 Secretary of State. Additionally, on or promptly following the Final Distribution Date,
14 Debtors may, without the need for any further actions, consents, or approvals, dispose of or
15 destroy any and all records maintained by Debtors.

16 **8.3 Post-Effective Date Management; Plan Agent**

17 **8.3.1 Plan Agent as Sole Shareholder, Director, and Officer**

18 From and after the Effective Date, Debtors shall each be managed by the Plan Agent,
19 as a one-person Board of Directors of each Debtor. The Plan Agent shall be, without any
20 required corporate or other action, the sole shareholder, director, and officer of each Debtor,
21 and shall serve in such capacity until this Plan has been fully effectuated and Debtors' affairs
22 have been fully wound up. The initial Plan Agent shall be SierraConstellation Partners, LLC.
23 Such initial Plan Agent shall continue to serve as the Plan Agent until the earlier of (a) the
24 date on which the Plan has been fully effectuated and Debtors' affairs have been fully wound
25 up or (b) the date on which such Plan Agent is removed, resigns, or is unable to serve as Plan
26 Agent. The Committee may remove the Plan Agent at any time, with or without cause, upon

1 at least 15 days' notice to the Plan Agent. In the event the initial Plan Agent (or any future
2 Plan Agent) is removed, resigns, or is unable to serve as Plan Agent, the Committee shall
3 name the replacement Plan Agent without the need for Court approval or any corporate
4 action.

5 **8.3.2 Duties and Rights of Plan Agent**

6 The Plan Agent shall use its best efforts to cause Debtors to fulfill all of their duties
7 and obligations under this Plan. Without limiting the rights set forth in Section 8.3.1 above,
8 the Plan Agent shall have broad and exclusive power to manage Debtors. The Plan Agent
9 shall have full power, authority, and responsibility to take any and all such actions as the Plan
10 Agent, in its good faith discretion, deems necessary or appropriate to cause Debtors to fulfill
11 their duties and obligations under this Plan. In addition to all rights and powers given to the
12 Plan Agent under this Plan, the Plan Agent shall have all of the rights and powers given to
13 directors and officers under Oregon law and shall have all rights and powers of a trustee
14 appointed pursuant to Section 1104 of the Bankruptcy Code. Without limiting any rights the
15 Plan Agent may have pursuant to law or this Plan, the Plan Agent is empowered, on behalf of
16 Debtors, to (a) sell, hold, manage, administer, and distribute assets and Cash in accordance
17 with this Plan or any Orders entered by the Court, and take such actions as may be necessary
18 or appropriate to effect distributions to be made by Debtors under this Plan or any Orders
19 entered by the Court; (b) establish bank accounts; (c) engage and pay professionals, including
20 attorneys, accountants, actuaries, appraisers, brokers, and others, to assist Debtors in
21 fulfilling their obligations under this Plan (such professionals may include, but are not
22 limited to, any professionals engaged by Debtors or the Committee at any time prior to the
23 Effective Date); (d) object to Claims and resolve Disputed Claims; (e) initiate and pursue all
24 Rights of Action retained by Debtors under this Plan, and compromise and settle such Rights
25 of Action; (f) obtain and pay for directors' and officers' liability insurance in such amounts
26 and with such carriers as determined by the Plan Agent in its good faith discretion; (g) obtain

1 and pay for liability insurance policies, including polices providing errors and omissions
2 coverage (including “tail” coverage) to the Plan Agent and any agents employed by the Plan
3 Agent or Debtors; (h) exercise, post-Confirmation, any post-Confirmation duties or
4 obligations imposed on Debtors pursuant to any agreements entered into by Debtors in
5 connection with the Case or any Orders entered by this Court, including any orders
6 approving settlements; (i) enter into and effectuate settlements with Creditors; (j) incur and
7 repay debt; and (k) exercise such other powers and take such other actions that the Plan
8 Agent, in its sole discretion, deems reasonably necessary or appropriate to effectuate this
9 Plan or Orders entered by this Court. Without limiting the above, the Plan Agent will
10 oversee the prosecution of any and all claims of Debtors, in consultation with the Committee.
11 Any litigation of claims involving officers and directors shall be commenced by the Plan
12 Agent at the direction of the Committee and may only be settled by the Plan Agent with the
13 approval of the Committee.

14 **8.3.3 Compensation of Plan Agent**

15 The Plan Agent shall receive, as compensation for its services under this Plan, a
16 reasonable hourly rate as agreed by the Committee. The fees, costs, and expenses of the Plan
17 Agent shall be paid by on a monthly basis in arrears. Prior to making any payment to itself
18 under this Plan, the Plan Agent shall submit its invoice for such payment to the Committee,
19 which shall have 10 days to object to the invoice (or any portion thereof). If no objection is
20 made within such 10-day period, the Plan Agent may make the payment. Any objections of
21 the Committee that cannot be resolved by the Plan Agent and the Committee shall be
22 resolved by the Court.

23 **8.3.4 Settlement or Abandonment of Claims**

24 The Plan Agent may not settle, compromise, dismiss, abandon, or elect not to pursue,
25 any Rights of Action having a stated value in excess of \$50,000 without giving 15 days’
26 notice to the Committee.

1 **8.3.5 Fees and Expenses of Agents and Professionals**

2 The Plan Agent shall pay the reasonable fees and expenses of all professional persons
3 and agents employed by the Plan Agent in connection with this Plan, as well as the
4 reasonable post-Effective Date fees and expenses of any professional employed by the
5 Committee in connection with this Plan. Any such professional person or agent seeking a
6 payment from the Plan Agent shall submit an invoice to the Plan Agent, which (absent an
7 objection by the Plan Agent) the Plan Agent shall promptly pay. Any objection that cannot
8 be resolved by the Plan Agent and the party seeking such payment shall be resolved by the
9 Court.

10 **8.3.6 Continuing Creditors Committee**

11 On and after the Effective Date, the Committee shall oversee the Plan Agent's
12 implementation of the Plan. The Committee shall have access to the Plan Agent and the right
13 to consult with and, to the extent specifically provided in the Plan and the Confirmation
14 Order, direct the Plan Agent in connection with the administration and implementation of the
15 Plan on and after the Effective Date. The Committee may retain professionals, whose
16 reasonable fees and expenses shall be paid without the need for Bankruptcy Court approval,
17 after giving 15 days' notice of such professional's invoice to the Plan Agent. In the event of
18 the resignation, death, or incapacity of a member of the Committee, the remaining members
19 of the Committee shall designate another individual to serve on the Committee. Such
20 replacement member shall be deemed a member of the Committee as of the date of such
21 designation, without any further act or need for an order of the Bankruptcy Court. Such
22 replacement member need not have served on the Committee. The Committee shall be
23 deemed dissolved on the date the last of the Chapter 11 Cases is closed.

