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May 1, 2019

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket UM 1818 – Columbia Basin Electric Cooperative, Inc. v. Umatilla Basin Electric Cooperative, Inc.

Dear Filing Center:

Attached for filing in the above-captioned docket is Columbia Basin Electric Cooperative's Supplemental Brief.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

In the Matter of the Complaint of)	
)	
COLUMBIA BASIN ELECTRIC)	SUPPLEMENTAL BRIEF OF
COOPERATIVE, INC.)	COLUMBIA BASIN ELECTRIC
)	COOPERATIVE, INC.
v.)	
)	
UMATILLA ELECTRIC COOPERATIVE, INC.)	

Pursuant to the ruling in this docket issued on April 10, 2019, (the “Ruling”) Columbia Basin Electric Cooperative, Inc. (“Columbia Basin”) submits this Supplemental Brief to the Public Utility Commission of Oregon (“Commission”).

I. INTRODUCTION

After the parties to this proceeding submitted final briefs to the Commission on December 22, 2017, the te Velde party in this proceeding (the “Willow Creek Dairy”) filed for bankruptcy on April 26, 2018. The Willow Creek Dairy property includes six irrigation circles that both Columbia Basin Electric Cooperative (“Columbia Basin”) and Umatilla Electric Cooperative (“Umatilla”) contend they have the exclusive right to serve pursuant to ORS 758.450.

The Ruling declares there is good cause to take judicial notice of the te Velde bankruptcy matter and invites the parties to submit supplemental briefing to discuss the facts officially noticed and to provide legal arguments to aide in the Commission’s review of issues.

The Commission should find for Columbia Basin in this case. None of the parties dispute the fact that the six irrigation circles¹ at the heart of this matter are located entirely within Columbia Basin's service territory. None of the parties dispute that Columbia Basin previously provided electric service to the property where the six pivot irrigation circles are located or that Columbia Basin still has electric service facilities available and ready to serve those circles. Also, none of the parties dispute the fact that Willow Creek Dairy installed electric lines from the six irrigation circles to Umatilla's electric facilities located in Umatilla's service territory. Moreover, the record of this case and in the bankruptcy docket evidences that the Willow Creek Dairy encompasses a variety of separate loads and that its future operations are uncertain and speculative.

The only way that the Commission can find that Umatilla may provide electric service to the six pivot irrigation circles in Columbia Basin's service territory is by:

- (1) determining that the Commission has the authority to adopt and use the geographic load center test or point of delivery test without violating ORS 758.450; and
- (2) deciding that an electric customer may, as a matter of law and policy, build facilities into a neighboring service territory to reach the electric service provider of its choice (i.e., applying the point of delivery test); or
- (3) finding that all the various loads of the Willow Creek Dairy property are a single unified load that Umatilla is entitled to serve (i.e., applying the geographic load center test).

As explained in Columbia Basin's earlier briefing and in this Supplemental Brief, the Commission should decline to take the above steps.

¹ Currently six irrigation circles are located in Columbia Basin's territory. There is an additional parcel of land, however, that is leased to the Boardman Tree Farm located adjacent to the six irrigation circles, which could be developed into a seventh irrigation circle in Columbia Basin's service territory.

First, as Columbia Basin argued in its initial briefing, ORS 758.450 does not grant the Commission the discretion to adopt either the point of delivery or the geographic load center test. The plain language in ORS 758.450 prohibits any person from providing utility service in or into the allocated territory of a utility.² Therefore, the Commission must strictly apply the prohibitions in ORS 758.450, which would give Columbia Basin the exclusive right to serve the electric load of the six irrigation circles.

Second, Columbia Basin's earlier briefing explained that the Commission already determined in Order No. 15-110 that the term "utility service" does not stop at the point of delivery.³ Rather, a utility's service to a customer's load located in an adjoining utility's service territory via the customer's extension of electric lines is a violation of ORS 758.450.⁴ The Commission also determined in Order No. 15-110 that the point of delivery or point of service test is contrary to the purpose of ORS 758.450 and renders meaningless the territory allocation law.⁵

Third, if the Commission nevertheless decides to use the geographic load test, Columbia Basin's earlier briefing argued that all the various electric loads that Umatilla serves on the Willow Creek Dairy property are not one unified load. Umatilla's service records show that Umatilla services a host of different irrigation, industrial and commercial loads. And at least two—maybe three—legally separate entities (the Willow Creek Dairy, the Boardman Tree Farm and Sage Hollow Ranch) conduct independent operations on the Willow Creek Dairy property. The number and diversity of the loads, and the presence of two or three different operators, clearly demonstrates that all the loads on the Willow Creek Dairy property are not a single, unified electric load. Moreover, the proposed future operations of the Willow Creek Dairy have

² There are limited exceptions to this prohibition, which are not applicable here.

³ *In the Matter of Columbia Basin Elec. Coop., Inc. v. PacifiCorp*, Docket No. UM 1670, Order No. 15-110 at 7 (Apr. 10, 2015).

⁴ Order No. 15-110 at 7. "We reject the basis of PacifiCorp's assertion – that all 'utility service' occurs at the point of delivery. Such a premise, if adopted, would effectively render meaningless all allocated service territories, as a customer could choose its own utility service provider simply by constructing its own transmission line to an adjoining service territory."

⁵ *Id.*

been and continue to be too speculative to find that the electric use on the property represents a unified load.

II. FACTUAL BACKGROUND

Columbia Basin noted in its prior briefing that in 2017, Willow Creek Dairy was just beginning operations and planned to develop the Willow Creek Dairy property over the next eight to ten years.⁶ The Willow Creek Dairy purchased the approximately 7300 acres of property in 2015 from the Boardman Tree Farm, which leased back approximately 3073 acres of that Willow Creek Dairy property.⁷ Pursuant to the lease agreement, the Boardman Tree Farm would continue to lease and use its portion of the property to grow and harvest trees independent of Willow Creek Dairy operations until 2026. The amount of land leased by the Boardman Tree Farm would incrementally decrease each year as the Boardman Tree Farm harvested its trees from the property.⁸

On the remaining acres, Willow Creek Dairy planned to operate a dairy with approximately 30,000 cows, which would produce an enormous amount of waste.⁹ The Dairy obtained a Confined Animal Feeding Operation permit (“CAFO Permit”) from the Oregon Department of Agriculture (“ODA”).¹⁰ The CAFO Permit required the Dairy to collect all the liquid waste in settling lagoons and pump the effluent out to the fields through the pivot irrigation circles.¹¹ It was anticipated that the liquid waste would fertilize the crops, which would feed the cows. One logistical challenge with this system is that it required significant

⁶ Umatilla confirmed that the Willow Creek Dairy was under development and would be completed according to the schedule set forth in the Agricultural Lease between Willow Creek Dairy and the Boardman Tree Farm. Umatilla Elec. Coop.’s Response to Columbia Basin Elec. Coop.’s Opening Brief, at 3 (Dec. 8, 2017) (“Umatilla’s Response Brief”).

⁷ *In re te Velde*, No. 18-11651, Motion for Order Authorizing Compromise of Controversy with Boardman Tree Farm, LLC at 3 (Bankr ED Cal, Feb. 5, 2019) (provided as Exhibit 1) (“Motion for Order Authorizing Compromise”).

⁸ *Id.* at 3.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3

irrigation water to function, but the Willow Creek Dairy property only had irrigation rights between April and October of each year.¹²

The Willow Creek Dairy initially intended to receive its irrigation water from the Columbia Improvement District (“CID”), which distributed water collected from the Columbia River.¹³ The Willow Creek Dairy installed an extensive irrigation system to receive water on the northern edge of its property from the CID canals to pump the Columbia River water to its fields via the pivot irrigation circles.¹⁴

However, given that the CID water was only available from April until October and inadequate for the distribution of dairy wastes year around, the Willow Creek Dairy entered into water right transfer agreements with Sage Hollow Ranch, LLC, (“Sage Hollow”) on or about January 7, 2016.¹⁵ Sage Hollow is located in vicinity of the Willow Creek Dairy and had ground water rights, which could be used for a year-round water supply.¹⁶ Thus, the purpose of the original water right transfer agreement between Sage Hollow and the Willow Creek Dairy was to provide for the exchange of Sage Hollow’s ground water rights for Willow Creek Dairy’s Columbia River surface water rights held by the CID and delivered to the Willow Creek Dairy under the CID Water Delivery Contract.¹⁷ Sage Hollow and Willow Creek Dairy also entered into an Irrigation Canal Diversion Agreement that extended until December 31, 2017, “for the construction of diversion structure on the CID canal and connecting pipeline to deliver te Velde CID water under the Water Delivery Contract to Sage Hollow lands.”¹⁸ Pursuant to these agreements and other amendments, Willow Creek Dairy and Sage Hollow Farms exchanged

¹² *Id.* at 3.

¹³ *Id.* at 3.

¹⁴ WCD/100, Aylett/3-4.

¹⁵ *In re te Velde*, No. 18-11651, Concurrence of Sage Hollow Ranch, LLC Re: Chapter 11 Trustee’s Motion to Assume and Assign Executory Water Delivery Contracts, at 3 (Bankr ED Cal, Jan. 30, 2019) (Provided as Exhibit 2) (“Sage Hollow Concurrence”).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3.

surface water rights and ground water rights, respectively, during the 2017 and 2018 growing seasons.¹⁹

The Sage Hollow manager's Declaration filed in the bankruptcy docket further explains the exchange that occurred during 2017 and 2018:

Meanwhile, Sage Hollow benefits from being able to use Columbia River surface water rights provided by CID, primarily because higher flow volumes under those water rights allow us to apply more water during periods of extreme heat or when otherwise helpful to maximize crop growth and return on investment. Finally, the experience of the past two years (when Sage Hollow has used CID surface water under temporary transfer arrangements) has confirmed that delivery of water to Sage Hollow via our newly-installed CID canal diversion structure and pipeline has lowered our overall costs and enhanced reliability of water supply to our farm.²⁰

In contrast, Willow Creek Dairy's manager testified in this proceeding in September 2017 that Willow Creek Dairy received its water from the CID canal and pumped that water to the Willow Creek Dairy property in a highly coordinated and integrated manner. His testimony provided:

The dairy's electrical use starts at the irrigation canal where we take water from the irrigation district. The dairy owns multiple pumps on the canal for that purpose. The pumps are all located in UEC's area and require a large amount of electric power to operate. They are also a critical piece of the dairy operation because we have to coordinate our water outtake with the irrigation district and

¹⁹ *Id.* at 4 "Additionally, and as an interim measure, the Amendment allowed temporary use by Sage Hollow of te Velde/CID surface water rights and temporary use by te Velde of groundwater otherwise available to Sage Hollow under its groundwater rights during the 2017 and 2018 irrigation seasons, subject to OWRD's acceptance of CID temporary, intra-district transfer petitions and other requirements. Fortunately, Sage Hollow and te Veld were able to use surface and groundwater supplies, respectively, at their Boardman, Oregon facilities on a temporary basis during the past two years."

²⁰ *In re te Velde*, No. 18-11651, Declaration of Brian Bosma in Support of Concurrence of Sage Hollow Ranch, LLC Re: Chapter II Trustee's Motion to Assume and Assign Executory Water Delivery Contracts, at 3 (Bankr ED Cal, Jan. 30, 2019) (Provided as Exhibit 3) ("Bosma Declaration").

must be able to take all of the water we agree to take during the period of time that we agree to take it. This coordination happens on a daily basis.

After the water is pumped from the canal, it flows through the pen stock – the main water pipes – toward the various places the water will be used. Along the way, we have different facilities that also require electric service. For example, there are booster pumps needed to carry the water longer distances. There are also variable frequency drives (“VFD”) that help us maintain the pressure levels in the pen stock. All of the booster pumps and VFDs are also located in UEC’s area.

After the water leaves the final booster pump, there is no additional electric service required to move the water. However, there is still a need for power at the irrigation pivot. We use electric motors to drive the wheels around the center pivot.²¹

Umatilla’s engineer also testified that the vast majority of the Willow Creek Dairy load is associated with the pumping of water from the CID canal.²²

The Willow Creek Dairy is now in bankruptcy. The Willow Creek Dairy owner, te Velde, filed for bankruptcy on April 26, 2018, in part due to Willow Creek Dairy’s failure to comply with its CAFO Permit. The Oregon Department of Agriculture and Department of Environmental Quality proposed to revoke the CAFO Permit on June 27, 2018, but later suspended that revocation. The bankruptcy court appointed a trustee for the te Velde estate (“Trustee”) on September 19, 2018.

As revealed through various filings in the bankruptcy docket, the environmental problems with the Willow Creek Dairy stem, in part, from the Dairy’s inability to remove or process the vast amount of waste produced by the dairy herd. The original plan was for the Willow Creek Dairy to pump out and apply the dairy waste to the irrigated fields.²³ Although the Willow Creek Dairy property was approximately 7300 acres, the Boardman Tree Farm leased

²¹ WCD/100, Aylett/4.

²² UEC/100, Lankford/3 (“[T]he vast majority of the load associated with the irrigation facilities is associated with the pumping of water from the irrigation canal, which is located in UEC’s service territory.”).

²³ Exhibit 1, Motion for Order Authorizing Compromise at 3.

approximately 3,000 acres, which limited the amount of irrigated land the Willow Creek Dairy could use to apply the liquid dairy waste.²⁴ The Willow Creek Dairy had had insufficient water rights to adequately remove the dairy wastes to the storage lagoons, and then apply those wastes to the irrigated crops.²⁵ The Willow Creek Dairy began to violate the conditions of its CAFO Permit soon after it began operations.²⁶ By the time the Trustee assumed responsibility for the te Velde estate in September 2018, the Willow Creek Dairy had over 30 million gallons of unprocessed dairy waste.²⁷

The Trustee discovered that, with the Boardman Tree Farm’s use of the Willow Creek Dairy property, the Dairy had insufficient irrigated land to apply the dairy waste at rates allowed by the Oregon Department of Agriculture and the Oregon Department of Environmental Quality via the irrigation/waste application system.²⁸

Due to the environmental problems, the Trustee determined he needed to sell the property “as is,” terminate the lease with the Boardman Tree Farm, accelerate the removal of the trees to develop more irrigated land, and obtain a purchaser who would (i) remove stumps from the cleared land, (ii) install new irrigation/waste distribution systems and (iii) permit the Trustee to “land apply” the 30 million gallons of dairy waste to the Willow Creek Dairy fields.²⁹

To implement this plan, the Trustee entered into an Order and Mutual Agreement around January 16, 2019, (“OMA”) with the Oregon Department of Agriculture (“ODA”).³⁰ The OMA states that the Trustee has no intention of continuing the operation of the Dairy. Instead the Trustee intends to sell the dairy herd, wind down dairy operations, and sell the farm.³¹ Pursuant

²⁴ *Id.* at 4.

²⁵ *Id.* at 3.

²⁶ *Id.* at 4.

²⁷ *Id.* at 4

²⁸ *Id.* at 4

²⁹ *Id.* at 4-5.

³⁰ *In re te Velde*, No. 18-11651, Exhibit to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Compromise of Controversy with Oregon Department of Agriculture, Order and Mutual Agreement with the Oregon Department of Agriculture (Bankr ED Cal, Jan. 22, 2019) (Provided as Exhibit 4).

³¹ *Id.* at 2.

to the OMA, the ODA issued a new clean up permit. The OMA obligates the Trustee to sell the Dairy's cows by April 15, 2019. If the new owner will not (or cannot) apply for a new CAFO Permit by October 1, 2019, the Trustee must decommission the dairy.³²

The Trustee entered into an Asset Purchase Agreement (“APA”) with Canyon Farm, LLC around January 2019.³³ The APA provides, among numerous other obligations, that the Trustee would use reasonable efforts to remove all of the trees and equipment owned by the Boardman Tree Farm and Trustee and buyer committed to obtain a wind-down plan agreement between the Trustee and the ODA³⁴ and to develop Post-Closing Agreements that allocate the obligations of the parties regarding the wind-down plan and CAFO Permit.³⁵

The Trustee entered into a Settlement Agreement and Mutual Releases, dated January 30, 2019, with the Boardman Tree Farm to terminate the Boardman Tree Farm's lease of approximately 3,097 acres on the Willow Creek Dairy property, and to accelerate the removal of trees from the leased properties.³⁶ The Trustee also obtained the Boardman Tree Farm's water rights, which were used for irrigating the trees on the Willow Creek Dairy property.

The Trustee negotiated a “Second Amendment of Irrigation Canal Diversion Agreement” with Sage Hollow to continue the CID water transfer from Willow Creek Dairy in exchange for Sage Hollow's ground water from basalt wells during the 2019 irrigation season.³⁷ Additionally, bankruptcy documents claim that the future “completion of the water right exchanges and administrative transfer applications under the Water Right Transfer Agreement is critical to the future success and profitability of both the Sage Hollow and Lost Valley Farm [Willow Creek

³² *Id.* at 4.

³³ *In re te Velde*, No. 18-11651, Exhibit to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Sale of Real and Personal Property Free and Clear of Liens and Interests, Asset Purchase Agreement with Canyon Farm, LLC (Bankr ED Cal, Jan. 9, 2019) (Provided as Exhibit 5).

³⁴ *Id.* at 19.

³⁵ *Id.* at 25.

³⁶ *In re te Velde*, No. 18-11651, Exhibit to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Compromise of Controversy with Boardman Tree Farm, LLC, Settlement Agreement and Mutual Releases (Bankr ED Cal, Feb. 5, 2019) (Provided as Exhibit 6).

³⁷ Exhibit 2, Sage Hollow Concurrence at 4.

Dairy] operations in Boardman, Oregon.”³⁸ In the future, Willow Creek Dairy must rely on the ground water supply, which is available for twelve months per year, instead of the CID water supply that is only available during the summer months, because the Willow Creek Dairy needs water year-round to distribute the liquid waste to the fields.

The Trustee entered into a Post-Closing Agreement with the buyer, Canyon Farm, LLC (“Canyon Farm”) and its property operator, Easterday Farms Dairy, LLC (“Easterday Farms”), which became effective on or about March 1, 2019.³⁹ The Post-Closing Agreement sets forth how those three parties intend to clean up and operate the Willow Creek Dairy property during 2019 and the steps that will be taken in the event the parties are unsuccessful in the cleanup. The Post-Closing Agreement shows that current ownership of the Willow Creek Dairy property and its future development is even more uncertain and the electric load arrangements are even more complex than under te Velde’s earlier ownership.

First, the Post-Closing Agreement states that three different legal entities will work together regarding the operation of the Willow Creek Dairy property. The Post-Closing Agreement is very clear, however, each entity is an independent party and no partnership is created by the arrangements. For instance, the parties’ liability is several, not joint, each party indemnifies the other,⁴⁰ and each party may seek damages against the others for breach, including a \$5,000,000 liquidated damage provision.⁴¹ The fact that each party’s rights and obligations are set forth in a contract, instead of an operation plan, punctuates the fact the parties are separate legal entities operating at arms-length (i.e., not unified).

Second, the Post-Closing Agreement shows an elaborate allocation of obligations and rights concerning the operation of the Willow Creek Dairy property. The Trustee is responsible

³⁸ *Id.* at 5.

³⁹ *In re te Velde*, No. 18-11651, Exhibit to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Compromise of Controversy with Oregon Department of Agriculture, Post Closing Agreement and License (Bankr ED Cal, Jan. 22, 2019) (Provided as Exhibit 7) (“Post Closing Agreement”).

⁴⁰ *Id.* at 12.

⁴¹ *Id.* at 15.

for dealing with the ODA and for complying with the current CAFO Permit, the liquidation of the dairy herd, and clean-up and removal of the current wastes.⁴² The Trustee must pay all costs related to the waste applications to the irrigated fields, including payment of all repairs, maintenance and labor associated with the application of wastes through the irrigation/waste distribution system.⁴³ The Trustee has access rights to the property to fulfill his obligations under the new CAFO Permit, but the Trustee hold no property ownership rights except a license to access the property to conduct the clean-up.⁴⁴

Canyon Farm will own the Willow Creek Dairy property and will pay approximately \$10,000,000 for the removal of the stumps and the installation of new irrigation equipment and nutrient lines for the land application of the dairy waste to the cleared land.⁴⁵ Canyon Farm will also be responsible for the cost of any additional pumping equipment necessary for the Trustee's clean-up operations, including irrigation/black water infrastructure necessary to pump nutrient water through the center irrigation pivots.⁴⁶

Easterday Farms will lease all or a portion of the Willow Creek Dairy property pursuant to a separate lease.⁴⁷ Easterday Farms is responsible for maintenance and repair of all dairy equipment and the irrigation system and will pay for all maintenance and repairs.⁴⁸

Easterday Farms and Canyon Farm will make all nutrient water applications as directed by the Trustee and pursuant to the Permits, except that all nutrient application costs, repairs, rolling stock fuel, maintenance and labor, "but not including utilities and water shall be allocated to Trustee and Easterday Farms, not Canyon Farm."⁴⁹

⁴² *Id.* at 7-8.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 5-6

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 11.

Easterday Farm and Canyon Farm are also responsible for implementing the 2019 crop plan but may also carry out any other farming activities as long as they do not interfere with the Trustee's clean-up responsibilities under the CAFO Permits.⁵⁰

Third, in regard to electric service, the three parties will share in the electricity supply arrangements. The Trustee is responsible for paying all electricity costs until April 1, 2019.⁵¹ The Post-Closing Agreement provides that after April 1, 2019, the parties will obtain and pay for utilities as follows:

Utilities. Unless otherwise expressly set forth in this Agreement to the contrary, Easterday shall, at its own expense, pay for all the utilities furnished to the Lost Valley Farm [Willow Creek Dairy] during the Term, including: irrigation water, electricity, worker sanitation, and security services. Canyon Farm agrees and covenants that sufficient quantities of irrigation water and electricity will be made available at its expense to facilitate the Trustee's compliance with the Permit Documents. Notwithstanding the foregoing, The [sic] Trustee will be responsible, at its sole expense, for supplying Lost Valley Farm with the necessary quantity of potable or industrial water to the Production Area to comply with the Trustee's obligations under Section III.1.b. above and to provide drinking water to the Trustee's employees during the term of this Agreement.⁵²

Pursuant to the Ruling in this proceeding, UM 1818, dated February 28, 2019, Umatilla filed a notice on March 7, 2019, stating that service accounts concerning service to the Willow Creek Dairy property should be transferred to Easterday Farms. Umatilla further stated, “[b]eyond what has been made publicly available, UEC has no information about the new owner's plans for the property, including the area located in CBEC's service territory.”⁵³

⁵⁰ *Id.* at 10-11.

⁵¹ *Id.* at 8.

⁵² Exhibit 7, Post Closing Agreement at 10.

⁵³ Umatilla's Notice of Contact from Buyer of Willow Creek Dairy (March 7, 2019).

III. ARGUMENT

A. **Umatilla Electric's Utility Service to the Six Irrigation Circles in Columbia Basin's Exclusive Service Territory Violates ORS 758.450(2).**

ORS 758.450(2) provides that no person shall offer, construct or extend utility service in or into an allocated territory.⁵⁴ ORS 758.400(3) defines the term “utility service” as “service provided by any equipment, plant or facility for the distribution of electricity to users . . . through a connected and interrelated distribution system.” As discussed in depth in Columbia Basin’s prior briefing, nothing in ORS 758.450 expressly or implicitly grants the Commission the discretion to unilaterally revise the service territory boundaries after they have been established and authorized by the Commission.

B. **The Commission Already Rejected the Point of Service Test as a Matter of Law and Policy.**

Willow Creek Dairy constructed electric facilities from the irrigation circles in Columbia Basin’s territory into Umatilla’s service territory to receive service from Umatilla. OPUC Staff has argued that Umatilla is not violating ORS 758.450(2) because Umatilla did not construct the facilities and it is only providing service in its own service territory. However, in Order No. 15-110, the Commission expressly rejected the argument that “utility service” terminates at the point of delivery (here, the point of delivery is now in Umatilla’s service territory) and held that adoption of that point of service test would render meaningless all associated service territories.⁵⁵ The Commission should similarly reject Willow Creek Dairy’s efforts to circumvent ORS 758.450(2) in this case. To do otherwise could significantly undermine the service territory statute and open a large loophole for other customers seeking to choose their service providers by building to connect with facilities in the chosen provider’s territory.

⁵⁴ ORS 758.450(2) “Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.” The exceptions set forth in subsection (4) do not apply here.

⁵⁵ Order No. 15-110 at 7.

C. The Geographic Load Center Test Does Not Provide a Defense to Umatilla's Violation of ORS 758.450(2).

If the Commission determines it has the statutory authority to apply the geographic load center test, the test still does not provide defense for Umatilla's violation of Columbia Basin's service territory under the present circumstances.

In Order No. 15-110, the Commission explained:

The geographic load center test is defined as a theoretical point determined by giving consideration to the location of the *permanent* electric loads which have been or *which will be installed within a reasonable time as part of existing plans*. In effect, this test permits the utility which serves a majority of a customer's load to serve the entire load, regardless of the territory boundaries of a service area.⁵⁶

Order No. 15-110 shows that the Commission only looked to one factor to determine the geographic location of the majority of the load—the existing permanent loads and those additional loads that would be installed within a reasonable time under an existing plan. In Order No. 15-110, the Commission analyzed the location of the wind turbines and collector substation relative to the service boundary and concluded:

The record indicates that a majority of the Shepherds Flat Central turbines and the collector substations are in PacifiCorp's territory. We determine that this constitutes a majority of the load, and thus find that PacifiCorp may serve all of Shepherds Flat Central.

The Commission recognized that, although the wind generation facility consisted of numerous wind turbines, the facility's load was primarily used for only one uniform purpose—to provide station service collectively to all turbines when the turbines were not generating power.

Contrary to Umatilla's and the OPUC Staff's arguments, the Commission did not look to other factors in deciding that case, such as property ownership, the ownership of non-electrical

⁵⁶ Order No. 15-110 at 7, citing *Public Service Co. v. Pub. Utilities Comm'n of Colorado*, 765 P.2d 1015, 1020 (1988).

facilities and maintenance equipment, unified management of facilities, permits, etc.⁵⁷ Umatilla misapplies the Commission’s reasoning. The Commission used the other factors cited to determine if the Shepherds Flat Wind Complex was one or three different “customers.”⁵⁸ The Commission then made its determination on the load issue using the sole criteria of the location of the loads.

The OPUC Staff also erroneously argued that there is no precedent for dividing an individual property owner’s interest for purposes of the geographic load test. However, the case that the Commission primarily relied upon in Order No. 15-110 as the basis for applying the geographic load test, *Public Service Co. v. Pub. Utilities Comm’n of Colorado*,⁵⁹ concerned the allocation of load on property owned by a single owner. That case and other cases demonstrate that single ownership of property is not a factor in determining unified load.⁶⁰

As explained in detail below, application of geographic load test here demonstrates that the electric load for Willow Creek Dairy property is not a unified load because there are multiple, separate loads that support a host of different operations, such as commercial, industrial and irrigation operations, by different legal entities, including the Boardman Tree Farm and possibly Sage Hollow’s irrigation needs, which are not even located on the Willow Creek Dairy property. In addition, the future development of the Willow Creek Dairy property is too speculative to be considered in applying the geographic load test.

⁵⁷ Umatilla’s Response Brief at 6 “Factors the PUC previously considered when determining if an electric load is “unified” included: (1) the commonality of ownership of constituent electric loads; (2) the commonality of ownership of land where the constituent electric loads are located; (3) the commonality of ownership of any related electrical facilities such as collector substations or lines; (4) the commonality of ownership of other facilities and maintenance equipment; (5) the extent to which there is a corporate entity that has unified management authority over the electric load; (6) the extent to which a corporate entity or management authority exercises a contracting authority related to the electric loads; and (7) the extent to which constituted electric loads are permitted under the same regulatory permits.”

⁵⁸ *Id.* at 5. “For purposes of this territory allocation dispute, we must decide whether the three wind projects should be treated as one integrated customer or as three individual customers.”

⁵⁹ 765 P.2d 1015 (1988).

⁶⁰ See *Northern Virginia Elect. Coop. v. Virginia Elect. & Power Co.*, 265 Va. 363 (2003).

a. Historically and currently there are multiple, separate loads on the Willow Creek Dairy property.

In 2017, Columbia Basin provided extensive evidence that there were multiple loads and services and at least two, and maybe three, different legal entities receiving service on the Willow Creek Dairy property. However, both Umatilla and the OPUC Staff argued that all of the Willow Creek Dairy electric service was used to only support Willow Creek Dairy operations and, thus, that electric service was a unified load.⁶¹ The basis of those arguments were wrong and that reasoning has now been further undercut by new information from the te Velde bankruptcy, which supports Columbia Basin's argument that the six circles in Columbia Basin's territory are not part of a unified load.

First, the te Velde bankruptcy documents demonstrate that the Willow Creek Dairy loads are not a single unified load because the electric service is used to support a host of different commercial operations, including some operations for other separate legal entities, i.e, Boardman Tree Farm and possibly Sage Hollow. The Dairy is currently shut down and the Trustee has either sold or liquidated the herd. As explained above, there is a plan for growing crops during 2019, but aside from a few crops that will be grown for the Trustee's purposes, Canyon Farm and Easterday may plant crops and use the Willow Creek Dairy fields as they like as long as those activities do not interfere with the Trustee's clean-up operations. The Trustee must use the crop land and irrigation/waste distribution system in 2019 to dispose of the 30 million gallons of dairy waste by application to the fields.

The bankruptcy documents also show that the Trustee, Easterday Farms and Canyon Farm all have varying property rights and responsibilities regarding the operations, future electric load, and provisions of electricity service to the Willow Creek Dairy property. The Post-Closing Agreement shows that the Trustee is initially responsible for obtaining and paying for electricity until April 1, 2019.⁶² Easterday Farms is primarily responsible for utilities and

⁶¹ Staff/100, Gibbens-Rossow/8 ("The irrigation circle load in Columbia Basin's territory remains part of a single customer's load, who owns and operates one business."); Umatilla's Response Brief at 7.

⁶² Exhibit 7, Post Closing Agreement at 8.

electricity after April 1, 2019, but Canyon Farm has some responsibility to provide electricity for the Trustee's clean-up operations.⁶³ While Easterday is responsible for obtaining and paying for electric service after April 1, 2019, and until the Post-Closing Agreement terminates, all three entities will use electricity for various and separate operations. In sum, there are a number of different operations, run by different entities, occurring on, or associated with, the Willow Creek Dairy property.

Second, the te Velde bankruptcy documents show that the Willow Creek Dairy's water use and associated water system and electrical service, could not have been a single, fully integrated operation, because during 2017 and 2018, Willow Creek Dairy and Sage Hollow exchanged their respective water rights. (And they plan to continue this exchange in 2019.⁶⁴) Specifically, Willow Creek Dairy used Sage Hollow's ground water and Sage Hollow used Willow Creek Dairy's CID water from the Columbia River. If the water pumped from the CID canal by Willow Creek Dairy was ultimately used by Sage Hollow, the water exchange in 2017 and 2018 may have affected the electric loads on the Willow Creek Dairy property.

Even if Willow Creek Dairy's water was not diverted from Willow Creek Dairy's pumps, the te Velde bankruptcy documents expressly state that Sage Hollow's ground water was used by Willow Creek Dairy. In order to be so used, that ground water must have been pumped from the Sage Hollow property to the Willow Creek Dairy property. Therefore, at least a portion of the Willow Creek Dairy water supply and pumping operations were separate and independent from the CID canal supply. Those pumping operations would have had their own electric load separate from the electric load used to pump water from the CID canal.

However, Willow Creek Dairy's manager claimed that in 2017 and 2018, the Willow Creek Dairy property received its water from the CID canal.⁶⁵ He also claimed that the electric load for pumping the water from the canal and moving the water throughout the Willow Creek

⁶³ *Id.*

⁶⁴ Exhibit 2, Sage Hollow Concurrence at 4.

⁶⁵ WCD/100, Aylett/4.

Dairy property was all interconnected and highly coordinated.⁶⁶ He made those claims without any mention of the water transfers with Sage Hollow in 2017 and 2018. And in its Response Brief, Umatilla argued that the Willow Creek Dairy manager's testimony regarding the integrated operation of the water distribution system proved that the Willow Creek Dairy load is a single unified load, stating:

The only evidence in this case regarding the nature of the Dairy's operations comes from the testimony of Mr. Aylett. Mr. Aylett explains that every aspect of the Dairy's operations is highly coordinated with every other aspect....Based on the testimony of Mr. Aylett alone, CBEC has not carried its burden of showing the Dairy's load is not unified.⁶⁷

Both the testimony of Willow Creek Dairy and Umatilla's arguments using that testimony appear to conflict with the bankruptcy court documents that state the Willow Creek Dairy water from the CID canal was diverted to Sage Hollow in 2017 and 2018. The bankruptcy documents show the water transfers in 2017 and 2018 were not just paper transactions, but, in fact, Sage Hollow constructed water diversion facilities and pipelines for the delivery of the Columbia River water to its property. The bankruptcy documents also state that Willow Creek Dairy actually used ground water for its needs. Therefore, it appears that Willow Creek Dairy used ground water from Sage Hollow during 2017 and 2018 and that the Willow Creek Dairy manager's testimony that its water system and electric system, which are operated as one, single integrated unit that originates at the CID canal is misleading, if not entirely wrong. If Willow Creek Dairy pumped water from the CID canal during the summer irrigation season and used the Sage Hollow ground water during the winter for the dairy herd's needs and flushing the dairy wastes to the storage lagoons, then the irrigation and electric system is not as unified and integrated as Willow Creek Dairy claims. In fact, the te Velde bankruptcy documents suggest the electric load and water supply for the dairy building and facilities may be entirely separate

⁶⁶ *Id.*

⁶⁷ Umatilla's Response Brief at 7.

from the water and electric systems for the irrigated fields and as a consequence —not a unified load.

Finally, even if the Commission focuses solely on the irrigation circle operations, there is no evidence the operation of those fields is so integrated that they should be deemed a unified load. Since the dairy operations have terminated and the herd sold, the current electric service at Willow Creek Dairy is primarily for pumping water and dairy waste, other clean-up operations, and the operation of the irrigated circle pivots. Umatilla and the OPUC Staff have not provided any evidence that the electrical operation of each irrigation pivot on each field is so integrated that it is not an independent load from other pivots. In fact, the Willow Creek Dairy manager admitted that each pivot has its own electric need separate from the pumping operations, highlighting the independence of the load for each pivot, separate from rest of the Willow Creek Dairy pumping and electric needs. He testified:

After the water leaves the final booster pump, there is no additional electrical service required to move the water. However, there is still a need for the power at the irrigation pivot. We use electric motors to drive the wheels around the center pivot.⁶⁸

The Post-Closing Agreement states that Canyon Farm and Easterday Farms may use the Willow Creek Dairy property in 2019 for their own farming purposes, independent of the crop plan and the Trustee's clean-up responsibilities. This suggests that Canyon Farm and Easterday Farms can operate each field and associated irrigation pivot independent of the other fields. And the fact that each field and pivot can be operated independent of the other fields and pivots demonstrates that the Willow Creek Dairy's load for farming operations is neither integrated nor unified.

In sum, there is simply no evidence that demonstrates the load for the six pivots or irrigated fields on the Willow Creek Dairy property in Columbia Basin's service territory is so

⁶⁸ WCD/100, Aylett/4.

closely integrated with other pivots or fields that they should be deemed a single load. The bankruptcy documents also demonstrate that Willow Creek Dairy's load consists of multiple independent loads—including the load for the dairy facilities, pumping and individual pivots—for multiple different entities. The Commission should not deem the Willow Creek Dairy electric load as a unified load for the geographic load test.

b. The future development of the Willow Creek Dairy property is too speculative to be considered in the geographic load center test.

The geographic load center test permits the consideration of future loads *which will be installed within a reasonable time as part of existing plans*. The te Velde bankruptcy documents demonstrate there are no existing plans regarding future electric loads.

In 2017, Umatilla and the OPUC Staff argued the Agricultural Lease Agreement between Willow Creek Dairy and the Boardman Tree Farm provided the “existing plan” for determining the future loads of the Dairy. Columbia Basin argued that “plan” was too speculative, it included activities too far into the future, and a host of events could occur that would disrupt the plan.

