

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2018 SEP 17 PM 4:08

I. JEAN MECKSTROTH
CLERK OF COURTS

All Proof of Claim Forms MUST be FILED by September 18, 2018. Failure to timely file this form with supporting documents will result in a waiver of your right to file a claim. Objections must be filed by October 2, 2018. All claims will come before the court for hearing on October 29, 2018, at 9:00 a.m. at the court.

In the Court of Common Pleas of Auglaize County, Ohio
Civil Division

Paul Mastronardi,

Plaintiff,

Case No. 2017-CV-144

-vs-

Luis Chibante, et al.,

Defendants.

PROOF OF CLAIM

With Supporting Documents Attached

This form is for making a claim for payment from entities that have been dissolved and the affairs of which are being wound up pursuant to a lawsuit filed in this case. The entities that have been dissolved and no longer exist, but whose affairs are being wound up, are:

Golden Fresh Farms Holdings, Inc., an Ohio corporation, and
Golden Fresh Farms Enterprises, L.P., an Ohio limited partnership.

*Filers must attach copies of any documents that support the claim, such as promissory notes, leases, purchase orders, invoices, Itemized statements of accounts (including the account history showing all invoices and payments since the account's inception), contracts, judgments, mortgages and security agreements. Do not attach original documents; the copies you attach may be destroyed after scanning. If the documents are not available, attach an explanation in detail.

Distribution of the assets of the entities will be a final distribution, after determination of the validity of all secured and unsecured claims.

1. (a) Who is the current creditor? The Ohio Greenhouse Company
(Legal Name of the current claimant/creditor (the person or entity to be paid for this claim))
Other names the creditor used with the Golden Fresh entities not applicable

(b) Has this claim been acquired from someone else? NO YES If yes, from whom? _____ (Attach documents of assignment)

2. Where should notices to this claimant/creditor be sent? (List address.)
The Ohio Greenhouse Company, c/o David Einsteadig
28700 Plymouth Road
Livonia, MI 48150

3. Where should payments to this claimant/creditor be sent? (List address.)
Same as no. 2 above

4. Does this claim amend one already filed? NO YES If yes, date filed: / /

5. Do you know if anyone else has filed a proof of claim for this claim? NO YES If yes, who? _____

6. Do you have a number you use NO YES-- Last 4 digits of account number you use: _____

Initial each page DPE

COURT'S
CLAIM 57
IDENTIFICATION/EVIDENCE
DKT. # _____
DATE: _____

All Proof of Claim Forms MUST be FILED by September 18, 2018. Failure to timely file this form with supporting documents will result in a waiver of your right to file a claim. Objections must be filed by October 2, 2018. All claims will come before the court for hearing on October 29, 2018, at 9:00 a.m. at the court.

7. How much did the entities owe you on September 29, 2017? \$ Unliquidated contingent liability that could reach or exceed \$250,000 USD
8. What is the total value of everything you provided to the entities after September 29, 2017? \$ 0
9. How much were you paid by the entities after September 29, 2017? \$ 0
10. What is the difference between the amounts in Line 8 and Line 9? \$ 0
11. How much is the claim? \$ 250,000 * (Should equal Line 7 plus Line 10. If not, please explain.)
 Does this amount include interest or other charges? NO YES If so, attach statement itemizing interest, fees, expenses or other charges, and explaining the basis for the interest or other charges to this page, and initial each page.
12. What is the basis of the claim? Examples: goods sold, money loaned, services performed, lease, etc.
See attached Exhibit, incorporated by reference
 Attach copies of all supporting documents (as listed on page 1)* and initial each page submitted.
13. Is all or part of the claim secured? NO YES, the claim is secured by a lien on property, as follows:
- Real estate. If the claim is secured by a lien on real estate, attach a copy of the mortgage, certificate of judgment, or other lien documents showing date perfected; also attach prior payment history showing all payments you received from the Golden Fresh entity, which Golden Fresh entity your claim is against, and showing how all payments you have received were applied to principal, to interest, to fees or otherwise.
- Motor Vehicle. If the claim is secured by a lien on a motor vehicle(s), attach a copy of the memorandum of title and all documents supporting the lien validity and the date it was perfected; also attach prior payment history showing all payments you received from the Golden Fresh entity, which Golden Fresh entity your claim is against, and showing how all payments you have received were applied to principal, to interest, to fees or otherwise.
- Other. Describe property encumbered by your lien: (Use additional pages if necessary.) _____