24 **8.3.7 Form of Payments**

25 Distributions to be made by the Plan Agent under this Plan shall be made by check
26 drawn on a domestic bank or by wire transfer from a domestic bank, at the sole election of

1 the Plan Agent.

2 **8.3.8 Delivery of Distributions**

3 Except as otherwise agreed to by the Plan Agent in writing, Distributions to be made
4 pursuant to this Plan may be delivered by regular mail, postage prepaid, in an envelope
5 addressed as directed in a written request served on the Plan Agent, but if no such request is
6 made, to the address shown on Debtors' Schedules, as they may from time to time be
7 amended in accordance with Bankruptcy Rule 1009, or, if a different address is stated in a
8 proof of claim duly filed with the Court, to such address stated on the proof of claim.

9 **8.3.9 Distributions of Cash**

10 (a) If any portion of a Claim is Disputed, no payment or Distribution
11 provided under the Plan shall be made on account of such Claim unless and until such
12 Disputed Claim becomes an Allowed Claim. To the extent a Disputed Claim
13 ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the
14 holder of such Allowed Claim in accordance with the provisions of the Plan. Upon
15 allowance, the holder of such Claim shall receive any Distributions that would have
16 been made up to the date of allowance on account of such claim had the Disputed
17 Claim been an Allowed Claim on the Effective Date.

18 (b) The Plan Agent shall not be required to make Distributions of fractions
19 of dollars, and whenever any Distribution of a fraction of a dollar under the Plan
20 would otherwise be required, the actual Distribution made shall reflect a rounding of
21 such fraction to the nearest whole dollar (up or down), with half dollars being
22 rounded down.

23 (c) The Plan Agent shall have no duty to make a Distribution on account
24 of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be
25 made on such date is less than \$30,000, in which case such Distributions shall be
26 deferred to the next Distribution date; (ii) if the amount to be distributed to the Claim

1 holder on the particular Distribution date is less than \$100, unless such Distribution
2 constitutes the final Distribution to such Claim holder; or (iii) if the amount of the
3 final Distribution to such Claim holder is \$50 or less, in which case no Distribution
4 will be made to such holder and such distribution shall revert for Distribution on
5 account of other Allowed Claims.

6 (d) If a Distribution to the holder of any Claim is returned to the
7 Consolidated Debtors as undeliverable, no further Distributions shall be made to such
8 holder unless and until the Plan Agent is notified in writing of such holder's then-
9 current address. Undeliverable Distributions shall remain in the possession of the
10 Plan Agent until the earlier of (i) such time as the Distribution becomes deliverable or
11 (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

12 **8.3.10 Distribution of Unclaimed Cash**

13 Any Cash to be distributed under the Plan shall revert to Debtors if it is not claimed
14 by such Claim's holder within three months after the date of such Distribution. If such Cash
15 is not claimed on or before such date, the Distribution to such holder shall be deemed to be
16 reduced to zero and such returned, undeliverable, or Unclaimed Distribution shall be deemed
17 unclaimed property under Section 347(b) of the Bankruptcy Code and the Allowed Claim
18 upon which the Cash was originally distributed shall be deemed waived, discharged, and
19 forever barred without further order of the Bankruptcy Court.

20 **8.3.11 Withholding and Reporting Requirements**

21 The Plan Agent shall provide to the Committee reports that set forth: (i) a budget; (ii)
22 beginning and ending cash, with the variations between actual versus budget; (iii) reserve
23 amounts, if any; (iv) receipts received and disbursements made on a claim by claim or vendor
24 by vendor basis, including bank statements; (v) updates concerning progress on claims
25 reconciliation, claims paid, and remaining unpaid claims; (vi) quarterly professional fees
26 paid; (vii) any pending or settled Rights of Action; and (viii) such other reports and

1 information as the Committee from time to time may reasonably request.

2 **8.3.12 Bond**

3 The Plan Agent shall not be required to post a fiduciary bond unless the Committee
4 requests that the Plan Agent obtain such a bond. If such a request is made then, within
5 15 business days after such request, the Plan Agent shall obtain a fiduciary bond and
6 evidence of such bond shall be filed with the Court. Unless the Committee agrees to a lower
7 amount, the face amount of the bond shall at all times be in an amount not less than 125% of
8 the total amount of Cash under the Plan Agent's control. The cost of such bond shall be paid
9 out of the Assets.

10 **8.3.13 Event of Default; Remedy**

11 In the event the Plan Agent shall default in the performance of any of its obligations
12 under the Plan and shall not have cured such a default within 20 days after receipt of written
13 notice of default from the Creditor to whom the performance is due, then such Creditor may
14 seek an Order from the Bankruptcy Court to compel such performance. An event of default
15 occurring with respect to one Claim or Interest shall not be an event of default with respect to
16 any other Claim or Interest.

17 **8.3.14 Corporate Action**

18 Upon the Effective Date, all actions contemplated by the Plan shall be authorized and
19 approved in all respects (subject to the provisions of the Plan), including, without limitation,
20 the execution, delivery, and performance of all documents and agreements relating to the
21 Plan. On the Effective Date, Debtors and the Plan Agent are authorized and directed to
22 execute and deliver any agreements, documents, or instruments contemplated by the Plan and
23 Disclosure Statement in the name of and on behalf of Debtors and the Plan Agent.

24 **8.3.15 Final Order**

25 Any requirement in the Plan for a Final Order may be jointly waived by Debtors and
26 the Committee; provided, however, that nothing contained herein shall prejudice the right of

1 any party-in-interest to seek a stay pending appeal with respect to such Final Order.

2 **8.4 Substantive Consolidation**

3 Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval,
4 pursuant to Sections 105(a) and 1123(a)(5)(C) of the Bankruptcy Code, effective as of the
5 Effective Date, of the substantive consolidation of Debtors' Estates (the "Consolidated
6 Debtors") for the purposes of confirming and consummating the Plan, including, without
7 limitation, voting, confirmation, reconciliation of Claims, and Distributions.