Recent events have further proven Columbia Basin's position was correct. The Surrender Agreement in the te Velde bankruptcy terminated the Agricultural Lease Agreement. Therefore, the development “plan” that existed in 2017 that Umatilla and the OPUC Staff relied upon is null and void.

Currently, there are no plans concerning the future electric loads of the Willow Creek Dairy property. The only document that specifically addresses future operations of the Willow Creek Dairy operations is the Post-Closing Agreement. The Post-Closing Agreement and other bankruptcy documents, however, are hardly plans for electric load development. At best they are contingent obligations concerning the operations of the dairy facilities and the property that may or may not occur. In addition, the Post-Closing Agreement appears to terminate upon either (i) the date of transfer of the Permits from the Trustee to the new owner or operator, or (ii) the date the Oregon Department of Agriculture issues the Notice of Satisfaction or Decommissioning. Those events must occur by November 2019. Most significantly, there are no plans for the

operation of the Dairy after the end of 2019. Umatilla admitted it knows of no plans for electric service, either. Those documents confirm that the future operation of the dairy is speculative at this time – either the property is cleaned up by October 31, 2019, or the dairy will be decommissioned, and all dairy operations shall cease.

Thus, as in 2017, the current “plan” for the future operations of the Willow Creek Dairy are simply too speculative and indefinite to meet the geographic load center test for future loads.

IV. CONCLUSION

The primary issue of this proceeding is whether the Commission has the discretion to adopt and apply the geographic load center test given the plain language of ORS 758.450(2). If not, Umatilla’s actions violate ORS 758.450(2).

If the Commission concludes it has that discretion, it should decline to apply the point of service test and condone a customer building across a service territory boundary to choose its electric provider. Similarly, the Commission should find that the geographic load center test does not provide a valid defense to Umatilla’s actions of providing utility service into Columbia Basin’s exclusive service territory in violation of ORS 758.450(2). The evidence as of December 2017, as well as the new te Velde bankruptcy evidence, demonstrate that the Willow Creek Dairy property does not represent a single unified load that Umatilla is entitled to serve.

Thus, the Commission should find that Umatilla has violated ORS 758.450(2) by providing utility service into Columbia Basin’s exclusive service territory.

Respectfully submitted this 1st day of May, 2019.

By /s/ Raymond S. Kindley
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Of Attorneys for Columbia Basin Electric
Cooperative, Inc.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 1

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

**Motion for Order Authorizing Compromise
of Controversy with Boardman Tree Farm**

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12 UNITED STATES BANKRUPTCY COURT
 13 EASTERN OF CALIFORNIA
 14 FRESNO DIVISION

12 In re	}	Case No. 18-11651
13 GREGORY JOHN te VELDE,	}	(Chapter 11)
14 Debtor.	}	DC No. MB-25
	}	Hearing date: 2/27/2019
	}	Time: 1:30 p.m.
	}	Place: 2500 Tulare St., 5 th Flr.
	}	Courtroom 11
	}	Fresno, CA 93721
	}	Hon. Fredrick E. Clement

18 **MOTION FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY WITH**
 19 **BOARDMAN TREE FARM, LLC**

20 The motion of Randy Sugarman, Trustee in Bankruptcy, respectfully represents:

21 **SUMMARY OF RELIEF REQUESTED**

22 1. By this Motion the Trustee requests approval of a settlement with the Estates
 23 secured creditor and lessee Boardman Tree Farm, LLC, (“BTF”) pursuant to the provisions of
 24 Federal Rules of Bankruptcy Procedure, Rule 9019 as set forth in that certain “Settlement
 25 Agreement and Mutual Release” attached as Exhibit 2 to the accompanying Declaration of Randy
 26 Sugarman.

27 **JURISDICTION AND VENUE**

28 2. On April 26, 2018, (“the Petition Date”), the Debtor Gregory J. Te Velde filed his

1 voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On September 21, 2018,
2 this Court entered its Order confirming the appointment of Movant Randy Sugarman (“Trustee”)
3 as the Chapter 11 Trustee in Bankruptcy of this Estate.

4 3. This Court has subject matter jurisdiction over this Motion pursuant to the
5 provisions of 28 U.S.C. Sections 1334 and 157 and Federal Rules of Bankruptcy Procedure, Rule
6 9019. This Motion is a “core” proceeding as defined by 28 U.S.C. § 157(b)(2)(A), (M) & (O).
7 Venue is proper here pursuant to the provisions of 28 U.S.C. § 1409.

8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 **A. The Boardman Tree Farm Secured Debt and Agricultural Lease**

10 4. The Debtor is an individual who owned three large dairies as of the Petition Date.
11 One of those, which is the subject of this Motion, is located in an environmentally sensitive area
12 near the Columbia River in Boardman, Oregon, and is known as the Lost Valley Farm.

13 5. Public records indicate that the Debtor purchased the Lost Valley Farm in
14 November, 2015, at which time it was used as a commercial timber growing and harvesting
15 operation by the seller Boardman Tree Farm, LLC (“BTF”). The Debtor’s plans for the property
16 were to develop it into a modern dairy, with ultimately 30,000 milking cows. BTF provided
17 purchase money financing for the sale evidenced by a promissory note in the amount of
18 \$55,000,000 secured by a first deed of trust on the subject real property, as well as a UCC-1
19 Financing lien and fixture filing on certain other assets.

20 6. On September 4, 2018, BTF filed its Proof of Secured Claim No. 56 against the
21 Estate in the amount of \$55,947,023.05, as of the Petition Date, which includes its voluminous
22 loan documentation. The Trustee has independently confirmed through a title search that BTF is
23 indeed duly secured and perfected on the subject real property, and senior in priority to all other
24 secured claims except for real property taxes and possibly certain mechanics liens, the validity and
25 priority of which is in dispute.

26 7. As part of the transaction with BTF, the Debtor and BTF executed an “Agricultural
27 Lease” whereby BTF leased back 3079 acres of the Lost Valley Farm to continue its commercial
28 tree farming operation. A correct copy of this Agricultural Lease is attached to the accompanying

1 Declaration of Randy Sugarman and labeled Exhibit 1. Among other things, the Agricultural
2 Lease provided that BTF would have the right to grow and harvest trees through 2026, and that as
3 it harvested stands of trees, its rent would be reduced and it would surrender the real property back
4 to the Debtor in phases. Thus, the “Maximum Leased Premises” set forth in the lease ran from
5 3079 acres in 2015 declining to 153 acres in 2026. The Trustee is informed and believes that the
6 initial rent due from BTF for its 2015 acreage operating to pay a significant portion of the debt
7 service due on the BTF note and deed of trust. However, the Trustee is further informed and
8 believes that no other debt service payments of any kind were made by the Debtor to BTF. As the
9 amount of acreage under lease declined, a growing default accrued and the Trustee has no basis to
10 dispute the amount set forth on BTF’s Proof of Claim.

11 **B. The Estate’s Environmental Problems**

12 8. To obtain the governmental entitlements necessary to develop this dairy, it was
13 necessary for the Debtor to obtain a “Confined Animal Feeding Operation” (“CAFO”) permit from
14 the State of Oregon Department of Agriculture. There was considerable opposition to the issuance
15 of the CAFO to the Debtor. Among other things, various regulators and public interest groups
16 expressed concern that the liquid and solid dairy waste from thousands of cows in a relatively
17 concentrated area would cause excessive nitrates to leach into the soil and groundwater in an area
18 which already had high levels of nitrates in the water table.

19 9. Thus, the ODA issued a CAFO to the Debtor on very strict conditions. In general,
20 it required the Debtor to ensure that the liquid and solid dairy waste from the milking herd remain
21 on impermeable surfaces of contract or heavy-gauge plastic until it was processed into
22 commercial-grade compost and low-concentrate liquid stored in large settling lagoons. The
23 material in the settling lagoons was to be pumped out and applied as organic fertilizer through
24 irrigation pivots placed throughout the 7300 +/- real property. It was anticipated that this diluted
25 liquid would both fertilize and be absorbed by feed crops, which in turn would be fed to the dairy
26 cattle. One logistical challenge with this system is that it required significant irrigation water to
27 function, but the Lost Valley Farm only had irrigation rights between April and October of each
28 year.

1 10. The Debtor built out a portion of the dairy but breached the conditions of the
2 CAFO, and continued with multiple violations of the CAFO even after the imposition of contempt
3 sanctions by the Oregon Circuit Court and other fines by an administrative law judge for the
4 Oregon Department of Agriculture. In fact, the largest fines ever imposed under the CAFO
5 program were assessed against the Debtor in these Oregon state proceedings.

6 11. After extensively investigating the situation and conferring with special
7 environmental counsel and other professionals, the Trustee determined that there were a number of
8 design and construction problems with the waste system which could be fixed at a reasonable cost,
9 and the Trustee did so. The more difficult problem was lawfully disposing of the liquid material in
10 the settling lagoons, which the Trustee is informed and believes is in excess of 30 Million gallons.

11 12. The Trustee discovered that the Estate did not have sufficient land under irrigation
12 pivots to dispose of this material at the rate allowed by the ODA and/or Oregon Department of
13 Environmental Quality, since much of the Lost Valley Farm was still under the lease-back to
14 Boardman Tree Farm under the Agricultural Lease to grow and harvest commercial trees. Thus,
15 more waste was being generated than could be lawfully disposed by “land application”.

16 13. On the advice of counsel, the Trustee concluded that he was bound by lawful state
17 and local environmental regulations, and that the “police power” exception to the automatic stay
18 set forth in 11 U.S.C. Section 362(b)(4) allowed the ODA and/or DEQ to fully enforce the
19 applicable regulations against the Estate. The Trustee concluded that his only viable option to
20 avoid an 8 figure administrative liability was to sell the facility “as is” and coordinate an
21 elimination or mitigation of the environmental liability as part of the sale.

22 14. Over the course of several months, with the assistance of environmental consultants
23 and other professionals, the Trustee developed a two part strategy to resolve the problem. The
24 Trustee located a buyer who was willing to pay significant purchase consideration for the Lost
25 Valley Farm, commit to an accelerated time schedule to clear the land, install additional irrigation
26 pivots, and plan, and allow the Estate post closing access to the property to complete the “land
27 application” of the dairy waste over the next year. These obligations were incorporated into
28 the “Post Closing Clean-Up Agreement and License” with the Buyer of the Lost Valley Farm, see

1 Dkt. No. Among other things, this Post Closing Agreement obligates the Buyer to spend
2 \$10,700,000 in ground preparation costs and provides for an award of liquidated damages to the
3 Estate in the amount of \$5,000,000 if the work is not done and the Estate incurs an environmental
4 liability to the ODA as a result.

5 15. Concurrently, the Trustee negotiated a stipulated remediation program with the
6 ODA allowing the removal of the dairy waste through “land application” rather than pumping and
7 trucking the material offsite. .

8 16. Two authorize these components of the transaction, the Trustee has previously filed
9 a “Motion for Order Authorizing Compromise of Controversy with Oregon Department of
10 Agriculture” (Dkt. No. 1474) and “Motion for Order Authorizing Sale of Real and Personal
11 Property Free and Clear of Liens and Subject to Overbid” (Dkt. No. 1407) (“the 363 Motion”),
12 which are pending as of this writing. Further details concerning the environmental problems and
13 economics of the sale are set forth therein.

14 **C. Consummation of a “Short Sale”**

15 17. Due in part to the environmental problems at the Lost Valley Farm, its current fair
16 market value is well below the total amount of encumbrances against its real and personal property
17 associated. As is more fully set forth in the 363 Motion and related papers, the maximum sales
18 price the Trustee was able to achieve for the property was just under \$67,000,000. This includes
19 millions of dollars of personalty subject to a senior lien in favor of Rabobank, N.A. To resolve the
20 proper allocation of the purchase price as between real and personal property and to resolve the
21 priority of the mechanics liens asserted against the realty, the Trustee filed an adversary proceeding
22 *Sugarman v. Boardman Tree Farm, LLC et al*, A.P. No. 19-01007. Among other things, this
23 adversary proceeding seeks to bifurcate BTF’s claim into secured and unsecured components
24 pursuant to the provisions of Bankruptcy Code Section 506.

25 **D. The Need for Concessions By BTF to Consummate the Sale** 26 **and the Required Environmental Compliance**

27 18. The Trustee needs two concessions from BTF to consummate the sale and thereby
28 economically comply with its obligation to the Oregon Department of Agriculture. First, the

1 Trustee needs BTF to consent to the sale pursuant to Section 363(f)(2). Second, the Trustee needs
2 BTF to agree to a greatly accelerated termination of its lease and clearing of hundreds of acres of
3 commercial poplar trees. In that connection, BTF and the Trustee previously executed a “Lease
4 and Water Rights Termination and Partial Harvest and Surrender Agreement” filed on February 4,
5 2019, as Dkt. No. 1574.

6 THE SETTLEMENT

7 19. As part of these negotiations, the Trustee and BTF agreed to global settlement of all
8 disputes between BTF and the Estate. On January 30, 2019, the Trustee and BTF executed a
9 “Settlement Agreement and Mutual Release”, a correct copy of which is attached to the
10 accompanying Declaration of Randy Sugarman and labeled Exhibit 2. The principal terms of the
11 Settlement Agreement are the following:

- 12 A. BTF shall be granted an allowed claim in the amount of \$62,000,000 as of
13 March 1, 2019;
- 14 B. BTF shall consent to the sale of the Lost Valley Farm as prayed in the
15 Trustee’s 363(f) Motion (Dkt. No. 1407);
- 16 C. The Trustee will use his best efforts to obtain Court authorization to
17 disburse the minimum sum of \$46,494,527.35 directly to BTF on the
18 closing of the sale, after payment of closing costs and estimated reserves for
19 disputed liens;
- 20 D. BTF shall have the right to seek additional amounts from the estimated reserves up
21 to the full amount of its Claim;
- 22 E. Any unpaid deficiency due BTF shall be treated as an allowed general unsecured
23 claim;
- 24 F. BTF surrender complete possession of the Lost Valley Farm to the Trustee’s buyer
25 by on or about December 31, 2019;
- 26 G. BTF shall be granted an additional allowed general unsecured claim in the amount
27 of \$1,000,000 as partial compensation for the waiver of its right to continued
28 possession of the premises through 2026;

1 H. The Parties will exchange mutual releases.

2 20. This is a summary only. The Settlement Agreement is a complex document.
3 Interested parties should carefully review its terms.

4 21. The Trustee requests authority to consummate the Settlement Agreement pursuant
5 to the provisions of Federal Rules of Bankruptcy Procedure, Rule 9019.

6
7 **BASIS FOR RELIEF**

8 22. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that the Court
9 may approve a compromise or settlement: "On motion by the trustee and after notice and a
10 hearing, the court may approve a compromise or settlement." *See* Fed. R. Bankr. P. 9019(a).
11 Settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is
12 encouraged. *In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390
13 U.S. 414, 424 (1968) ("in administering reorganization proceedings in an economical and practical
14 manner, it will often be wise to arrange the settlement of claims as to which there are substantial
15 and reasonable doubts").

16 23. For a compromise to be approved, the proposed compromise must be fair and
17 equitable. *Anderson*, 390 U.S. at 424. In determining the fairness and equity of a compromise, the
18 bankruptcy court must apprise itself of all facts necessary to form an intelligent and objective
19 opinion of the probability of ultimate success should the claims be litigated, and estimate the
20 complexity, expense and likely duration of such litigation, and other factors relevant to a full and
21 fair assessment. *In re A&C Properties*, 784 F.2d 1377, 1382 (9th Cir. 1986), *cert. denied*, 479
22 U.S. 854, 107 S.Ct. 189, 93 L.Ed.2d 122 (1986).

23 24. In addition to the above factors, *A&C Properties* hold that the Court should also
24 consider the paramount interests of creditors and a proper deference to their reasonable views. *Id.*
25 All of these criteria are commonly described as the "A&C Factors".

26 25. Under these criteria, the Trustee believes that the proposed compromise is fair,
27 reasonable and in the best interests of the bankruptcy estate and its creditors.

28 26. The first "A&C Factor" is probability of success in litigation. In the context of this

1 particular situation, the Trustee contends that the “success in litigation” could mean two things.
2 The first is reducing the potential unsecured deficiency claim of BTF. There are three theoretical
3 ways this could be accomplished. None are viable. One is to walk away from the property and
4 hope that BTF enforces its deed of trust through a nonjudicial foreclosure proceeding thus,
5 invoking Oregon’s anti-deficiency protections. The problem with this concept is that BTF could
6 side-step the antideficiency laws through a judicial foreclosure. Further, walking away would
7 result in a potential multi-million dollar liability to BTF under the environmental indemnity
8 executed by the Debtor at the time of the loan documents. The next is to attempt to give the
9 property back to BTF under what is known as an “Eat Dirt” Plan of Reorganization. The problem
10 with this scheme is that such Plans are generally held to be unconfirmable pursuant to Bankruptcy
11 Code Section 1129(b)(2). The third means would be to dispute the amount of Boardman’s claim
12 to the extent that it seeks “default rate interest”. The problem here is that “default rate” interest
13 has been allowed by controlling Ninth Circuit authority, *General Electric Capital Corp. v. Future*
14 *Media Productions, Inc.*, 547 F.3d 956 (9th Cir. 2008) and *In re New Investments, Inc.* 840 F.3d
15 1137 (9th Cir. 2016).

16 27. The second theoretical “success in litigation” would be to eliminate or reduce the
17 additional \$1,000,000 unsecured claim granted to BTF on account of its 365(h) damages for early
18 termination of the Agricultural Lease. This is certainly possible; but given the hundreds of acres
19 of trees currently planted on the Lost Valley Farm and the costs of early removal, storage,
20 inventory damage and shrinkage, and timber market issues, it is very possible that BTF’s damages
21 could be considerably greater than \$1,000,000. The \$1,000,000 represents a reasonable estimate,
22 particularly in view of the other concessions granted by BTF to consummate the sale.

23 28. The second “A&C Factor” is “difficulty to be encountered in collection.” This is
24 not a factor in the proposed settlement now before the Court.

25 29. The third “A&C Factor” is the “expense, inconvenience, and delay” of litigation.
26 This factor strongly supports the settlement. The settlement was reached through a prompt
27 negotiation of the disputes between the Estate, BTF, the buyer, and the ODA, and is a component
28 of a broader effort to resolve outstanding environmental remediation obligations while continuing

1 to wind down the Lost Valley Farm in an orderly manner.

2 30. The fourth “A&C Factor” is the “consideration of the reasonable views of
3 creditors.” The Trustee has attempted to keep the Estate’s major creditors apprised of his
4 activities and decisions. If there is an objection to this settlement by creditors, the Trustee will
5 address those concerns at the appropriate time.

6 31. In sum, the Trustee believes that the proposed settlement is fair and equitable to the
7 Estate.

8 WHEREFORE, the Chapter 11 Trustee requests the entry of an order authorizing him to
9 compromise the controversy between and among the Estate and Boardman Tree Farm, LLC on the
10 terms set forth above, and for such other and further relief as the Court deems proper.

11 Dated: February 5, 2019

Respectfully submitted,

MACCONAGHY & BARNIER, PLC

 /s/ John H. MacConaghy

John H. MacConaghy
Attorneys for Chapter 11 Trustee,
Randy Sugarman

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 2

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Sage Hollow Concurrence

6 Pages

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UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 FRESNO DIVISION

In re GREGORY JOHN TE VELDE, <p style="text-align: center;">Debtor.</p>	Case No. 18-11651 Chapter 11 DC No: MB-21 Date: 2/13/19 Time: 1:30 p.m. Place: 2500 Tulare St., Fifth Floor Courtroom 11 Fresno, CA 93721 Judge: Hon. Frederick E. Clement
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**CONCURRENCE OF SAGE HOLLOW RANCH, LLC
 RE: CHAPTER 11 TRUSTEE’S MOTION TO ASSUME AND ASSIGN
 EXECUTORY WATER DELIVERY CONTRACTS**

I. INTRODUCTION

Sage Hollow Ranch, LLC, an Oregon limited liability company and unsecured creditor herein, by and through its undersigned counsel (“Sage Hollow”), concurs with and supports the pending *Chapter 11 Trustee’s Omnibus Motion to Assume and Assign Water Delivery Contracts* [ECF No. 1440] (the “Motion”). For the reasons set forth below and under the

1 accompanying Declaration of Brian Bosma, filed herewith, Sage Hollow consents to the relief
2 requested under the Motion as essential to maximize the value and productive potential of the
3
4 Lost Valley Farm asset in this proceeding.

5 **II. JURISDICTION, VENUE AND STANDING**

6
7 1. On April 26, 2018, the Debtor Gregory J. Te Velde filed a voluntary petition
8 for relief under Chapter 11 in the above entitled Court. On September 21, 2018, the Court
9
10 entered its Order confirming the appointment of the Chapter 11 Trustee herein

11 2. This Court has jurisdiction over this Motion pursuant to the provisions 28
12 U.S.C. §§ 1334 and 157, 11 U.S.C. § 365, and Bankruptcy Rule 6006.

13 3. Pursuant to 11 U.S.C. § 365(c)(1)(b), the Chapter 11 Trustee “may not assume
14 or assign any executory contract or unexpired lease of the debtor, whether or not such contract
15 or lease prohibits or restricts assignment of rights or delegation of duties, if... a party, other
16 than the debtor, to such contract or lease... does not consent to such assumption or
17 assignment.” Under the Motion, Sage Hollow is identified as a “counter-party” and, in that
18 capacity, consents to the Sage Hollow-related “Water Delivery Contracts” at issue under the
19 Motion and offers the following concurrence in further support of the Motion.
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21
22
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24

25 **III. SUMMARY AND HISTORY OF THE SAGE HOLLOW** 26 **WATER DELIVERY CONTRACTS**

27 1. Sage Hollow carries on agricultural operations in Boardman, Oregon on lands
28 located within a short distance of the Lost Valley Farm dairy operation, owned by Debtor
29 herein, Greg te Velde (“te Velde”) and now under control of the Chapter 11 Trustee. Sage
30 Hollow is a signatory to or assignee of rights under three “Water Delivery Contracts,” as
31 described in the Motion, to wit: the *Water Right Transfer Agreement*, between Greg te
32 Velde/Debtor herein (“te Velde”) and Sage Hollow, as supplemented by the *Memorandum of*
33
34
35

1 *Supplemental Agreements Regarding Water Right Transfer Agreement*, also between te Velde
2 and Sage Hollow (Exhibit 14 to Declaration of Randy Sugarman (ECF 1456 at 70-89)); and
3
4 the *Water Delivery Contract* between te Velde and Columbia Improvement District (Exhibit
5 15 to Declaration of Randy Sugarman (ECF 1456 at 90-97)).
6

7 2. On or about January 7, 2016, Sage Hollow and te Velde entered into the original
8 *Water Right Transfer Agreement*, the purpose of which was to provide for the exchange of
9
10 certain groundwater rights held by Sage Hollow for certain Columbia River surface water
11 rights held by Columbia Improvement District (“CID”) and delivered to te Velde under the
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13 CID Water Delivery Contract. By its terms, the exchange of water rights under the *Water Right*
14 *Transfer Agreement* would close only upon final and binding approval by the Oregon
15
16 Department of Water Resources (“OWRD”) of specified administrative water rights transfer
17
18 applications to permanently make the exchanged surface and groundwater rights appurtenant
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20 to and authorized for use at the Sage Hollow and Lost Valley Farm properties, respectively.

21 3. As described in the *Memorandum of Supplemental Agreements Regarding*
22 *Water Right Transfer Agreement*, Sage Hollow and te Velde later entered into an “Irrigation
23
24 Canal Diversion Agreement,” which extended to December 31, 2017, the deadline for
25
26 permanent OWRD transfer application approvals under the *Water Right Transfer Agreement*
27
28 and also established terms and conditions for the construction of a diversion structure on the
29
30 CID canal and connecting pipeline to deliver te Velde’s CID water under the Water Delivery
31
32 Contract to Sage Hollow lands.

33 4. As further described in the *Memorandum of Supplemental Agreements*
34 *Regarding Water Right Transfer Agreement*, the parties entered into an “Amendment of
35
Irrigation Canal Diversion Amendment,” which again extended the date for permanent OWRD

1 transfer application approvals (in that case, to the end of the 2018 irrigation season).
2 Additionally, and as an interim measure, the Amendment allowed temporary use by Sage
3 Hollow of the Velde/CID surface water rights and temporary use by the Velde of groundwater
4 otherwise available to Sage Hollow under its groundwater rights during the 2017 and 2018
5 irrigation seasons, subject to OWRD's acceptance of CID temporary, intra-district transfer
6 petitions and other requirements. Fortunately, Sage Hollow and the Velde were able to use
7 surface and groundwater supplies, respectively, at their Boardman, Oregon facilities on a
8 temporary basis during the past two years.

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13 5. Regulatory and political headwinds and other factors have contributed to further
14 delay final and binding OWRD transfer application approvals necessary to complete the
15 transaction contemplated under the *Water Right Transfer Agreement*. To-date, such approvals
16 still have not been obtained. Accordingly, Sage Hollow and the Chapter 11 Trustee are
17 negotiating a "Second Amendment of Irrigation Canal Diversion Agreement," the purpose of
18 which is to allow Sage Hollow's temporary use of the Velde surface water rights (now vested
19 in the Chapter 11 Trustee) during the 2019 irrigation season and the Trustee's use of
20 groundwater from basalt wells that serve Lost Valley Farm. Additionally, the Trustee and Sage
21 Hollow are separately negotiating a Temporary Partial Assignment of Water Delivery Contact,
22 which CID requires as a condition on delivery of the Velde water to Sage Hollow on a temporary
23 basis.

24 25 26 27 28 29 30 **IV. ARGUMENT / CONCURRENCE**

31 1. Despite the above-described contractual and regulatory complexities, the
32 rationale for the parties' surface and groundwater exchanges under the 2016 *Water Right*
33 *Transfer Agreement* and all subsequent arrangements is straightforward: Sage Hollow's use of
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1 CID surface water and te Velde's use of groundwater enhances the productive capacity and
2 value of both operations by reallocating water rights to match the respective needs of each.

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4 2. As more fully set out in the accompanying Declaration of Brian Bosma, Lost
5 Valley Farm has more water under its CID surface water irrigation rights than necessary to
6 support dairy operations during the authorized, seasonal period of use for those rights (roughly
7 April through October). The situation is different during the non-irrigation season (roughly
8 November through March) when Lost Valley Farm doesn't have enough water to support year-
9 round dairy operations on the scale necessary to maximize the diary's productive capacity.

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13 3. Sage Hollow has the opposite problem. Sage Hollow's groundwater rights are
14 insufficient for seasonal irrigation of its farmlands to their maximum productive potential.
15 Specifically, Sage Hollow needs the higher flow volume entitlements under the te Velde/CID
16 water to respond to changing crop irrigation requirements related to weather and other factors.

17
18
19 4. In summary, completion of the water right exchanges and administrative
20 transfer applications under the *Water Right Transfer Agreement* is critical to the future success
21 and profitability of both the Sage Hollow and Lost Valley Farm operations in Boardman,
22 Oregon. Accordingly, the Court should grant relief sought by the Trustee under the Motion
23 and allow the Trustee to formally assume and assign te Velde's rights and duties under the
24 *Water Right Transfer Agreement* and the other Sage Hollow-related Water Delivery Contracts
25 at issue under the Motion.

30 V. CONCLUSION

31 Wherefore, Sage Hollow respectfully requests the Court grant the Motion and order
32 any additional relief deemed appropriate by the Court, as necessary to protect the value and
33 productive potential of the Lost Valley Farm asset in this proceeding.
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DATED: January 30, 2019.

HALVERSON NORTHWEST LAW GROUP P.C.

By: /s/ Paul C. Dempsey
Paul C. Dempsey, State Bar No. 167384
Attorneys for Sage Hollow Ranch, LLC

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 3

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Declaration of Brian Bosma

1 **3 Pages**

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9 *Attorney for Creditor Sage Hollow Ranch, LLC*

10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 FRESNO DIVISION

<p>13 In re</p> <p>14 GREGORY JOHN TE VELDE,</p> <p>15</p> <p>16 Debtor.</p>	<p>13 Case No. 18-11651</p> <p>14 Chapter 11</p> <p>15</p> <p>16 DCN: MB-21</p> <p>17 Date: 2/13/19</p> <p>18 Time: 1:30 p.m.</p> <p>19 Place: 2500 Tulare St., Fifth Floor</p> <p>20 Courtroom 11</p> <p>21 Fresno, CA 93721</p> <p>22 Judge: Hon. Frederick E. Clement</p>
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23
24 **DECLARATION OF BRIAN BOSMA IN SUPPORT OF**
25 **CONCURRENCE OF SAGE HOLLOW RANCH, LLC RE:**
26 **CHAPTER 11 TRUSTEE’S MOTION TO ASSUME AND ASSIGN**
27 **EXECUTORY WATER DELIVERY CONTRACTS**

28 I, Brian Bosma, state:

29
30 1. I am a Member and Manager of Sage Hollow Ranch, LLC, an Oregon limited
31 liability company and unsecured creditor herein (“Sage Hollow”).

32
33 2. Sage Hollow is a signatory to or assignee of rights under three “Water Delivery
34 Contacts,” as described in the *Chapter 11 Trustee’s Omnibus Motion to Assume and Assign*
35

1 *Water Delivery Contracts* (the “Motion”), specifically: the *Water Right Transfer Agreement*,
2 between Greg te Velde/Debtor herein (“te Velde”) and Sage Hollow, as supplemented by the
3
4 *Memorandum of Supplemental Agreements Regarding Water Right Transfer Agreement*, also
5 between te Velde and Sage Hollow (Exhibit 14 to Declaration of Randy Sugarman (ECF 1456
6 at 70-89)); and the *Water Delivery Contract* between te Velde and Columbia Improvement
7 District (Exhibit 15 to Declaration of Randy Sugarman (ECF 1456 at 90-97)).
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9

10 3. Under the original *Water Right Transfer Agreement*, Sage Hollow and te Velde
11 agreed to exchange their groundwater and surface water rights, respectively, to better serve
12 their farming and dairy operations in Boardman, Oregon. The *Water Right Transfer Agreement*
13 and subsequent Sage Hollow-related *Water Delivery Contracts* addressed in the Motion have
14 provided the terms and conditions for te Velde’s use of certain groundwater rights held by Sage
15 Hollow and for Sage Hollow’s use of certain Columbia River surface water rights held by
16 Columbia Improvement District (“CID”) and delivered to te Velde under the *Water Delivery*
17 *Contract*. Both parties have compelling reasons for exchanging their water rights, as described
18 below.
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23 4. te Velde’s Lost Valley Farm dairy benefits from being able to use groundwater
24 rights on a year-round basis. CID surface water rights, which te Velde has used under the *Water*
25 *Delivery Contract*, are seasonal-use only for irrigation during the spring/summer growing
26 season. Without access to additional volumes of year-round water supply, te Velde cannot
27 maximize dairy efficiency and productivity. Additionally, groundwater withdrawals from
28 deeper, basalt wells produce higher quality water, which lessens water treatment and
29 environmental compliance demands at the dairy.
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 4

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Order and Mutual Agreement with the Oregon Department of Agriculture

EXHIBIT 1

OREGON DEPARTMENT OF AGRICULTURE

In the Matter of Greg teVelde)	ORDER
dba Lost Valley Farm)	AND
Oregon Confined Animal Feeding Operation)	MUTUAL AGREEMENT
National Discharge Elimination System)	
Individual Permit No.: OR995129)	OAH Case No. 2018-ABC-02014
Master Address No.: 1000184)	
)	
Randy Sugarman, Trustee.)	

RECITALS

WHEREAS, Gregory John te Velde is an individual residing in the state of California. Mr. te Velde conducted business in Oregon under the assumed business name Lost Valley Farm (Oregon Secretary of State Registry Number 128131497). Lost Valley Farm is a large confined animal feeding operation (CAFO) located at 73956 Homestead Lane, Boardman, Oregon, in Morrow County (the “Facility”) and permitted under Oregon CAFO NPDES Individual Permit No. OR995129 (the “CAFO Permit”) issued by the Oregon Department of Agriculture (ODA) and the Oregon Department of Environmental Quality (DEQ);

WHEREAS, on April 26, 2018, Mr. te Velde filed for bankruptcy under 11 U.S.C. §§ 101 *et seq.* (“the Bankruptcy Case”);

WHEREAS, on June 27, 2018, the ODA and DEQ proposed to revoke Oregon CAFO NPDES Individual Permit No. OR995129 and issued a NOTICE OF REVOCATION OF INDIVIDUAL PERMIT NO. OR995129 (“Notice”). The Notice includes a proposed order for a shutdown of the facility within 60 days of the order becoming final;

WHEREAS, on August 24, 2018, Mr. te Velde timely filed a REQUEST FOR HEARING, NOTICE OF REVOCATION OF PERMIT NO. OR995129 (the “Request for Hearing”) to dispute the Notice;

WHEREAS, on September 9, 2018, the United States Bankruptcy Court, Eastern District of California (18-11651-A-11) ordered appointment of a trustee for the Chapter 11 Bankruptcy Estate of Gregory John te Velde;

WHEREAS, on September 14, 2018, the ODA referred the Request for Hearing to the Office of Administrative Hearings for a contested case proceeding (the “Contested Case”);

WHEREAS, on September 19, 2018, Randy Sugarman was appointed as the trustee (the “Trustee”) and has since assumed management all of the assets the Chapter 11 Bankruptcy Estate

of Gregory John te Velde, including Lost Valley Farm and the CAFO Permit (the "Estate"). The Trustee is authorized and appointed to perform any and all activities in relation to the Estate including winding up Lost Valley Farm and its assets, and complying with the terms of the Notice and this Order and Mutual Agreement (OMA), in a manner that is consistent with the Trustee's obligations as a fiduciary of the Estate;

WHEREAS, the Trustee has declared to the U.S. Bankruptcy Court and Multnomah County Circuit Court that it is in the best interest of the Estate to liquidate the herd existing on the Facility and to sell Lost Valley Farm. The Trustee has also declared to the ODA that he does not intend to continue operations of the dairy, intends to wind down the CAFO operations, and intends to sell Lost Valley Farm to a new owner.

WHEREAS, the Trustee and the ODA have agreed to a STIPULATION TO SCOPE OF HEARING narrowing the contested issues to those addressing shut-down of the Facility only and have further agreed to reach resolution of the remaining issues through settlement;

NOW THEREFORE the ODA and the Trustee (together "the Parties") agree that this OMA may be issued to operate in addition to the Individual Permit No. OR995120 and further that this OMA resolves the Request for Hearing and the December 3, 2018 AMENDED REQUEST FOR HEARING NOTICE OF REVOCATION OF INDIVIDUAL PERMIT NO. OR995129 PURSUANT TO STIPULATION TO SCOPE OF HEARING (the "Amended Request for Hearing").

I. MUTUAL AGREEMENT

1.1. **Authorization.** The Trustee covenants and agrees that, subject to court approval of this OMA in the Bankruptcy Case, he is authorized and appointed to perform any and all activities contained in this OMA.

1.1.1. The ODA and DEQ are authorized to enter into and to issue this OMA pursuant to ORS 183.417, ORS 468.050, ORS 468.065, ORS 468.100 and OAR 340-045-0062.

1.2. **Withdrawal of hearing request.** The Trustee stipulates and agrees that the Request for Hearing and the Amended Request for Hearing are withdrawn.

1.2.1. The ODA and DEQ stipulate and agree that this OMA is a settlement of disputed claims asserted in the Amended Request for Hearing and that the Trustee makes no admission of liability or agrees to any finding of fact, conclusion of law or order made or proposed in the Notice.

1.2.2. The Parties stipulate and agree that this OMA supersedes and replaces the Order set forth in the Notice only. Other provisions in the Notice, being the sections entitled "Authorities", "Findings of Fact", "Ultimate Findings of Fact", "Conclusions of Law" and "Discussion" remain in effect but only as consistent with the terms of this OMA.

1.3. **Governing terms.** The Parties agree that the terms of the CAFO Permit, the applicable ODA-approved Animal Waste Management Plan (“AWMP”), and the OMA control the actions specified in this OMA, and further agree that the terms used in this OMA, unless specifically noted otherwise, are as defined in the CAFO Permit.