 Attach a copy of security agreement and filed financing statement; also attach prior payment history showing all payments you received from the Golden Fresh entity, which Golden Fresh entity your claim is against, and showing how all payments you have received were applied (principal, interest, fees or other.)
- Value of the property securing the debt: \$ _____
- Amount of the claim that is secured:* \$ _____ *(Should not exceed the value of the property securing the debt.)
- Amount of the claim that is unsecured: \$ _____
 (The sum of the secured and unsecured amounts should match the amount of the claim in Item 7, above.)
14. Is this claim subject to a right of setoff? NO YES. Identify the property. _____
 *Unliquidated contingent liability that could reach or exceed \$25,000 USD

All Proof of Claim Forms MUST be FILED by September 18, 2018. Failure to timely file this form with supporting documents will result in a waiver of your right to file a claim. Objections must be filed by October 2, 2018. All claims will come before the court for hearing on October 29, 2018, at 9:00 a.m. at the court.

15. Is any of this claim for attorney fees? NO YES. If so, explain why you are entitled to attorney fees, and attach a complete listing of all hours and all charges showing with specificity the work performed identified on the invoice sufficient to support your claim. _____

Use extra pages if needed to support your claim or any of your answers in this proof of claim form.

Note—The Receiver or any interested person may timely challenge whether a claim is valid, whether the security interest is valid and enforceable, the priority of any secured claim, whether a claim is an administrative claim, and whether the fees, expenses and charges listed are required to be paid, or other pertinent issues, by filing an objection to any claim filed.

Time for Filing. A proof of claim shall be deemed timely if it is filed with supporting documents not later than 4:30 p.m. on September 18, 2018. All claims filed are open for inspection by the public and all interested parties at the Clerk of Court's office during normal business hours. Objections shall be deemed timely if filed not later than 4:30 p.m. on October 2, 2018.

The person completing this form must sign and date it, initial each page attached to it, and it must be filed with the Auglaize County Clerk of Courts, Auglaize County Courthouse, 201 South Willipie Street, Room 043, P.O. Box 409, Wapakoneta, OH 45895, whose hours are: Monday thru Friday, 8 a.m. until 4:30 p.m. A proof of claim is deemed filed only when received and file-stamped by the Clerk.

A person who submits a fraudulent claim may be subject to prosecution for such fraud or attempt under the appropriate criminal code sections. Such person may also be subject to punishment for contempt of court of up to 10 days in jail and up to \$500 fine, or both.

I hereby certify that the undersigned is the:

creditor; creditor's attorney; creditor's authorized agent; (check one)

and I understand that my signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt. I certify that I have examined the information in this Proof of Claim and attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct, at 2:50pm _____, this 14th day of September, 2018.

(X) 

(Signature is mandatory)

Print the name of the person who is completing and signing this claim:

Full Name: David Einsteadig

Title: AUTHORIZED OFFICER AND GENERAL COUNSEL

Company: The Ohio Greenhouse Company

Address: 28700 Plymouth Road
Livonia, MI 48150

Contact Phone: (734) 943-0410

Email david.einsteadig@sunsetgrown.com

IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO

PAUL MASTRONARDI
PLAINTIFF

CASE NO. 2017 CV 0144
JUDGE PEPPL

VS

LUIS CHIBANTE, et al
Defendants.

Memorandum in Support of Proof of Claim

STATEMENT OF FACTS

A. Background Information

By statute and by case law, Receivers in Ohio are permitted to enter into contracts, sell assets and make transfers of real and personal property, among other items. R.C. 2735.04(B)(4) and (5). The Statute also authorizes the Receiver to enter into an agreement to sell assets "free and clear of all liens" including real and personal property. *Id.*