8 On and after the Effective Date (a) all assets and liabilities of Debtors shall be treated
9 as though they were pooled; (b) each Claim filed or to be filed against a Debtor, as to which
10 one or more Debtors are liable as a legal or contractual matter, shall be deemed filed as a
11 single Claim against, and a single obligation of, Debtors; (c) all Claims held by a Debtor
12 against one or more other Debtors shall be cancelled or extinguished; (d) no Distributions
13 shall be made under this Plan on account of any Claim held by a Debtor against one or more
14 other Debtors; (e) all guarantees of any Debtor of the obligation of one or more other Debtors
15 shall be eliminated so that any Claim against any Debtor, and any Claim based upon a
16 guarantee thereof executed by one or more other Debtors, shall be treated as one Claim
17 against the Consolidated Debtors; and (f) any joint or several liability of one or more Debtors
18 shall be one obligation of the Consolidated Debtors, and any Claims based upon such joint or
19 several liability shall be treated as one Claim against the Consolidated Debtors.

20 The substantive consolidation of Debtors under the Plan shall not (other than for
21 purposes related to funding Distributions) affect (i) the legal and organizational structure of
22 Debtors; (ii) executory contracts or unexpired leases entered into during the Chapter 11
23 Cases or that have been or will be rejected; (iii) any agreements entered into by Consolidated
24 Debtors on or after the Effective Date; (iv) the Plan Agent's or Consolidated Debtors' ability
25 to subordinate or otherwise challenge Claims on an entity-by-entity basis; (v) any Rights of
26 Action or defenses thereto, which in each case shall survive entry of the Confirmation Order

1 as if there had been no substantive consolidation of Debtors' Estates; and (vi) subject to
2 Section 13.15 hereof, and only to the extent payable to Debtors in accordance with the terms
3 of the Insurance Contracts, distributions to Debtors from any Insurance Contracts or the
4 proceeds thereof.

5 **ARTICLE 9 - LEASES AND EXECUTORY CONTRACTS**

6 **9.1 Leases and Executory Contracts Assumed**

7 Debtors are not assuming any leases or executory contracts that have not previously
8 been assumed by Order entered prior to the Effective Date.

9 **9.2 Leases and Executory Contracts Rejected**

10 Without admitting the existence or validity of any other executory contract or
11 unexpired lease, except for the executory contracts listed on the Plan Supplement, which
12 contracts shall be treated as set forth in the Plan Supplement, all executory contracts or
13 unexpired leases which Debtors have not previously rejected or have not previously assumed,
14 shall be deemed rejected as of the Effective Date. Any Claims for damages arising by reason
15 of the rejection of any such executory contract or unexpired lease as of the Effective Date
16 will be disallowed and the holder thereof barred from receiving Distributions under the Plan
17 unless a Proof of Claim for such damages on account of rejection is Filed with the Court
18 within 30 days after the Effective Date.

19 **ARTICLE 10 - EFFECT OF CONFIRMATION AND RELEASES**

20 **10.1 Effect of Confirmation**

21 The effect of confirmation shall be as set forth in Section 1141 of the Bankruptcy
22 Code. Except as otherwise provided in the Plan or in the Confirmation Order, confirmation
23 of the Plan shall act as a permanent injunction applicable to entities against (a) the
24 commencement or continuation, including the issuance or employment of process, of a
25 judicial, administrative, or other action or proceeding against Debtors, or any of Debtors, or
26 the Released Parties that was or could have been commenced against Debtors or the Released

1 Parties before entry of the Confirmation Order, excepting from such injunction any
2 affirmative defense asserted by a director, officer or former director or officer in any action
3 filed by Debtor or Debtors' estates; (b) the enforcement against the Released Parties or
4 Debtors or their assets of a judgment obtained before the Petition Date; and (c) any act to
5 obtain possession of or to exercise control over, or to create, perfect, or enforce a lien upon
6 all or any part of the assets of the Consolidated Debtors.

7 **10.2 Releases**

8 Without limiting the above, upon entry of the Confirmation Order, the Released
9 Parties are deemed expressly, unconditionally, generally, and individually and collectively,
10 acquitted, released, and discharged from any and all Claims, obligations, rights, suits,
11 damages, Causes of Action, remedies, and liabilities whatsoever that were, or could have
12 been, commenced by Debtors against the Released Parties before entry of the Confirmation
13 Order. Preference Actions are expressly released by Debtors and Debtors' Estates.

14 Further, none of the Released Parties shall have or incur any liability to any person
15 for any act or omission in connection with, relating to, or arising out of, or taken by a
16 Released Party during, the Chapter 11 Cases; the formulation, negotiation, implementation,
17 confirmation, or consummation of this Plan, the Disclosure Statement, or any contract,
18 instrument, release, or other agreement or document entered into during the Chapter 11 Cases
19 or otherwise created or pursued in connection with, or in furtherance of, this Plan, including,
20 but not limited to, reconciliation and resolution of Claims.

21 Nothing in this Plan or in the Confirmation Order shall in any way be construed to
22 discharge, release, limit, or relieve any party for a fiduciary breach related to the pension
23 plan. The PBGC and NORPAC Foods, Inc. Defined Benefit Plan shall not be enjoined or
24 precluded from enforcing such liability or responsibility by any of the provisions of the Plan
25 or the Confirmation Order.

26 **ARTICLE 11 - MODIFICATION,**

Page 17 of 26 - DEBTORS' AND THE COMMITTEE'S SECOND AMENDED JOINT PLAN OF LIQUIDATION

1 **REVOCATION, OR WITHDRAWAL OF THE PLAN**

2 **11.1 Modification of Plan**

3 Debtors and the Committee may jointly alter, amend, or modify the Plan pursuant to
4 Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the time
5 the Bankruptcy Court has entered the Confirmation Order. After such time, and prior to
6 substantial consummation of the Plan, Debtors and the Committee may, so long as the
7 treatment of holders of Claims and Interests under the Plan are not adversely affected,
8 institute proceedings in Bankruptcy Court to remedy any defect or omission, or to reconcile
9 any inconsistencies in the Plan, Disclosure Statement, or Confirmation Order, or other
10 matters as may be necessary to carry out the purposes and effects of the Plan; provided,
11 however, that prior notice of such proceedings shall be served, if necessary, in accordance
12 with Bankruptcy Rule 2002.

13 **11.2 Revocation or Withdrawal of Plan**

14 **11.2.1 Right to Revoke**

15 Debtors and the Committee reserve the right to jointly revoke or withdraw the Plan at
16 any time prior to the Effective Date.