1.3.1. The term “Facility” means Lost Valley Farm and includes the Production and Land Application Areas that are covered by the CAFO Permit and the ODA-approved AWMP. Attachment 1 depicts the Facility (page 1) and Production Area (page 2), which is the area depicted as the dairy on page 1. The Land Application Area is the area of the Facility other than the Production Area.

1.3.2. The term the “CAFO Permit” refers to the Oregon CAFO NPDES Individual Permit No. OR995129.

1.3.3. The term “clean-up permit” refers to the CAFO Permit and the amended ODA-approved AWMP as provided in Paragraph 3.5.

1.3.4. The term “ODA-approved AWMP” refers to the ODA-approved AWMP as it is approved or as it is amended and approved as provided in Paragraphs 3.4 and 3.5.

1.3.5. To the extent that the terms of the CAFO Permit, or the OMA conflict on terms governing clean-up or decommissioning of the Facility, the OMA shall control to the extent consistent with law.

1.4. **Documents incorporated by reference.** The CAFO Permit and the ODA-approved AWMP are incorporated by reference herein.

1.5. **Objectives of the OMA.** The Parties agree that the clean-up or decommissioning of the Facility must be accomplished in a manner that assures:

1.5.1. Clean-up or decommissioning of the Facility consistent with the terms of the CAFO Permit, ODA-approved AWMP, and the OMA.

1.5.2. Continuous accountability under the CAFO Permit, the ODA-approved AWMP and the OMA, regardless of whether the Facility is part of the Estate or is owned by persons who purchase the Facility.

1.5.3. That the ODA will terminate coverage under the CAFO Permit only upon clean-up to the satisfaction of the ODA and subsequent issuance of coverage under a new CAFO permit to a new owner or operator of the Facility (the “New CAFO Permit”) or subsequent to decommissioning of the Facility to the satisfaction of the ODA.

1.6. **Implementation of objectives.** The Parties agree to the following to accomplish the objectives in Paragraph 1.5 above:

Continuity

1.6.1. The Trustee agrees to perform the clean-up and/or decommissioning consistent with the terms of this OMA, the CAFO Permit, and the ODA-approved AWMP which remain a Covenant of the Trustee on behalf of the Estate that shall survive the closing of any transaction to sell or to otherwise dispose of the Facility and shall continue until the Trustee is released as provided in Paragraph 1.15.

1.6.2. The Trustee agrees to secure all necessary agreements from any new owner and/or operator of the Facility to ensure that the Trustee is able to perform the obligations set forth in this OMA, and further agrees that any sale of the Facility sought by the Trustee shall be pursuant to an order that includes this term and the terms of the OMA. Such agreements shall be a condition of the closing of any transaction to sell or any other disposition of the Facility.

1.6.3. To ensure the work under this OMA is complete and the interests of the State are protected, the ODA and DEQ reserve any and all of their rights to file an administrative priority claim in the bankruptcy proceedings to obtain payment for the costs to comply with the terms of this OMA should the Trustee or his assignee fail to complete the clean-up and decommissioning, if applicable. In addition, the Trustee shall include as a term of sale a liquidated damages clause payable by the new owner and/or operator of the Facility for the clean-up related costs the new owner and/or operator is obligated yet fails to perform under their agreement with the Trustee, which clause shall remain effective until the ODA issues the Notice of Satisfaction and terminate thereafter. Further, in the event of a default by the Trustee under this OMA prior to the issuance of the Notice of Satisfaction for the clean-up and upon written request of the ODA and/or DEQ, the Trustee will assign all rights available to the Trustee to enforce and obtain liquidated damages to the ODA and/or DEQ, which rights shall be exercisable only upon depletion of the segregated trust account funds (as described in the following sentence), and not prior. Until the Trustee is released as provided in Paragraph 1.15, the Trustee agrees to hold the sum of \$500,000.00 in a segregated account to assure his performance under this OMA, which shall be paid to the ODA and/or DEQ upon the Trustee's material breach of his obligations under this OMA, provided that such breach is not substantially cured after thirty (30) days written notice of default.

1.6.4. If the new owner or operator of the Facility does not elect to apply for a new CAFO Permit by October 31, 2019 as set forth in Section 1.10.1, the Trustee agrees to decommission the Facility as provided in this OMA. The Trustee may assign and the ODA may transfer the clean-up permit as provided in Section 1.6.10 and 1.15, but until such time as the transfer order is issued, the Trustee shall remain responsible for compliance with this OMA, the CAFO Permit and ODA-approved AWMP.

1.6.5. This OMA, the CAFO Permit and the ODA-approved AWMP shall be binding on any subsequently appointed bankruptcy trustee in the Bankruptcy Case, the trustee appointed in the Bankruptcy Case under another chapter of the Bankruptcy Code, the debtor in possession if reinstated, and the debtor in the event the Bankruptcy Case is

dismissed. The Trustee further agrees not to propose any Plan of Reorganization or Liquidation inconsistent with the terms of this OMA and this OMA shall be incorporated into such Plan.

Amended AWMP

1.6.7. Not less than 60 days prior to removal of the last of the dairy cows and heifers from the Facility, or by another date set by ODA, the Trustee shall submit an amended AWMP to the ODA for review and approval. The amended AWMP must be consistent with Special Permit Condition S3.D.1(b) (non-substantial changes) and shall reflect that upon removal of all existing animals, no (zero) animals may be confined or fed at the Facility such that the terms of the AWMP govern clean-up activities only. The remaining terms of the AWMP may not be amended as would constitute a substantial change to the AWMP as provided in Special Permit Condition S3.D.1(a).

1.6.8. The ODA agrees to review the amended AWMP in a timely manner and to approve the AWMP as consistent with law and the terms of the CAFO Permit.

1.6.9. Upon approval of the amended AWMP, the CAFO Permit shall constitute a “clean-up permit” only and no (zero) animals may be fed or confined on the Facility under the ODA-approved AWMP or the CAFO Permit.

Transfer of Clean-up Permit

1.6.10. Subsequent to approval of the amended AWMP, and upon issuance of a Notice of Satisfaction for the clean-up of the Facility, the ODA may withdraw its Notice of Revocation against the CAFO Permit and may allow transfer of the CAFO Permit as provided in Special Condition S1.C., OAR 340-045-0045, and Paragraph 1.15, provided however, that a transfer order must reflect that the new owner or operator is bound to the terms of the OMA and provided the OMA is assigned to the new owner or operator.

1.6.10.1. Within 30-days of issuance of a Notice of Satisfaction for the clean-up of the Facility, the Trustee shall inquire whether the new owner or operator of the Facility will assume ownership of the clean-up permit via a transfer and assignment of the CAFO Permit as set forth in Paragraph 1.15. The Trustee agrees to notify the ODA of the new owner or operator’s response within 15-days after the Trustee’s inquiry.

1.6.10.2 If the new owner or operator will not request transfer of the clean-up permit or otherwise refuses to accept transfer and assignment of the clean-up permit as set forth in Paragraph 1.15, the Trustee will initiate decommissioning of the Facility within 30-days of providing the notification described in Paragraph 1.6.11 to the ODA.

1.7. **Termination of the CAFO Permit.** The Parties agree that termination of coverage under the CAFO Permit may occur only as follows:

1.7.1. Upon clean-up of the Facility to the satisfaction of the ODA and then only upon issuance of the New CAFO Permit to the new owner or operator of the Facility; or

1.7.2. Upon clean-up and decommissioning of the Facility to the satisfaction of the ODA if a new owner or operator of the Facility does not seek to operate a confined animal feeding operation as consistent with Paragraph 1.10.1, or if no new owner or operator of the Facility is found.

1.8. **Good faith.** The Parties agree to work cooperatively and in good faith to implement the terms of this OMA. Good cause may be a basis for nonperformance according to agreed-upon timelines, but may not be a basis for nonperformance of any task.

1.8.1. For the purposes of this OMA, “good cause” exists when an action, delay, or failure to act arises due to acts of God, riot, war, terrorism, bioterrorism, civil unrest, flood, earthquake, power outage or government fiat. “Good cause” may also exist when there are conditions, situations or circumstances that are outside the Parties’ reasonable control.

1.8.2. If good cause is asserted as a basis for nonperformance under this OMA the Parties shall meet and confer to determine whether this OMA should be amended to address the contingencies that resulted in an assertion of nonperformance for good cause.

1.9. **Resolution of disputes.** Where there is a dispute about implementation of the actions described in the OMA, ODA’s decision shall control the outcome.

1.9.1 Notwithstanding, the Parties agree to meet and confer about disputes and to work in good faith and in a timely manner to resolve disputes. The Parties may consider mediation to resolve disputes. Any mediator is to be chosen by agreement of the Parties.

1.9.2. If dispute resolution is unsuccessful, the Parties retain their rights and remedies.

1.10. **Operation of Facility.** At all times until a New CAFO Permit is issued or until the Facility is decommissioned, the Trustee or transferee/assignee (pursuant to Paragraph 1.15) shall operate the Facility in compliance with the CAFO Permit, the ODA-Approved AWMP, and this OMA.

1.10.1. After clean-up to the satisfaction of the ODA, and if no application has been received by the ODA and DEQ by October 31, 2019, which application is for the resumption of a confined animal feeding operation on the Facility, decommissioning must be initiated within 90 days and as consistent with the terms of this OMA, the ODA-approved AWMP, and any relevant non-conflicting terms of the CAFO Permit.

1.11. Construction and Assurance of work quality. The Trustee agrees to perform or cause to be performed all actions as specified in this OMA.

1.11.1. The Trustee agrees that no construction activities subject to ODA approval prior to beginning construction may begin until after ODA has approved the construction activity.

1.11.2. The Trustee covenants and assures that all work associated with clean-up or decommissioning shall be performed or overseen by qualified professionals.

1.11.2.1. The Parties agree that if ODA objects to the quality of the work performed, the Trustee will timely address the ODA's concerns and will remedy the work that is objected to so that it meets the satisfaction of the ODA.

1.11.2.2. The ODA agrees that it will exercise good faith in any objections to the quality of work and will facilitate necessary approvals in a timely manner.

1.12. Timely inspection. Upon completion of clean-up or decommissioning tasks and the Trustee's request for inspection, the ODA agrees to timely (within 3-5 business days) inspect the Facility to determine whether the clean-up or decommissioning task has been implemented to its satisfaction. The Parties agree that under the terms of this OMA, clean-up and decommissioning may be completed in phases and over time and that ODA may therefore need to conduct more than one inspection of the Facility to confirm clean-up or decommissioning is complete to ODA's satisfaction. The ODA will utilize the Notice of Satisfaction Checklist included as Attachment 2 for purposes of inspection and sign-off on the clean-up tasks as they are completed to the ODA's satisfaction. If a task is not complete, the ODA will specify what is necessary to achieve clean-up as set forth in Paragraph 1.13.2.

1.13. Notice of Satisfaction. Upon completion of clean-up or decommissioning, if applicable, consistent with the terms of the CAFO Permit, the ODA-approved AWMP and this OMA (Part III), the ODA agrees to issue a written Notice of Satisfaction for the clean-up within 90 days of completion of clean-up and, separately, a written Notice of Satisfaction for the decommissioning within 90 days of completion.

1.13.1. The ODA agrees that a Notice of Satisfaction may not be unreasonably withheld or withheld without cause.

1.13.1.1. "Unreasonably withheld" means that the ODA or DEQ adds or significantly amend tasks that are not described in the Order provisions of this OMA, or add terms or conditions that are not included in or are inconsistent with the terms of the CAFO Permit or ODA-approved AWMP.

1.13.1.2. "Without cause" means that the ODA withholds a Notice of Satisfaction without legal basis or without substantial evidence to support its actions.

1.13.2. If the Facility is not cleaned up or decommissioned to the satisfaction of the ODA, the ODA agrees to explain in writing why clean-up is not to its satisfaction, and to specify the tasks that must be accomplished in order to achieve clean-up or decommissioning to its satisfaction.

1.13.3. The Parties agree to pursue dispute resolution as provided in Paragraph 1.9 if disputes arise under this Paragraph 1.13 and its subparts.

1.14. **Enforcement of Order.** The Parties agree that the ODA and/or DEQ or the Trustee may seek enforcement of the terms of this OMA in a court of competent jurisdiction and further agree that the ODA and/or DEQ or the Trustee may seek any lawful remedy to enforce the terms of the OMA or the terms of the CAFO Permit. Notwithstanding the foregoing, the United States Bankruptcy Court for the Eastern District of California shall retain jurisdiction to interpret or otherwise enforce this OMA and any Order issued by the Bankruptcy Court relative to this OMA.

1.14.1. The ODA and DEQ agree to seek enforcement after pursuing dispute resolution as provided in Paragraph 1.9 above in its discretion and as consistent with its duties to protect the public health, welfare and safety.

1.15. **Assignment, Transfer and Release.** The Trustee shall assign this OMA to a new owner or operator of the Facility who has applied for and received ODA's approval for a transfer of the CAFO Permit pursuant to OAR 340-045-0045 and the terms of the CAFO Permit. A condition of the assignment shall be that the new owner or operator is bound to the terms of this OMA.

1.15.1. If the OMA is assigned consistent with Paragraph 1.15, the ODA and DEQ shall, upon issuance of a transfer order consistent with Paragraph 1.6.7, fully release the Trustee from any further liabilities or obligations under the OMA, CAFO Permit and ODA-approved AWMP.

1.15.2. Upon issuance of a Notice of Satisfaction to the Trustee for the decommissioning of the Facility, the ODA and DEQ shall fully release the Trustee from any further liabilities or obligations under the OMA, CAFO Permit and ODA-approved AWMP.

1.16. **Severability and Enforceability.** The provisions of this OMA shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this OMA, or the application thereof to any Party or any circumstance, is determined by a court of law to be invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of the OMA and the application of such provision shall not be affected by such invalidity or unenforceability.

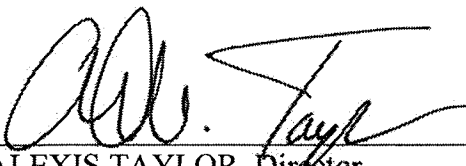
1.17. **Court Approval of Compromise.** The Trustee agrees to seek approval of this Agreement under Federal Rule of Bankruptcy Procedure 9019 within ten (10) business days of its full execution and, pending such approval, agrees to not seek approval of an Order

authorizing the sale of the Facility under terms and conditions inconsistent with this OMA. To the extent the Trustee seeks approval of the sale of the Facility pending the approval of this OMA, the Trustee agrees that any such sale shall be pursuant to this OMA as approved.

IT IS SO AGREED.

RANDY SUGARMAN, Trustee
On behalf of the Lost Valley Farm

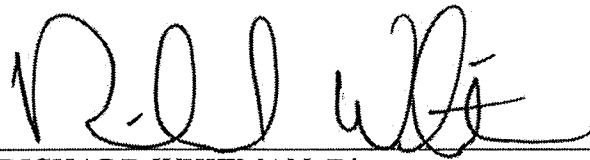
DATE



ALEXIS TAYLOR, Director
OREGON DEPARTMENT OF AGRICULTURE

1/17/19

DATE



RICHARD WHITMAN, Director
Oregon Department of Environmental Quality

1/17/19

DATE

II. CONSENT

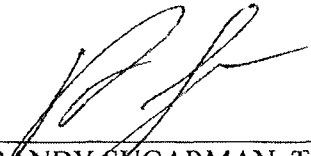
2.1. I, the Trustee for the Lost Valley Farm acknowledge that I have the assistance of qualified legal counsel and that I have read and understand the terms of this OMA.

2.2. I understand and agree that this OMA and all documents incorporated by reference sets for the entire agreement of the Parties.

2.3. I understand and agree that this OMA resolves the contested case hearing regarding the Notice of Revocation. I understand my right to a contested case hearing and judicial review of a final order in contested case and freely and voluntarily waive the right to a contested case hearing, request for reconsideration, and right to judicial review. I also freely and voluntarily waive reconsideration and judicial review of this OMA.

authorizing the sale of the Facility under terms and conditions inconsistent with this OMA. To the extent the Trustee seeks approval of the sale of the Facility pending the approval of this OMA, the Trustee agrees that any such sale shall be pursuant to this OMA as approved.

IT IS SO AGREED.



RANDY SUGARMAN, Trustee
On behalf of the Lost Valley Farm

1/16/2019

DATE

ALEXIS TAYLOR, Director
OREGON DEPARTMENT OF AGRICULTURE

DATE

RICHARD WHITMAN, Director
Oregon Department of Environmental Quality

DATE

II. CONSENT

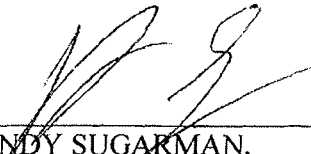
- 2.1. I, the Trustee for the Lost Valley Farm acknowledge that I have the assistance of qualified legal counsel and that I have read and understand the terms of this OMA.
- 2.2. I understand and agree that this OMA and all documents incorporated by reference sets for the entire agreement of the Parties.
- 2.3. I understand and agree that this OMA resolves the contested case hearing regarding the Notice of Revocation. I understand my right to a contested case hearing and judicial review of a final order in contested case and freely and voluntarily waive the right to a contested case hearing, request for reconsideration, and right to judicial review. I also freely and voluntarily waive reconsideration and judicial review of this OMA.

2.4. I understand and agree that although I have withdrawn my right to a contested case hearing the Notice continues in effect only as consistent with the terms of this OMA, and further that the terms of this OMA, rather than the terms of the Notice, control the clean-up and, if applicable, the decommissioning activities for the Facility.

2.5. I understand and agree that this OMA is not intended to limit in any way the ODA's right to proceed against the Estate in any forum for any future violations of the CAFO Permit or ODA-approved AWMP not expressly settled herein; provided however, that the ODA and DEQ acknowledge that the Estate will terminate on confirmation of a Plan of Reorganization or dismissal of the Bankruptcy Case. Provided, further, that I retain all rights and obligations to contest and dispute any action taken by ODA or DEQ regarding violations not expressly settled herein.

2.6. In consideration of the conditions agreed to by ODA in Section I of this OMA, I, the Trustee, acting on behalf of the Estate, release and forever discharge the State of Oregon and all of its political subdivisions, agencies, department, administrators, officers, current and former employees, agents, attorneys, and insurers (collectively "Released Parties"), from any and all claims, demands, or causes of action, whether known or unknown, under any legal equitable, or other theory, relating existing as of the date of this OMA. The release, acquittal, and discharge of the described above ("Release") includes any claims against the Released Parties, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC § 1983 *et seq*, and for attorney fees or costs.

2.7. I agree that subject to approval of the court in the Bankruptcy Case as provided herein, my signature binds the Estate, and that subsequent to sale of the Facility, I will continue to be bound by the terms of the OMA until released according to the terms of this OMA. I further agree that this OMA may be executed in one or more multiple counterparts, including facsimile, scanned and electronically transmitted or counterparts, each of which shall constitute an original and of which together shall constitute one and the same order.



 RANDY SUGARMAN,
 Trustee, Lost Valley Farms

1/16/2019

 DATE

III. ORDER

Clean up of the Facility

3.1. Clean up of the Facility shall comprise three activities which may be performed separately or simultaneously but only as consistent with the terms of the CAFO Permit, the ODA-approved AWMP, and this OMA. Where there are conflicting provisions in the CAFO

Permit that directly govern clean-up or decommissioning, such as Special Permit Condition S1.E., the OMA will control. Notwithstanding, provisions of the CAFO Permit and the ODA-approved AWMP are crucial to lawful clean-up or decommissioning, and terms that do not conflict with the OMA must be complied with. Clean-up activities are in three parts as follows: 1) cessation of waste production; 2) clean-up of the Facility; and 3) operation of the Facility pending termination of the CAFO Permit as set forth in Paragraph 1.7. The Trustee must perform the following tasks according to the timelines and terms herein specified.

3.1.1. Removal of solid waste. With regard to the clean-up of solid manure, removal of “all” solid manure or compost refers to the amount of stored solid manure that can be removed from compacted soil pens and approved solid manure/compost storage areas with normal operation of front-end loaders.

3.1.2. Removal of liquid waste. With regard to the clean-up of liquid manure that is present in any vault (excluding lagoons and settling cells), underground transfer pipes, flush system components, and pumps associated with the waste system, removal of “all” liquid manure, refers to removal of liquid manure from generation areas through the waste system to the settling cells and lagoons, and subsequent flushing of systems with a legal water source; provided that, this provision does not require waste removal activities that would damage or require the deconstruction of any part of the waste system.

3.1.2.1. Deconstruction means that any part of the infrastructure of the Facility is permanently taken apart such that it will no longer perform the function intended by its original construction.

3.1.3 Removal of liquid waste from biolink tanks. With regard to the clean-up of liquid manure from the biolink tanks, removal of “all” liquid manure refers to removal of liquid manure by pumping the tanks as low as possible through the waste system to the settling cells and lagoons and, where access is available, removing the remaining waste to the maximum extent possible with hand shovels, and covering the tanks to prevent precipitation from entering the tanks; provided that, this provision does not require waste removal activities that would damage or require the deconstruction of any part of the waste system.

3.1.4 Removal of liquid waste from sand lanes and alleys. With regard to the clean-up of liquid manure from the sand lanes and alleys, removal of “all” liquid manure refers to removal of liquid manure by scraping the surfaces of generation areas, removing the waste to approved storage areas and land applying it in accordance with the ODA-approved AWMP, then flushing the surfaces through the waste system to the settling cells and lagoons, and subsequent flushing of systems with a legal water source until visual free of turbidity as observed at the terminus of the sand lane; provided that, this provision does not require waste removal activities that would damage or require the deconstruction of any part of the waste system.

3.1.5. Maintenance and repair. Maintenance and repair activities may be conducted only as needed to facilitate operation of the Facility while animals remain on the facility,

and after removal of the animals, will constitute only those activities necessary to facilitate clean-up or decommissioning of the Facility, to preserve or maintain infrastructure and fixtures within the Production Area, to maintain systems that pump storm water, or to conduct normal farming operations.

3.1.6. **Construction activities.** Other than construction activities required to satisfy the obligations under this OMA, no construction to enhance or expand the Production Area for purpose of operating a CAFO may occur without ODA's prior written consent, except as may be approved in association with a New CAFO Permit. No construction activities associated with the waste systems that are subject to ODA approval prior to commencement of activities may occur prior to any and all necessary ODA approvals, which shall not be unreasonably withheld, conditioned or delayed.

Cessation of Waste Production

3.2. For the purposes of this OMA, "by product feed" is any and all material transported to the Facility under contract with Luke Dynes or companies affiliated with Luke Dynes, or any other person who seeks to transport to the Facility and store on the Facility vegetable waste or other waste that is subsequently processed into usable or unusable material.

3.2.1. By January 31, 2019, all residual by product feed shall be moved from all solid waste and any other storage areas where such by product feed may be stored on the Facility and exported offsite or, by September 30, 2019, land applied in compliance with the CAFO Permit and the ODA-approved AWMP. This provision does not apply to by product feed moved onto the Facility after January 31, 2019. For the purposes of Paragraph 3.2 and its sub-parts "by product feed" is vegetable waste that is generated off site and not generated on the Facility.

3.2.2. Subsequent to removal of the material specified in paragraph 3.2., the Facility may not accept any further by product feed.

3.3. By April 15, 2019, all dairy cows whether milking or dry must be moved off of the Facility. An extension of this time period may be allowed by ODA only upon a showing of good cause.

Amended AWMP, Withdrawal of Notice of Revocation, and Transfer

3.4. Not less than 60 days prior to removal of the last of the dairy cows and heifers from the Facility or on another date set by ODA, the Trustee shall submit an amended AWMP to the ODA for review and approval; provided however, the AWMP may only be amended as follows:

3.4.1. To reflect that no (zero) dairy animals and heifers or any other animal is being confined, fed or otherwise held on the Facility;

3.4.2. To reflect that the waste systems will continue to function to collect runoff and ancillary waste generated by precipitation events and that waste will be generated as part

of the clean-up and decommissioning activities, but that new no manure, process water or waste is expected to be generated by the Facility;

3.4.3. As consistent with the CAFO Permit Special Condition S3.D.1(b); and

3.4.4. As otherwise required to be consistent with the terms and conditions of this OMA.

3.5. An amended AWMP shall be reviewed and may be approved consistent with the terms of the CAFO Permit Special Condition S3.D.1(b) and applicable law. Upon approval of the amended AWMP, the CAFO Permit and the amended ODA-approved AWMP (the “clean-up permit”) and this OMA shall govern operations of the Facility until, as applicable, a New CAFO Permit is issued or the Facility is decommissioned and the CAFO Permit is terminated.

Transfer of the CAFO Permit

3.6. Subsequent to approval of the amended AWMP and upon issuance of a Notice of Satisfaction for the clean-up of the Facility, the ODA may transfer the CAFO Permit as provided in Special Condition S1.C. and OAR 340-045-0045, and provided further, as follows:

3.6.1. Only the clean-up permit may be transferred.

3.6.2. A transfer order must include provisions binding the transferee to the terms of this OMA and provide that the terms of the CAFO Permit and the ODA-approved AWMP (the clean-up permit), and this OMA shall govern the Facility until, as applicable, a New CAFO Permit is issued or the Facility is decommissioned and the CAFO Permit is terminated.

3.6.3. As consistent with Paragraph 1.15, upon issuance of the transfer order, the Trustee shall be released from liability, duties and obligations under the CAFO Permit, the ODA-approved AWMP, and this OMA.

3.6.4. If the CAFO Permit (the clean-up permit) and this OMA are not transferred and assigned as provided in Paragraph 1.6.10 and its subparts and Paragraph 1.15, the Trustee shall be solely responsible for all liability and obligations under the CAFO Permit, the ODA-approved AMWP, and the OMA arising prior to and continuing through the date of the Notice of Satisfaction.

Clean-up activities

Milking Parlor

3.7. After the last milking and last milk pickup, all milking parlor systems shall be cleaned and emptied. All containers of teat dip, dairy pharmaceuticals, pipeline and milking system wash, disinfectant chemicals, milk silo wash, disinfectant chemicals, milk cooling chemicals (glycol) must be removed from the Facility or sealed with preservative solutions so that the chemicals may not enter into the liquid manure system on the Facility.

Holding Pens and Freestall Barns

3.8. By September 30, 2019, all liquid and solid manure and sand bedding from the holding pens and freestall barns must be handled as follows: solid manure and sand bedding shall be scraped, directly land applied to lands consistent with the CAFO Permit and the ODA-approved AWMP and all liquid manure shall be flushed and processed through the existing sand lane, biolynk, screen separators, settling cells and lagoons, and thereafter be applied to lands or exported consistent with the CAFO Permit and the ODA-approved AWMP.

3.9. The system components must be flushed with clean water derived from a lawful source until, subject to permitted storage capacity in the lagoons, the liquids flowing through the weir gate into the north sand lane pump vault are visually free of turbidity.

North Sand Lane

3.10. After the milk cows are removed, all accumulated manure solids, debris and sand must be removed to approved solid manure storage areas or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

Biolynk

3.11. After the milk cows are removed, the flush water liquids and accumulated manure solids and sludge must be removed from the biolynk tanks consistent with Paragraph 3.1.3 and moved to approved liquid or solid manure storage areas or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

Screen Separators

3.12. After all of the milk cows have been removed and the clean water flush cycle has been completed for the holding pens and freestall barns as described in Paragraph 3.9, all solid manure must be removed from the screen separators and moved to approved solid manure storage areas or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

Settling Cells

3.13. After all of the milk cows have been removed and the clean water flush cycle for the holding pen and freestall barns described in Paragraph 3.9 has been completed, the liquid manure, sludge and solid manure must be removed from settling cells and moved to approved liquid or solid manure storage areas or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit. The contents remaining in the settling cells after this step is completed will be a staff gauge

reading of eight (8) large pegs read from the top of the staff gauge. This will be a one-time reading.

Approved Solid Manure Storage Areas Located Outside of Animal Pens

3.14. After the milk cows, heifers and calves have been removed from the Facility, all solid manure must be exported consistent with the CAFO Permit or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP.

Approved Solid Manure Storage Areas Located Inside of Animal Pens

3.15. After the milk cows, heifers and calves have been removed from the Facility, all solid manure must be exported consistent with the CAFO Permit or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

Lagoons and Underground Flush Plumbing

3.16. By October 31, 2019, the depth of waste remaining in Lagoons 1, 2, and 3, must be at least six (6) large pegs and five (5) small pegs (together 6.5 pegs) as read from the top of the staff gauge. By October 31, 2019, depth of waste remaining in Lagoon 5 must be at least six (6) large pegs read from the top staff gauge. The depth of waste will be a one-time reading. The visibility of the pegs is irrespective of the type of material stored in the lagoons.

3.16.1. After waste is removed from the lagoons to achieve the remaining depth of waste specified in Paragraph 3.16, the lagoon walls must thereafter be visually free of solid build up.

3.16.2. By October 31, 2019, flush water accumulated during the cleaning of the lagoon walls, if generated, and the remaining liquid in the lagoons must be land applied or exported according to the CAFO Permit.

3.16.3. All land applications must be in conformance with the CAFO Permit, the ODA-approved AWMP and this OMA. In addition, all application plans must be prepared and reviewed by or under the direction of a certified agronomist or certified crop advisor to ensure continual compliance with the CAFO Permit and ODA approved AWMP, and all applications records created and maintained as required by the CAFO Permit Special Condition S4.

3.16.4. Waste must be exported consistent with the terms of the CAFO Permit.

3.17. By September 30, 2019 all liquid transfer systems in the Production Area must be flushed with clean water and be modified to collect and contain site stormwater in approved settling cells and lagoons. By October 31, 2019, all liquid transfer systems outside the Production Area must be flushed with clean water to a visual standard to be observed at the irrigation pivots.

3.17.1 By October 31, 2019, all land applications resulting from flushing of underground waste lines from the lagoons to the pivots must be applied to crops with a demonstrated agronomic need and at an agronomic application rate as determined by the certified crop advisor. The crop advisor may consider the nutrient required for a full single season crop when planning the land application of the underground waste line flushing water.

3.17.2. Following flushing and application of such flush water in accordance with this OMA, stormwater generated after the last flush date (October 31, 2019) may be stored in the settling cells and lagoons and applied in accordance with the CAFO Permit and ODA-approved AWMP.

Heifer Sand Lane

3.18 Following removal of all heifers, dry cows and calves from the Facility and by September 30, 2019, all accumulated solid manure, sludge and sand must be removed from the heifer sand lane and moved to approved storage areas or applied consistent with agronomic rates consistent with the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

Feed Storage Areas

3.19. All ensilage and feed inventories existing and stored at the Facility for purposes of feeding livestock as of the date all cows, heifers and calves are removed must be removed from the Facility by October 31, 2019. All crops grown and harvested on the Facility other than those constituting ensilage may be stored at the Facility in accordance with customary farming practices and otherwise in accordance with the CAFO Permit and ODA-approved AWMP, if and as applicable. Storage of ensilage from the 2019 crop is allowed up to December 31, 2019, provided that the ensilage grown in the 2019 crop year shall not be fed to livestock located at the Facility and must be stored in accordance with the terms of the CAFO Permit and ODA-approved AWMP.

Animal Mortality Storage Area

3.20. After all the milk cows, heifers and calves have been removed from the Facility, all animal mortalities must be removed from the Facility within 10 days of the last live animal being removed. Animal mortalities must be handled and disposed of according to the CAFO Permit, the ODA-approved AWMP and this OMA.

Records

3.21. In addition, all applications must be properly inspected, monitored, and all records kept as required by the CAFO Permit Special Condition S4.

Operation of the Facility Pending Issuance of a New CAFO Permit or Decommissioning

3.22. During the process of clean-up of the Facility and up until the time a New CAFO Permit is issued or the Facility is decommissioned, the Facility must be operated in compliance with the CAFO Permit and the ODA-approved AWMP (the clean-up permit) and this OMA.

3.23. Upon completion of the clean-up tasks as described in this OMA and issuance of the Notice of Satisfaction, which shall be issued upon completion of clean-up as described in this OMA, the Facility must thereafter be operated and maintained in compliance with the CAFO Permit and the ODA-approved AWMP (the clean-up permit) and this OMA, until such time that the a New CAFO Permit is issued or the Facility is decommissioned and the CAFO Permit is terminated.

Decommissioning

3.24. The Trustee or the current owner and/or operator of the Facility may request in writing to the ODA that the CAFO Permit be revoked and coverage under the CAFO Permit terminated provided that the Facility is decommissioned as described in this OMA.

3.24.1. Decommissioning shall be completed following satisfaction of the obligations under Paragraph 3.24.2 and either, but not both, of Paragraph 3.24.3 or 3.24.4 which obligations may be performed separately or simultaneously but only as consistent with the terms of this OMA.

3.24.2 Manure Removal. All liquid and solid manure and process wastewater must be removed from the structures and storage areas and either land applied according to the ODA-approved AWMP or exported according to the CAFO Permit.

3.24.3 Lagoon Removal. The lagoon liners must be removed and disposed of or recycled in a lawful manner, and any earthen structure must be filled with soil and returned to the grade matching the surrounding area. All soil fill and remaining exposed soil must be seeded to site-appropriate grass or ground cover to prevent erosion.

3.24.4 Lagoon Reuse. All liquid and solid manure and process wastewater must be removed from the lagoons and either land applied according to the CAFO Permit and the ODA-approved AWMP or exported consistent with the CAFO Permit.

3.24.4.1. All liquid storage facilities that could fill with rain water must be flushed with clean water, the flush water land applied or exported and the remaining liquid in the lagoons tested to confirm the *E. coli* level is at or below the water quality standard of 406 CU/100 ml of sample.

Termination of the CAFO Permit

3.25. The CAFO Permit is terminated only upon completion of clean-up as described in this OMA and issuance of a New CAFO Permit for the Facility.

3.26. In the event that a New CAFO Permit is not issued for the Facility, the CAFO Permit is terminated only upon decommissioning of the Facility as described in this OMA.

3.27. Upon termination of the CAFO Permit, this OMA shall be deemed of no further force and effect.

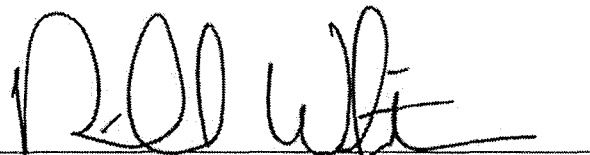
3.28. The Directors of the Oregon Department of Agriculture and the Oregon Department of Environmental Quality reserve the right to institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with the terms of this OMA.

IT IS SO ORDERED.