17 **11.2.2 Effect of Withdrawal or Revocation**

18 If Debtors and the Committee jointly revoke or withdraw the Plan prior to the
19 Effective Date, the Plan shall be deemed null and void. In such event, nothing contained
20 herein shall be deemed to constitute a waiver or release of any Claims by or against Debtors
21 or any other entity, or to prejudice in any manner the rights of Debtors or any other entity in
22 any further proceedings involving Debtors and/or the Committee.

23 **11.2.3 Nonconsensual Confirmation**

24 Debtors and the Committee shall request that the Bankruptcy Court confirm the Plan
25 pursuant to Section 1129(b) of the Bankruptcy Code if the requirements of all provisions of
26 Section 1129(a) of the Bankruptcy Code, except Section 1129(a)(8), are met. To the extent

1 the Court declines to confirm the Plan, Debtors and the Committee will jointly request a
2 reasonable period of time to submit an amended Plan to address the grounds upon which
3 confirmation was denied.

4 **ARTICLE 12 - RETENTION OF JURISDICTION**

5 **12.1 Retained Jurisdiction**

6 Notwithstanding entry of the Confirmation Order, the Bankruptcy Court shall retain
7 jurisdiction of the Chapter 11 Cases pursuant to and for the purposes set forth in
8 Section 1127(b) of the Bankruptcy Code and to:

9 (a) classify the Claim or Interest of any Creditor or equity holder,
10 reexamine Claims or Interests that have been allowed for voting purposes, and
11 determine any objections that may be Filed to Claims or Interests;

12 (b) determine requests for payment of Claims entitled to priority under
13 Section 507(a)(2) of the Bankruptcy Code, including compensation and
14 reimbursement of expenses in favor of professionals employed at the expense of
15 Debtors' Estates;

16 (c) hear and determine all Rights of Action asserted by Debtors or the
17 Plan Agent pending on the Effective Date or asserted after the Effective Date;

18 (d) approve the assumption, assignment, or rejection of an executory
19 contract or unexpired lease and the allowance of Claims resulting therefrom;

20 (e) approve the sale or lease of property free and clear of all liens and
21 encumbrances in accordance with 11 U.S.C. § 363, if so requested by the Plan Agent;

22 (f) resolve controversies and disputes regarding interpretation of the Plan,
23 including disputes between the Plan Agent and the Committee;

24 (g) implement the provisions of the Plan and enter orders in aid of
25 execution of the Plan or to enforce the Confirmation Order;

26 (h) adjudicate adversary proceedings and contested matters pending or

1 hereafter commenced in the Chapter 11 Cases;

2 (i) enter and implement such orders as may be appropriate in the event the
3 Confirmation Order is for any reason stayed, revoked, modified, or vacated;

4 (j) hear and determine any applications to modify the Plan, cure any
5 defect or omission, or reconcile any inconsistency in the Plan or related documents,
6 or any order of the Bankruptcy Court, including the Confirmation Order;

7 (k) ensure that Distributions to holders of Allowed Claims are
8 accomplished as provided herein;

9 (l) hear and determine any other matters related hereto and not
10 inconsistent with Chapter 11 of the Bankruptcy Code; and

11 (m) enter final decrees closing one or more of the Chapter 11 Cases.

12 **12.2 Non-Exclusive Jurisdiction**

13 Following the Effective Date, the Bankruptcy Court will retain non-exclusive
14 jurisdiction of the Chapter 11 Cases for the following purposes:

15 (a) to recover all assets of Debtors, wherever located;

16 (b) to hear and determine any motions or contested matters involving
17 taxes, tax refunds, tax attributes, and tax benefits, and similar or related matters with
18 respect to Debtors or Debtors' Estates arising prior to the Effective Date or relating to
19 the period of administration of the Chapter 11 Cases, including, without limitation,
20 matters concerning state, local, and federal taxes in accordance with Sections 346,
21 505, and 1146 of the Bankruptcy Code; and

22 (c) to hear any other matter not inconsistent with the Bankruptcy Code.

23 **12.3 Failure of Bankruptcy Court to Exercise Jurisdiction**

24 If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction
25 over any matter arising under, arising in, or related to these Chapter 11 Cases, this Article
26 shall not prohibit or limit the exercise of jurisdiction by any other court having competent

1 jurisdiction with respect to such subject matter.

2 **ARTICLE 13 - MISCELLANEOUS**

3 **13.1 Headings**

4 The headings in the Plan are for convenience of reference only and shall not limit or
5 otherwise affect meanings of the Plan.

6 **13.2 Notices**

7 Unless otherwise agreed to between a Creditor and the Plan Agent, or otherwise
8 stated in the Plan, all notices required or permitted to be made in accordance with the Plan
9 shall be in writing and shall be delivered personally or by regular or certified mail, return
10 receipt requested. Notice to a holder of an Allowed Claim shall be directed to the address set
11 forth within its proof of claim or, if none, to its address set forth on the Schedules. Notices
12 shall be deemed given upon delivery, if personally delivered; and upon mailing, if mailed.
13 Any person may change the address at which such person is to receive notices under the Plan
14 by sending written notice, pursuant to the provisions of this section, to the Plan Agent and
15 any other person to be charged with knowledge of such change.

16 **13.3 Revesting**

17 Except as otherwise expressly provided herein, on the Effective Date, all property and
18 assets of Debtors' Estates shall revert in Consolidated Debtors, free and clear of all claims,
19 liens, encumbrances, charges, and other Interests of Creditors arising on or before the
20 Effective Date.

21 **13.4 Reservation of Rights**

22 Neither the filing of the Plan, nor any statement or provision contained herein, nor the
23 taking by any Creditor of any action with respect to the Plan, shall, until the Effective Date
24 (a) be, or be deemed to be, an admission against interest; and (b) be, or be deemed to be, a
25 waiver of any rights any Creditor may have against Debtors or any of their assets or any
26 other Creditor, and, until the Effective Date, all such rights are specifically reserved. In the

1 event the Effective Date cannot be determined, neither the Plan, nor any statement contained
2 herein, may be used or relied upon in any manner in any suit, action, proceeding, or
3 controversy within or without the Chapter 11 Cases.

4 **13.5 Governing Law**

5 Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal
6 laws are applicable, the laws of the State of Oregon shall govern the construction and
7 implementation of the Plan, and all rights and obligations arising under the Plan.

8 **13.6 Saturday, Sunday, or Legal Holiday**

9 If any payment or act is required to be made or performed on a date that is not a
10 Business Day, then the making of such payment or the performance of such act may be
11 completed on the next Business Day but shall be deemed to have been completed as of the
12 required date.

13 **13.7 Computation of Time Periods**

14 In computing any period of time prescribed or allowed by the Plan, the day or month
15 of the act, event, or default from which the designated period of time begins to run shall not
16 be included. The last day or month of the period so computed shall be included. In the event
17 the last day is a Saturday, Sunday, or legal holiday, then the period shall run until the end of
18 the next day that is not a Saturday, Sunday, or legal holiday.

19 **13.8 Utility Deposits**

20 All utilities holding a Utility Deposit shall, immediately after the Effective Date,
21 return or refund such Utility Deposit to Debtors. At the sole option of Debtors, any Utility
22 Deposit that has not been refunded may be applied in satisfaction of payments due or to
23 become due from Debtors to a utility holding such Utility Deposit.

24 **13.9 Setoffs**

25 Debtors may, but shall not be required to, set off against any Claim and the
26 Distributions to be made pursuant to the Plan in respect of such Claim, any Claims of any

1 nature whatsoever which Debtors may have against the holder of such Claim, but neither the
2 failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release
3 of any such Claim Debtor may have against such holder.

4 **13.10 Section 1146(a) Exemption**

5 Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer, or
6 exchange of any security under the Plan, or the execution, delivery, or recording of an
7 instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or
8 the re-vesting, transfer, or sale of any real property of Debtors pursuant to, in implementation
9 of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a
10 stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of
11 deeds or similar official for any city, county, or governmental unit in which any instrument
12 hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and
13 directed to accept such instrument without requiring the payment of any documentary stamp
14 tax, deed stamps, transfer tax, intangible tax, or similar tax.

15 **13.11 Recordable Order**

16 The Confirmation Order shall be deemed to be in recordable form and shall be
17 accepted by any recording officer for filing and recording purposes without further or
18 additional orders, certifications, or other supporting documents.

19 **13.12 Effectuating Documents and Further Transactions**

20 Debtors shall execute, deliver, file, or record such contracts, instruments,
21 assignments, and other agreements or documents, and take or direct such actions as may be
22 necessary or appropriate to effectuate and further evidence the terms and conditions of the
23 Plan.

24 **13.13 Severability**

25 In the event any provision of the Plan is determined to be unenforceable, such
26 determination shall not limit or affect the enforceability and operative effect of any other

1 provisions of the Plan. To the extent any provision of the Plan would, by its inclusion in the
2 Plan, prevent or preclude the Bankruptcy Court from entering the Confirmation Order, the
3 Bankruptcy Court may, on the request of Debtors or the Committee, modify or amend such
4 provision, in whole or in part, as necessary to cure any defect or remove any impediment to
5 confirmation of the Plan existing by reason of such provision.

6 **13.14 Binding Effect**

7 The provisions of the Plan shall bind Debtors, Consolidated Debtors, all Creditors,
8 and all holders of Claims and Interests, and their respective successors, heirs, and assigns.

9 **13.15 Insurance**

10 Notwithstanding anything to the contrary in the Disclosure Statement, this Plan
11 (including, without limitation, Section 8.4, 10.1 or 10.2 hereof), the Plan Supplement, the
12 Confirmation Order, any bar date notice or claim objection, any other document related to
13 any of the foregoing or any other order of the Bankruptcy Court (including, without
14 limitation, any other provision or order that purports to be preemptory or supervening,
15 confers Bankruptcy Court jurisdiction, grants an injunction, discharge, or release, or requires
16 a party to opt out of any releases):

17 (a) nothing modifies or alters the terms and conditions of any Insurance
18 Contract or the coverage provided pursuant thereto, or the rights of any person or entity to
19 seek and obtain coverage under any insurance contract (including present and former officers
20 and directors of the Debtors); and all rights and obligations under the Insurance Contracts
21 shall be determined under the applicable Insurance Contracts and applicable non-bankruptcy
22 law;

23 (b) all obligations and liabilities of Debtors under the Insurance Contracts
24 shall survive unaltered, regardless of whether such obligations arise before or after the
25 Effective Date; and

26 (c) the automatic stay of Bankruptcy Code section 362(a) and the

1 injunctions set forth in the Plan shall be deemed lifted without further order of this Court,
2 solely to permit: (a) claimants with valid workers' compensation claims or direct action
3 claims to proceed with their claims; (b) the Insurers to administer, handle, defend, settle,
4 and/or pay, in the ordinary course of business and without further order of this Bankruptcy
5 Court, (i) workers' compensation claims, (ii) claims where a claimant asserts a direct claim
6 against any Insurer under applicable non-bankruptcy law, or an order has been entered by
7 this Court granting a claimant relief from the automatic stay or the injunctions set forth in
8 Article 10 of the Plan to proceed with its claim, and (iii) all costs in relation to each of the
9 foregoing; and (c) the Insurers to cancel any Insurance Contracts, and take other actions
10 relating to the Insurance Contracts (including setoff), to the extent permissible under
11 applicable non-bankruptcy law, and in accordance with the terms of the Insurance Contracts.

12 **13.16 Plan Controls**

13 In the event, and to the extent, that any provision of the Plan is inconsistent with the
14 provisions of the Disclosure Statement, or any other instrument or agreement contemplated
15 to be executed pursuant to the Plan, the provisions of the Plan shall control and take
16 precedence.

17 DATED: September 11, 2020.

18 NORTH PACIFIC CANNERS & PACKERS,
19 INC., HERMISTON FOODS, LLC, AND
NPCP QUINCY, LLC

20 By /s/ Winston Mar
21 Winston Mar, Chief Restructuring Officer

22 OFFICIAL COMMITTEE OF UNSECURED
23 CREDITORS OF NORTH PACIFIC
24 CANNERS & PACKERS, INC., HERMISTON
25 FOODS, LLC, AND NPCP QUINCY, LLC
26

1 Syngenta Seeds, LLC, solely in its capacity as
2 Committee Chairperson and not in its individual
3 capacity

4 By /s/ David Conaway
5 David Conaway, Counsel to Syngenta
6 Seeds, LLC

7 Presented by:

8 TONKON TORP LLP

9 By /s/ Albert N. Kennedy
10 Albert N. Kennedy, OSB NO. 821429
11 Attorneys for Debtors

12 LOWENSTEIN SANDLER LLP

13 By /s/ Bruce S. Nathan
14 Bruce S. Nathan, *Admitted Pro Hac Vice*
15 Attorneys for Official Committee of
16 Unsecured Creditors

17 LEONARD LAW GROUP LLC

18 By /s/ Timothy A. Solomon
19 Timothy A. Solomon, OSB No. 072573
20 Attorneys for Official Committee of
21 Unsecured Creditors

1
2 **EXHIBIT A – DEFINITIONS**

3 **Administrative Expense Claim** shall mean any Claim entitled to the priority
4 afforded by Sections 503(b) and 507(a)(2) of the Bankruptcy Code, including
5 Section 503(b)(9) Claims.