ALEXIS M. TAYLOR, Director
Oregon Department of Agriculture

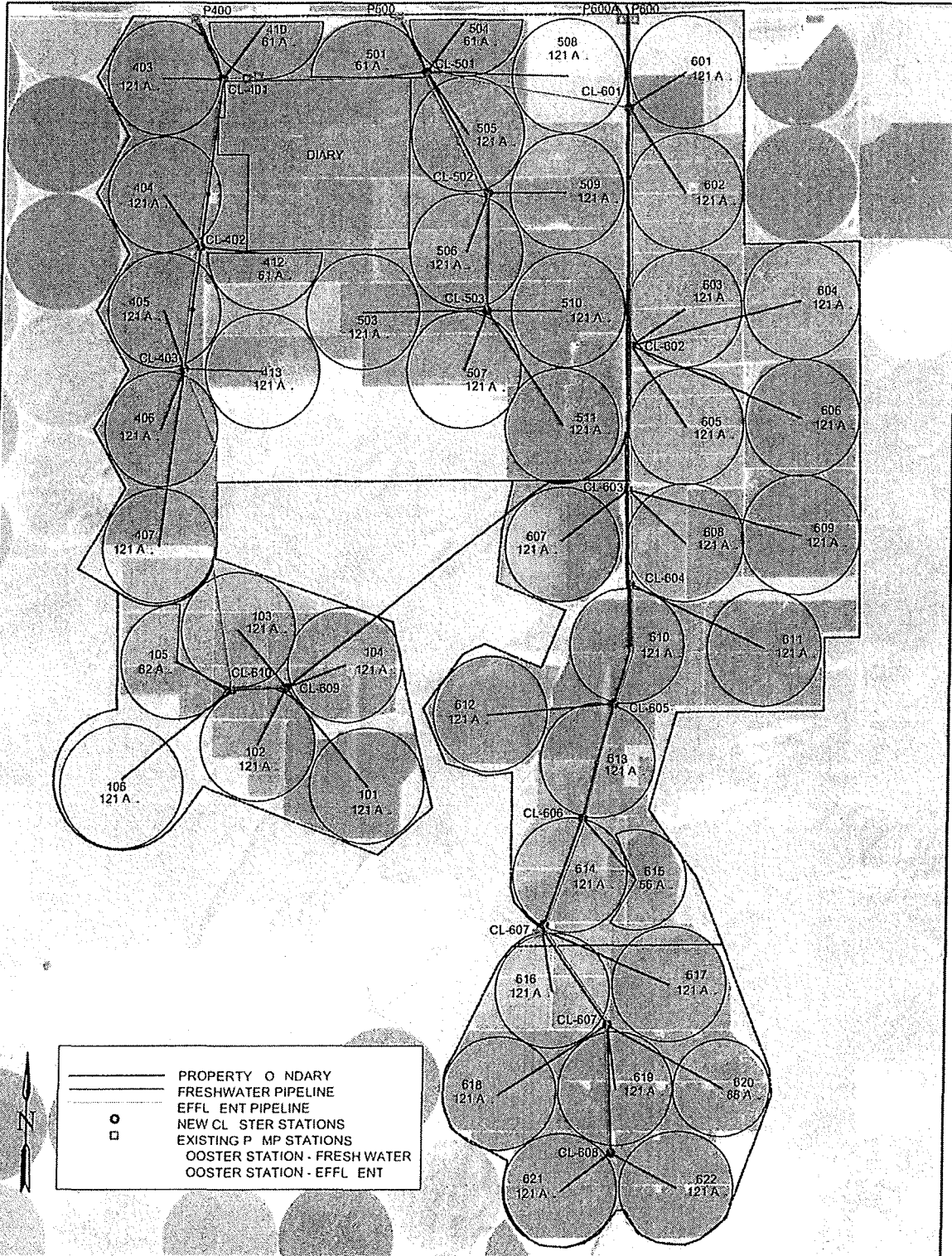
1/17/19
DATE



RICHARD WHITMAN, Director
Oregon Department of Environmental
Quality

1/17/19
DATE

DRAWING FOR INFORMATION PURPOSE ONLY



	PROPERTY BOUNDARY
	FRESHWATER PIPELINE
	EFFLUENT PIPELINE
	NEW CENTERLINE STATIONS
	EXISTING CENTERLINE STATIONS
	COOSTER STATION - FRESH WATER
	COOSTER STATION - EFFLUENT

NO	REVISION DESCRIPTION	DATE
4		
3		
2		
1		

WILLOW CREEK DAIRY
SANDLAKE FARM DEVELOPMENT
PIVOTS AND PIPELINES

IRZ Consulting, LLC
500 N 1ST, HERMISTON, OREGON 97838
OFFICE (541) 567-0252 FAX (541) 567-4239

DESIGNED	TOM CHOLT
DRAWN	S VA SHAKYA
SCALE	NIS SHEET
DATE	09-10-2015
DRAWING NO	518-15-001
	M1

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Lost Valley Dairy

CAFO Production Area

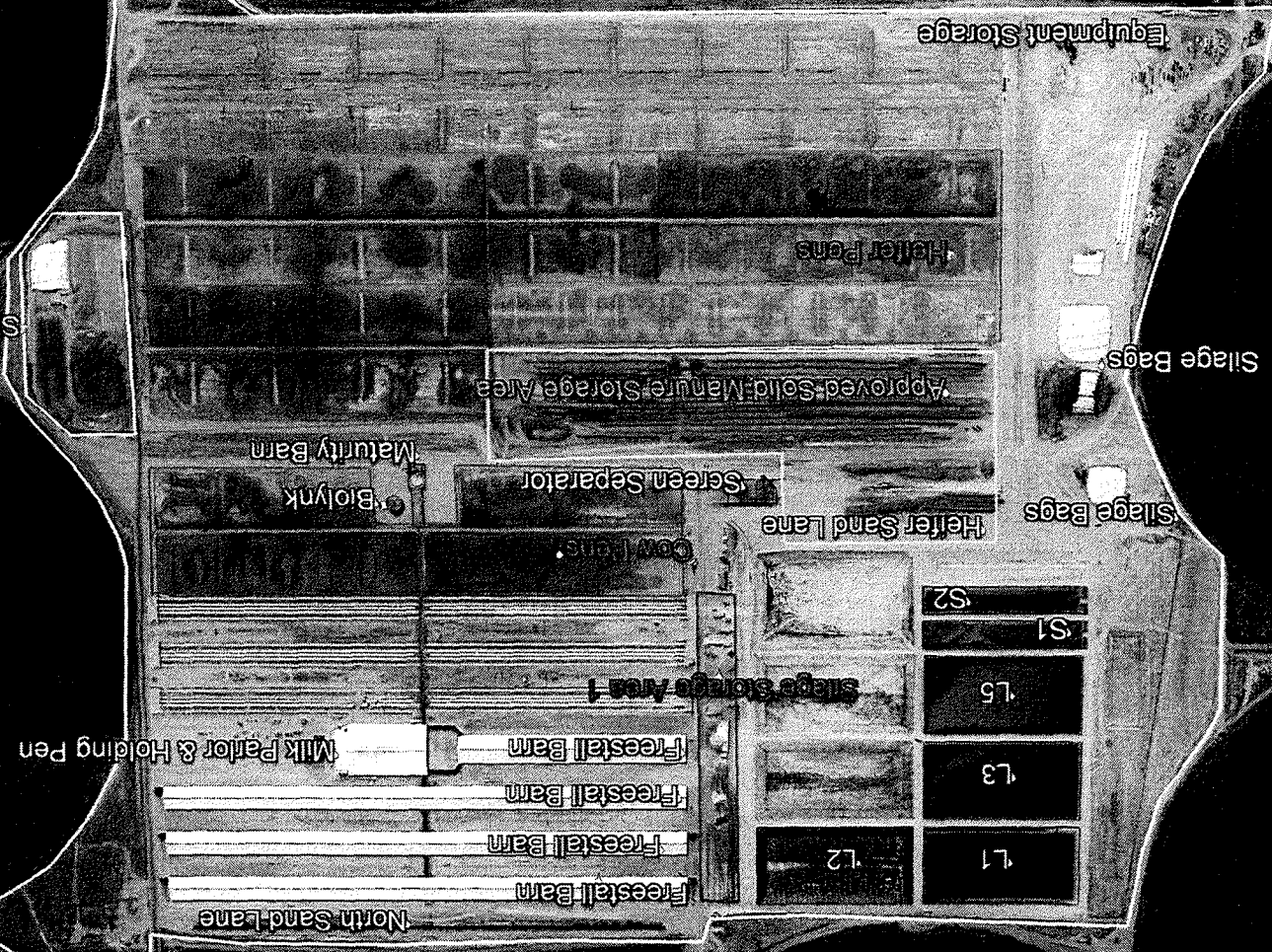
Attachment 1

2000 ft

Doc 1477

Case 18-11651

Filed 01/22/19



L1	L2
L3	L3
L5	S1
S2	S2

Attachment 2
Notice of Satisfaction Clean-Up Checklist

<u>OMA Section</u>	<u>Clean-Up Item</u> (reference OMA for full description)	<u>Deadline Date*</u>	<u>Completion Date</u>
3.2.1	<u>Cessation of Waste Production:</u> All residual by product feed shall be moved from all solid waste and compost storage areas or any other areas where such by product feed may be present on the Facility.	Jan. 31, 2019	
3.3	<u>Cessation of Waste Production:</u> All dairy cows whether milking or dry must be moved off of the Facility. An extension of this time period may be allowed by ODA only upon a showing of good cause.	April 15, 2019	
3.7 (3.1.1, 3.1.2)	<u>Milking Parlor:</u> After the last milking and last milk pickup, all milking parlor systems are cleaned and emptied.		
3.8 & 3.9 (3.1.1,3.1.2,3.1.4)	<u>Holding Pen and Freestall Barns:</u> All liquid and solid manure and sand bedding from the holding pens and freestall barns must be removed, land applied and/or flushed to settling cells and lagoons. Flushed until liquids flowing through the weir gate into the north sand lane pump vault are visually free of turbidity.	Sept. 30, 2019	
3.10 (3.1.1, 3.1.2, 3.1.4)	<u>North Sand Lane:</u> All accumulated manure solids, debris and sand must be removed to approved solid manure storage areas or applied consistent with agronomic rates and flushed with clean water to a visual standard to be observed at the center weir gate area.	Oct. 31, 2019	
3.11 (3.1.1, 3.1.2, 3.1.3)	<u>Biolyнк:</u> After the milk cows are removed, the flush water liquids and accumulated manure solids and sludge must be removed from the biolyнк tanks and tanks covered.	Oct. 31, 2019	
3.12 (3.1.1, 3.1.2)	<u>Screen Separators:</u> All solid manure must be removed from the screen separators and moved to approved solid manure storage areas or applied consistent with agronomic rates or exported consistent with the CAFO Permit.	Oct. 31, 2019	

3.13	<u>Settling Cells:</u> Liquid manure, sludge and solid manure must be removed from settling cells and moved to approved storage areas, land applied, or exported. Contents remaining will be at staff gauge reading of 8 large pegs read from top of the gauge.	Oct. 31, 2019	
3.14	<u>Approved Solid Manure Storage Areas Located Outside of Animal Pens:</u> After removal of cows, solid manure must be exported or land applied appropriately.		
3.15	<u>Approved Solid Manure Storage Areas Located Inside of Animal Pens:</u> After removal of cows, solid manure must be exported or land applied appropriately.		
3.16	<u>Lagoons:</u> Lagoon walls visually free of solid build up. Flush water and waste accumulated in lagoons land applied or exported. By deadline, depth of waste remaining in Lagoons 1, 2, and 3 must be 6.5 pegs. Depth of waste remaining in Lagoon 5 must be 6 pegs.	Oct. 31, 2019	
3.17	<u>Underground Flush Plumbing:</u> All liquid transfer systems in the Production Area flushed with clean water and modified to collect and contain site storm water in approved settling cells and lagoons.	Sept. 30, 2019	
3.17	<u>Underground Flush Plumbing:</u> All liquid transfer systems outside the Production Area flushed with clean water to a visual standard to be observed at the irrigation pivots.	Oct. 31, 2019	
3.18	<u>Heifer Sand Lane:</u> Following removal of cows, all accumulated solid manure, sludge and sand must be removed from the heifer sand lane and moved to approved storage areas or applied consistent with agronomic rates.		
3.19	<u>Feed Storage Areas:</u> All ensilage and feed inventories existing and stored at the Facility for purposes of feeding livestock as of the date all cows, heifers and calves are removed must be removed from the Facility.	October 31, 2019	
3.20	<u>Animal Mortalities:</u> All Animal mortalities removed to landfill or rendering.	10 days after last live animal leaves.	

*To complete all items by October 31, 2019 as anticipated by the OMA, items without specified deadline must be completed in advance of Oct. 31, 2019.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 5

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Asset Purchase Agreement with Canyon Farm, LLC

1 MacCONAGHY & BARNIER, PLC
 2 JOHN H. MacCONAGHY, State Bar No. 83684
 3 JEAN BARNIER, State Bar No. 231683
 4 645 First Street West, Suite D
 5 Sonoma, CA 95476
 6 Telephone: (707) 935-3205
 7 Email: macclaw@macbarlaw.com
 8
 9 Attorneys for Chapter 11 Trustee,
 10 RANDY SUGARMAN

11
 12 UNITED STATES BANKRUPTCY COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 FRESNO DIVISION

<p>12 In re 13 GREGORY JOHN TE VELDE, 14 Debtor.</p>	}	<p>Case No. 18-11651 (Chapter 11) DC No. MB-20 Date: 2/6/2019 Time: 10:30 a.m. Place: 510 9th St. Bakersfield, CA Judge: Hon. Frederick E. Clement</p>
--	---	--

15
 16
 17
 18 **EXHIBITS TO DECLARATION OF RANDY SUGARMAN IN SUPPORT OF MOTION**
 19 **FOR ORDER AUTHORIZING SALE OF REAL AND PERSONAL PROPERTY FREE**
 20 **AND CLEAR OF LIENS AND INTERESTS**

EXHIBIT	DESCRIPTION	PAGES
21 1	Asset Purchase Agreement	73
22 2	First Amendment to Asset Purchase Agreement	18
23 3	Payment of Rent Agreement	3
24 4	Agreement Regarding Livestock Collateral	7

25 Dated: January 9, 2019

MacConaghy & Barnier, PLC

/s/ John H. MacConaghy
 By John H. MacConaghy
 Attorneys for Chapter 11 Trustee

EXHIBIT 1

ASSET PURCHASE AGREEMENT

BY AND AMONG

**CANYON FARM, LLC,
a Delaware limited liability company
Buyer**

AND

**RANDY SUGARMAN, CHAPTER 11 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF GREG TE VELDE,
Bankruptcy No. 18-11651, United States Bankruptcy Court,
Eastern District of California, Fresno Division,
Seller.**

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "**Agreement**") is made as of December 18, 2018 ("**Effective Date**"), by and among CANYON FARM, LLC, a Delaware limited liability company ("**Buyer**"), and RANDY SUGARMAN, CHAPTER 11 TRUSTEE FOR THE BANKRUPTCY ESTATE OF GREG TE VELDE, Bankruptcy No. 18-11651, United States Bankruptcy Court, Eastern District of California, Fresno Division ("**Seller**"). Capitalized terms used herein and not otherwise defined herein have the meaning set forth in Article I.

RECITALS

WHEREAS, Seller is engaged in the dairy business and owns three (3) large dairy operations, two (2) of which are located in California, and one (1) of which is located at 73956 Homestead Lane, Boardman, Oregon, all comprising the dairy operation doing business under the assumed name "Lost Valley Farm" (Oregon Secretary of State Registry Number 128131497);

WHEREAS, Lost Valley Farm is a Confined Animal Feeding Operation ("**CAFO**") registered to Oregon CAFO NPDES Individual Permit No. OR995129 (the "**Existing CAFO Permit**"), which was issued by the Oregon Department of Agriculture ("**ODA**") and the Oregon Department of Environmental Quality ("**DEQ**") on March 31, 2017;

WHEREAS, on April 26, 2018, Gregory John te Velde (the "**Debtor**") filed a voluntary petition for relief commencing under Case No. 18-11651 (the "**Bankruptcy Case**") under Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California (the "**Bankruptcy Court**");

WHEREAS, the ODA and DEQ issued a Notice of Revocation of Individual Permit No. OR995129 and proposed order to revoke the Existing CAFO Permit and to shut down and clean up the Lost Valley Farm CAFO (the "**CAFO Notice of Revocation**");

WHEREAS, Buyer has delivered to Mid-Columbia Title Company, c/o Renee Grace (the "**Escrow Agent**"), an amount in cash equal to One Million and 00/100 Dollars (\$1,000,000.00) (the "**Minimum Deposit**") in immediately available funds, and this Agreement shall serve as joint written escrow instructions of Buyer and Seller authorizing delivery of this Agreement and the Deposit (defined herein) to Escrow Agent;

WHEREAS, Seller believes, following consultation with Seller's advisors and consideration of available alternatives, that, in light of the current circumstances, a sale of the real property and certain other assets comprising Lost Valley Farm located in the State of Oregon, as further provided herein, is necessary to preserve and maximize value, and is in the best interest of Seller and Seller's creditors and that the Buyer is a good faith purchaser for value;

WHEREAS, Seller desires to sell to Buyer all of the Acquired Assets (defined below) and transfer to Buyer the Assumed Liabilities (defined below), and Buyer desires to purchase from Seller all of the Acquired Assets and assume all of the Assumed Liabilities, in each case upon the terms and conditions as hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Section 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transactions contemplated under this Agreement as promptly as practicable after the Bankruptcy Court enters the Sale Order, as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 **Definitions.** For purposes of this Agreement, the following terms have the meanings specified or referenced below.

(a) **“Affiliate”** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting interests, by agreement or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

(b) **“Acquired Assets”** shall have the meaning set forth in Section 1.2.

(c) **“Assigned Agreements”** means all Contracts listed or described in **SCHEDULE 1.1(C)**.

(d) **“Assumed Liabilities”** means all liabilities listed or described in **SCHEDULE 1.1(d)**.

(e) **“Avoidance Actions”** means any and all claims for relief of Seller under Chapter 5 of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer or other similar state laws.

(f) **“Bankruptcy Case”** shall have the meaning ascribed to it in the Recitals.

(g) **“Bankruptcy Code”** means Title 11 of the United States Code, Sections 101 et seq.

(h) **“Bankruptcy Court”** shall have the meaning set forth in the Recitals.

(i) **“Bidding Procedures”** means the bidding procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures Order (defined below), subject to (a) immaterial modifications or clarifications or (b) such other changes to which Buyer consents (such consent not to be unreasonably withheld).

(j) **“Bidding Procedures Order”** means an order of the Bankruptcy Court approving, among other things, the Bidding Procedures for conducting a sale and auction of the Acquired Assets and authorizing Seller’s performance of its obligations under this Agreement, in the form of **EXHIBIT A** attached hereto, with (1) immaterial modifications or clarifications, or (2) such other changes to which Buyer consents (such consent not to be unreasonably withheld).

(k) **“Bill of Sale”** shall mean a duly executed and acknowledged Bill of Sale conveying good, marketable and indefeasible title to the Equipment and Personal Property, free of all liens and encumbrances.

(l) **“Boardman Lease”** shall mean that certain real estate lease agreement to be entered after the Effective Date hereof by and between Seller and Boardman Tree Farm, LLC, a fully-executed copy of which shall be attached hereto on **SCHEDULE 1.1(l)** prior to the expiration of the Inspection Period.

(m) **“Business Day”** means any day of the year, other than a Saturday or Sunday, on which national banking institutions are open to the public for conducting business and are not required or authorized by Law to close.

(n) **“Buyer”** shall have the meaning set forth in the Preamble.

(o) **“Buyer Termination Notice”** shall have the meaning set forth in Section 12.1(c)(i).

(p) **“California Operation”** shall mean the business operation and assets of Seller used solely and exclusively within the State of California and are not used in the Dairy Operation.

(q) **“Claims”** means all claims, causes of action, rights of recovery (including rights of indemnity, warranty rights, rights of contribution, rights to refunds and rights to reimbursement) and rights of set-off, in each case, of whatever kind or description against any Person.

(r) **“Closing Date”** shall have the meaning set forth on Section 5.1.

(s) **“Closing Legal Impediment”** shall have the meaning set forth in Section 11.3.

(t) **“Code”** means the Internal Revenue Code of 1986, as amended.

(u) **“Contract”** or **“Contracts”** shall mean all real estate leases and other contracts or arrangements related to or inuring to the benefit of the Acquired Assets.

(v) **“Crops”** shall mean all crops grown, growing or to be grown prior to Closing, including crops grown as or on trees, vines or bushes, broadly defined.

(w) **“Cure Costs”** means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the of the Assigned Agreements, as determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order or other Order, as applicable.

(x) **“Dairy Operation”** shall mean the dairy operation owned by Seller using the Acquired Assets in its business commonly known as “Lost Valley Farm” located in Morrow County, Oregon, as defined in the Recitals, and shall expressly exclude the California Operation.

(y) **“Documents”** shall mean all books, records, files, invoices, business plans, quality control records, reports, studies relating to the Acquired Assets in Seller’s custody or

control, including all data and other information stored on hard drives, discs, tapes or other media.

(z) “**Effective Date**” shall have the meaning set forth in the Preamble.

(aa) “**Encumbrance**” means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance or other similar restriction of any kind.

(bb) “**Equipment**” shall mean all machinery, fixtures, equipment, vehicles, appliances, implements and all tangible personal property of every kind and description owned by Seller and located on or used in connection with the ownership or operation of the Dairy Operation, which shall include but not be limited to all equipment listed on **SCHEDULE 1.1(bb)**, which shall be attached hereto within five (5) Business Days following the Effective Date, and which shall be exclusive of the Excluded Equipment.

(cc) “**Escrow Agent**” shall have the meaning set forth in the Recitals.

(dd) Intentionally omitted.

(ee) “**Excluded Agreements**” shall be the agreements set forth on **SCHEDULE 1.1(ee)**.

(ff) “**Excluded Assets**” shall have the meaning set forth in Section 2.2.

(gg) “**Excluded Equipment**” shall mean all of the assets specifically identified on SCHEDULE 1.1(gg) and not purchased by the Buyer under this Agreement.

(hh) “**Excluded Liabilities**” shall mean all of the Liabilities of the Seller and the Dairy Operation that are not Assumed Liabilities.

(ii) “**Expense Reimbursement**” shall have the meaning set forth at Section 12.3(a).

(jj) “**Final Order**” means an Order of the Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial, request for stay, motion or petition for reconsideration, application or request for review, or other similar motion, application, notice or request (collectively, a “**Challenge**”) has been timely filed, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all respects without the possibility for further Challenge thereon; (b) as to which the time for instituting or filing a Challenge shall have expired; and (c) as to which no stay is in effect.

(kk) “**FIRPTA Affidavit**” shall mean a transfer certificate confirming that Seller is a “United States Person” within the meaning of Section 1445 of the Code;

(ll) “**Governmental Authority**” means any United States federal, state, municipal or local or any foreign government, governmental agency or authority or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court.

(mm) **“Governmental Authorization”** means any approval, consent, license, permit, waiver or other authorization issued granted or otherwise made available by or under the authority of any Governmental Authority.

(nn) **“Hazardous Substance”** means any “toxic substance,” “hazardous pollutant,” “hazardous waste,” “hazardous material” or “hazardous substance” under any applicable Laws concerning environmental, health or safety matters.

(oo) **“Improvements”** shall mean all buildings and improvements located on the Land, including but not limited to all freestall barns, milk parlors, dry lot corrals, wells, underground irrigation pipes, and all of Seller’s right, title and interest in and to any and all fixtures attached thereto.

(pp) **“Knowledge”** means, with respect to any matter in question, in the case of Seller, the actual knowledge of Randy Sugarman, as Chapter 11 Trustee for the Bankruptcy Estate of the Debtor.

(qq) **“Land”** shall mean all of the real property owned by Seller and located in Morrow County, Oregon, and consisting of approximately 7,288.9 total acres, together with all rights, servitudes, and interests appurtenant thereto, as depicted and legally described on **EXHIBIT B** attached hereto.

(rr) **“Law”** means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority.

(ss) **“Liability”** means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

(tt) **“Mandatory Title Removal Items”** shall have the meaning set forth at Section 4.1(e).

(uu) **“Material Adverse Effect”** means any effect, change, condition circumstance, development or event that, individually or in the aggregate with all other effects, changes conditions, circumstances, developments and events has had , or would reasonably be expected to have a material adverse effect on the Acquired Assets (excluding the Excluded Assets and the Excluded Liabilities taken as a whole, excluding any effect, change, condition, circumstance, development or event that results from or arises out of the following (unless, in the case of clauses (ii) through (v) below, the same has a materially disproportionate effect on the Seller taken as a whole compared to other comparable participants in the industries in which the Seller operate): (i) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated hereby; (ii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war or any effect, change or event that is otherwise generally applicable to the industries and markets in which Seller operate; (iii) any changes in credit, financial or securities markets in general , including changes in interest rates or the availability of financing; (iv) general economic conditions; (v) any hurricane, tornado, flood, earthquake or other natural disaster; (vi) changes in (or proposals to change) Laws or accounting regulations or principles; (vii) the Bankruptcy Case, including, without limitation,

any announced liquidation of the Debtor or any of its respective assets, or (viii) any action expressly contemplated by this Agreement or taken at the written request of Buyer.

(vv) **“Minimum Deposit”** shall have the meaning set forth in the Recitals.

(ww) **“ODA”** shall mean the Oregon Department of Agriculture.

(xx) **“DEQ”** shall mean the Oregon Department of Environmental Quality.

(yy) **“Order”** means any award, writ, injunction, judgment, order or decree entered, issued, made or rendered by any Governmental Authority.

(zz) **“Ordinary Course of Business”** means the operation of the Dairy Operation in the ordinary and usual course consistent with the Existing CAFO Permit, Bankruptcy Case and all Orders entered into in connection therewith.

(aaa) **“Outside Date”** shall have the meaning set forth in Section 12.1(b)(ii).

(bbb) **“Party”** or **“Parties”** means, individually or collectively, Buyer and Seller.

(ccc) **“Permits”** means all agreements, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances and Orders of a Governmental Authority that are necessary for Seller to own, lease and operate the Acquired Assets and to carry on the Dairy Operation. For the avoidance of doubt, the Existing CAFO Permit will not be assigned or transferred to Buyer at Closing and shall be expressly excluded from the meaning of the word “Permit” as used herein.

(ddd) **“Permitted Encumbrances”** shall have the meaning set forth in Section 4.1(e).

(eee) **“Person”** means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

(fff) **“Personal Property”** shall mean, with the exception of the Equipment, all other personal property owned by Seller and relating to the ownership or operation of the Acquired Assets, unless expressly excluded and set forth on **SCHEDULE 1.1(fff)**.

(ggg) **“Prepaid Expenses”** means all deposits and prepaid charges and expenses of Seller as of the Closing Date to the extent related to an Assigned Agreement and after applying any such deposits, prepaid charges and expenses against any Cure Costs payable to the Third Party to whom such deposits, prepaid charges and expenses were paid as set for in SCHEDULE 1.1(ggg).

(hhh) **“Proceeding”** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

(iii) **“Purchase Price”** has the meaning set forth in Section 3.1.

(jjj) **“Qualified Bid”** shall have the meaning set forth in the Bidding Procedures.

(kkk) “**Representative**” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

(lll) “**Sale Hearing**” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

(mmm) “**Sale Order**” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form attached hereto as *EXHIBIT C*, with such changes as are not adverse to Buyer or as the Parties may mutually agree.

(nnn) “**Seller**” and “**Seller**” shall have the meaning set forth in the Preamble.

(ooo) “**Silage**” shall mean the silage that has been harvested and stored on the Land and is currently used in the Dairy Operation, the amount of which shall vary based upon its use and the Ordinary Course of Business.

(ppp) “**Successful Bid**” shall have the meaning set forth in the Bidding Procedures.

(qqq) “**Tax**” or “**Taxes**” means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority.

(rrr) “**Tax Return**” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, Schedules, statements, or information) filed with or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

(sss) “**Termination Fee**” means an amount equal to One Million and 00/100 Dollars (\$1,000,000.00), which shall, pursuant to the Bidding Procedures Order, become the senior lien in the Bankruptcy Case.

(ttt) “**Third Party**” means a Person who or which is neither a Party nor an Affiliate of either Party.

(uuu) “**Transaction Documents**” means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(vvv) “**Transfer Taxes**” shall have the meaning set forth in Section 9.1(a).

(www) “**Trustee’s Deed**” shall mean a duly executed and acknowledged Oregon form of special warranty deed conveying good, marketable and indefeasible fee simple title to the Land, free of all liens and encumbrances created or suffered by the grantor, except the Permitted Exceptions;

(xxx) “**WARN Act**” shall mean the Worker Adjustment and Retraining Act, as amended.

(yyy) “**Water Rights**” shall mean any and all surface or groundwater rights, permits, certificates, decreed rights, claims, limited licenses, or transfer applications owned or held by Seller, whether appurtenant to and inuring to the benefit of the Land or personal to Seller, including, without limitation, all rights owned by Seller to retrieve and use water from groundwater upon the Land, and all other water rights, points of diversion, points of appropriation, reservoir rights and other water rights held by Seller and associated with the Land, as listed or described in **SCHEDULE 1.1(yyy)**.

(zzz) “**Water Rights Transfer Documents**” shall mean an assignment of the pending application for transfer T-12248 with Sage Hollow Ranch LLC and for transfer T-12247 with Willow Creek Dairy, predecessor to Lost Valley Farm, and all documents necessary to effectuate the assignment of these transfer applications, as required by the Oregon Water Resources Department or any other Third Party or Governmental Authority.

(aaaa) “**Wind-Down Plan**” shall have the meaning set forth at Section 8.1(d), a fully-executed copy of which shall attached hereto as **SCHEDULE 1.1(aaaa)** prior to the expiration of the Inspection Period.

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Any reference in this Agreement to “\$”, money or dollars means United States Dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in Exhibits and Schedules shall have the respective meanings assigned in this Agreement. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or

interpretation of this Agreement. All references in this Agreement to any “Section,” “Article,” “Schedule,” or “Exhibit” are to the corresponding Section, Article, Schedule, or Exhibit of or to this Agreement unless otherwise specified.

(b) Buyer and Seller participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase all right, title and interest of Seller in, to or under the following (collectively referred to herein as, the “Acquired Assets”) of the Dairy Operation:

- (a) all Land, together with all mineral rights;
- (b) all Water Rights;
- (c) all Equipment and Personal Property;
- (d) all Improvements;
- (e) all Assigned Agreements;
- (f) all Permits and pending applications therefore, in each case to the extent assignable;
- (g) all Prepaid Expenses;
- (h) all Documents (other than those described in Section 2.2(c) to the extent available and permitted to be transferred by applicable Laws;
- (i) all Crops existing as of the Closing, except for Crops included within the Boardman Lease;
- (j) all Silage existing as of the Closing; and
- (k) any other assets, property, and/or rights listed on **SCHEDULE 2.1(n)**.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include any of the following (collectively, the “Excluded Assets”):

- (a) Seller’s rights under this Agreement and the other Transaction Documents (including the right to receive the Purchase Price delivered to Seller pursuant to this Agreement);

- (b) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Seller and all bank accounts and securities accounts;
- (c) all documents prepared in connection with this Agreement or the transactions contemplated hereby or primarily relating to the Bankruptcy Case, and the Tax Returns, other Tax work papers, and all other Documents not related to the Acquired Assets;
- (d) any Excluded Agreement;
- (e) all of the Excluded Equipment;
- (f) any Tax refunds, rebates or credits of Seller;
- (g) all Claims of Seller (including Avoidance Actions) to the extent arising out of, or relating to any portion of the Acquired Assets referenced in Section 2.1;
- (h) all insurance policies and binders, all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders and all rights to proceeds thereof that are not expressly listed as an Assigned Agreement in **SCHEDULE 1.1(C)**;
- (i) all livestock, born or unborn, whether owned by Seller or used in the Dairy Operation;
- (j) all products of livestock in their unmanufactured states, including, without limitation, all milk inventory produced in the Dairy Operation; and
- (k) all assets, property, rights, interests, and claims of every kind and description of Seller related to the California Operation.

Section 2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Buyer shall assume and agree to perform and discharge, when due (in accordance with their respective terms and subject to the respective conditions hereof), the Assumed Liabilities expressly listed in **SCHEDULE 1.1(d)**.

Section 2.4 **Excluded Liabilities.** Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obligated to pay, perform or otherwise discharge, and Seller shall be solely and exclusively liable with respect to any Excluded Liability.

Section 2.5 **Assignments.** Except for the Existing CAFO Permit, which shall not be assigned to Buyer at Closing, Seller shall transfer and assign all Assigned Agreements and Permits and Water Rights Transfer Documents to Buyer, and Buyer shall assume all Assigned Agreements and Permits from Seller, as of the Closing pursuant to, *inter alia*, Sections 363 and 365 of the Bankruptcy Code and the Sale Order. To the maximum extent permitted by the Bankruptcy Code or other applicable Law, the Assigned Agreements and Permits shall be assigned to, and assumed by, Buyer as of the Closing Date. Notwithstanding anything to the contrary in this Agreement, to the extent that the assignment to Buyer of any Assigned Agreement or Permit is not permitted by Law or is not permitted without the consent of a Third Party and, in the case of the Assigned Agreements and Permits that are the subject of Sections 363 and 365 of the Bankruptcy Code and the Sale Order, as applicable, such restriction cannot be effectively overridden or cancelled by the Sale Order, or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment or an undertaking or attempt to assign

the same or any right or interest therein if such consent is not given and the Closing shall proceed with respect to the remaining Assigned Agreements and Permits without any reduction in the Purchase Price; provided, however, that Seller will use its commercially reasonable efforts to obtain any such consents to assign such Assigned Agreements and Permits to Buyer.

Section 2.6 Further Assurances. At the Closing, Seller shall, upon Buyer's request, execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary to vest in Buyer title to the Acquired Assets and such other instruments as shall be reasonably necessary to evidence the assignment by Seller and assumption by Buyer of the Assigned Agreements, and each of Seller, on the one hand, and Buyer, on the other hand, shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary under applicable Law, and execute and deliver such instruments and documents and to take such other actions, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing. In furtherance and not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Seller shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the Closing.

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. The purchase price (the "**Purchase Price**") for the purchase, sale, assignment and conveyance of Seller's right, title and interest in, to and under the Acquired Assets shall be Sixty-Six Million Eight Hundred Seventy-Nine Thousand and 00/100 Dollars (\$66,879,000.00).

Section 3.2 Minimum Deposit; Supplemental Deposit. Within three (3) Business Days following the Seller's delivery of a completed SCHEDULE 1.1(bb) (which shall be delivered to Buyer within five (5) Business Days following the Effective Date), Buyer shall deliver to the Escrow Agent the Minimum Deposit in immediately available funds to be held in escrow pursuant to the terms of this Agreement. Within three (3) business days following the expiration of the Inspection Period, Buyer shall deliver to the Escrow Agent, a Supplemental Deposit in the amount of Two Million and No/100 Dollars (\$2,000,000.00) in immediately available funds (the "**Supplemental Deposit**" and together with the Minimum Deposit, the "**Deposit**"). The Deposit shall be non-refundable to Buyer unless expressly set forth to the contrary in this Agreement; provided, however, the Deposit shall not become property of the Seller bankruptcy estate unless the Deposit is otherwise due or payable to Seller in accordance with this Agreement. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any Seller or Buyer. The Deposit shall be retained by Seller at the Closing (and deducted from the Purchase Price due and payable at the Closing), or if this Agreement is terminated, treated in the manner set forth in Section 11.2. Notwithstanding anything to the contrary in the foregoing, Seller will have no rights to the Minimum Deposit until the Bankruptcy Court issues the Bidding Procedures Order or another Order confirming that this Agreement will not be rejected by the Bankruptcy Court and the transactions taken thereunder and herein may be performed by Seller in accordance with its terms.

Section 3.3 Closing Date Payments. At the Closing, (a) Buyer shall pay to Seller cash by wire transfer of immediately available funds in an amount equal to the aggregate of the Purchase Price, minus the Minimum Deposit, and (b) Seller shall direct the Escrow Agent to indefeasibly transfer the Minimum Deposit to an account designated by Seller.

Section 3.4 Discharge of Assumed Liabilities After Closing. Following the Closing, Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time and as such Assumed

Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

Section 3.5 **Allocation of Purchase Price.**

(a) No later than five (5) days prior to the Closing Date, Buyer and Seller mutually agree on a final allocation Schedule(s) allocating the Purchase Price (as may be adjusted pursuant to the terms of this Agreement) among the Acquired Assets, including the Assumed Liabilities to the extent such Assumed Liabilities are required to be treated as part of the purchase price for Tax purposes in accordance with Section 1060 of the Code (the "**Allocation Schedule**"). Such Allocation Schedule shall become final, binding and conclusive at Closing.

(b) Buyer and Seller will each file all Tax Returns consistent with the Allocation Schedule established in accordance with Section 3.5(a). Neither Buyer, nor Seller shall take any Tax position inconsistent with such Allocation Schedule, and neither Buyer, nor Seller, shall agree to any proposed adjustment based upon or arising out of Allocation Schedule by any Governmental Authority without the written consent of the other Party.

ARTICLE IV
TITLE, SURVEY AND INSPECTIONS

Section 4.1 **Title and Survey Matters.**

(a) Title. As of the Effective Date, Buyer has in its possession a Commitment from the Title Company, for an ALTA 2006 Owner's Title Insurance Policy with Extended Coverage for the Land (the "**Commitment**"), with the Commitment in the full amount of the Purchase Price, together with legible copies of all instruments mentioned therein as exceptions to good and indefeasible title.