6 **Allowance Date** shall mean the date a Claim is Allowed.

7 **Allowed Claim** shall mean a Claim, proof of which has been properly filed or, if no
8 Proof of Claim was so filed, which was or hereafter is listed on the Schedules, as amended,
9 supplemented, and/or modified, as liquidated in an amount and not disputed or contingent,
10 and, in either case, a Claim as to which no objection to the allowance thereof, or motion to
11 estimate for purposes of allowance, shall have been filed on or before any applicable period
12 of limitation that may be fixed by the Bankruptcy Code, the Bankruptcy Rules, and/or the
13 Bankruptcy Court, or as to which any objection, or any motion to estimate for purposes of
14 allowance, shall have been so filed, to the extent agreed to by the Plan Agent, Debtors, or
15 allowed by a Final Order.

16 **Available Cash** at any particular time shall mean that amount of Cash held by or for
17 Debtors that the Plan Agent, in its sole discretion after consultation with the Committee,
18 determines is then available for distribution to holders of Allowed General Unsecured
19 Claims, after establishing such reserves as the Plan Agent deems necessary or appropriate.

20 **Bankruptcy Code** shall mean the Bankruptcy Reform Act of 1978, as amended from
21 time to time, set forth in Sections 101 et seq. of Title 11 of the United States Code.

22 **Bankruptcy Court** shall mean the United States Bankruptcy Court for the District of
23 Oregon, or such other court that exercises jurisdiction over the Chapter 11 Cases or any
24 proceeding therein, including the United States District Court for the District of Oregon, to
25 the extent the reference to the Chapter 11 Cases or any proceeding therein is withdrawn.
26

1 **Bankruptcy Rules** shall mean, collectively, the Federal Rules of Bankruptcy
2 Procedure, as amended and promulgated under Section 2075, Title 28, of the United States
3 Code, and the local rules and standing orders of the Bankruptcy Court.

4 **Business Day** shall mean a day other than a Saturday, Sunday, or other day on which
5 banks in Portland, Oregon are authorized or required by law to be closed.

6 **Cash** shall mean lawful currency of the United States of America.

7 **Chapter 11 Cases** shall mean the cases under Chapter 11 of the Bankruptcy Code
8 with respect to Debtors pending in the United States Bankruptcy Court for the District of
9 Oregon, jointly administered as *In re North Pacific Cannery & Packers, Inc., Hermiston*
10 *Foods, LLC, and NPCP Quincy, LLC*, Lead Case No. 19-62584-pcm11.

11 **Claim** shall mean (a) any right to payment from a Debtor arising before the Effective
12 Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed,
13 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or
14 unsecured; or (b) any right to an equitable remedy against a Debtor arising before the
15 Effective Date for breach of performance if such breach gives rise to a right of payment from
16 a Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed,
17 contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. “Claim” shall
18 exclude any claim or right to payment of the kind specified in Sections 726(a)(4) and (5) of
19 the Bankruptcy Code.

20 **Class** shall mean one of the classes of Claims defined in Article 5 hereof.

21 **Collateral** shall mean any property in which a Debtor has an interest that is subject to
22 a lien or security interest securing the payment of an Allowed Secured Claim.

23 **Committee** shall mean the Official Unsecured Creditors Committee appointed in the
24 jointly administered Chapter 11 cases of *In re North Pacific Cannery & Packers, Inc.,*
25 *Hermiston Foods, LLC, and NPCP Quincy, LLC*, Lead Case No. 19-62584-pcm11, by the
26

1 United States Trustee pursuant to Section 1102 of the Bankruptcy Code, as continued by the
2 Plan and reconstituted by the addition or removal of members from time to time.

3 **Confirmation Order** shall mean the order of the Bankruptcy Court confirming the
4 Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

5 **Consolidated Debtors** shall mean Debtors, as substantively consolidated on the
6 Effective Date, as further described in Section 8.4 of the Plan.

7 **Convenience Class Unsecured Claim** shall mean any General Unsecured Claim in
8 an amount equal to or less than \$10,000 (including Claims originally in excess of \$10,000
9 that have been reduced by the holder of such Claim to \$10,000 in order to be treated as a
10 Convenience Class Unsecured Claim).

11 **Creditor** shall mean any entity holding a Claim against a Debtor.

12 **Debtors** shall mean, collectively, North Pacific Cannery & Packers, Inc., Hermiston
13 Foods, LLC, and NPCP Quincy, LLC, as Debtors and Debtors-in-Possession in the
14 Chapter 11 Cases.

15 **Debtors' Estates** shall mean the estates of Debtors created upon the commencement
16 of the Chapter 11 Cases.

17 **Deficiency Claim** shall mean an Allowed Unsecured Claim held by a Creditor whose
18 Allowed Secured Claim has been satisfied in full due to payment, surrender of Collateral, or
19 some combination thereof, but such payment or surrender of Collateral is insufficient to
20 satisfy the Creditor's Claim in its entirety.

21 **Disclosure Statement** shall mean Debtors' and the Committee's Jointly Filed
22 Disclosure Statement, as amended, modified, restated, or supplemented from time to time,
23 pertaining to the Plan.

24 **Disputed** shall mean, with respect to any Claim, (a) listed on the Schedules as
25 unliquidated, disputed, or contingent; (b) as to which Debtors, the Plan Agent, or any other
26 party-in-interest, has interposed a timely objection or request for estimation in accordance

1 with the Bankruptcy Code and the Bankruptcy Rules; or (c) as otherwise disputed in
2 accordance with the applicable bankruptcy or insolvency law, which objection, request for
3 estimation, or dispute has not been withdrawn or determined by a Final Order.

4 **Distribution** shall mean a payment of Cash by Debtors under this Plan to a holder of
5 an Allowed Claim.

6 **Distribution Date** shall mean any date on which the Plan Agent, after consultation
7 with the Committee, makes a distribution to holders of Allowed Claims under the Plan

8 **Effective Date** shall mean the first Business Day after the Confirmation Order
9 becomes a Final Order.

10 **Filed** shall mean filed with the Bankruptcy Court in the Chapter 11 Cases or other
11 court of competent jurisdiction.