(b) Survey. Prior to the Closing Date, Seller shall cooperate reasonably with Purchaser and its Representatives, including providing reasonable access to the Land and Improvements, in connection with the Buyer's efforts to procure and ALTA/NSPS survey of the Land (the "**Survey**") prepared by a licensed surveyor. The Parties acknowledge and agree that the total number of acres comprising the Land set forth herein is approximate, and that any determination of the actual number of acres set forth in the Survey will not affect the Purchase Price.

(c) Title Review Period. Buyer shall have until January 7, 2019 (the "**Title Review Period**") within which to notify Seller in writing of any objections Buyer has regarding any matters shown or referred to in the Commitment or Survey (each, an "**Objection**" and the notice thereof, the "**Objection Notice**").

(d) Title Cure Period. Seller shall have until one (1) business day prior to the expiration of the Inspection Period (defined below) (the "**Title Response Period**") within which to deliver written notice to Buyer indicating which Objections Seller has elected to cure and remove prior to Closing (the "**Seller's Response Notice**"). If Seller fails to provide a Seller's Response Notice, Seller shall be deemed to have elected to cure and remove the Objections prior to Closing. If Seller either elects not to cure and remove one or more of the Objections, Buyer, in its sole discretion, may elect to either: (i) accept the Land subject to the Objection(s) with no adjustment to the Purchase Price (in which event such Objections shall be deemed Permitted Exceptions and Buyer shall close notwithstanding the existence of the same); or (ii) terminate this

Agreement by written notice to Seller delivered no later than one (1) Business Day prior to the Auction, in which event Buyer shall be entitled to a return of the Deposit and the parties shall be released from all further obligations under this Agreement except for those obligations that are expressly stated to survive termination of this Agreement, and the Minimum Deposit shall be returned to Buyer in full.

(e) Permitted Exceptions. If Buyer fails to notify Seller in writing of any Objections, whether from the Commitment or the Survey, which are unacceptable to Buyer within the periods set forth above, such Objections shall be deemed accepted by Buyer and shall constitute permitted exceptions (the “**Permitted Exceptions**”), and Buyer’s right to request Seller to cure such conditions, matters or exceptions shall be deemed waived by Buyer. Notwithstanding the provisions of this Section 4.1(e), Seller covenants and agrees to remove on or before Closing, any (i) exceptions for real estate contracts, mortgages, deeds of trust, assignments of rents and leases, financing statements and any other liens or encumbrances for monetary liabilities or obligations encumbering the Land or Improvements; (ii) exceptions for the payment of real estate excise, sales, conveyance or stamp taxes and any delinquent real estate taxes and assessments; and (iii) exceptions relating to Seller’s due authorization, execution and /or delivery of the Trustee’s Deed and other Transfer Documents contemplated herein (the “**Mandatory Title Removal Items**”).

Section 4.2 Buyer’s Inspection.

(a) Inspection Rights and Duties. Pending Closing, Buyer and its Representatives shall have the right to full and complete access to the Land and Improvements to complete its due diligence inspections during normal business hours and conduct studies and tests thereon.

(b) Inspection Period. Buyer shall have until 5 p.m., Pacific Standard Time on the on January 14, 2019 (the “**Inspection Period**”) to conduct any inspections, tests, or investigations, including, but not limited to Water Rights evaluations, water tests, equipment inspections, inspections related to the Dairy Operation and any of the Personal Property and Improvements, feasibility studies, construction and engineering studies, environmental studies, soil and hazardous materials and hazardous substances tests, water and sewer capacity evaluations, tax statements, supplier and service contracts and conduct any other study, test, investigation, or inspection which Buyer deems necessary, of or upon the Land and Improvements. In the event that Buyer provides written notice to Seller prior to the end of the Inspection Period of Buyer’s election to terminate this Agreement and the transaction hereunder, this Agreement shall terminate.

Section 4.3 Indemnification. Buyer agrees to repair any damage to the Acquired Assets caused by the Buyer or its Representatives in the process of conducting its due diligence inspections, and further agrees to indemnify, defend and hold Seller harmless from and against all claims, costs, demands and expenses, including without limitation, reasonable attorney’s fees, court costs and other legal expenses, to the extent resulting from or related to the inspections or activities caused or performed by the Buyer or its agents, except that Buyer shall not have the obligation to provide for any remediation or reconstruction for any pre-existing condition (whether structural or environmental) located in, on or at the Land or Improvements. In the event Buyer damages any portion of the Acquired Assets during its inspections, and does not make reasonable efforts to repair said damage, Seller shall have the right to repair such damage and recover any expenses incurred for such repair from Buyer. Buyer’s obligations imposed by this paragraph shall survive termination of this Agreement.

**ARTICLE V
CLOSING**

Section 5.1 **Closing Date.** Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall be held on the earlier to occur on the latter of: (i) March 1, , 2019; or (ii) the Outside Date, as defined at Section 12.1(b)(ii). The date and time at which the Closing actually occurs is referred to as the “Closing Date.”

Section 5.2 **Buyer’s Closing Obligations.** At Closing, Buyer shall execute and deliver or tender the following items:

- (a) Purchase Price;
- (b) any statements or documents required from Buyer by the Title Company;
- (c) such other documents, excluding the Transaction Documents, that may be required to complete the Closing of the transactions contemplated by this Agreement;

Section 5.3 **Seller’s Closing Obligations.** At the Closing, Seller shall execute and deliver or tender the following items:

- (a) the Trustee’s Deed;
- (b) the Bill of Sale;
- (c) the Water Rights Transfer Documents;
- (d) the FIRPTA Affidavit;
- (e) any statements or documents required from Seller by the Title Company;
- (f) a copy of the Sale Order entered by the Bankruptcy Court;
- (g) the certificates of Seller to be received by Buyer pursuant to Section 10.1 and 10.2.
- (h) any other documents, including all of the Transaction Documents, that may be required to complete the Closing of the transaction contemplated by this Agreement.

Section 5.4 **Allocation of Costs; Adjustments.**

(a) All real estate and personal property taxes, becoming or which became, if not paid, delinquent in the year of Closing related to the Land, Improvements, and Personal Property shall be prorated as of the date of Closing in the customary manner in Morrow County, Oregon. Such proration between the Parties shall be final and the Parties shall not make any post-closing adjustment with respect to such Tax obligations.

(b) To the extent any special assessments levied in relation to the Land or Improvements are due as of the date of Closing (including any installments not yet due), such special assessments shall be deducted from the Purchase Price cash proceeds due Seller and paid to the appropriate Taxing authority by Escrow Agent at Closing.

(c) To the extent any water rights assessments levied in relation to the Land are due as of the date of Closing, such water rights assessments shall be paid by Buyer at Closing; provided, however, any delinquent water rights assessments levied for 2018 shall be deducted from the Purchase Price cash proceeds due Seller and paid to the appropriate authority by Escrow Agent at Closing.

(d) Income and Expenses proration relating to the Land shall be prorated in the same manner as set forth in Section 9.2.

(e) To the extent the total Silage that is actually conveyed to Buyer at Closing is less than 40,000 tons, Buyer shall receive a credit at Closing in an amount equal to \$21.50 per ton. Such amount shall be a credit in favor of Buyer against the Purchase Price due at Closing.

(f) To the extent the Boardman Lease requires Seller to reimburse or compensate Boardman Tree Farm, LLC in exchange for its obligation to harvest, stack and remove its poplar trees on an expedited basis, such amount actually paid by Seller prior to Closing shall be reimbursed by Buyer at Closing. All such expenses payable to Boardman Tree Farm, LLC after Closing shall thereafter be included as an Assumed Liability and set forth on **SCHEDULE 1.1(d)**; provided, however, the Parties agree that Buyer's monetary obligations set forth in this Section 5.4(f) shall not exceed a cumulative total of Six Hundred Twenty-One Thousand and 00/100 Dollars (\$621,000.00).

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF SELLER

Except as expressly set forth in the Schedules, Seller hereby represents and warrants to Buyer that, to the best of Seller's knowledge, the statements contained in this Article VI are true and correct as of the Effective Date and again as of the Closing Date:

Section 6.1 Authority; Validity. Seller has, subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, as applicable, the requisite power and authority necessary to enter into and perform all obligations under this Agreement and the other Transaction Documents to which Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Seller, the legal, valid and binding obligations of Seller, and are enforceable against Seller in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to, and after giving effect to, requisite Bankruptcy Court approval (including, without limitation, the Bidding Procedures Order and the Sale Order), as applicable, and (a) for entry of the Sale Order, and (b) for notices, filings and consents required in connection with the Bankruptcy Case, Seller is not required to give any notice to, make any filing with, or obtain any consent from, any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 6.2 No Conflict. Intentionally omitted.

Section 6.3 **Environmental Matters.** Intentionally omitted.

Section 6.4 **Title to Acquired Assets.** Seller is the sole owner of fee simple title to the Land, and such title is marketable and good of record, and Seller has good and valid title to all of the Acquired Assets. On the Closing Date and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, good title to the Acquired Assets, free and clear of all Encumbrances, except (a) as set forth on

SCHEDULE 6.4, and (b) for the Permitted Encumbrances.

Section 6.5 **Taxes.** On the Closing Date, Seller will be in a position to close with no Encumbrances for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

Section 6.6 **Legal Proceedings.** Except for the Bankruptcy Case and as set forth SCHEDULE 6.6, there is no Proceeding or Order pending, outstanding or, to Seller' Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the sale of the Acquired Assets and the transactions contemplated under this Agreement, or (b) would have, individually or in the aggregate, a Material Adverse Effect.

Section 6.7 **Compliance with Laws; Permits.** Except as set forth in SCHEDULE 6.7 and for such failures as would not, individually or in the aggregate, have a Material Adverse Effect, (i) Seller is not in violation in any material respect of any Law applicable to the ownership or operation of the Acquired Assets, and (ii) Seller holds all material Permits required for Seller to own and operate the Acquired Assets.

Section 6.8 **Assigned Agreements.** Other than as disclosed as an Excluded Agreement, there is no outstanding agreement or contract, whether written or oral, to which Seller is a party that primarily relates to ownership or operation of the Acquired Assets, or is otherwise material to the ownership and operation of the Dairy Operation following the Closing in the Ordinary Course of Business. Each Assigned Agreement is in full force and effect and is a valid and binding obligation of the applicable Seller in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of equity and (b) Seller has made available to Buyer correct and complete (other than redactions disclosed to Buyer) copies of each Assigned Agreement listed in SCHEDULE 1.1(C). Seller will not be in breach or default of its obligations in any material respect under any such Contract other than a default caused in connection with the Bankruptcy Case, (ii) no condition exists that with notice or lapse of time or both would constitute a default in any material respect by Seller under any Assigned Agreement other than a default caused in connection with the Bankruptcy Case, and (iii) no other party to any Assigned Agreement is in breach or default in any material respect thereunder other than a default caused in connection with the Bankruptcy Case.

Section 6.9 **Brokers or Finders.** Except as set forth on SCHEDULE 6.9 hereof, Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Seller shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

Section 6.10 **Improvements and Equipment.**

(a) Except as expressly set forth on **SCHEDULE 6.10(a)**, which shall be updated and recertified by Seller and delivered to Buyer prior to the expiration of the Inspection Period, Buyer is acquiring all Improvements located at the Land in its condition "AS IS, WHERE IS, AND WITH ALL FAULTS" and, except as otherwise expressly set forth in this Agreement, Buyer agrees to be responsible for completing its own inspections and reports relating to the quality or condition of the Improvements, and whether the Improvements are in compliance with applicable Laws relating to the Dairy Operation or the Existing CAFO Permit. Buyer acknowledges that it will rely solely upon such information in making its determination regarding the foregoing.

(b) Except as set forth on **SCHEDULE 6.10(b)**, which shall be updated and recertified by Seller and delivered to Buyer prior to the expiration of the Inspection Period, Buyer is acquiring all Equipment located at the Land in its condition "AS IS, WHERE IS, AND WITH ALL FAULTS" and, except as otherwise expressly set forth in this Agreement, Buyer agrees to be responsible for completing its own inspections and reports relating to the quality or condition of the Equipment, and whether the Improvements are in compliance with applicable Laws relating to the Dairy Operation or the Existing CAFO Permit. Buyer acknowledges that it will rely solely upon such information in making its determination regarding the foregoing.

Section 6.11 **WARN Act.** To the extent applicable, the Seller is in full compliance with the WARN Act and shall be fully responsible for any liability owing under the WARN Act related in any way to the Seller, Acquired Assets and the Dairy Operation. Further, the Final Order shall contain a provision stating the Buyer has no liability or obligation with respect to the WARN Act as it relates to the Seller, the operations of the Dairy Operation prior to Closing and the Acquired Assets.

Section 6.12 **Winter Wheat.** Prior to the Effective Date, Seller has planted Hard Red Winter Wheat ("JET" variety) as and for the winter crop within all portion of the Land under cultivation at a rate of 125 pounds per acre.

Section 6.13 **Statutory Disclosures.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Section 6.14 **No Other Representations or Warranties.** Buyer acknowledges that, except for the representations and warranties contained in this Article VI, neither Seller, nor any other Person on behalf of Seller, makes any express or implied representation or warranty with respect to any information provided by or on behalf of Seller to Buyer. Notwithstanding the foregoing, Seller shall update all Schedules attached to this Agreement to incorporate any changes occurring after the Effective Date hereof of which Seller has knowledge, and Seller shall recertify the representations and warranties contained in this Article VI by written instrument delivered to Buyer on the last business day prior to the expiration of the Inspection Period. All of the Seller's covenants, warranties and representations shall expressly survive the Closing and the delivery of the Transaction Documents, including, without limitation, the Trustee's Deed.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the statements contained in this Article VII are true and correct:

Section 7.1 **Organization and Good Standing.** Buyer is a limited liability company, duly existing and good standing under the laws of the State of Delaware.

Section 7.2 **Authority; Validity; Consents.** Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to entry of the Bidding Procedures and Sale Order and requisite Bankruptcy Court approval, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 7.3 **No Conflict.** When the consents and other actions described in Section 7.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) any Order, or (c) any Law.

Section 7.4 **Availability of Funds; Solvency.** Buyer has or will have at the Closing sufficient cash in immediately available funds to pay the Purchase Price and any other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming the accuracy of Seller's representations and warranties under this Agreement, (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present

fair value of its assets will be less than the amount required to pay its probable Liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

Section 7.5 **Litigation.** There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 7.6 **Brokers or Finders.** Seller has engaged Marc Schuil with Schuill & Associates as its broker in the underlying transaction contemplated by this Agreement. Seller shall be solely responsible for any fee or commission to its broker for or on account of the transactions contemplated by this Agreement, and Seller shall indemnify and hold Buyer harmless from any claims with respect to any such fees or commissions. Neither Buyer, nor any person acting on behalf of Buyer, has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Seller are or will become liable.

ARTICLE VIII ACTIONS PRIOR TO THE CLOSING DATE

Section 8.1 **Operations Prior to the Closing Date.** Seller covenants and agrees that, except (i) as may be required by the Bankruptcy Court, (ii) as may be permitted by this Agreement (including pursuant to the Bidding Procedures Order), (iii) as may be waived in writing by Buyer, or (iv) as otherwise required by Law, after the Effective Date (the "**Pre-Closing Covenants**"):

(a) Seller shall use commercially reasonable efforts to cause the removal of all poplar trees and equipment owned by Boardman Tree Farm and located on the Land in the manner set forth in the Boardman Lease.

(b) Each of the Parties shall use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, a Wind-Down plan between Seller and ODA and DEQ (the "**Wind-Down Plan**") in relation to the Existing CAFO Permit, and to ultimately complete the structured de-population and winding down of the Dairy Operation; provided, however, the Parties acknowledge and agree that the form and substance of the Wind Down Plan shall be subject to Buyer's review and delivery to Seller of a written certificate of acceptance prior to the expiration of the Inspection Period, the delivery of which by Buyer shall not be unreasonably conditioned, withheld or delayed. Once entered, Seller shall remain compliant with the Wind-Down Plan thereafter as required under this Section 8.1, which shall remain a covenant of Seller that shall survive the Closing of the transaction contemplated by this Agreement for so long as the Existing CAFO Permit remains in force and effect, and shall continue until the final revocation of the Existing CAFO Permit.

(c) Seller shall use its best efforts to take, or cause to be taken, and to do, or cause to be done, all things necessary, proper or advisable to comply in all material respects with (i) the Existing CAFO Permit, (ii) the Wind-Down Plan, (iii) all Water Rights; and (iv) all ancillary agreements, Laws or Permits applicable to the Acquired Assets and the underlying Dairy Operation. The covenants described in this Section 8.1(c) shall survive the Closing of the

transaction contemplated by this Agreement for so long as the Existing CAFO Permit remains in force and effect.

(d) Each of the Parties shall use their respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the transactions contemplated hereby, including using reasonable best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article X and Article XI to be satisfied, (ii) the obtaining of all necessary Governmental Authorizations, including, without limitation, the Wind-Down Plan, and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all steps as may be necessary to avoid any Proceeding by any Governmental Authority, (iii) the defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(e) Each of the Parties shall: (i) promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the Wind-Down Plan, and the transactions contemplated hereby, and any filing, notification or request for approval, and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto and shall discuss and attempt to reasonably account for any comments or suggestions of the other Party (in each case excluding any portions thereof that contain confidential information). In addition, neither of the Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other in advance and, to the extent not prohibited by any such Governmental Authority, gives the other Parties the opportunity to attend and participate, in each case to the maximum extent practicable. Subject to any restrictions under applicable Laws, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives, and the Governmental Authority or members of its staff, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval (in each case excluding any portions thereof that contain confidential information). In carrying out the obligations under this Section 8.1, subject to applicable Laws, the Parties will not submit or otherwise provide any information to such Governmental Authority without first having provided a reasonable opportunity to the other Party and its counsel to comment upon such information. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Any Party may, as it deems advisable and necessary, reasonably designate any sensitive material provided to the other Party under this Section 8.1, or otherwise pursuant to this Agreement, as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to the directors, officers or

employees of the recipient, unless express written permission is obtained in advance from the source of the materials.

(f) Neither Party shall, after the entry of the Sale Order, enter into any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party.

Section 8.2 Alternative Transactions.

(a) Consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller and the Bankruptcy Court of higher or better competing bids. From and after the Effective Date until the date that the auction contemplated by the Bidding Procedures Order (the "**Auction**") is declared closed by Seller, Seller shall be permitted to cause its respective Representatives to (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Representatives) with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of all, or a material portion of, the Acquired Assets to a purchaser or purchasers other than Buyer or effecting any other transaction (including a Chapter 11 plan) the consummation of which would be substantially inconsistent with the transaction contemplated by this Agreement (an "**Alternative Transaction**"), and (ii) respond to any inquiries or offers to purchase all or any part of the Acquired Assets and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Seller to prospective purchasers; provided, however, that in no event shall Seller or its Representatives encourage, support or negotiate the terms of any transaction that would supplant Buyer's position as the "stalking horse bidder," outside of the process contemplated in the Bidding Procedures or Bidding Procedures Order.

Section 8.3 Bankruptcy Court Filings and Approval.

(a) As soon as reasonably practicable following the Effective Date, Seller shall file and serve a motion or motions (the "**Bidding Procedures Motion**"), in form and substance reasonably satisfactory to Buyer, in the Bankruptcy Case requesting that the Bankruptcy Court (i) enter the Bidding Procedures Order, and (ii) approve the manner and form of the notice to be provided to creditors and other interested parties of the Sale Motion and hearing. Provided that the Bidding Procedures Order is entered, Seller shall thereafter file and serve a motion (the "**Sale Motion**"), and schedule a hearing on the Sale Motion for entry of the Sale Order for the earliest reasonably practicable date following the expiration of the Inspection Period set forth in Section 4.2(b). Thereafter, Buyer and Seller shall take all actions as may be reasonably necessary to cause the Bidding Procedures Order and the Sale Order to be issued, entered and become Final Orders, including furnishing affidavits, declarations, or other documents and information for filing with the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other document or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

(b) Seller shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bidding Procedures Order, the Bankruptcy Code, and the Federal Rules of Bankruptcy Procedures, to all Persons entitled to notice, including all Persons that have expressed

interest in buying the Acquired Assets, all Persons that have asserted Liens, claims or other interests in the Acquired Assets, all parties to the Assigned Agreements, all applicable state and local taxing authorities, including the Internal Revenue Service, each Governmental Authority that is an interested party with respect to the Acquired Assets and the Bidding Procedures Order and all taxing and environmental authorities in jurisdictions applicable to Seller. Seller shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer's prior review.

(c) On or before a date that is ten (10) days from the entry of the Bidding Procedures Order, Seller shall file with the Bankruptcy Court and serve a cure notice (the "Cure Notice") by first class mail on all non-debtor counterparties to all Contracts and provide a copy of the same to Buyer. The Cure Notice shall inform each recipient that its respective agreement may be designated by Buyer as either assumed or rejected, and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Contract, (ii) the name of the counterparty to the Contract, (iii) Seller's good faith estimates of the Cure Costs required in connection with such Contract, (iv) the identity of Buyer, (v) that Buyer's bid of the Acquired Assets, including the Contracts, is subject to overbids, if any, as specified in the Bidding Procedures, and (vi) the deadline by which any such agreement counterparty may file an objection to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

(d) Seller shall use best efforts to comply with the deadlines set forth in the Bidding Procedures or the Bidding Procedures Order, as applicable.

(e) The Parties shall consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Bidding Procedures Order and the Sale Order, including, with respect to Seller, sharing in advance any drafts thereof for Buyer's review and comment. Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the Sale Motion, or any other order related to any of the transaction contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. Seller shall use best efforts to obtain entry of the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and, consistent with Section 9.3 below, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(f) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assigned Agreements are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that (i) to obtain such approval, Seller must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets and otherwise have complied with the Bankruptcy Code requirements for approval of the sale of the Acquired Assets to Buyer and (ii) Buyer must provide adequate assurance of future performance under the Assigned Agreements to be assigned by Seller, and Buyer hereby agrees to provide all appropriate assurances thereof necessary in order to obtain the foregoing approvals.

(g) Seller shall give all notices required to be given by applicable Law, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Sale Order), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request. Seller shall promptly provide Buyer with copies of all communications from the Bankruptcy Court relating to the motions seeking entry of the Sale Order.

(h) In the event an appeal is taken or a stay pending appeal is requested, from the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay.

(i) Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or stay request in respect of such order. Seller shall use its best efforts to defend such appeal or stay request and obtain an expedited resolution of such appeal.

(j) After entry of the Sale Order, Seller shall not take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

Section 8.4 **Bidding Procedures.** The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Seller and its Representatives and Affiliates are and may continue soliciting inquiries, proposals or offers for the Acquired Assets in connection with any Alternative Transaction solely in accordance with the terms of the Bidding Procedures Order.

Section 8.5 **Notification of Certain Matters.** On or prior to the date that is ten (10) days following the Effective Date, Seller shall provide to Buyer their good faith estimate of the Cure Costs associated with each Assigned Agreement.

ARTICLE IX ADDITIONAL AGREEMENTS

Section 9.1 **Taxes.**

(a) Any Tax payable in connection with the sale or transfer of the Acquired Assets (“**Transfer Taxes**”) shall be borne by Buyer and, to the extent any Seller is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by Buyer to Seller at Closing. Seller and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Seller shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes.

(b) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets (including access to Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that (other than as required pursuant to this (b)) neither Buyer nor any Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this (b) shall be borne by the Party requesting it.

Section 9.2 **Income and Expense Prorations.** At Closing, all rents and expenses, utility charges and other income or expense items for 2018 and prior relating to the Acquired Assets shall be retained or paid, as applicable, by Seller. All rents and expenses, utility charges and other income or expense items for 2019 and thereafter relating to the Acquired Assets shall be prorated as of the date of Closing in the customary manner in Morrow County, Oregon. Such proration shall be final and the Parties shall not make any post-closing adjustment with respect to such expenses.

Section 9.3 **Assignment Agreements; Adequate Assurance of Future Performance.** With respect to each Assigned Agreement, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Agreement. Buyer and Seller agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Agreements, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer’s and Seller’ Representatives available to testify before the Bankruptcy Court.

Section 9.4 **Post-Closing Books and Records and Personnel.** For twenty-four (24) months after the Closing Date, (a) neither Buyer, nor Seller shall dispose of or destroy any of the business records and files of the Business and (b) Buyer and Seller (including, for clarity, any trust established under a Chapter 11 plan of Seller or any other successors of Seller) shall allow each other and their respective Representatives reasonable access during normal business hours, and upon reasonable advance notice and to the extent permitted by applicable Law, to all employees, files and any books and records and other materials included in the Acquired Assets for purposes relating to the Bankruptcy Case, the wind-down of the operations of Seller, the functions of any such trusts or successors, or other reasonable business purposes, including Tax matters, litigation, or potential litigation, each as it relates to the Business, the Acquired Assets or the Assumed Liabilities, and Buyer and Seller (including any such trust or successors) and such Representatives shall have the right to make copies of any such files, books, records and other materials. In addition, from and after the Closing for a period of sixty (60) days, Seller will permit Buyer and its Representatives access to such personnel of Seller during normal business hours as Buyer may reasonably request to assist with the transfer of the Acquired Assets, provided that nothing in this Section 9.4 shall prohibit Seller from ceasing operations or winding up its affairs following the Closing.

Section 9.5 Confidentiality. The terms of any confidentiality agreement to which Buyer (or an Affiliate of Buyer) is party in respect of Seller (or any Affiliate thereof) shall continue in full force and effect until the Closing, at which time Buyer's obligations under any such confidentiality agreement shall terminate only insofar as they pertain to the Acquired Assets.

Section 9.6 Post-Closing Agreements. Following the Closing, Seller and Buyer shall use their reasonable best efforts, and shall cooperate with each other, to enter into (i) a written lease agreement by and between Seller, as tenant, and Buyer, as landlord, for such portion of the Land as is reasonably necessary to grant Seller with the legal right to remain as the named party under the Existing CAFO Permit until such time as the Existing CAFO Permit is either revoked or formally transferred to Buyer; and (ii) any ancillary agreements between Seller, Buyer, and any third party operator of the Dairy Operation (if any), as may be reasonably necessary in the responsible discretion of Seller to memorialize the post-closing obligations and ongoing indemnification responsibilities of the Parties relating to the Existing CAFO Permit and the Wind-Down Plan (collectively, the "**Post-Closing Agreements**"). As a condition precedent to the Parties' respective obligation to close described at Article X below, the Parties shall reach an agreement on the form and substance of all Post-Closing Agreements, and each such Post-Closing Agreement shall be executed by the Parties prior to the expiration of the Inspection Period, with the Parties' obligations thereunder remaining expressly subject to the successful Closing of the transaction contemplated by this Agreement.

ARTICLE X CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions in the Buyer's sole and absolute discretion:

Section 10.1 Accuracy of Representations. The representations and warranties of Seller contained in Article V shall be true and correct as of the Effective Date and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date).

Section 10.2 Seller's Performance. Seller shall have performed and complied with in all material respects the covenants and agreements that Seller is required to perform or comply with pursuant to this Agreement at or prior to the Closing Date, including without limitation, the Pre-Closing Covenants required by Section 8.1 and Buyer shall have received a certificate of Seller to such effect signed by a duly authorized person thereof.

Section 10.3 Wind-Down Plan. Prior to the expiration of the Inspection Period, Seller shall have received a fully-executed Wind-Down Plan signed by a duly authorized person from the necessary Government Authorities, which shall be acceptable to Buyer in its sole and absolute discretion, a copy of which shall be attached hereto as **SCHEDULE 1.1(zzz)**.

Section 10.4 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a "**Closing Legal Impediment**"); provided, however, that Seller shall take all actions required by Section 8.3 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 10.5 Seller's Deliveries. Each of the deliveries required to be made to Buyer by Seller under this Agreement shall have been so executed and delivered.

Section 10.6 Bidding Procedures Order. The Bidding Procedures Order (i) shall not have been voided, reversed or vacated or subject to a stay and (ii) shall not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 10.7 Bankruptcy Court Actions. The Bankruptcy Court shall not have entered an order (i) appointing a trustee or examiner with expanded powers or (ii) dismissing the Bankruptcy Case or converting the Bankruptcy Case to a case governed under Chapter 7 of the Bankruptcy Code.

Section 10.8 Sale Order. The Bankruptcy Court shall have entered the Sale Order prior to March 31, 2019, the Sale Order shall be a Final Order and the Sale Order shall not be subject to a stay or pending appeal.

Section 10.9 Boardman Lease. Prior to the expiration of the Inspection Period, Seller shall have negotiated and delivered to Buyer a fully-executed modification to the Boardman Lease, which shall be acceptable to Buyer in its sole and absolute discretion, a copy of which shall be attached hereto as **SCHEDULE 1.1(O)**.

Section 10.10 Post-Closing Agreements. Buyer and Seller shall have negotiated the Post-Closing Agreements, the form and substance of which shall be mutually acceptable to the Parties, and all such Post-Closing Agreements shall be executed by the Parties prior to the expiration of the Inspection Period and attached hereto as **SCHEDULE 10.10**.

ARTICLE XI CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

Seller's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 11.1 Accuracy of Representations. The representations and warranties of Buyer contained in Article VII shall be true and correct as of the Effective Date and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date).

Section 11.2 Buyer's Performance. Buyer shall have performed and complied with in all material respects the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing Date, and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer or manager thereof.

Section 11.3 No Order. No Closing Legal Impediment shall be in effect, provided, however, that prior to asserting this condition Seller shall have taken all actions required by Section 8.3 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 11.4 Buyer's Deliveries. Each of the deliveries required to be made to Seller by Buyer under this Agreement shall have been so executed and delivered.

Section 11.5 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay or pending appeal.

Section 11.6 Post-Closing Agreements. Buyer and Seller shall have negotiated the Post-Closing Agreements, the form and substance of which shall be mutually acceptable to the Parties, and all such Post-Closing Agreements shall be executed by the Parties prior to the expiration of the Inspection Period.

ARTICLE XII TERMINATION

Section 12.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding (other than as provided in the last sentence of this Section 12.1, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Seller and Buyer; or
- (b) by either Seller or Buyer:
 - (i) if the Bankruptcy Court rules that it does not approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this (i) shall not be available to any Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or Order;
 - (ii) if the Closing shall not have occurred by the close of business on March 31, 2019 (the "**Outside Date**"); provided, however, that the right to terminate this Agreement pursuant to this Section 12.1(b)(ii) shall not be available to a Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in the failure of the Closing to be consummated by such time;
 - (iii) if (A) following entry by the Bankruptcy Court of the Bidding Procedures Order, such order is voided, reversed or vacated or is subject to a stay such that the Bidding Procedures Order is not in full force and effect as of January 14, 2019; (B) the Auction is not held on or before February 12, 2019; (C) the Bankruptcy Court has not entered the Sale Order on or before February 15, 2019; provided, however, if approval of the Sale Order is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available;
 - (iv) if the Sale Order is vacated;
 - (v) if Seller enters into a definitive agreement with respect to an Alternative Transaction because Buyer is not the Successful Bid at the Auction;
 - (vi) if the Bankruptcy Court enters an order approving an Alternative Transaction; or
- (c) by Buyer:

(i) in the event of any breach by Seller of any of its agreements, covenants, representations or warranties contained herein that would result in the failure of any condition set forth in this Agreement to be satisfied, and the failure of Seller to cure such breach by the earlier of (A) the Outside Date, and (B) the date that is fifteen (15) days after receipt of the Buyer Termination Notice; or

(ii) If Buyer elects, in its sole and absolute discretion, pursuant to Section 4.1 and Section 4.2;

(d) By Seller:

(i) if the Bankruptcy Case is dismissed; or

(ii) if any conditions to the obligations of Buyer set forth in Article X shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement; or

(iii) In the event of any breach by Buyer of any of its agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article XI to be satisfied, and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date, and (B) the date that is fifteen (15) days after receipt of a notice of termination from the Seller;

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in its reasonable discretion, that the Successful Bid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended and submitted at the Auction, then within one (1) Business Day following the conclusion of the Auction, Seller and Buyer shall enter into an amendment to this Agreement to reflect Buyer's Successful Bid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 12.2 Effect of Termination. If this Agreement is terminated pursuant to Section 12.1(d)(iii), the Deposit shall be retained by Seller for its own account as liquidated damages, the Parties acknowledging that such amount is a reasonable approximation of any such damages likely to accrue under the circumstances. If this Agreement is terminated pursuant to any other provision of this Agreement, the Seller shall promptly (but in any event within two (2) Business Days of such termination) instruct the Escrow Agent to return the Deposit to Buyer by wire transfer of immediately available funds.

Section 12.3 Termination Fee.

(a) If (i) this Agreement is terminated by Seller for any reason other than by Seller pursuant to Section 12.1(d)(iii), then, in any such case, Seller shall, without the requirement of any notice or demand from Buyer or any application to or order of the Bankruptcy Court, promptly, but in no event later than three (3) Business Days after the consummation of an Alternative Transaction, pay or cause to be paid to Buyer an amount equal to the Termination Fee and a written release and instructions to the Escrow Agent to return the Minimum Deposit to the Buyer. The Termination Fee shall, pursuant to the Bidding Procedures Order, constitute allowed administrative expenses of Seller's estates under Sections 503(b) of the Bankruptcy Code.

(b) Each of the Parties acknowledge and agree that the agreements contained in this Section 12.3 are an integral part of the transaction contemplated under this Agreement and that,

without these agreements, the other Parties would not enter into this Agreement. Each of the Parties further acknowledges that the payment by Seller of the Termination Fee is not a penalty, but rather liquidated damages in a reasonable amount that will compensate Buyer, for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereunder, which amount would otherwise be impossible to calculate with precision. Without limiting in any way Buyer's rights set forth in (c), Buyer's receipt in full of the Termination Fee, together with interest or collection expenses, if any, due and payable as provided herein, shall be the sole and exclusive monetary remedy of Buyer against Seller, and Seller shall have no further liability or obligation, under this Agreement or relating to or arising out of any such breach of this Agreement or failure to consummate the transactions contemplated hereunder. The obligations to return the Minimum Deposit and pay the Termination Fee will (i) be binding upon and enforceable against Seller immediately upon the Bankruptcy Court's entering the Bidding Procedures Order, (ii) not be terminable or dischargeable thereafter for any reason, (iii) survive any subsequent conversion, dismissal or consolidation of the Bankruptcy Case, any plan of reorganization or liquidation in the Bankruptcy Case, and (iv) survive the subsequent termination of this Agreement. The obligations to return the Minimum Deposit and pay Buyer the Termination Fee as and when required under this Agreement, are intended to be, and upon entry of the Bidding Procedures Order are, binding upon (A) Seller and Debtor, (B) any successors or assigns of Seller, (C) any trustee, examiner or other representative of Seller's estate, and (D) any other entity vested or revested with any right, title or interest in or to Seller, or any other Person claiming any rights in or control (direct or indirect) over Seller (each of (B) through (D), a "Successor") as if such Successor were a Seller hereunder. The obligations of Seller to return the Minimum Deposit and the obligation to pay Buyer the Termination Fee, as and when required under this Agreement, may not be discharged under Sections 1141 or 727 of the Bankruptcy Code or otherwise and may not be abandoned under Section 554 of the Bankruptcy Code or otherwise.

(c) For the avoidance of doubt, while Buyer may pursue (i) a grant of specific performance prior to the termination of this Agreement to cause the Closing and performance of this Agreement as provided in Section 13.11 and (ii) concurrently pursue the payment of the Termination Fee under this Section 12.3 if this Agreement is validly terminated pursuant to Section 12.1(b)(vi), under no circumstances shall Buyer be permitted or entitled to receive both (A) the remedy of specific performance to cause the Closing and (B) the payment of the Termination Fee.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Public Announcements. The Parties shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

Section 13.2 Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a nationally recognized courier for overnight delivery service, or (c) by email or other electronic means, confirmed by telephone or return email (including an automated return receipt), to the persons indicated below. A notice or communication shall be deemed to have been effectively given (i) if in person, upon personal delivery to the Party to whom the notice is directed, (ii) if by nationally recognized courier, one (1)

Business Day after delivery to such courier, and (iii) if by email or other electronic means, when sent. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

If to Seller, then to:

The Bankruptcy Estate of Greg te Velde
583 First St. West
Sonoma, CA 95476
Attention: Randy Sugarman, Trustee
Email: sugarmanco@gmail.com
Telephone: (415) 314-6566

with a copy (which shall not constitute notice) to:

MacConaghy & Barnier
Attn: John H. MacConaghy, Esq.
645 First Street West, Suite D
Sonoma, CA 95476
Email: macclaw@macbarlaw.com
Telephone: (707) 935-3205

If to Buyer, then to:

Canyon Farm, LLC
P.O. Box 941
Pasco, WA 99302
Email: canyonfarm@fall-line-cap.com

with a copy (which shall not constitute notice) to:

Messerli & Kramer P.A.
Attn: Jonathan R. Septer, Esq.
100 South Fifth Street, Suite 1400
Minneapolis, MN 55402
Email: jsepter@messerlikramer.com
Telephone: (612) 672-3769

Section 13.3 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought and such amendment, modification, discharge or waiver is delivered substantially contemporaneously to each other Party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach or of a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. No course of dealing between or among the

Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights to payment of any Party under or by reason of this Agreement.

Section 13.4 **Entire Agreement.** This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents contain all of the terms, conditions and representations and warranties agreed to by the Parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. The representations, warranties, covenants and agreements contained in this Agreement (including the Schedules and the Exhibits) and the other Transaction Documents are intended, among other things, to allocate the economic cost and the risks inherent in the transactions contemplated hereby and thereby, including risks associated with matters as to which the party making such representations and warranties has no knowledge or only incomplete knowledge, and such representations and warranties may be qualified by disclosures contained in the Schedules. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the Effective Date or as of any other date.

Section 13.5 **No Presumption as to Drafting.** Each of the parties acknowledges that it has been represented by legal counsel in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or the Transaction Documents against the drafting party has no application and is expressly waived.

Section 13.6 **Assignment.** This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Party (which consent maybe granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Seller, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Agreement.

Section 13.7 **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 13.8 **Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.**

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed in accordance with, the laws of the State of Oregon applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Oregon applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case is closed through the entry of a Final Decree, all Proceedings arising out of or relating to this Agreement shall be heard and determined in an Oregon state court or a federal court sitting in the State of Oregon, and the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state court or federal court having jurisdiction over Morrow County, Oregon (including any appellate courts therefrom) with respect to all Proceedings arising out of or relating to this Agreement and the transaction contemplated hereby (whether based on contract, tort or other theory); (b) agree that all claims with respect to any such Proceeding shall be heard and determined in such courts and agrees not to commence any Proceeding relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or other theory) except in such courts; (c) irrevocably and unconditionally waive any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum; and (d) agree that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The Parties agree that any violation of this (b) shall constitute a material breach of this Agreement and shall constitute irreparable harm.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) EACH PARTY CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 13.8.

Section 13.9 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or other electronic transmission in portable document format (pdf)) with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. This Agreement shall become effective when, and only when, each Party shall have received a counterpart hereof signed by the other Party. Delivery of an executed counterpart hereof by means of facsimile or electronic transmission in portable document format (pdf) shall have the same effect as delivery of a physically executed counterpart in person.

Section 13.10 Parties in Interest; No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights, benefits, remedies, obligations, liabilities or claims hereunder upon any Person not a Party or a permitted assignee of a Party.

Section 13.11 **Specific Performance.** The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at Law.

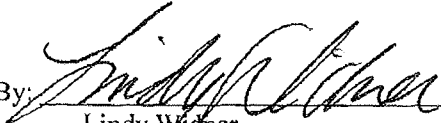
Section 13.12 **Survival.** All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms.

[Signature pages follow]

CAREFULLY READ THE TERMS HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS AGREEMENT BECOMES PART OF A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING. THE PARTIES EXECUTING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY ARE LEGALLY AUTHORIZED TO EXECUTE THIS AGREEMENT.

BUYER:
CANYON FARM, LLC,
a Delaware limited liability company

SELLER:
THE BANKRUPTCY ESTATE OF GREG TE
VELDE, Bankruptcy No. 18-11651, United
States Bankruptcy Court, Eastern District of
California, Fresno Division

By: 
Lindy Widner
Its: Authorized Signatory

By: _____
Randy Sugarman
Its: Trustee

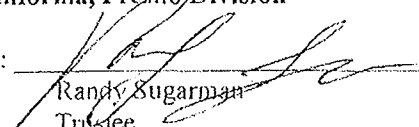
[Signature page to Real Estate Sales Agreement]

CAREFULLY READ THE TERMS HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS AGREEMENT BECOMES PART OF A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING. THE PARTIES EXECUTING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY ARE LEGALLY AUTHORIZED TO EXECUTE THIS AGREEMENT.

BUYER:
CANYON FARM, LLC,
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SELLER:
THE BANKRUPTCY ESTATE OF GREG TE
VELDE, Bankruptcy No. 18-11651, United
States Bankruptcy Court, Eastern District of
California, Fresno Division

By: _____
Printed Name: _____
Its: _____

By:  _____
Randy Sugarman
Its: Trustee

[Signature page to Real Estate Sales Agreement]

EXHIBIT A
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EXHIBIT A

BIDDING PROCEDURES ORDER

1. The following bidding procedures ("**Sale Procedures**") shall govern the sale of all Oregon land, buildings, fixtures, and improvements consisting of approximately 7,300 acres +/-, South of Homestead Lane and East of Bombing Range Road commonly known as the Lost Valley Farm, including without limitation all existing pivots and irrigation equipment, all dairy barns and equipment and milling equipment and other buildings, all water and irrigation rights, all planted and growing crops, all mineral and gas rights, all easements of any kind, and substantially all feed inventories on the land on the date of closing and rolling stock/motorized equipment and implements attachments, tools, and fixtures currently installed or in use (the "**Assets**") The Assets shall be sold by Randy Sugarman, Chapter 11 Trustee of the Estate of Gregory J. te Velde, ("**Trustee**").

2. The Assets will be offered at an auction ("**Auction**") which will take place on _____, 2019 commencing at _____ PST in the Courtroom of the Hon. Fredrick E. Clement, United States Bankruptcy Court for the Eastern District of California, Fresno Division, 2500 Tulare St., 5th Floor, Fresno, CA 93721. In the event of a change in the time or location of the Auction, the Trustee will use its reasonable best efforts to notify all Qualified Bidders who have timely submitted Qualified Bids by the Auction Deadline (as such terms are defined below).

3. Canyon Farm, LLC ("**Initial Bidder**") has entered into an Asset Purchase Agreement ("**APA**") with the Trustee to acquire the Assets for \$67,500,000.00. Initial Bidder is a "Stalking Horse" bidder, whose offer may be outbid at the Auction. However, if this occurs, Initial Bidder will receive a termination fee of \$1,000,000 (the "**Termination Fee**") if it is not the Auction Winner and the transaction to the Auction Winner closes. The Termination Fee shall be earned by and payable to the Initial Bidder upon consummation of a sale of the Assets to a successful competing bidder. The Trustee has agreed that obligations to pay the Termination Fee shall survive termination of the Stalking Horse Purchase Agreement, and to the extent owed by the Estate, be allowed super-priority administrative expense claims under sections 503(b) and 507 of the Bankruptcy Code and shall not be subordinate to any other administrative expense claim against Estate. The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the sale of the Assets, and related matters, including the right to object to the sale of the Assets or any portion thereof (including the conduct of the Auction and interpretation of these Sale Procedures).

4. In order to participate in the bidding process, each person (each a "**Potential Bidder**") must deliver to the Trustee at the address set forth in Paragraph 8 below, the following:

a. an executed Asset Purchase Agreement in substantially the form attached hereto ("**Form APA**"), with the purchase price equal to or in excess of the Minimum Bid Amount (defined herein);

b. a deposit in good funds in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000.00) ("**Deposit**") to be submitted to Trustee in the form of a

cashier's check or wired funds;

c. financial statements showing that the Potential Bidder has ample and present ability to timely close on the Assets and perform all of the post-closing obligations of the Buyer pursuant to the terms of the completed Form APA; or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements or other financial information of the equity holder(s) of the Potential Bidder, or such other form of financial disclosure acceptable to the Trustee, demonstrating such Potential Bidder's ability to timely close;

d. a signed statement acknowledging the prohibition against collusive bidding, and disclosing any connections or agreements with the Trustee and/or any officer, director, member, counsel, or equity security holder of the Trustee.

e. except for the Initial Bidder, a written disclaimer of any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation or reimbursement of expenses. For the avoidance of doubt, no Potential Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Seller, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid agrees to refrain from and waive any assertion or request for reimbursement on any basis.

5. No overbid will be accepted if it contains contingencies.

6. The Trustee shall use its best efforts to immediately provide Potential Bidders any and all due diligence information regarding the Assets that he has in his possession. Further the Trustee shall provide access to all Potential Bidders to the Assets upon twenty-four (24) hours notice.

7. A "Bid" is a completed Form APA from a Potential Bidder stating that: (i) the Potential Bidder offers to purchase the Assets that is the subject of the APA upon the same or better terms and conditions as set forth in the Form APA, with the completed Form APA marked to show any and all amendments and modifications from the Form APA, including, but not limited to, purchase price and contact information of the purchaser; (ii) the Potential Bidder agrees to purchase the Assets that is the subject of its APA for at least the Minimum Bid Amount relating to such Assets (as set forth below); (iii) the Potential Bidder is prepared to enter into and consummate the transaction by the Closing Date; and (iv) the offer is irrevocable until the later of the date that (a) the Auction has taken place and it is not selected as the Auction Winner, in which case the Deposit will be refunded, or (b) the sale of the Assets to it has been consummated if it is the Auction Winner. If a Potential Bidder is represented by a licensed real estate broker, an acceptable Bid may include a provision that one percent (1%) of the gross sales price may be paid to such broker as its share of the total commission otherwise payable by the Trustee to his broker, as allowed by the Court.

8. Bids are due and must be actually received by the Trustee no later than 5:00 p.m. PDT one (1) business day prior to the Auction ("Auction Deadline"). Bids shall be submitted

to: John H. MacConaghy, Esq., MacConaghy & Barnier, PLC, 645 First St. West, Ste. D., Sonoma, CA 95476 for the Trustee if sent via regular or overnight mail or personal delivery. Bids may be submitted via electronic mail to macclaw@macbarlaw.com, and sugarmanco@gmail.com. The deposit, if wired, shall be wired to Trustee's counsel per the following wiring instructions: Bank: Wells Fargo Bank, N.A; Address: 420 Montgomery St., San Francisco, CA 94104; ABA# 121000248; Account Number: 545046401; Account Name Credit to: MacConaghy & Barnier, PLC Attorney Client Trust Fund CA IOLTA Account – Please reference Bidder Name and Telephone Number. If the Trustee does not receive any Qualified Bids by the Bid Deadline, the Trustee will report the same to the Bankruptcy Court.

9. For a Bid to be deemed a “Qualified Bid” it must comply with the requirements of Sections 4, 5, 7, and 8 above. A “Qualified Bidder” is a Potential Bidder that submits a Qualified Bid.

10. If the Trustee determines that a Potential Bidder is not a Qualified Bidder, the Deposit will be returned to the Potential Bidder within a period of five (5) business days of such determination.

11. At the Auction, only Qualified Bidders shall be entitled to bid on the Assets. The Minimum Overbid bid(s) shall be Sixty Nine Million Dollars (\$69,000,000.00) for the Assets (“**Minimum Bid Amount**”). No bid will be accepted if it contains contingencies, including without limited to, as to financing or due diligence.

12. The Auction shall be conducted by Trustee as follows:

a. At the Auction, bidding will begin at the Minimum Bid Amount or such higher amount that a Qualified Bidder has bid prior to the Auction. Qualified Bidders may bid in minimum increments of Five Hundred Thousand Dollars (\$500,000.00) higher than the Minimum Bid Amount (the “**Minimum Bid Increment**”). The Minimum Bid Increment may be in increments higher than Five Hundred Thousand Dollars (\$500,000.00). Bidding at the Auction shall continue until such time as the highest and best bid is determined.

b. The Auction will be conducted as follows: (i) Qualified Bidders and/or their representatives may make a bid at the auction in person or via telephonic conferencing through Court Call with bidding starting at the amount of the highest Qualified Bid received for the Assets; (ii) a certified shorthand reporter shall be present to create a record of the Auction; (iii) the Auction will be an open bid process, with all bids stated orally and on the record; (iv) the Trustee may recess the Auction at any time; (v) Qualified Bidders may ask for a reasonable time for a recess during the bidding, which requests the Trustee will grant in its discretion.

c. In the event that the Stalking Horse Bidder overbids, it may elect to apply a credit toward its Bid in an amount equal to the Termination Fee; provided however in all cases any overbid shall conform with the established Bid Increments and such overbid shall result in a net increase to the bankruptcy estate.

13. Upon completion of the Auction, the highest and best Qualified Bid shall be

selected that maximizes the value of the Assets and is in the best interest of the Trustee, its bankruptcy estate, the Committee and its creditors ("**Successful Bid/Auction Winner**"). The Trustee will then submit the Successful Bid for approval by the Bankruptcy Court for entry of an order by the Bankruptcy Court approving the sale ("**Sale Order**").

14. At the conclusion of the Auction, the Trustee may designate a "Back-Up Bidder" or multiple Back-Up Bidders, with the consent of the entity(ies) submitting such bid(s). If the Auction Winner does not close the transaction per the terms and conditions of the Successful Bid, the Trustee may elect, in its business judgment, to move forward with the next Back-up Bidder to take the place of the Auction Winner upon the terms of the Back-Up Bidder's last and highest bid at the Auction. The proceedings related to these selections shall be approved in the Sale Order. If selected as a Back-Up Bidder, such bidder's Deposit shall be released upon the later to occur: (a) the closing of a transaction with the Auction Winner or other Back-Up Bidder, or (b) thirty (30) days from the date of the Auction.

15. The closing of a sale of the Assets to the Auction Winner ("**Closing**") shall be held in the offices of the duly licensed Title Company specified in the Form APA, or such other location as is agreed to by the parties, as soon as practicable following the date the Sale Order becoming final and no longer appealable ("**Closing Date**"), but in no event after March 1, 2019. The Closing Date specified in a given Bid shall be one factor considered by the Trustee in determining the highest and best bid.

16. Nothing herein shall be construed to modify the terms and conditions set forth in the APA executed by Initial Bidder.

17. Any disputes related to these Bidding Sale Procedures, including whether a Bid constitutes a Qualified Bid, shall be resolved by the Bankruptcy Court.

EXHIBIT B

LEGAL DESCRIPTION OF LAND

Legal Description

PARCEL I:

A parcel of land located in Township 3 North, Range 26, East of the Willamette Meridian, in the County of Morrow and State of Oregon, described as follows:

Section 15: All.

Section 16: All.

Section 17: All.

Section 20: All.

Section 21: All.

Section 22: All.

Section 28: A portion of the West Half of said Section 28 described as follows: The Northwest corner of said Section being the True Point of Beginning; Thence North 89°28'04" East along the North line of said Section 28 a distance of 1,150.29 feet; Thence South 00°31'56" East a distance of 1,442.20 feet to a point of curve; Thence Westerly along a curve to the right having a radius of 1,350.00 feet a distance of 1,920.36 feet to a point on the West line of Section 28; Thence North 00°31'40" West along the West line of said Section 28 a distance of 2,777.38 feet to the True Point of Beginning.

Section 29: A portion of the North Half of said Section 29 described as follows: Beginning at the Northwest Corner of said Section 29 being the True Point of Beginning; Thence South 89°55'40" East along the North line of said Section a distance of 5,314.21 feet to the Northeast corner of said Section 29; Thence South 00°31'40" East along the East line of said Section 29 a distance of 2,777.38 feet to a point of curve; Thence Westerly along a curve to the right having a radius of 1,350.00 feet a distance of 922.51 feet; Thence North 59°52'37" West a distance of 1,706.19 feet; Thence North 89°55'40" West parallel with the North Section line a distance of 2,928.43 feet to a point on the West line of Section 29; Thence North 01°30'21" West along the said West line a distance of 1,759.00 feet to the True Point of Beginning.

EXCEPTING THEREFROM: That portion of Sections 17, 20 and 29 lying Northerly and Westerly of the Following Described line: Beginning at the Northwest corner of said Section 29; Thence South 01°30'21" East along the West line of said Section 29 a distance of 1,759.00 feet to the True Point of Beginning;

Thence South 89°55'40" East a distance of 2,928.43 feet;

Thence South 59°52'37" East a distance of 378.03 feet;

Thence North 30°06'34" East a distance of 2,112.15 feet;

Thence North 29°29'36" West a distance of 1,521.36 feet;

Thence North 30°07'54" East a distance of 1,521.36 feet;
 Thence North 29°29'42" West a distance of 1,538.94 feet;
 Thence North 29°34'17" East a distance of 1,476.46 feet;
 Thence North 29°31'32" West a distance of 1,573.16 feet;
 Thence North 29°35'01" East a distance of 1,457.59 feet;
 Thence North 29°10'25" West a distance of 1,550.63 feet;
 Thence North 30°14'40" East a distance of 1,625.98 feet to a point on the North line of said
 Section 17 which is North 89°16'33" West a distance of 857.68 from the Northeast corner thereof
 and the terminus of said line.

ALSO EXCEPTING THEREFROM all roads and road rights of way.

PARCEL II

TRACT "A":

A parcel of land lying in Sections 14, 23, 26, 27, 34 and 35 in Township 3 North, Range 26 East of the Willamette Meridian and in Sections 2, 3, 10 and 11, Township 2 North, Range 26 East of the Willamette Meridian, in the County of Morrow and State of Oregon, being more particularly described as follows:

Township 3 North, Range 26 East of the Willamette Meridian, in the County of Morrow and State of Oregon.

Section 14: The West half.

Section 23: All.

Sections 27 and 34: All that portion of Sections 27 and 34 lying Easterly of the following described line:

Beginning at the South quarter corner of Section 34;

Thence North 89°23'00" East along the Southerly line of said Section 34, a distance of 60.58 feet to the True Point of Beginning;

Thence North 38°03'36" East, a distance of 10.24 feet;

Thence North 52°25'12" East, a distance of 333.45 feet;

Thence North 70°24'04" East, a distance of 464.38 feet;

Thence North 53°54'08" West, a distance of 421.01 feet;

Thence North 42°42'52" West, a distance of 523.40 feet;

Thence North 19°27'27" West, a distance of 325.52 feet;

Thence North $00^{\circ}29'16''$ West, a distance of 2,664.23 feet;
 Thence South $80^{\circ}08'12''$ West, a distance of 580.46 feet;
 Thence North $73^{\circ}56'03''$ West, a distance of 956.50 feet;
 Thence North $22^{\circ}36'58''$ West, a distance of 1,352.27 feet;
 Thence North $35^{\circ}35'17''$ East, a distance of 1,488.75 feet;
 Thence North $64^{\circ}01'20''$ East, a distance of 562.04 feet;
 Thence South $67^{\circ}42'30''$ East, a distance of 1,406.33 feet;
 Thence North $22^{\circ}17'30''$ East, a distance of 1,393.16 feet;
 Thence North $67^{\circ}42'30''$ West, a distance of 1,697.41 feet;
 Thence North $04^{\circ}14'58''$ East, a distance of 1,171.44 feet;
 Thence North $12^{\circ}00'12''$ East, a distance of 1,157.95 feet to the North quarter corner of said Section 27, and Terminus of this line.

Sections 26 and 35: All that portion of Sections 26 and 35 lying Northerly and Westerly of the following described line:

The Northeast corner of said Section 26 being the True Point of Beginning;
 Thence South $00^{\circ}31'56''$ East along the East line of said Section, a distance of 3,559.99 feet;
 Thence South $89^{\circ}28'05''$ West, a distance of 805.28 feet;
 Thence South $00^{\circ}32'22''$ East, a distance of 1,651.97 feet;
 Thence South $89^{\circ}27'28''$ West, a distance of 3,372.06 feet;
 Thence South $15^{\circ}38'27''$ West, a distance of 2,280.70 feet;
 Thence South $35^{\circ}50'54''$ East, a distance of 1,920.69 feet;
 Thence South $21^{\circ}46'36''$ East, a distance of 1,704.41 feet to a point lying on the Southerly line of said Section 35.
 Thence South $89^{\circ}39'06''$ West along said Southerly line, a distance of 2,205.64 feet to the Southwest corner of said Section 35 and Terminus of this line.

Township 2 North, Range 26 East of the Willametta Meridian, in the County of Morrow and State of Oregon.

Sections 2, 3, 10 and 11: All that portion of Sections 2, 3, 10 and 11 described as follows:

Beginning at the Northwest corner of said Section 2, said Northwest corner being the True Point of Beginning;
 Thence North $89^{\circ}39'06''$ East, along the Northerly line of said Section 2, a distance of 2,205.64 feet;

Thence South 21°46'36" East, a distance of 3,006.50 feet;
Thence South 06°25'54" East, a distance of 681.77 feet;
Thence South 19°49'25" West, a distance of 2,971.56 feet;
Thence South 49°28'13" West, a distance of 738.67 feet;
Thence South 68°56'55" West, a distance of 381.07 feet;
Thence North 84°35'36" West, a distance of 673.57 feet;
Thence North 64°22'22" West, a distance of 498.86 feet;
Thence North 30°57'52" West, a distance of 610.67 feet;
Thence South 83°51'38" West, a distance of 179.95 feet;
Thence South 35°46'58" West, a distance of 645.54 feet;
Thence South 57°29'32" West, a distance of 414.96 feet;
Thence South 76°21'15" West, a distance of 411.79 feet;
Thence North 84°40'00" West, a distance of 574.35 feet;
Thence North 61°30'19" West, a distance of 298.77 feet;
Thence North 44°43'36" West, a distance of 482.75 feet;
Thence North 29°36'05" West, a distance of 289.52 feet;
Thence North 21°02'27" West, a distance of 297.13 feet;
Thence North 02°54'58" West, a distance of 474.28 feet;
Thence North 11°46'03" East, a distance of 454.46 feet;
Thence North 62°17'52" West, a distance of 1,234.57 feet;
Thence North 52°00'57" West, a distance of 286.20 feet;
Thence North 19°45'29" West, a distance of 556.46 feet;
Thence North 05°52'18" West, a distance of 210.58 feet;
Thence North 00°00'26" West, a distance of 242.38 feet;
Thence North 02°57'32" East, a distance of 205.68 feet;
Thence North 14°13'57" East, a distance of 194.34 feet;
Thence North 29°38'55" East, a distance of 411.54 feet;
Thence North 25°38'35" East, a distance of 2,277.72 feet;
Thence North 38°03'36" East, a distance of 503.16 feet to a point lying on the Northerly line of said Section 3, and being North 89°23'00" East, a distance of 60.58 feet from the North quarter corner of said Section 3;
Thence North 89°23'00" East along said Northerly line, a distance of 2,578.64 feet to the Northwest corner of aforesaid Section 2, and the True Point of Beginning.

TRACT "B":

A parcel of land situated in Sections 27, 28, 33 and 34 in Township 3 North, Range 26, East of the Willamette Meridian, in the County of Morrow and State of Oregon, described as follows:

Beginning at the Northwest corner of Section 28;

Thence North 89°28'04" East, along the North line of said Section 28 a distance of 1,150.29 feet;

Thence South 00°31'56" East, a distance of 1,442.20 feet to a point of curve;

Thence Southwesterly along the arc of a curve having a central angle of 11°48'03" and a radius a 1,350.00 feet, a distance of 278.05 feet to the True Point of Beginning;

Thence South 70°26'25" East, a distance of 4,306.92 feet;

Thence South 13°06'01" East, a distance of 4,312.46 feet;

Thence South 49°02'47" West, a distance of 1,626.40 feet;

Thence North 68°48'59" West, a distance of 4,283.16 feet;

Thence North 12°00'00" West, a distance of 4,192.31 feet to a point on a curve;

Thence Northeasterly along the arc of a curve having a central angle of 67°21'48" and a radius of 1,350.00 feet, a distance of 1,587.21 feet to the True Point of Beginning.

TRACT "C":

A parcel of land situated in Sections 28, 29, 32 and 33 in Township 3 North, Range 26, East of the Willamette Meridian, in the County of Morrow and State of Oregon, being more particularly described as follows:

Beginning at the Northwest corner of Section 28;

Thence North 89°28'04" East along the North line of Section 28, a distance of 1,150.29 feet;

Thence South 00°31'56" East a distance of 1,442.20 feet to a point of curve;

Thence Southwesterly along a curve to the right having a radius of 1,350.00 feet and a central angle of 120°39'19", an arc distance of 1,865.26 feet to a point on curve and True Point of Beginning;

Thence continuing along said curve an arc distance of 977.61 feet;

Thence North 59°52'37" West a distance of 258.83 feet;

Thence South 00°37'43" East parallel with the East line of Section 29 a distance of 2,645.05 feet to a point of curve, said curve having a radius of 1,600.00 feet, a central angle of 229°11'20", and a bearing of South 05°45'39" East to the radius point;

Thence along said curve on a chord bearing of South 82°26'45" West a chord distance of 100.14 feet;

Thence continuing along said curve on chords corresponding to 300.00 feet of arc lengths, an arc distance of 6,300.00 feet to a point of tangency, said point lying South 54°56'59" East of said radius point, and said chords being the true boundary line;

Thence North 35°03'01" East a distance of 939.67 feet;

Thence North 12°00'00" West a distance of 4,192.31 feet to the True Point of Beginning.

EXCEPTING FROM PARCELS I AND II, all Timber reserved in Special Warranty Deed between Boardman Tree Farm, LLC, a Delaware limited liability company as Grantor, to Greg TeVelde, as Grantee, recorded November 12, 2015 as Microfilm No. 2015-37074, Morrow County Microfilm Records, together with the terms and conditions contained therein,

EXHIBIT C
SALE ORDER
See attached.

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Special Counsel for Randy Sugarman, Chapter 11 Trustee

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re
GREGORY JOHN TE VELDE,
Debtor

Tax ID #: xxx-xx-7505
Address: 5850 Avenue 160
Tipton, CA 93272

CASE NO. 18-11651

DC No.: WW-37

Chapter 11

Date: January 9, 2019
Time: 1:30 p.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 11
Judge: Honorable Fredrick E. Clement

Order Approving Motion for Order Approving Bidding and Sale
Procedures

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ORDER APPROVING MOTION FOR ORDER APPROVING BIDDING AND SALE PROCEDURES

At Fresno, in the Eastern District of California.

The Motion of the Chapter 11 Trustee, Randy Sugarman, for an Order approving Bidding and Sale Procedures came before this Court for its consideration pursuant to an Order Shortening Time entered on December ____, 2018.

All appearances were entered on the record. Riley C. Walter appeared for the Chapter 11 Trustee as Special Counsel.

The Court, having reviewed the Motion for Order Approving the Bidding and Sale Procedures (the "Motion"), the supporting Memorandum of Points and Authorities, the Declaration of Randy Sugarman, and the proposed Bidding and Sales Procedures attached to the Randy Sugarman Declaration, noting that the Motion has been duly and properly served, noting the absence of objections, and having determined that good cause exists for granting the Motion and for approval of the Bidding and Sales Procedures proposed by the Trustee, and designation of Canyon Farm, LLC as Stalking Horse:

NOW THEREFORE,

IT IS HEREBY ORDERED ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion be, and hereby is, granted.
2. Canyon Farm, LLC is designated as the Stalking Horse.
3. The Court adopts and orders that the Trustee follow the Bidding and Sales Procedures attached hereto as Exhibit 1 as the bidding and sales procedures pursuant to which the Trustee will solicit bids for the purchase of the Lost Valley Farm Assets described in the Bidding and Sales Procedures and conduct the auction and sale of Lost Valley Farm Assets, specifically including the provisions of the attached Bidding and Sales Procedures that authorize and authorize the Trustee to pay the Stalking

Horse Bidder a break-up fee and expense reimbursement in the amounts and on the terms and conditions detailed in the Motion and supporting documents.

4. The Trustee shall file a Sale Motion for approval of the sale of the Lost Valley Farm Assets which hearing will be held not later than _____, 2019. Unless otherwise ordered, the said Sale Motion shall be filed and served on no less than 28 days' notice on all creditors with responses to said Sale Motion, if any, to be filed no later than 5:00 p.m. on _____, 2019, and replies, if any, to be served by _____ 2019.

Presented by:

MACCONAGHY & BARNIER

COLLINS & COLLINS, LLP

WALTER WILHELM LAW GROUP,
a Professional corporation

By:

Riley C. Walter
Special Counsel for Randy Sugarman,
Chapter 11 Trustee

IT IS SO ORDERED.

Dated: _____, 2019

Judge of the United States Bankruptcy Court

SCHEDULE 1.1(C)**ASSIGNED AGREEMENTS**

1. All servient and dominant rights-of-way and easements of record.
2. Columbia Improvement District Notice of Agreement and Covenants, dated June 2, 1978.
3. Water Delivery Contract, recorded June 23, 1978, between Columbia Improvement District and R. Land Company or assignee [Morrow County Microfilm No. M-13590].
4. Water Delivery Contract, recorded June 23, 1978, between Columbia Improvement District and R. Land Company or assignee [Morrow County Microfilm No. M-13592].
5. Water Delivery Contract, recorded June 23, 1978, between Columbia Improvement District and Dennis and Charlotte Repp or assignee [Morrow County Microfilm No. M-13593].
6. Water Delivery Contract, recorded October 9, 1978, between Columbia Improvement District and R. Land Company or assignee [Morrow County Microfilm No. M-14198].
7. Columbia Improvement District Second Addendum to Landowners' Notice of Agreements and Covenants, recorded March 23, 1981.
8. Agreement between Lawrence Lindsay, et al and Connecticut General Life Insurance Company, recorded March 6, 1987.
9. Columbia Improvement District Third Addendum to Landowners' Notice of Agreements and Covenants, recorded April 21, 1988.
10. Assignment and Assumption Agreement between Boise Cascade Corporation and Lynn Potter et al, recorded February 25, 1992.
11. Assignment of Water Delivery Contract, recorded February 25, 1992 [Morrow County Microfilm No. M-38071].
12. Agreement between Lawrence Lindsay, et al and Glenn S. Chowning, et al, recorded March 20, 1992 [Morrow County Microfilm No. M-38207].
13. Assignment of Water Delivery Contract, recorded March 20, 1992 [Morrow County Microfilm No. M-38209].
14. Oil and Gas Lease between Neil F. Ormond and Savant Resources, LLC, or assignees, recorded February 5, 2007.
15. Assignment of Water Delivery Contract, recorded November 12, 2015 [Morrow County Microfilm No. 2015-37077].
16. Water Rights Transfer Agreement, recorded March 28, 2016 [Morrow County Microfilm No. 2016-37887], as supplemented by Memorandum of Supplemental Agreements, recorded April 17, 2017 [Morrow County Microfilm No. 2017-40086].

17. Water Delivery Contract, recorded April 4, 2016 [Morrow County Microfilm No. 2016-37919].
18. Any and all warranties and service contracts relating to the Equipment shown on Schedule 1.1(bb).

SCHEDULE 1.1(I)

BOARDMAN LEASE

(TO BE ADDED PRIOR TO EXPIRATION OF INSPECTION PERIOD)

EXHIBIT A
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SCHEDULE 1.1(bb)

EQUIPMENT

[TO BE ADDED WITHIN FIVE (5) BUSINESS DAYS OF EFFECTIVE DATE]

EXHIBIT A
Page 56 of 72

SCHEDULE 1.1(ee)**EXCLUDED AGREEMENTS**

1. Timber Reservations, including the terms and provisions thereof, by and between Boardman Tree Farm, LLC, as Grantor, and Greg Te Velde as grantee, as disclosed in Special Warranty Deed recorded November 12, 2015, as Microfilm No. 2015-37074 Morrow County Microfilm Records.
2. A Lease executed by Greg Te Velde, as Lessor, and Boardman Tree Farm, LLC, as Lessee, recorded November 12, 2015, as Microfilm No. 2015-37076, Morrow County Microfilm Records, and that certain related Memorandum of Agreement executed by Greg te Velde as Land Owner and Boardman Tree Farm, LLC, recorded November 12, 2015, as Microfilm No. 2015-37078, Morrow County Microfilm Records.
3. That certain Agreement Regarding Livestock Collateral executed by Greg te Velde and others in favor of Wells Fargo Bank, N.A., recorded December 29, 2017, as Microfilm No. 2017-41558, Morrow County Microfilm Records.
4. Any leasehold or other possessory interest in favor of Soleseco, LLC, by reason of that certain, unrecorded "Soleseco Concrete Agreement, executed by Greg TeVelde dated May 23, 2017, as amended.
5. Any leasehold interest in favor of Pascoe Farming, Inc. by reason of that certain, unrecorded "Payment of Rent Agreement", executed by Greg TeVelde dated October 20, 2017.
6. That certain Milk Supply Agreement, dated November 1, 2015, and Amended May 12, 2017, between Columbia River Processing and Debtor.
7. That certain Collective Bargaining Agreement between the United Farmworkers' Union and Debtor.
8. Any agreement arising out of the California Operation.
9. Any other agreement of Seller or Debtor not specifically assumed by Buyer.

SCHEDULE 1.1(gg)

EXCLUDED EQUIPMENT

1. That certain Gomaco Concrete Paver identified on the Debtor's Schedule B filed in the Bankruptcy Case.
2. That certain Cessna P-210 airplane identified on the Debtor's Schedule B filed in the Bankruptcy Case.
3. That certain Schuitmaker Haywagon identified on the Debtor's Schedule B filed in the Bankruptcy Case.

SCHEDULE 1.1(ff)
EXCLUDED PERSONAL PROPERTY

None.

SCHEDULE 1.1(ggg)

PREPAID EXPENSES

None.

SCHEDULE 1.1(yyy)

WATER RIGHTS

- 1. Any and all groundwater, surface water, well rights, or other water rights running with and appurtenant to the land, which include the following:

Certificate 80062: portions located in Sections 14, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28 and 29

Certificate 83517: portions located in Sections 2, 3, 10, 11 (T2N), 26, 27, 28, 29, 33, 34, 35 (T3N)

Certificate 86856

Certificate 86857

Certificate 86992

Certificate 86993

Transfer Application No. T-12248 [from Sage Hollow Ranch LLC to Willow Creek Dairy/Lost Valley Farm]

Transfer Application No. T-12247 [from Willow Creek Dairy/Lost Valley Farm to Sage Hollow Ranch LLC]

Well No.s MORR52351, MORR52393, MORR52314 (deepened by MORR52392), MORR52392 (deepening of MORR52314)

SCHEDULE 1.1(aaaa)

WIND DOWN PLAN

(TO BE ADDED PRIOR TO EXPIRATION OF INSPECTION PERIOD)

SCHEDULE 2.1(n)

OTHER ASSETS, PROPERTY AND RIGHTS

None.

SCHEDULE 6.4**TITLE TO ACQUIRED ASSETS**

1. Real property taxes and assessments not accrued, due or payable as of the Closing;
2. Reservations as disclosed in Patent, including the terms and conditions thereof, recorded August 6, 1924 in Book K, Page 207, Morrow County Deed Records;
3. Reservations as disclosed in Patent, including the terms and conditions thereof, recorded March 17, 1926 in Book K, Page 247, Morrow County Deed Records;
4. Reservations, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded December 20, 1961 in Book 67, Page 122, Morrow County Deed Records.
5. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded March 4, 1974, as Microfilm No. M-6571, Morrow County Microfilm Records.
6. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded April 16, 1974, as Microfilm No. M-6712, Morrow County Microfilm Records.
7. Easement for right of way, including the terms and provisions thereof, in favor of Sabre Farms, recorded August 27, 1974, as Microfilm No. M-7191, Morrow County Microfilm Records.
8. Assignment of Permits and Easements, including the terms and provisions thereof, in favor of Columbia Improvement District, recorded June 28, 1978, as Microfilm No. M-13583, Morrow County Microfilm Records.
9. Easement for Aviation, including the terms and provisions thereof, in favor of United States of America, recorded September 10, 1974, as Microfilm No. M-7237, Morrow County Microfilm Records.
10. Easement for Aviation, including the terms and provisions thereof, in favor of United States of America, recorded September 10, 1974, as Microfilm No. M-7240, Morrow County Microfilm Records.
11. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded March 5, 1975, as Microfilm No. M-7791, Morrow County Microfilm Records.
12. Conveyance and Easement, including the terms and provisions thereof, in favor of Columbia Improvement District, recorded June 23, 1978 as Microfilm No. M-13554, Morrow County Microfilm Records.