12 **Final Distribution Date** shall mean the date the Plan Agent, after consultation with
13 the Committee, determines, in its good faith discretion, that no further payments or
14 distributions are likely to be required by Debtors under this Plan

15 **Final Order** shall mean an order or judgment entered on the docket by the Clerk of
16 the Bankruptcy Court or any other court exercising jurisdiction over the subject matter and
17 the parties (a) that has not been reversed, stayed, modified, or amended; (b) as to which no
18 appeal, certiorari proceeding, reargument, or other review or rehearing has been requested or
19 is still pending; and (c) as to which the time for filing a notice of appeal, petition for
20 certiorari, or request for reargument or further review or rehearing shall have expired.

21 **General Unsecured Claim** shall mean a Claim that is not a Secured Claim, an
22 Administrative Expense Claim, a Priority Claim, or a Convenience Class Unsecured Claim.

23 **Insider** shall have the meaning ascribed to such term by Section 101(31) of the
24 Bankruptcy Code.

1 **Insurance Contracts** means all insurance policies that have been issued to or provide
2 coverage at any time to any of the Debtors or their predecessors, and all agreements,
3 documents, or instruments relating thereto.

4 **Insurer** means any company or other entity that issued or entered into an Insurance
5 Contract (including, for the avoidance of doubt, any third-party administrator), and any
6 respective predecessors, successors, and/or affiliates thereof.

7 **Interests** shall mean all rights of the Members of Debtors on account of their
8 cooperative membership interest in Debtors, and all owners of any issued and outstanding
9 shares of common stock or membership interests in Debtors.

10 **Member** shall mean all present and former cooperative members of Debtors or any of
11 them.

12 **Petition Date** shall mean August 22, 2019, the date on which each of the voluntary
13 petitions commencing the Chapter 11 Cases were Filed.

14 **Plan** shall mean this Joint Plan of Liquidation, as amended, modified, restated, or
15 supplemented from time to time.

16 **Plan Agent** shall mean SierraConstellation Partners, LLC, or such person or entity
17 serving from and after the Effective Date as Debtors' sole director and officer for purposes of
18 effectuating this Plan.

19 **Plan Supplement** shall mean the appendix of any schedules or exhibits that may be
20 Filed at least 10 days prior to the hearing to consider confirmation of the Plan.

21 **Preference Actions** shall mean any and all actual or potential avoidance, recovery, or
22 related claims that may be brought by or on behalf of Debtors or Debtors' Estates to avoid a
23 transfer of property or an obligation incurred by Debtors with respect to or concerning an
24 entity or person that is not an Insider pursuant to Sections 547 and 550 of the Bankruptcy
25 Code.

1 **Priority Claim** shall mean any Claim for an amount entitled to priority in right of
2 payment under Section 507(a)(3), (4), (5), (6) or (7) of the Bankruptcy Code.

3 **Pro Rata** shall mean the ratio of an Allowed Claim in a particular Class to the
4 aggregate principal amount of all Allowed Claims in that Class.

5 **Rejection Claim** shall mean a Claim arising from the rejection of an unexpired lease
6 or executory contract pursuant to the Plan or a Final Order of the Bankruptcy Court.

7 **Released Parties** shall mean each of the following: (a) SierraConstellation Partners,
8 LLC; (b) Alvarez & Marsal North America, LLC (c) counsel to Debtors; (d) counsel to
9 Committee; (e) individual Committee members; (f) individual Growers Committee members,
10 *provided that* this release expressly does not include claims that the Debtors or their estates
11 may have against a Member that serves or served as the Debtors' present or former officers
12 or directors *only* for alleged actions or omissions undertaken *solely* in their capacity as an
13 officer or director, it being understood that all such claims are expressly preserved by the
14 Debtors' estates; (g) counsel to the Growers Committee; (h) FTI Consulting, Inc.; and
15 (i) with respect to each of the foregoing Entities in clauses (a) through (h), such entity's
16 current and former affiliates and such entity's and such affiliates' current and former
17 directors, managers, officers, chief restructuring officers, and equity holders. Preference
18 Actions are expressly released by Debtors and Debtors' Estates.

19 **Rights of Action** shall mean, except for Preference Actions (which are expressly
20 excluded) (a) any adversary proceedings pending as of the Effective Date; (b) any claims or
21 causes of action identified in the Plan Supplement; and (c) any other claims, demands,
22 rights, actions, causes of suits, and suits of Debtors' Estates, of any kind or character,
23 including rights of setoff, counterclaim, or recoupment, that the Plan Agent, after
24 consultation with the Committee, determines should be asserted in the best interests of the
25 Debtors' Estates.

1 **Schedules** shall mean the Schedules of Assets and Liabilities and the Statement of
2 Financial Affairs filed by Debtors pursuant to Section 521 of the Bankruptcy Code, as
3 amended, modified, restated, or supplemented from time to time.

4 **Section 503(b)(9) Claim** shall mean any Claim entitled to the priority afforded by
5 Section 503(b)(9) of the Bankruptcy Code.

6 **Secured Claim** shall mean a Claim that is secured by a lien, security interest, or other
7 charge against, or interest in, property in which Debtors have an interest or that is subject to
8 setoff under Section 553 of the Bankruptcy Code, to the extent of the value (as set forth in
9 the Plan or, if no value is specified, as determined in accordance with Section 506(a) of the
10 Bankruptcy Code or, if applicable, Section 1111(b) of the Bankruptcy Code) of the interest of
11 the holder of such Claim in Debtors' interest in such property or to the extent of the amount
12 subject to setoff, as the case may be.

13 **Unclaimed Distribution Deadline** shall mean three months from the date the Plan
14 Agent makes a distribution.

15 **Unclaimed Distribution** shall mean a distribution that is not claimed by a holder of
16 an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

17 **Utility Deposits** shall mean deposits with utilities made by a Debtor after the Petition
18 Date pursuant to Section 366(b) of the Bankruptcy Code.

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EXHIBIT 2
Schedule of Class 5
Member Claims

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Exhibit 2 – Class 5 Member Claims

Because all other Allowed Claims will not be paid in full, holders of Allowed Class 5 Claims will not receive any payment or Distribution on account of such Claim, are deemed to have rejected the Plan, and are not entitled to vote to accept or reject the Plan. Below is a list of filed Claims Debtors believe are Class 5 Member Claims that will be subordinate to all other Claims and will receive no payment or Distribution on account of such Claim. The below list is non-exhaustive, as the Plan will treat all Claims, filed and not filed, of Members on account of their Member status as subordinated.