13. Conveyance and Easement, including the terms and provisions thereof, in favor of Columbia Improvement District, recorded June 28, 1978 as Microfilm No. M-13581, Morrow County Microfilm Records.
14. Easement for Pipeline, including the terms and provisions thereof, in favor of R. Land Company and Dennis A. Repp and Charlotte C. Repp, recorded October 9, 1978, as Microfilm No. M-14200, Morrow County Microfilm Records.
15. Easement for Roadway, including the terms and provisions thereof, in favor of R. Land Company and Dennis A. Repp and Charlotte C. Repp, recorded October 9, 1978, as Microfilm No. M-14201, Morrow County Microfilm Records.
16. Easement for Roadway, including the terms and provisions thereof, in favor of Lawrence D. Lindsay and Corine Ann Lindsay, recorded March 16, 1979, as Microfilm No. M-15107, Morrow County Microfilm Records.
17. Easement for Telephone line right of way, including the terms and provisions thereof, in favor of Telephone Utilities of Eastern Oregon, recorded July 14, 1980, as Microfilm No. M-17850, Morrow County Microfilm Records.
18. Easement for Telephone line right of way, including the terms and provisions thereof, in favor of Telephone Utilities of Eastern Oregon, recorded September 4, 1980, as Microfilm No. M-17693, Morrow County Microfilm Records.
19. Easement for Joint Use of Water Delivery System, including the terms and provisions thereof, in favor of Lawrence Lindsay, Rosella Lindsay both individually and as partners dba Lindsay Ranch, recorded March 17, 1987, as Microfilm No. M-28601, Morrow County Microfilm Records.
20. Easements, including the terms and provisions thereof, as disclosed in Deed recorded March 20, 1992, as Microfilm No. M-38208, Morrow County Microfilm Records.
21. Easement for Underground utilities, including the terms and provisions thereof, in favor of Umatilla Electric Cooperative Association, recorded September 10, 1996, as Microfilm No. M-48951, Morrow County Microfilm Records.
22. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded July 25, 2016, as Microfilm No. 2016-37919, Morrow County Microfilm Records.
23. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded April 24, 2017, as Microfilm No. 2017-40120, Morrow County Microfilm Records.
24. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded April 24, 2017, as Microfilm No. 2017-40121, Morrow County Microfilm Records.
25. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded November 13, 2017, as Microfilm No. 2017-41310, Morrow County Microfilm Records.

26. Right of Way for Electric Transmission and Distributing Lines, including the terms and conditions thereof, in favor of Umatilla Electric Cooperative Association, recorded March 5, 1975, as Microfilm No. M-7791, Morrow County Microfilm Records

SCHEDULE 6.6**LEGAL PROCEEDINGS**

1. In re Gregory J. te Velde, U.S. Bankruptcy Court Eastern District of California, Case No. 18-11651;
2. Sugarman v. Rabobank, N.A, et al, U.S. Bankruptcy Court, Eastern District of California, A.P. No. 18-1030;
3. Columbia River Processing, Inc., v. Te Velde, U.S. Bankruptcy Court Eastern District of California, A.P. No. 18-1035;
4. Sineco Construction, LLC v. Boardman Tree Farm, LLC et al, U.S. Bankruptcy Court District of Oregon, A.P. No. 18-3098 TMB;
5. Custom Feed Services, LLC v. Western Ag Improvements, Inc. et al, U.S. Bankruptcy Court, District of Oregon, A.P. NO. 18-3078 TMB;
6. IRZ Consulting, LLC v. Te Velde, U.S. Bankruptcy Court, District of Oregon, A.P. No. 18-3079
7. Rabobank, N.A. v. Te Velde, Morrow County Circuit Court Case No. 18CV00675;
8. Rabobank, N.A. v. Te Velde, Fresno County Superior Court Case No. 18CECG00437;
9. Daritech, Inc. v. Te Velde, U.S. Dist. Ct., D.Or. 2:18-CV-00090-SU
10. State of Oregon v. Te Velde, Multnomah County Circuit Court Case No. 18CV06449;
11. Columbia Basin Electric Co. v. Umatilla Electric Cooperative, Oregon PUC Case No. UM 1818;
12. In the Matter of Gregory te Velde, dba Lost Valley Farm, Before the Office of Administrative Hearings, State of Oregon for the Oregon Department of Agriculture, Notice of Revocation of CAFO NPDES Permit No. OR995129, OAH Case No. 2018-ABC-02014;
13. In the Matter of Gregory te Velde, dba Lost Valley Farm, Registrant to Oregon CAFO NPDES Permit No. OR995129, Master Address 1000184, Request for Hearing, Notice of Assessment of Civil Penalty #1827787;
14. In the Matter of Water Right Transfer Application No. T-12248 Submitted by Sage Hollow Ranch LLC, Protest of Pete and Tressa Meenderinck and Meenderinck Land Co. LLC; Request for Contested Case Hearing, Dated April 7, 2017;
15. In the Matter of Water Right Transfer Application No. T-12248 Submitted by Sage Hollow Ranch LLC, Protest of Columbia Riverkeeper, Center for Biological Diversity, Center for Food Safety, Food & Water Watch, Humane Oregon, and Water Water of Oregon; Request for Contested Case Hearing, Dated March 30, 2017;
16. Louis Tello-Juardo v. Willow Creek dairy aka Lost Valley Farm, U.S. Equal Opportunity Employment Commission No. 551-2017-01285

SCHEDULE 6.7

COMPLIANCE WITH LAWS; PERMITS

1. Seller's CAFO and all laws and regulations relating to it;
2. State and local building codes as to the buildings constructed on the subject real property;
3. Any other matters related to or arising out of any of the Legal Proceedings described in Schedule 6.6.

SCHEDULE 6.9

BROKERS OR FINDERS

1. Marc Schuil, Schuil & Associates, Inc., Commission to be paid by Seller as allowed by the Bankruptcy Court.

SCHEDULE 6.10(a)
WARRANTIES TO IMPROVEMENTS

None.

EXHIBIT A
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SCHEDULE 6.10(b)
WARRANTIES TO EQUIPMENT

None.

SCHEDULE 10.10

POST CLOSING AGREEMENTS

(TO BE ADDED PRIOR TO EXPIRATION OF INSPECTION PERIOD)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 6

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Settlement Agreement and Mutual Releases with the Boardman Tree Farm

1 2
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 10 Attorneys for Chapter 11 Trustee,
 11 RANDY SUGARMAN

12 UNITED STATES BANKRUPTCY COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 FRESNO DIVISION

15 In re)
 16)
 17 GREGORY JOHN TE VELDE,)
 18)
 19 Debtor.)

20 Case No. 18-11651
 21 (Chapter 11)
 22 DC No. MB-25
 23 Date: 2/27/2019
 24 Time: 1:30 p.m.
 25 Place: 2500 Tulare St.
 26 Fresno, CA 93721
 27 Courtroom 11
 28 Judge: Hon. Fredrick E. Clement

29 **EXHIBITS TO DECLARATION OF RANDY SUGARMAN IN SUPPORT OF MOTION**
 30 **FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY WITH**
 31 **BOARDMAN TREE FARM, LLC**

EXHIBIT	DESCRIPTION	PAGES
1	Agricultural Lease	29
2	Settlement Agreement and Mutual Releases	12

32 Dated: February 5, 2019

MacConaghy & Barnier, PLC

33
 34 /s/ John H. MacConaghy
 35 By John H. MacConaghy
 36 Attorneys for Chapter 11 Trustee

EXHIBIT 2

EXECUTION VERSION

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This **SETTLEMENT AGREEMENT AND MUTUAL RELEASES** (this "Agreement"), dated as of January 30, 2019 ("Execution Date"), is entered into among **RANDALL SUGARMAN**, solely in his capacity as Trustee over the Estate of Gregory John te Velde, ("te Velde" or "Debtor" and the "Estate"), debtor under the Bankruptcy Case (as defined below), having a mailing address of c/o John H. MacConaghy, MacConaghy & Barnier, PLC 645 First Street West, Suite D Sonoma, CA 95476 ("Trustee"), and **BOARDMAN TREE FARM, LLC**, a Delaware limited liability company, having an address at c/o Greenwood Resources, Inc. 1500 SW First Avenue, Suite 1150 Portland, OR 97201 ("BTF" and together with Trustee, the "Parties" and each a "Party").

RECITALS

A. te Velde, an individual, as maker, executed and delivered a Promissory Note ("Note"), in the original principal amount of \$55,000,000.00 to BTF, as holder, effective November 1, 2015.

B. te Velde, as grantor, First American Title Company of Oregon, as Trustee, and BTF, as Beneficiary, entered into a Commercial Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing ("DOT"), effective as of November 1, 2015, through which, among other things, te Velde granted BTF a first priority lien on the Mortgaged Property¹, including, without limitation, all Improvements, appurtenances, easements, rights and privileges pertaining to the Land, geothermal rights, Fixtures, Rents, including royalties, revenues and other income, and Water Assets, as more fully set forth in the DOT. In connection with the Note and DOT, te Velde issued an Environmental Indemnity Agreement ("Environmental Indemnity") to BTF, dated as of November 1, 2015.

C. The DOT was duly recorded in the Official Records of Morrow County, Oregon, on November 12, 2015, at Document No. 2015-37075 and remains in full force and effect. BTF filed a Uniform Commercial Code financing statement with the Secretary of State of California, on December 7, 2015, no. 15-7499465161, indicating BTF has a lien on all of te Velde's right, title and interest in center pivot irrigation systems.

D. Through the Note and DOT, te Velde obligated himself to, among other things: (1) comply with the terms, conditions and covenants in the Note, DOT, and related agreements, including without limitation, to timely pay all real property taxes when due, (2) promptly and diligently comply with all laws, ordinances, rules and orders of Governmental Authorities relating to construction, building codes and environmental matters, (3) furnish BTF will all contracts related to the Mortgaged Property, (4) not enter into leases of the Mortgaged Property without BTF's consent, which consent was not to be unreasonably withheld, and (5) indemnify BTF and hold BTF harmless from Losses incurred under the terms of the DOT and related agreements, with

¹ All defined terms not defined herein have the meanings ascribed to them in the DOT.

EXECUTION VERSION

indemnified Losses accruing interest at the rate of 8% per annum. Under the terms of the DOT, te Velde remains liable for Losses after discharge of his other Secured Obligations to BTF.

E. te Velde commenced a voluntary case under chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of California ("Bankruptcy Court"), Case No. 18-11651 ("Bankruptcy Case"), on April 26, 2018 ("Petition Date").

F. Prior to the Petition Date, te Velde breached and defaulted on his obligations under the Note and DOT in multiple ways, including without limitation: (1) failing to make all payments when due to BTF, (2) failing to satisfy or prevent the assertion of construction lien encumbrances ("Construction Liens") against the Mortgaged Property, (3) granting a deed of trust on some or all of the Mortgaged Property to J.D. Heiskell Holdings, LLC, (4) failing to timely pay real estate taxes and other charges, (5) failing to obtain BTF's consent to agreements through which te Velde permitted other parties to lease or otherwise use portions of the Mortgaged Property, and (6) failing to comply with applicable laws, regulations, restrictions and orders imposed by Governmental Authorities.

G. Pre-petition defaults under the Note and DOT continue after the Petition Date, and additional events of default occurred on and after the Petition Date.

H. As of the Petition Date, as set forth in BTF's timely filed proof of claim in the Bankruptcy Case, BTF was owed not less than \$55,947,023.05 ("Minimum BTF Prepetition Claim") under the Note, which amount does not include, among other things, any amounts for Losses, or late fees resulting from the Debtor's prepetition failure to pay the principal amount of the Note when due after acceleration of the Maturity Date due to Debtor's prepetition defaults.

I. Between the Petition Date and November 30, 2018, BTF has incurred or accrued in excess of \$250,000 in reasonable and necessary counsel fees and expenses (collectively "Fees") in connection with enforcement of its rights under the Note and DOT, which amount will increase until such time as BTF is fully paid under the Note and DOT, or BTF otherwise agrees to the satisfaction of the Note and DOT. Pursuant to the Note and DOT, te Velde and his successors are obligated to pay all Fees, which are part of BTF's secured claim.

J. With interest calculated on the Minimum BTF Prepetition Claim at the default interest rate in the Note, BTF would be owed \$61,809,071.74, as of March 1, 2019, exclusive of Fees and Losses.

K. Four parties have filed pending Construction Liens claims, in the total amount of approximately \$2,666,077, which they assert are liens against the Mortgaged Property, senior to BTF in right to payment. Certain of these parties have commenced civil actions in which both BTF and the Trustee are parties seeking to enforce these claims *entitled Sineco Construction, LLC v. Boardman Tree Farm, LLC et al*, D.Or. 18-3098 TMB and *IRZ Consulting, LLC v. Tevelde et al*, D.R. 18-3079 TMB ("the Removed Actions"). After review of the Construction Liens and

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applicable law, the Trustee and BTF have concluded that none of the Construction Liens are senior to BTF in right to payment.

L. Debtor failed to timely pay real estate taxes on the Mortgaged Property, and the Morrow County, Oregon Tax Assessor filed a proof of claim ("Morrow County POC") in the Bankruptcy Case for ad valorem taxes ("Real Property Taxes") in the approximate amount of \$907,543.90, including estimated taxes due through 2019, but not including interest that accrued after August 22, 2018. The Trustee estimates that the total amount of Real Property Taxes on the Mortgaged Property including interest as of March 1, 2019 that the estate will be liable for will be \$870,615.06, after appropriate adjustments are made to the amount set forth in the Morrow County POC.

M. The Trustee was appointed by order entered in the Bankruptcy Case on September 21, 2018.

N. The Trustee has determined that it is in the best interest of the Estate to sell the Mortgaged Property and the personal property ("Personal Property") located at the Mortgaged Property (collectively "LVF Assets"), and has retained the firm of Schuil & Associates ("Schuil") as broker to sell all the LVF Assets pursuant to the terms of a certain Exclusive Authorization and Right to Sell Agreement ("Schuil Agreement"). The Bankruptcy Court approved the Trustee's retention of Schuil pursuant to the terms of the Schuil Agreement by order entered November 29, 2018. The Trustee and Schuil have agreed that Schuil is entitled to a commission of 2% of the purchase price of the LVF Assets ("Commission").

O. With the assistance of Schuil, the Trustee has found a buyer for the LVF Assets, and the Trustee and Canyon Farm, LLC ("Stalking Horse") have entered into an asset purchase agreement ("APA"), subject to approval of the Bankruptcy Court and the outcome of a possible auction. The Trustee's motion to approve bidding procedures ("Bidding Procedures Motion") was approved by the Bankruptcy Court on January 9, 2019. If there are qualified overbidders, an auction ("Auction") of the LVF Assets will be held at the hearing on the Trustee's motion to approve the sale of the LVF Assets, free and clear of all liens, claims and interests pursuant to Sections 363(b) and (f) of the Bankruptcy Code ("Sale Motion"), currently scheduled for February 6, 2019. The Trustee expects that a closing of the sale of the LVF Assets ("Closing") will be held on or about March 1, 2019.

P. The purchase price for the LVF Assets under the APA, is \$66,879,000 ("Minimum Sale Price").

Q. Assuming the LVF Assets sell at the Minimum Sale Price, the Commission will be approximately \$1,337,580, subject to Bankruptcy Court approval, allocable to Real Property and Personal Property on a pro rata basis. Additional actual and necessary closing costs such as escrow and recording costs ("Closing Costs") are estimated to be \$125,000. After payment of the estimated Commission, Real Property Taxes and Closing Costs, the remaining proceeds of the Mortgaged Property will be approximately \$64,545,000.

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R. The Trustee has asked BTF to agree to enter into a certain Lease and Water Rights Termination and Partial Harvest and Surrender Agreement (“Surrender Agreement”) which among other things, terminates all of BTF’s possessory rights under the Agricultural Lease (“BTF Lease”) dated and effective as of November 1, 2015, through which BTF leased approximately 3,566 acres of the Mortgaged Premises, for a term expiring in 2026, and terminates BTF’s rights under the Water Delivery Agreement dated and effective as of November 1, 2015, (“Water Agreement”), through which te Velde agreed to provide BTF with rights to access water during the term of the BTF Lease, and causes BTF to forego other rights under the BTF Lease and Water Agreement. If the Trustee had rejected the BTF Lease, BTF could have chosen to stay in possession of the leased premises or would have been entitled to a rejection damage claim, and if the Trustee had rejected the Water Agreement, BTF would have had a second rejection damage claim. The Trustee estimates that these rejection damage claims would have exceeded \$1,000,000.00. The Trustee sought BTF’s agreement to the terms of the Surrender Agreement, in part, to enable the Trustee to reach an agreement with the Oregon Department of Agriculture (“ODA”) that avoids the imposition of additional fees and costs on the estate in connection with te Velde’s alleged failure to, among other things, comply with permits issued by ODA and orders issued by the Oregon Circuit Court. BTF has agreed to entered into the Surrender Agreement in expectation of also entering into this Agreement, and both agreements were simultaneously negotiated.

S. The Trustee has asked BTF to consent to, among other things, the: (1) grant of the Sale Motion, (2) Closing of the sale of all the LVF Assets to the Stalking Horse or the successful bidder after an Auction, free and clear of all liens, claims and interests granted to BTF under the Note and DOT (except as otherwise set forth herein and in the Surrender Agreement), (3) allocation of a portion of the proceeds of the sale of the LVF Assets to Personal Property, (4) payment of the following from the proceeds of the sale of the Mortgaged Property: (i) all Real Property Taxes due at the time of Closing, (ii) the portion of the Commission allocable to the Mortgaged Property, (iii) all Closing Costs, (iv) the distributions to be made to parties asserting liens on certain Personal Property as set forth herein, and (v) the establishment of and distributions of the Reserves (as defined below) for resolution of the remaining disputes with Construction Lien claimants (“Construction Lien Costs”) and Rabobank, N.A. (“Rabobank”), (5) waiver of the right to seek relief from the automatic stay in the Bankruptcy Case to foreclose on the Mortgaged Property, on or prior to April 1, 2019, (6) release of all claims, including Losses, BTF has or may have, now or in the future, against the Debtor’s estate arising from the Note and DOT (except as set forth herein and in the Surrender Agreement), (7) allowance of its claim for purposes of this Agreement at an amount below the amount BTF asserts its claim lawfully should be allowed, and (8) allowance of the Allowed Surrender Agreement Unsecured Claim (as defined below) in the amount of \$1,000,000.00.

T. On January 7, 2019, the Trustee filed an action for declaratory relief against BTF and all other lienholders on the LVF Assets entitled *Sugarman v. Boardman Tree Farm, LLC et al*, A.P. No. 19-1007 (the “506 Action”) seeking, among other things, (1) an allocation of the proceeds of Sale between the Mortgaged Property and the Personal Property, (2) a declaratory judgment that BTF’s secured claim is senior in priority to all of the Construction Liens, and (3) a declaratory judgment that all of the Construction Liens are therefore unsecured pursuant to the provisions of

EXECUTION VERSION

Bankruptcy Code Section 506(a)(1). It is anticipated that some or all of the Construction Lien Claimants will dispute the Trustee's claims in the 506 Action.

U. The Trustee and BTF have conducted good faith arm's length negotiations culminating in the terms set forth herein.

AGREEMENT

In consideration of the recitals stated above and the terms set out below, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into and are made a part of this Agreement.

2. Court Approval. The effectiveness of this Agreement is conditioned upon (a) entry of an order ("Approval Order") of the Bankruptcy Court authorizing the Trustee to proceed under and enforce the terms of this Agreement pursuant to 11 U.S.C. section 363(b) and/or Fed. R. Bankr. Pro. 9019(a), on or before February 27, 2019 ("Approval Deadline"), (b) the Trustee filing a motion ("Distribution Motion") seeking authority to make distributions in accordance with paragraphs 8-11 below, and (c) a hearing is held on the Distribution Motion on or before February 27, 2019, unless otherwise agreed by BTF. The terms of the Approval Order must be acceptable to BTF. If a notice of appeal of the Approval Order is timely filed, or a stay of the effective of the Approval Order is issued, BTF may determine within five (5) business days after filing of the notice of appeal or the order granting a stay to terminate the effectiveness of this Agreement by written notice to the Trustee ("Termination Right").

3. No Relief from Stay. Assuming this Agreement is approved by the Court on or prior to the Approval Deadline and BTF has not timely exercised its Termination Right, BTF will not seek relief from the automatic stay under 11 U.S.C. section 362(a) to foreclose on the Mortgaged Property on or before April 1, 2019, provided the Stalking Horse does not terminate the APA or repudiate its obligation to perform under the APA prior to that date, and in the event the Stalking Horse does so, then BTF's commitment under this paragraph is of no further force or effect.

4. Disputed Construction Liens. From the Execution Date forward, the Trustee may only enter into settlement agreements with disputed Construction Liens claimants which result in some or all of such Construction Lien being satisfied from the Mortgaged Property, with BTF's consent, which BTF may not unreasonably withhold.

5. Sale. BTF consents to all of the following, provided they all occur by the deadlines and on the terms set forth in this Agreement: (a) the grant of the Sale Motion, subject to entry of an order granting the Sale Motion on terms consented to by BTF, which consent may not be unreasonably withheld, and entry of that order on or before February 13, 2019, (b) the allowance of claims as set forth in this Agreement, and (c) the Closing pursuant to the terms of the APA,

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provided (i) the Closing occurs on or before March 31, 2019, and (ii) all amounts payable to BTF at Closing (as set forth in paragraph 8 below) shall be delivered to BTF by the escrow agent for the Sale within two (2) business days of the day of Closing.

6. Allowance of Surrender Agreement Unsecured Claim. BTF has an allowed \$1,000,000.00 general unsecured claim ("Allowed Surrender Agreement Unsecured Claim") in the Bankruptcy Case. This is to compensate BTF for some of the out-of-pocket costs BTF will incur as a result of the obligations BTF has taken on through the Surrender Agreement and in lieu of rejection damages that would have been allowed to BTF had the Trustee rejected either or both of the BTF Lease and Water Agreement.

7. Allowance of BTF Secured Claim. BTF has an allowed secured claim in the Bankruptcy Case in the amount of \$62,000,000 ("March 1 Claim Amount"), as of March 1, 2019, and in the event BTF has not received payments in accordance with paragraphs 8, 10-11 of this Agreement by March 1, 2019 in the total amount of the March 1 Claim Amount, interest will accrue on the unpaid portion of the March 1 Claim Amount, at the annualized rate of 8%, calculated daily from March 2, 2019 forward and that will be the total allowed amount of the allowed BTF secured claim ("Allowed BTF Secured Claim"). The Allowed BTF Secured Claim is less than the amount BTF asserts it is entitled to and is the result of a compromise between BTF and the Trustee. The Allowed BTF Secured Claim is in addition to and separate from the Allowed Surrender Agreement Unsecured Claim. The amount of the Allowed BTF Secured Claim and any payments made on the Allowed BTF Secured Claim shall not be reduced by the amount of or any distributions on the Allowed Surrender Agreement Unsecured Claim.

8. Distribution of Minimum Price Sale Proceeds. The Parties acknowledge that the timing and amount of distribution of the proceeds of Sale ("Sale Proceeds") is subject to Bankruptcy Court approval, that a number of parties in interest have asserted arguments to sequester all or a majority of the Sale Proceeds, and that the amount of allowed disbursements fixed by the Bankruptcy Court at the time of the Sale Motion is uncertain. Notwithstanding the foregoing, the Trustee shall use his best efforts to obtain authorization from the Bankruptcy Court to disburse the following sums directly from the Sale Proceeds within two business days of the closing of the Sale, assuming the final purchase price is the Minimum Sales Price and the Closing occurs on or before two business days before the Closing Deadline:

- (a) \$1,337,580 to Schuil in payment of the Commission;
- (b) the amount due to Morrow County for Real Estate Taxes, estimated by the Trustee to be \$870,615.06;
- (c) Closing Costs, estimated to be \$125,000;
- (d) An amount for payment of senior perfected liens on certain equipment subject of purchase money security interest liens, estimated by the Trustee to be \$1,630,000;

EXECUTION VERSION

(e) An amount equal to 150% of the unresolved Construction Liens ("Closing Date Construction Disputes") for possible payment to Construction Liens claimants upon resolution of those disputes ("Construction Lien Reserve"), estimated by the Trustee to be \$3,999,115 ("Construction Lien Estimate"), which Construction Lien Reserve shall be held by the Trustee pending further Bankruptcy Court Order;

(f) the sum of \$46,694,527.35, plus the difference between the Construction Lien Estimate and the actual amount needed to be held by the Trustee in the Construction Lien Reserve, to BTF in partial satisfaction of its Minimum BTF Prepetition Claim;

(g) the amount the Bankruptcy Court orders to be distributed to Rabobank on account of the undisputed portion of its liens on the Personal Property portion of the LVF assets; and

(h) the amount equal to the remaining Sale Proceeds for possible distributions, in whole or part, to Rabobank, BTF, or other parties ("BTF-Rabobank Reserve") upon resolution of any disputes as to priority and proper allocation of the Sale Proceeds, which distributions do not need to occur simultaneously, which BTF-Rabobank Reserve shall be held by the Trustee pending further Bankruptcy Court Order.

9. Resolution of Construction Liens and Distribution from Construction Lien Reserve. To the extent the Construction Lien Reserve is more than the amount ultimately needed to satisfy Closing Date Construction Disputes, the excess in the Construction Lien Reserve shall be paid to BTF within five (5) days of final resolution of the last Closing Date Construction Dispute. At all times BTF's consent to any disbursements from the Construction Lien Reserve will be required, which consent BTF may not unreasonably withhold.

10. Distributions from BTF-Rabobank Reserve. The proceeds in the BTF-Rabobank Reserve shall be distributed as set forth in one or more final non-appealable orders directing the distribution of the proceeds in the BTF-Rabobank Reserve, whether entered approving stipulations among BTF and Rabobank and any third party asserting an interest in these funds or through another process.

11. Distribution of Sale Proceeds Above Minimum Sale Price. To the extent, if any, Sale Proceeds exceed the Minimum Sale Price, the amount equal to the Minimum Sale Price shall be distributed as set forth in paragraph 8 above, and the Trustee shall use his best efforts to obtain authorization from the Bankruptcy Court to distribute any amount in excess of the Minimum Sale Price to increase the Commission in the amount of 2% of the increase in the Sale Proceeds realized by the Estate above the Minimum Sale Price and the remainder to increase the BTF-Rabobank Reserve.

12. Allowed Deficiency Claim. If by the time all Sale Proceeds have been distributed, BTF has not received Sale Proceeds equal to the amount of the Allowed BTF Secured Claim, without regard to any distributions BTF has or will receive on the Allowed Surrender Agreement Unsecured Claim, BTF has an allowed unsecured claim in the Bankruptcy Case in the amount of

EXECUTION VERSION

not less than the difference between the Minimum BTF Prepetition Claim and the total amount of Sale Proceeds BTF has received on the Allowed BTF Secured Claim (“Allowed Deficiency Claim”). In such circumstances, the Parties reserve all rights they both have regarding whether the Allowed Deficiency Claim should be set at or above the amount of the Minimum BTF Prepetition Claim less the total amount of Sale Proceeds BTF receives on the Allowed BTF Secured Claim. The Allowed Deficiency Claim and the Allowed Surrender Agreement Unsecured Claim are two separate and distinct allowed claims. Distributions shall be made on both the Allowed Deficiency Claim and Allowed Surrender Agreement Unsecured Claim on a pro rata basis, at the same time as distributions are made to holders of other allowed general unsecured claim in the Bankruptcy Case. None of the Allowed BTF Secured Claim, Surrender Agreement Unsecured Claim or Allowed Deficiency Claim is subject to any subordination, recharacterization, reconsideration or disallowance, in whole or part.

13. Mutual Releases. Subject to: (a) the Parties satisfying their obligations under the terms of this Agreement and the Surrender Agreement, (b) the proceeds of the LVF Assets being at or above the Minimum Sale Price, and (c) BTF not exercising its Termination Right in the event such right arises, and except as otherwise set forth herein, the Parties, on behalf of themselves and their respective officers, directors, members, advisors, employees, representatives, owners, agents, predecessors, successors, assigns, and affiliates (collectively “Representatives”) agree to mutually release and to forever discharge each other and each other’s Representatives, from any and all claims, demands, actions, rights, causes of action, obligations, costs, losses, expenses, damages, remedies, surcharges and liabilities, all alleged or actual, of every kind and of any nature whatsoever, whether known or unknown, in law or equity, as of the date of execution of this Agreement, arising out of or in any way related to the Note, DOT, Mortgaged Property and BTF Lease. Notwithstanding the foregoing or any other terms of this Agreement, the releases set forth in this paragraph do not release any Party from any covenant, obligation or duty under this Agreement, the Surrender Agreement, or Environmental Indemnity, as they may be amended; or in any way waive, limit or foreclose any Party from seeking and obtaining any appropriate remedies for any violations of this Agreement, the Surrender Agreement, or Environmental Indemnity; or bar the Trustee from the continued prosecution of the 506 Action or the Removed Actions provided that the relief sought by the Trustee is consistent with this Agreement.

14. Waiver of Claims Unknown: In entering into this Agreement, each Party recognizes that no facts or representations are ever absolutely certain. Accordingly, each Party assumes the risk of any mistake, and if it should subsequently discover that any understanding of the facts or of the law was incorrect, each Party understands and expressly agrees that it is not entitled to set aside this Agreement by reason thereof, regardless of any mistake of fact or law. It is expressly understood and agreed that the possibility that such claims exist has been explicitly taken into account in determining the consideration to be given for this Agreement.

15. Attorneys’ Fees and Costs. In the event it becomes necessary to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to reasonable and necessary attorneys’ fees and expenses incurred in connection with enforcing the terms of this Agreement.

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16. Execution of Additional Documents. The Parties agree to cooperate, execute and exchange such additional documentation as may be necessary to accomplish and fulfill their respective obligations and commitments in this Agreement, without further consideration.

17. Knowing Execution and Opportunity to Obtain the Advice of Counsel. Each of the Parties hereby represents and warrants to the others that it knows and understands the contents and effect of this Agreement, it obtained the advice of legal counsel of its own choosing before executing this Agreement or has declined to seek such advice, and that it entered into this Agreement voluntarily.

18. Representations and Warranties. Each of the Parties warrants and represents to the others that, as of the time it executed this Agreement:

(a) It/he has the right and authority to execute this Agreement, subject to entry of the Approval Order for the Trustee, it/he had not sold, assigned, transferred, conveyed or otherwise disposed of any right exercised or surrendered by virtue of this Agreement;

(b) The person executing this Agreement for each Party is authorized to do so by and on behalf of the Party.

19. Successors and Assigns. All terms of this Agreement bind and inure to the benefit of each Party's successors and assigns, including, without limitation, any successor chapter 11 trustee or any chapter 7 trustee appointed in the Bankruptcy Case.

20. Time is of the Essence. Time is of the essence under this Agreement. All deadlines may only be extended with the written consent of BTF, in its sole discretion.

21. Notices. All notices to be provided under this Agreement shall go to:

If to BTF:

Boardman Tree Farm, LLC
c/o GreenWood Resources, Inc.
1500 SW 1st Avenue, Suite 1150
Portland, OR 97201
Tel: (971) 533-7065

Attn: Jeff Nuss

with a copy to:

Sara L. Chenetz
Perkins Coie LLP
1888 Century Park East, 17th floor

EXECUTION VERSION

Los Angeles, CA 90067
schenetz@perkinscoie.com

If to the Trustee:

Randy Sugarman
c/o John H. MacConaghy
MacConaghy & Barnier, PLC
645 First Street West, Suite D
Sonoma, CA 95476
Tel: (707) 935-3205
sugarmanco@gmail.com.

22. Headings/Pronouns/Plural Singular. All headings in this Agreement are for convenience only and shall not be deemed to impact the meaning or interpretation of any part of this Agreement or the Agreement as a whole. Wherever from the context it appears appropriate, each term stated in the singular or plural shall include the other. Pronouns stated in the female, male; gender neutral or to refer to a thing and not a person shall include all the others.

23. Entire Agreement. This Agreement, together with the other documents and agreements to be executed pursuant hereto, represents and contains the entire agreement and understanding between the Parties and supersedes any and all prior agreements, representations and understandings with respect to the subject matters addressed in this Agreement and may only be modified or amended in writing signed by both Parties.

24. Severability. If any provision of this Agreement or the application of this Agreement to all persons, entities and circumstances shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or application of such provision to persons, entities or circumstances other than those as to which it is held invalid or

EXECUTION VERSION

unenforceable shall not be affected, and all provisions of this Agreement shall be enforced to the fullest extent permitted by law.

25. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile and email/pdf signatures on this Agreement shall be considered binding.

26. Non-Waiver. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach, whether similar or otherwise.

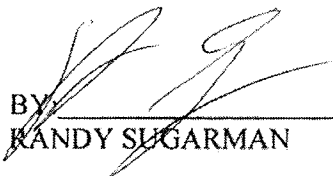
27. Mutual Drafting; Non-Construction Against the Drafter. Both Parties are deemed to have participated in drafting this Agreement and any ambiguity in or dispute about the meaning of any part of this Agreement shall not be presumptively construed against either of them.

This Agreement is executed as of the Execution Date.

SIGNATURE PAGE FOLLOWS.

EXECUTION VERSION

RANDY SUGARMAN, SOLELY IN HIS
CAPACITY AS CHAPTER 11 TRUSTEE OVER
THE ESTATE OF GREGORY JOHN TE VELDE

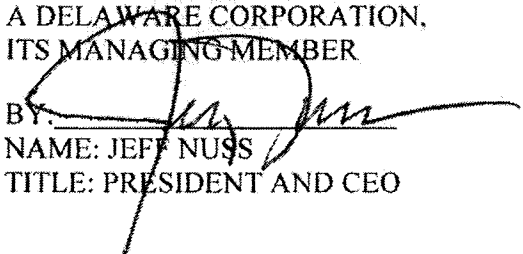

BY: _____
RANDY SUGARMAN

BOARDMAN TREE FARM, LLC

BY: GREENWOOD TREE FARM FUND, LP
A DELAWARE LIMITED PARTNERSHIP,
ITS SOLE MEMBER;

BY: GTFF GP, LLC
A DELAWARE LIMITED LIABILITY COMPANY,
ITS GENERAL PARTNER;

BY: GREENWOOD RESOURCES, INC.
A DELAWARE CORPORATION,
ITS MANAGING MEMBER

KSO

BY: _____
NAME: JEFF NUSS
TITLE: PRESIDENT AND CEO

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

Exhibit 7

to

**Supplemental Brief of
Columbia Basin Electrical Cooperative, Inc.**

Post-Closing Agreement

1 MacCONAGHY & BARNIER, PLC
 2 JOHN H. MacCONAGHY, State Bar No. 83684
 3 JEAN BARNIER, State Bar No. 231683
 4 645 First Street West, Suite D
 5 Sonoma, CA 95476
 6 Telephone: (707) 935-3205
 7 Email: macclaw@macbarlaw.com
 8
 9 Attorneys for Chapter 11 Trustee,
 10 RANDY SUGARMAN

11
 12 UNITED STATES BANKRUPTCY COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 FRESNO DIVISION

15 In re	}	Case No. 18-11651
	}	(Chapter 11)
16 GREGORY JOHN TE VELDE,	}	
	}	DC No. MB-20
17 Debtor.	}	
	}	Date: 2/6/2019
	}	Time: 10:30 a.m.
	}	Place: 510 9 th St.
	}	Bakersfield, CA
	}	Judge: Hon. Fredrick E. Clement

18 **EXHIBITS TO DECLARATION OF RANDY SUGARMAN IN SUPPORT OF MOTION**
 19 **FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY WITH OREGON**
 20 **DEPARTMENT OF AGRICULTURE**

21 EXHIBIT	DESCRIPTION	PAGES
22 1	Order and Mutual Agreement	23
23 2	Post-Closing Agreement and License	25

24 Dated: January 22, 2019

25 MacConaghy & Barnier, PLC

26 /s/ John H. MacConaghy
 27 By John H. MacConaghy
 28 Attorneys for Chapter 11 Trustee

EXHIBIT 2

POST-CLOSING CLEAN-UP AGREEMENT AND LICENSE

THIS POST-CLOSING CLEAN-UP AGREEMENT AND LICENSE (this “**Agreement**”) is made effective as of the “**Closing Date**”, as defined below and among CANYON FARM, LLC, a Delaware limited liability company (“**Canyon Farm**”); and RANDY SUGARMAN, CHAPTER 11 TRUSTEE FOR THE BANKRUPTCY ESTATE OF GREG TE VELDE, Bankruptcy No. 18-11651, United States Bankruptcy Court, Eastern District of California, Fresno Division (“**Trustee**”); and EASTERDAY FARMS DAIRY LLC, a Washington limited liability company (“**Easterday**”). Canyon Farm, Trustee, and Easterday are sometimes referred to herein collectively as the “**Parties**” and individually as a “**Party**”.

RECITALS

The following provide the basis for this Binding Agreement:

A. The Oregon Department of Agriculture (**ODA**) and the Oregon Department of Environmental Quality (**DEQ**) jointly administer the State of Oregon’s programs for the prevention and control of water pollution from confined animal feeding operations. Subject to the terms of a memorandum of understanding between the Oregon Environmental Quality Commission (**ECQ**) and the ODA, the ODA may perform any function of the EQC or the DEQ relating to the administration and enforcement of National Pollution Discharge Elimination System (**NPDES**) permits issued by the DEQ and ODA for confined animal feeding operations.

B. “**Lost Valley Farm**” is located at 73956 Homestead Lane, Boardman, Oregon, in Morrow County, and includes a confined animal feeding operation (**CAFO**), consisting of a dairy building, milking parlor, interior and exterior livestock pens, and dairy waste management facilities on a portion of the real property (the “**Production Area**”), and is registered to Oregon CAFO NPDES Individual Permit No. OR995129 (the “**Permit No. OR995129**”), which was

was issued to Gregory John te Velde (“**te Velde**”), under the assumed business name Lost Valley Farm (Oregon Secretary of State Registry Number 128131497), by ODA and DEQ on March 31, 2017.

C. On April 26, 2018, te Velde filed for bankruptcy relief under 11 U.S.C §§ 101 *et seq.*

D. On June 27, 2018, the ODA and DEQ proposed to revoke Permit No. OR995129 and issued a NOTICE OF REVOCATION OF INDIVIDUAL PERMIT NO. OR995129. The notice includes a proposed order for a shutdown of the dairy facility within 60 days of becoming final.

E. On August 24, 2018, te Velde timely filed a REQUEST FOR HEARING, NOTICE OF REVOCATION OF PERMIT NO. OR995129 to dispute the NOTICE OF REVOCATION.

F. On September 19, 2018, the United States Bankruptcy Court, Eastern District of California appointed Randy Sugarman as Chapter 11 Trustee for the Bankruptcy Estate of Gregory John te Velde, Bankruptcy No. 18-11651, United States Bankruptcy Court, Eastern District of California, Fresno Division (the “**Estate**”). Upon appointment, Trustee assumed management of all of assets on behalf of the Estate and is authorized and appointed to perform any and all activities in relation to the Estate.

G. The Trustee has declared that it is in the best interests of the Estate to liquidate the herd existing on the Production Area and to sell the Lost Valley Farm, and on December 18, 2018, the Trustee and Canyon Farm executed an Asset Purchase Agreement (“**APA**”) whereby Canyon Farm agreed to purchase the Lost Valley Farm from the Trustee.

H. Trustee and the ODA are parties to that certain ORDER AND MUTUAL AGREEMENT dated January 17, 2019 (the “**OMA**”), a copy of which is attached hereto and labeled Exhibit 1. The Parties agree that the OMA is a mutually acceptable “Wind Down Plan,” fulfilling the condition expressed at Section 10.9 of the APA by setting forth the terms, conditions, and covenants surrounding the Trustee’s obligation to clean-up or decommission the Production Area consistent with the terms of the Permit Documents (collectively, the “**Post-Closing Obligations**”). The OMA expressly states that the Trustee’s obligations under the Permit Documents will remain in full force and effect following the sale or transfer of the Lost Valley Farm to a new owner and will terminate upon (1) issuance by the ODA of a Notice of Satisfaction for cleanup and transfer of the Permit Documents; or (2) upon Decommissioning, as it is described in the OMA and issuance of a Notice of Satisfaction by ODA therefore.

I. Trustee and Boardman Tree Farm, LLC are parties to that certain “Lease and Water Rights Termination and Partial Harvest and Surrender Agreement” dated January __, 2019 (“**BTFA**”), a copy of which is attached hereto and labeled Exhibit 2. The Parties agree that the BTFA is a mutually acceptable modification to the Boardman Lease, fulfilling the condition expressed in Section 10.9 of the APA.

J. It is anticipated that on or about March 1, 2019, or such other date as is mutually agreed by the Parties (the “**Closing Date**”) Canyon Farm will purchase and acquire from the Estate the Lost Valley Farm pursuant to the APA. The Closing Date shall be deemed the “**Effective Date**” of this Agreement.

K. As a condition that survived the closing of the acquisition contemplated under the APA, Canyon Farm and the Trustee, on behalf of the Estate, agreed to enter into certain “Post-

Closing Agreements” to, among other things, facilitate the Trustee’s compliance with the BTFA and the Permit Documents subsequent to closing.

L. To facilitate the Trustee’s Post-Closing Obligations under the OMA, Permit No. OR995129, and the Animal Waste Management Plan, as amended (collectively, the “**Permit Documents**”), the Trustee requires non-exclusive right to gain physical access to the Lost Valley Farm. Accordingly, Canyon Farm desires to convey a non-revocable license to the Trustee, and the Trustee desires to accept a non-revocable license from Canyon Farm, which license shall remain in full force and effect for such time as the Estate remains subject to the terms and obligations set forth in the OMA, as more particularly described in this Agreement.

M. During the pendency of this Agreement, Canyon Farm will have leased all or a portion of the Lost Valley Farm to Easterday pursuant to that certain Farm Lease Agreement dated March __, 2019 (the “**Farm Lease**”). To further facilitate the Trustee’s post-closing obligations under the Permit Documents, and in addition to the obligations to be carried out by the Trustee and Canyon Farm set forth herein, the Trustee and Canyon Farm mutually desire to engage Easterday to undertake to complete various obligations set forth herein.

AGREEMENT

I. PURPOSES OF THIS AGREEMENT.

This Agreement sets forth the understanding of the Parties as to the rights, obligations, and prohibited activities among the Parties, as outlined by the BTFA and the Permit Documents, with the underlying purpose being to successfully obtain a Notice of Satisfaction for clean-up from the ODA in compliance with the Permit Documents and to thereafter transfer the Permit Documents to Easterday or Canyon Farm, or, if the Permit Documents are not transferred, to facilitate Decommissioning as described in the OMA by Trustee and to obtain a Notice of Satisfaction therefore.

1. BTFA. Pursuant to the BTFA, Boardman Tree Farm, LLC is obligated to harvest stands of existing poplar trees located within the Lost Valley Farm to stump level and thereafter surrender its leasehold rights in the underlying land to the owner of the Lost Valley Farm in phases. This Agreement sets forth the obligations of Canyon Farm to remove some or all of the stumps and otherwise prepare the underlying land for irrigated cultivation of crops and other farm in a manner that will facilitate the Trustee's compliance with the Permit Documents.

2. OMA Obligations. Pursuant to the Permit Documents, the Trustee is obligated to complete each of the obligations under the OMA in a manner that is consistent with the Permit Documents. This Agreement sets forth the respective obligations among the Parties to fulfill the obligations under the OMA in a timely and economically feasible manner, and to facilitate the ability to "land apply" wastewater and manure from the Production Area on both (i) land currently under cultivation, and (ii) land to be surrendered to the owner of the Lost Valley Farm pursuant to the BTFA.

3. Allocation of Rights and Remedies. Subject to the conditions and limits stated herein, this Agreement also sets forth the understanding of the Parties as to the allocation of liability, rights to indemnification, and remedies upon a material default by and among one or more of the Parties.

4. Condition Precedent to this Agreement. This Agreement is conditioned upon the Closing of the APA, as the term is defined therein.

II. NON-REVOCABLE LICENSE; TERM

1. License. Canyon Farm and Easterday collectively grant to Trustee, and Trustee hereby accepts, a non-revocable license (the "**License**") to access, use and occupy the Lost Valley Farm for the purposes outlined in the OMA and subject to the terms and conditions

set forth in this Agreement. The Parties do not intend to create an agency, a partnership, a joint venture, a lease or any other interest in real or personal property for Trustee through this License, and the Parties only intent to create a license that is non-revocable by Canyon Farm and/or Easterday. Trustee and its agents and invitees are, except as otherwise specifically provided in this Agreement, authorized to use all elements of the Lost Valley Farm for its intended purposes.

2. Personal Property; Fixtures. Trustee shall also have the right to use Canyon Farm's and/or Easterday's personal property and fixtures, as may be located within the Lost Valley Farm on the Effective Date and thereafter, pursuant to the terms and conditions of this Agreement.

3. Term. Trustee's right to access, use and occupy the Lost Valley Farm shall commence on the Effective Date and shall expire automatically and immediately upon the earlier of: (a) the date of the transfer of the Permit Documents; or (b) the date ODA issues the Notice of Satisfaction for Decommissioning as described in the OMA.

4. License Fee. Unless as otherwise directed by Canyon Farm, Trustee shall pay a license fee (the "**License Fee**") to Easterday in the amount of \$500.00 per month for each month this Agreement is in effect. One year's License Fee shall be payable in advance on the Effective Date. Monthly License Fees, if any, shall be payable on the first day of each month thereafter.

5. Non-Revocable. Notwithstanding anything to the contrary herein, this License shall be non-revocable by the Parties during the Term.

6. Alterations. Except as required by the ODA and/or DEQ, Trustee shall not make improvements to the Lost Valley Farm without the prior written consent of Canyon Farm and

Easterday. For the avoidance of doubt, Canyon Farm and Easterday hereby consent to the Trustee's installation of all equipment/components required under the OMA. On termination or expiration of this Agreement, Trustee shall remove its trade fixtures from the Lost Valley Farm, and, at either Canyon Farm's or Easterday's sole election, (a) Trustee shall remove any or all improvements from the Lost Valley Farm, except where such improvements were required to obtain either the Notice of Satisfaction for clean-up or Decommissioning or a New CAFO Permit (as this term is defined in the OMA), and restore the Lost Valley Farm to its condition existing as of the Effective Date; or (b) Canyon Farm and/or Easterday shall be entitled to keep any improvements without reimbursement to Trustee.

III. POST CLOSING OBLIGATIONS – OBLIGATIONS OF THE TRUSTEE.

The Trustee agrees to complete the following Post-Closing Obligations in accordance with the terms and conditions of the Permit Documents and this Agreement:

1. Clean-Up Obligations. The Trustee shall timely complete the Clean-Up Activities, as described in Paragraphs 3.1 – 3.24 of the OMA, including without limitation, the following:
 - a. The Trustee shall remove all livestock and animal mortalities, if any, from the Property.
 - b. The Trustee shall clean the dairy structures to the reasonable satisfaction of Canyon Farm, including without limitation idling the parlors and the Deval rotaries, removal of chemicals, scraping and flushing the livestock alleys, and scraping the interior livestock pens.
 - c. The Trustee shall further remove all sand containing waste material, remove all ensiled or other feed commodities, land apply or export all waste in solid form, land apply all waste in liquid form, pump down and clean the settling cells,

clean the screen separators, clean the sand lanes, clean the Biolyнк, and pump down the lagoons.

2. Monitoring Wells. Trustee shall be responsible for the monitoring of all groundwater monitoring wells located within the Lost Valley Farm, as required by the Permit Documents.

3. Expense of Nutrient Applications. The Trustee shall be responsible for all costs and expenses related to all nutrient applications, including the corresponding repairs, maintenance, and labor associated therewith except for expenses related to nutrient water applied through the irrigation system which shall be the responsibility of Easterday.

4. Electricity. The Trustee shall pay for all electricity furnished to the Production Area through April 1, 2019.

5. Insurance. Trustee shall, at all times during the Term, maintain and keep in force commercial general-liability and property insurance coverage with insurers approved by Canyon Farm with a combined single limit of at least \$6 million against public liability and property damage on the Lost Valley Farm. Canyon Farm and Easterday shall be named as additional insureds under Trustee's policy. Proof of the insurance coverage obtained by Trustee shall be given to Canyon Farm and/or Easterday upon request. Any contract entered into by Trustee for insurance coverage on the Lost Valley Farm shall include a provision requiring timely notice to Canyon Farm and Easterday in the event of cancellation of coverage by the insurer. Trustee is also responsible for any workers' compensation insurance required under state law related to its operations set forth by the Permit Documents and this Agreement.

6. Rolling Stock. Trustee shall, at its sole expense, pay for all repairs, fuel, and maintenance on the rolling stock of Easterday during the Term, and shall further pay all

repairs and maintenance expense on the dairy equipment until the dairy is idled to the reasonable satisfaction of Canyon Farm and Easterday; provided however, that Trustee shall not have any obligation to repair or rehabilitate any rolling stock or other equipment from its condition existing as of the Effective Date, unless necessary for the Trustee's compliance with the Permit Documents.

7. Record Retention. Trustee shall maintain adequate records of its operations, which it shall make available to Canyon Farm and/or Easterday upon their written request.

8. Decommissioning. In the event that the Trustee elects, with Canyon Farm and Easterday's prior written consent, to "Decommission" the Lost Valley Farm, as the term is described in the OMA, Trustee shall take all steps necessary to consummate decommissioning at Trustee's sole cost and expense.

IV. POST-CLOSING OBLIGATIONS – OBLIGATIONS OF CANYON FARM AND EASTERDAY.

Canyon Farm and/or Easterday, as specified below, agree to complete the following Post-Closing Obligations in accordance with the terms and conditions of the Permit Documents and this Agreement:

1. Land Preparation. At an estimated cost of ten million dollars (\$10,000,000.00), Canyon Farm shall fund, and Canyon Farm shall complete and construct in a workmanlike manner, all stump removal, ground preparation, irrigation installation, and nutrient line installation necessary to increase the irrigation capacity of the Lost Valley Farm pursuant to, and within the times set forth in, the schedule shown on the attached Exhibit 3. Canyon Farm will initiate this construction within thirty (30) days of the Effective Date.

2. Pumping Equipment. Canyon Farm will provide, at its sole cost and expense any additional manure pumping equipment necessary to complete the Trustee's clean up obligations under the Permit Documents, including pumping equipment, irrigation/black water infrastructure necessary to pump nutrient water through the center irrigation pivots.

3. Utilities. Unless otherwise expressly set forth in this Agreement to the contrary, Easterday shall, at its sole expense, pay for all utilities furnished to the Lost Valley Farm during the Term, including: irrigation water, electricity, worker sanitation, and security services. Canyon Farm agrees and covenants that sufficient quantities of irrigation water and electricity will be made available at its expense to facilitate the Trustee's compliance with the Permit Documents. Notwithstanding the foregoing, The Trustee will be responsible, at its sole expense, for supplying Lost Valley Farm with the necessary quantity of potable or industrial water to the Production Area to comply with the Trustee's obligations under Section III.1.b. above and to provide drinking water to the Trustee's employees during the term of this Agreement.

4. Repairs. Easterday shall, at its sole expense, pay for all repairs and maintenance on the dairy equipment after the Production Area is idled, and shall further pay for all repairs and maintenance on the irrigation system from and after the Effective Date.

5. 2019 Crop Plan. Canyon Farm and Easterday will comply with and adhere to the 2019 crop plan agreed to by the Trustee and the ODA, including (i) carrying the existing winter wheat crop to full season, (ii) planting any second crop on the winter wheat crop acreage with either white mustard or triticale, and (iii) planting any new acreage developed in 2019 pursuant to the schedule set forth in Exhibit 4 with corn, sudan, or alfalfa.

6. Nutrient Water Applications. Canyon Farm and/or Easterday will make all nutrient water applications as directed by the Trustee and in accordance with the Permit Documents; provided however, that all nutrient application costs, including repairs, rolling stock fuel, maintenance, and labor, but not including utilities and water shall be allocated to the Trustee and Easterday, as set forth in Article III, Section 3 above.

7. Data Collection. Except as specifically set forth herein, Canyon Farm and/or Easterday shall be responsible for all data collection and reporting of any spills, leaks, or incidents in accordance with the Permit Documents.

V. **PERMITTED USES.**

In addition to the Parties' right and obligation to carry out the Post-Closing Obligations, the Parties shall have the right to use the Lost Valley Farm for the following purposes:

1. Food Commodities Stockpiling Areas. Canyon Farm shall identify an area on the Lost Valley Farm that is acceptable for Trustee to stockpile or remove food commodities that are either owned by, or the proceeds of which belong, to the Estate ("**Stockpile Locations**"). Such Stockpile Locations shall be mutually acceptable to Easterday and must be located in an area that is compliant with the Permit Documents.

2. Farming Activities. Canyon Farm and/or Easterday shall not be precluded from carrying out any and all farming activities within the Lost Valley Farm in the ordinary course of business or as otherwise set forth in the Farm Lease; provided, however, no such farming activities will cause a breach of the Trustee's responsibilities under the Permit Documents. Trustee will make commercially reasonable efforts not to interfere with the operations of Lost Valley Farm.

VI. **COOPERATION.**

The Parties agree to act in good faith and shall cooperate to ensure that the Post-Closing Obligations are completed in a reasonable and timely manner and to facilitate the completion of all actions described in this Agreement and the Permit Documents. No Party will knowingly or intentionally take any action that interferes with such Post-Closing Obligations, including any actions that disturb or impede the Post-Closing Obligations at the Production Area pursuant to the Permit Documents and this Agreement.

VII. INDEMNIFICATION; LIMITATION OF LIABILITY.

1. Indemnification. Each Party (an “**Indemnifying Party**”) shall indemnify, defend and hold harmless the other Parties, and their respective officers, directors, members, partners, employees, beneficiaries, agents, affiliates, successors, and permitted assigns (collectively, the “**Indemnified Parties**”) for, from, and against all claims made or judicial or administrative actions filed which allege that any of the Indemnified Parties are liable to the claimant by reason of: (a) any injury to or death of any person, or damage to or loss of property, or any other thing occurring on or about any part of the Lost Valley Farm, or in any manner growing out of, resulting from or connected with the use, condition, or occupancy of the Lost Valley Farm if caused by any negligent or wrongful act or omission of the Indemnifying Party or its agents, partners, contractors, employees, permitted assignees, licensees, sublessees, invitees, or any other person or entity for whose conduct the Indemnifying Party is legally responsible; (b) violation by the Indemnifying Party of any contract or agreement to which the Indemnifying Party is a party in each case affecting any part of the Lost Valley Farm or the occupancy or use thereof by the Indemnifying Party; and (c) violation of or failure to observe or perform any condition, provision, or agreement of this Agreement and the Permit Documents on the Indemnifying Party’s part to be observed or

performed hereunder or thereunder. The indemnity obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Agreement.

2. Limitation of Liability. The Parties agree that neither the Trustee individually, nor the officers, directors, shareholders, members, partners, employees, agents, and affiliates of any Party, shall have any personal obligation hereunder, and that the Parties shall not seek to assert any claim or enforce any of their rights hereunder against any of the foregoing.

VIII. OWNERSHIP OF CLAIMS AND WARRANTIES.

The Trustee hereby stipulates and agrees that Canyon Farm and/or Easterday shall retain or assume ownership of any and all rights, claims and warranties arising out of contracts for the design, construction, installation or purchase of components of any assets acquired or purchased in carrying out the Post-Closing Obligations pursuant to this Agreement, and all contractual rights with respect to deficient or defective design, construction, or installation accruing after the closing of the transaction contemplated under the APA, including all rights under warranties.

IX. LIENS.

The Parties shall carry out their responsibilities under this Agreement in a manner that will keep the Lost Valley Farm free from all liens and other encumbrances arising from the Parties' procurement and performance of the Post-Closing Obligations and the activities of any affiliates, contractors, subcontractors or other creditors of any Party.

X. ALTERNATIVE DISPUTE RESOLUTION; VENUE.

1. Alternative Dispute Resolution. Prior to the commencement of any civil action to enforce the terms of this Agreement, the Parties agree that they will meet and confer about disputes and to work in good faith and in a timely manner to resolve disputes. The Parties may consider mediation to resolve disputes. Any mediator is to be chose by the unanimous

Agreement of the Parties. If the alternative dispute resolution is unsuccessful, the Parties retain their rights and remedies available under this Agreement and applicable law.

2. Venue. The United States Bankruptcy Court for the Eastern District of California shall retain jurisdiction to interpret or otherwise enforce this Agreement and any Order issued by the Bankruptcy Court relative to this Agreement.

XI. DEFAULT.

The occurrence of any of the following shall constitute a material default and breach of this Agreement by the respective Parties: (a) any failure by Trustee to make any payment required to be made by Trustee under this Agreement, when the failure continues for ten (10) days after written notice of such failure is given by Canyon Farm and/or Easterday to Trustee; and (b) failure by any Party to observe and perform any other provision of this Agreement to be observed or performed by such Party, including without limitation, the Post-Closing Obligations, when such failure continues for ten (10) days after written notice of such failure is given by the non-defaulting Party; *provided, however*, that if the nature of that default is such that it cannot reasonably be cured within a ten-day period, such Party shall not be deemed to be in default if such Party commences that cure within the ten-day period and thereafter diligently prosecutes it to completion; provided, however, under no circumstances shall any Party be precluded from completing any of the Post-Closing Obligations on behalf of a defaulting Party as a self-help remedy described below if the non-defaulting Party deems such action to be reasonably necessary to maintain compliance with the Permit Documents.

XII. REMEDIES.

1. Self-Help Remedies. Each party agrees that it shall be responsible for its own acts and omissions and the result thereof, and those of its officers, employees and agents, in

carrying out its respective obligations under this Agreement, and shall not be responsible for the acts or omissions of another Party. Notwithstanding the foregoing, if any Party fails to diligently pursue the completion of the Post-Closing Obligations, as allocated among the Parties by this Agreement and as required by the Permit Documents, the non-defaulting Parties shall have the right, but not the obligation, to perform or cause to be performed such incomplete Post-Closing Obligations at the expense of the defaulting Party. All costs and expenses directly or indirectly incurred with respect to the defaulting Party's failure to diligently pursue completion applicable Post-Closing Obligations shall, upon demand, be promptly reimbursed by the defaulting Party to the non-defaulting Parties. In performing or causing the performance of any such Post-Closing Obligations on behalf of a defaulting Party, the non-defaulting Parties shall incur no liability for any loss or damage that may accrue to itself or the Lost Valley Farm by reason thereof. The performance by any non-defaulting Party of any such Post-Closing Obligation on behalf of a defaulting Party shall not constitute a release or waiver of any of the non-defaulting Party's obligations under this Agreement.

2. Liquidated Damages. In the event any Party materially breaches its obligations under this Agreement causing a material breach under the OMA that: (a) extends beyond all applicable notice and cure periods under this Agreement and the OMA, (b) extends beyond the requirements of the Parties under this Agreement and under the OMA to meet and confer in good faith to resolve the dispute regarding the material breach, (c) results in the filing of a civil action that is successfully prosecuted by a non-defaulting Party, then the Parties agree that the non-defaulting Party shall be entitled to recover Liquidated Damages from the breaching Party in the amount of five million dollars (\$5,000,000). The Parties acknowledge

and agree that their respective actual damages caused by a material breach described herein would be impossible or very difficult to accurately estimate as of the Effective Date, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from an uncured material breach by the other Party. The Parties intend that the liquidated damages constitute solely compensation and not a penalty.

3. Administrative Claim. In the event that any rights or remedies available to Canyon Farm and/or Easterday under this Agreement result in the right to receive reimbursement or indemnification from the Trustee, such amounts shall qualify as an administrative expense against the Estate. The Trustee stipulates and agrees that such amounts that become due and owing under this Agreement are incurred in a manner that is reasonably necessary for the operation and preservation of the Estate, and directly relates to work that should result in compensation and reimbursement for Canyon Farm and/or Easterday's contribution to the bankruptcy process.

XIII. NOTICES.

Any notices to be given under this Agreement shall be delivered in accordance with the terms of the Lease but shall be addressed as follows:

If to Trustee:

Randy Sugarman
c/o John H. MacConaghy
MacConaghy & Barnier, PLC
645 First Street West, Suite D
Sonoma, CA 95476
Tel: (707) 935-3205
sugarmanco@gmail.com

If to Canyon Farm: Canyon Farm, LLC
c/o Lindy Widner
P.O. Box 941
Pasco, WA 99302
Tel:
lindy@fall-line-cap.com

With copy to: Jonathan R. Septer
Messerli Kramer P.A.
100 S. 5th Street, Suite 1400
Minneapolis, MN 55402
Tel: (612) 672-3769
jsepter@messerlikramer.com

If to Easterday: Cody A. Easterday
5235 N. Industrial Way
Pasco, WA 99301

[Tel: \(509\) 547-9600cody@easterdayfarms.com](mailto:cody@easterdayfarms.com)

With copy to: Jeffrey C. Misley
Sussman Shank LLP
1000 SW Broadway, Suite 1400
Portland, OR 97205
Tel: (503) 243-1643
jmisley@sussmanshank.com

XIV. MISCELLANEOUS.

1. Amendments. This Agreement may be amended only by written agreement among the parties to this Agreement or their successors or assigns.
2. Successors and Assigns. This Agreement is binding upon Canyon Farm, Easterday, the Estate, and their respective heirs, successors and assigns.
3. Arm's Length Negotiations. Each party herein expressly represents and warrants to all other parties hereto that (a) before executing this Agreement, each party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) each party has relied solely and completely upon its own judgment in executing this Agreement;

(c) each party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) each party has acted voluntarily and of its own free will in executing this Agreement; (e) each party is not acting under duress, whether economic or physical, in executing this Agreement; and (vi) this Agreement is the result of arm's length negotiations conducted by and among the parties and their respective counsel.

4. Governing Law. This Agreement shall be construed and enforced in accordance with Oregon law. All parties irrevocably submit to the jurisdiction of the United States Bankruptcy Court for the Eastern District of California for any action or proceeding regarding this Agreement.

5. Attorneys' Fees. In the event of any dispute, claim, mediation, arbitration or lawsuit between the parties hereto, arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

6. Binding Effect. Subject to any provision of this Agreement that may prohibit or curtail assignment of any rights hereunder, this Agreement shall bind and inure to the benefit of the respective heirs, assigns, personal representatives and successors of the parties hereto.

7. Severability. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect. It shall be conclusively presumed that all parties participated equally in the preparation and/or drafting of this Agreement.

8. Electronic Copy. A copy of this Agreement which has been signed and sent to the other party via facsimile transmission, or via electronic mail or similar methods shall be deemed a binding original.

9. Recitals. The recitals shall be considered an integral part of this Agreement and are incorporated herein by this reference.

10. Voluntary Execution. The parties acknowledge that their execution hereof is voluntary, and that in executing this Agreement, each is not relying on any inducements, promises and representations made by the other party or its representatives except as may be expressly set forth herein.

11. Independent Advisors. Each party acknowledges and agrees that it has had a full and fair opportunity to consult with independent legal advisors as to the legal and tax consequences of the transaction contemplated by the Agreement.

12. Essence of Time. Time is expressly deemed to be of the essence.

13. Further Assurances. Each party shall, upon the other's request, take all steps and execute, acknowledge and deliver to the other all further instruments necessary or expedient to effectuate the purposes of this Agreement.

14. Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

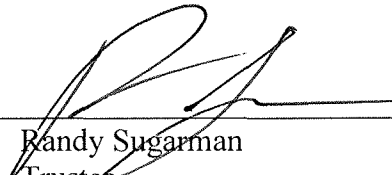
[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

CAREFULLY READ THE TERMS HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS POST-CLOSING AGREEMENT BECOMES PART OF A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING. THE PARTIES EXECUTING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY ARE LEGALLY AUTHORIZED TO EXECUTE THIS AGREEMENT.

CANYON FARM, LLC,
a Delaware limited liability company

**THE BANKRUPTCY ESTATE OF GREG
TE VELDE, Bankruptcy No. 18-11651,
United States Bankruptcy Court, Eastern
District of California, Fresno Division**

By: _____
Lindy Widner
Its: Authorized Signatory

By: _____

Randy Sugarman
Its: Trustee


[EASTERDAY ENTITY]

By: _____
Printed Name: _____
Its: _____

CAREFULLY READ THE TERMS HEREOF BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS POST-CLOSING AGREEMENT BECOMES PART OF A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING. THE PARTIES EXECUTING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY ARE LEGALLY AUTHORIZED TO EXECUTE THIS AGREEMENT.

CANYON FARM, LLC,
a Delaware limited liability company

**THE BANKRUPTCY ESTATE OF GREG
TE VELDE, Bankruptcy No. 18-11651,
United States Bankruptcy Court, Eastern
District of California, Fresno Division**

By: 
Lindy Widner
Its: Authorized Signatory

By: _____
Randy Sugarman
Its: Trustee

EASTERDAY FARMS DAIRY LLC,
a Washington limited liability company

By: _____
Printed Name: _____
Its: _____

EXHIBIT 2

COPY OF OMA

EXHIBIT 2

COPY OF BTFA

EXHIBIT 3

LAND PREPARATION SCHEDULE

DEVELOPMENT PLAN & SCHEDULE								
Circle Number	BTF Field Nos.	Order for Development	Pivot Acres	BTF Block Acres	Scheduled for Tree Removal	Stump Grinding/Removal Complete	Irrigation Installation Completed	
509 - b	503-04, trees removed/stump removal not completed on N1	1	90.00	124.00	February	4/30/2019	4/30/2019	
510b	503-04, 503-05	1	54.38	62.00	February	4/30/2019	4/30/2019	
511b	503-05	1	32.62	60.00	January	4/30/2019	4/30/2019	
610	Trees removed/stump removal not completed	2	147.77	180.00	Removed	5/15/2019	6/30/2019	
611	Trees removed/stump removal not completed	2	127.57	169.00	Removed	5/15/2019	6/30/2019	
612	Trees removed/stump removal not completed	2	117.40	160.00	Removed	5/15/2019	6/30/2019	
613	607-04, 607-05, 607-06, 607-07, 607-08, 607-09	2	117.40	136.00	Jan/Feb	5/15/2019	6/30/2019	
614	617-01, 617-02	3	117.40	130.00	February	6/14/2019	7/31/2019	
615	607-10	3	55.23	64.00	January	6/14/2019	7/31/2019	
616	618-01.1, 618-01.1	3	128.54	133.00	March	6/14/2019	7/31/2019	
602	611-02, 611-03, 611-04	4	117.40	88.00	March	6/30/2019	8/15/2019	
603	612-01, 612-02, 611-01, 611-02	4	117.40	135.00	March	6/30/2019	8/15/2019	
605	612-02, 611-02	4	53.90	73.00	March	6/30/2019	8/15/2019	
407b	612-01	4	58.70	50.00	March	6/30/2019	8/15/2019	
603	603-01, 603-02	5	117.40	142.00	January	7/19/2019	8/31/2019	
604	Trees removed/stump removal not completed	5	117.40	160.00	Removed	7/19/2019	8/31/2019	
605	Trees removed/stump removal not completed	5	117.40	160.00	Removed	7/19/2019	8/31/2019	
605	604-01, 604-02	6	117.40	152.00	September	10/31/2019	11/30/2019	
606	613-01, 613-02	6	117.40	132.00	September	10/31/2019	11/30/2019	
608	615-01, 615-02	6	117.40	138.00	September	10/31/2019	11/30/2019	
602	602-01, 602-02	6	117.40	150.00	September	10/31/2019	11/30/2019	
Total			2,167.01	2,529.00				

EXHIBIT 4

COPY OF 2019 CROP PLAN

Field #	Acres	Harvest	Grinding	Irrigation	2019 Crop	Solids	Solids	Solids	Liquids	Liquids	Liquids	Liquids	Liquids	Fall Crop
						T/Acre	Total Tons	N/Acre	Application Method	Month	# of Nitrogen	Gallons / Acre	Gallons / Field	
													(Assuming 13lbsN/100G)	
102	121	March	June	July	Alfalfa		0		Hose & Pump	July	200	20,513	2,482,051	Triticale
103	121	March	June	July	Alfalfa		0		Hose & Pump	July	200	20,513	2,482,051	Triticale
105	58.9	March	June	July	Alfalfa		0		Haul or Hose & Pump	July	200	20,513	1,105,641	Triticale
4075	41	March	June	July	Alfalfa		0		Pivot	July	200	20,513	841,026	Triticale
509E	89	Feb	April	April	Corn		0		Pivot	Apr	300	30,769	2,755,462	Triticale
510E	56.6	Feb	April	April	Corn		0		Pivot	Apr	300	30,769	1,741,585	Triticale
511E	55.6	Jan	April	April	Corn		0		Pivot	Apr	300	30,769	1,716,925	Triticale
602	121	Sept	Oct	Nov	Wheat		0		Pivot	Nov	200	20,513		Alfalfa
603	121	Jan	June	July	Alfalfa		0		Tanker	July	200	20,513	2,482,051	Triticale
604	121	Removed	June	July	Alfalfa		0		Tanker	July	200	20,513	2,482,051	Triticale
605	121	Sept	Oct	Nov	Wheat		0		Pivot	Nov	200	20,513		Alfalfa
606	121	Sept	Oct	Nov	Wheat		0		Pivot	Nov	200	20,513		Alfalfa
608	121	Sept	Oct	Nov	Wheat		0		Pivot	Nov	200	20,513		Alfalfa
609	121	Removed	June	July	Alfalfa	19.5	2360	84	Tanker	July	116	11,897	1,439,590	Triticale
610	121	Removed	May	June	Sudan	19.5	2360	84	Tanker	June	166	17,026	2,060,103	Triticale
611	127.6	Removed	May	June	Sudan	19.5	2488	84	Tanker	June	166	17,026	2,172,472	Triticale
612	121	Removed	May	June	Sudan	19.5	2360	84	Tanker	June	166	17,026	2,060,103	Triticale
613	121	Feb	May	June	Sudan	19.5	2360	84	Tanker	June	166	17,026	2,060,103	Triticale
614	121	Feb	May	July	Alfalfa	19.5	2360	84	Tanker	July	116	11,897	1,439,590	Triticale
615	55.2	Jan	May	July	Alfalfa	19.5	1076	84	Tanker	July	116	11,897	656,738	Triticale
616	128.5	March	May	July	Alfalfa	19.5	2506	84	Tanker	July	116	11,897	1,528,821	Triticale
	2180.6						17888							
												Total	31,489,313	
												Month	Gallons	Acres
Solids Recommendations														
Apply to pivots 604, 609, 610, 611, 612, 613, 614, 615, 616 (1037.3 acres)												Apr	6,596,923	201.4
18.5 Tons/acre												June	8,352,779	490.6
Do not apply to growing wheat - crop damage outweighs yield benefit												July	16,959,610	1004.6
Do not apply to frozen, snow covered or saturated ground												Nov	-	484
Ideally apply within 30 days of planting														
Incorporate into top 3-6 inches of soil with cultivation														

CERTIFICATE OF SERVICE – UM 1818

I hereby certify that I served a true and correct copy of the Supplemental Brief of Columbia Basin Electric Cooperative Inc. on the parties listed below via electronic mail and/or U.S. Mail in compliance with OAR 860-001-0180.

C=Confidential

COLUMBIA BASIN UM 1818	
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Dated this 1st day of May 2019.



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