Claim No.	PDF	Creditor Name	Liquidated Amount
98	PDF	Setniker, Scott	\$182,314.14
99	PDF	David Setniker	\$598,024.76
214	PDF	Jacob Kenagy	\$7,717.15
215	PDF	Kenagy Farms LTD	\$214,057.76
240	PDF	Anthony Schumacher	\$6,796.75
241	PDF	Brian and Stephanie Schumacher	\$220,121.94
242	PDF	Thomas J and Rita M Schumacher	\$336,573.25
269	PDF	Kathy Hendricks	\$26,927.68
287	PDF	Carol Hendricks #2293	\$26,927.65
294	PDF	Grover Living Trust	\$78,203.36
296	PDF	Dee Carter Farms Inc.	\$36,654.28
312	PDF	Stowell LLC	\$230,082.22
316	PDF	Deanna Dyksterhuis Living Trust	\$83,278.83
318	PDF	Jim Antrim	\$93,609.52
323	PDF	Judy Helmke	\$1,649.99
349	PDF	Kelly Dowd	\$15,364.11
357	PDF	Susan Boshart	\$8,359.12
361	PDF	KEITH AND EVLYN ZIELINSKI	\$651,420.00
363	PDF	Mullen Farms, Inc.	\$132,568.96

Exhibit 2 – Class 5 Member Claims

364	PDF	Mullen Acres, Inc.	\$130,062.51
365	PDF	The Hollin Living Trust	\$42,488.26
372	PDF	KG Farms Inc.	\$193,068.80
378	PDF	Gilbert & Son, Inc.	\$426,784.24
380	PDF	TOM FERY FARM INC.	\$118,169.27
383	PDF	Leroy Etzel	\$1,650.00
384	PDF	Larry Etzel	\$1,649.96
385	PDF	Etzel Family Trust	\$1,650.01
387	PDF	Eric Shumaker	\$4,451.65
388	PDF	Duane Ditchen	\$4,248.17
391	PDF	Joseph Fery	\$148,825.31
409	PDF	Shirley Martin	\$8,359.12
414	PDF	Ken Kaemer	\$1,067,927.13
418	PDF	Karl Stafford	\$29,621.03
419	PDF	Estate of Daniel Kraemer	\$1,534,398.98
429	PDF	Ray Stafford	\$397,460.82
433	PDF	Ron Sacchi, Tamra Sacchi	\$103,293.68
444	PDF	Blake F and Dawn Gilmour	\$68,117.73
446	PDF	Richard P Koenig	\$11,253.61
447	PDF	Dennis Koenig	\$22,526.04
451	PDF	Phyllis Hendricks	\$0.00
452	PDF	Janice Lais	\$8,359.13
454	PDF	Heuberger Farms Inc.	\$22,533.66
460	PDF	Richard Koenig & Diane Koenig	\$4,799.46

Exhibit 2 – Class 5 Member Claims

464	PDF	Robert J or Diana Koenig	\$183,768.65
465	PDF	Beverly Parscale	\$1,649.98
467	PDF	Landrith Farms Inc	\$136,445.49
469	PDF	Grenz Farms Inc	\$206,864.83
471	PDF	MICHAEL B. FORDYCE	\$423,516.10
477	PDF	Malpass Farms LLC	\$554,413.62
490	PDF	Bluegrass Farms, Inc.	\$285,092.56
509	PDF	Eileen Springer	\$8,359.12
516	PDF	Stockhoff Farms Inc.	\$114,255.35
522	PDF	Jason Whitehead	\$93,712.59
523	PDF	David and Suzanne Whitehead Revocable Living Trust	\$78,202.96
524	PDF	PEAKS VIEW FARM INC.	\$364,014.62
543	PDF	Geschwill, William	\$243,832.50
548	PDF	Roger and Carol Hildebrandt	\$263,430.10
550	PDF	Leonard Schurter	\$26,050.91
551	PDF	Leonard Schurter	\$0.00
554	PDF	GERALD P ETZEL	\$105,342.10
563	PDF	Carol Kauffman	\$8,359.12
568	PDF	Raymond Bartosz	\$239,770.02
576	PDF	Eric Etzel	\$20,889.50
577	PDF	Tim and Betty Bielenberg	\$44,116.89
578	PDF	Peter Etzel	\$15,847.65
579	PDF	Etzel Hill Farms Inc	\$334,358.95
580	PDF	MIKE BIELENBERG	\$176,558.77

Exhibit 2 – Class 5 Member Claims

601	PDF	Richard and Dorothy Schumacher	\$4,186.21
626	PDF	Peter A and Norma J Etzel Living Trust	\$59,172.57
650	PDF	Julie Lulay	\$4,333.72
657	PDF	Patricia E Vogel	\$8,695.64
673	PDF	Terry Shumaker	\$21,803.09
683	PDF	Leroy and Eileen Fery	\$35,744.77
705	PDF	Michael G Or Denise L Powell	\$74,892.79
723	PDF	Pam G or William J Schueller	\$0.00
730	PDF	Andy J Fery	\$52,185.30
736	PDF	A and R Farms, Inc.	\$311,926.50
744	PDF	Peter Gerald Etzel Farm	\$15,847.65
751	PDF	George and Marlene Meyer	\$112,147.20
773	PDF	Robert L Stockhoff	\$13,000.00
775	PDF	Sharon Moyer	\$8,359.12
782	PDF	Marie Zielinski Estate, Glenda Anderson Trustee	\$43,807.62
941	PDF	Sherri Marie Kjostad	\$9,512.03
945	PDF	Mary Gomez	\$9,512.04
946	PDF	Connie Jo Stocker	\$9,512.03
947	PDF	Rebecca Kay Fery	\$9,512.04
953	PDF	Robert L. Stockhoff	\$0.00
1018*	PDF	Tim and Betty Bielenberg	\$86,081.89 ¹
1039	PDF	Patricia E. Vogel	\$7,000.00
1053	PDF	Anthony Schumacher	\$6,796.75

¹ [foot note re Claim 1018]

Exhibit 2 – Class 5 Member Claims

1054	PDF	Brian & Stephanie Schumacher	\$220,121.94
1055	PDF	Thomas J. & Rita M. Schumacher	\$336,573.25

*Proof of Claim No. 1018 includes a Class 4 General Unsecured Claim in the amount of \$41,965.00 for lease-rejection damages that does not appear to be on account of the holder's status as a Member. Therefore, that portion of Claim No. 1018 is not a Class 5 Member Claim and will not be subordinated.

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