As this Court is aware, Receiver James L. Thieman was appointed over the assets of (a) Golden Fresh Farms Enterprises, L.P., an Ohio limited partnership ("Enterprises") by order entered January 23, 2018 in Case No. 2017 CV 0144 in the Court of Common Pleas of Auglaize County, Ohio and (b) Golden Fresh Farms Holdings, Inc., ("Holdings") the general partner of Enterprises (jointly "GFF"), by order entered September 29, 2017 in Case No. 2017 CV 0144. An Order Regarding Sale Procedures was filed April 25, 2018. Mastronardi Produce-USA, Inc. ("MPUSA") submitted a bid to purchase the sale of the business and assets of GFF pursuant to the court-approved and -controlled blind auction process. Several bids were received, including the bid from MPUSA which submitted its bid in the form of an Asset Purchase Agreement



("APA"). The Receiver determined the APA submitted by MPUSA to be the highest and best offer received as provided in the Order Regarding Sale Procedures. The APA contemplated an assignment by MPUSA, and consistent with this, the new entity, The Ohio Greenhouse Company ("TOGHC") was formed and the APA was assigned prior to closing.

The APA by and between the appointed Receiver specifically states that "Buyer is not assuming any Liabilities of Sellers" and "Buyer is not assuming any other liabilities whatsoever of any kind or nature including, but not limited to, any contract liabilities, any employment related liabilities, independent contracts, H-2A workers, or otherwise." (Exhibit 1, ¶1.3 p. 2). The Order of Sale explicitly approved the terms of the APA, including the "...sale of the assets free and clear of all liens as set forth in the APA." (Exhibit 2, p. 5). The sale closed On June 29, 2018.

B. Department of Labor Investigation of Golden Fresh Farms – March 2018

In or around March 2018, the Department of Labor ("DOL") initiated an investigation of GFF to determine its compliance with the laws enforced by the US DOL, Wage and Hour Division, in particular with the implementation and use of the H-2A foreign farm labor program. Based upon information and belief, the investigation included at least two on-site visits, requests for records, and interviews of GFF employees.

On August 15, 2018, the DOL issued a Request for Information to TOGHC. TOGHC timely responded to the Request indicating it was not the employer of record of any H-2A workers under any contract between the DOL and GFF during the 2017-2018 season. Indeed, all H-2A workers employed by GFF returned home prior to the sale closing on June 29, 2018 and also prior to TOGHC receiving its EIN on July 2, 2018.

LEGAL ANALYSIS

The well-recognized general rule of successor liability provides that the purchaser of a corporation's assets is not liable for the debts and obligations of the seller corporation. *Flaughner v. Cone Automatic Machine Co.*, 30 Ohio St.3d 60, 30 OBR 165, 507 N.E.2d 331 (1987). Equally well recognized are the four exceptions to this general rule. A successor corporation may be held liable only when: (1) the buyer expressly or impliedly agrees to assume such liability; (2) the transaction amounts to a *de facto* consolidation or merger; (3) the buyer corporation is merely a continuation of the seller corporation; or (4) the transaction is entered into fraudulently for the purpose of escaping liability. *Flaughner, supra*, 30 Ohio St.3d at 62. Further, contract law looks primarily to the intent of the contracting parties. *Victorson v. Bock Laundry Machine Co.* (1975), 37 N.Y.2d 396, 401, 373 N.Y.S.2d 39, 41, 335 N.E.2d 275, 277 (1975). Indeed, the Ohio Supreme Court has declined to expand the traditional exceptions to the general rule of non-liability of successor corporations, and has held that a corporation that purchases the assets of another corporation is not liable for the contractual liabilities of its predecessor corporation unless (1) the buyer expressly or impliedly agrees to assume such liability; (2) the transaction amounts to a *de facto* consolidation or merger; (3) the buyer corporation is merely a continuation of the seller corporation; or (4) the transaction is entered into fraudulently for the purpose of escaping liability. *Welco Industries, Inc. v Applied COS*, 617 NE2d 1129, 1133 (1993).

In the case of the sale of the business and asset purchase of GFF, the entire sale, including the APA and Order of Sale "free and clear from all liens" and "liabilities," was completed under direct court supervision and through a receivership. As set forth above, all

parties expressly agreed to release all liens and liabilities, and TOGHC expressly stated that it was not assuming any liabilities related to any employment matters, including H2A workers. This was approved by the Court. (Exhibit 2).

There simply is no successor liability in this case under controlling law, and liability as it relates to any employment matters, including any H-2A liability for any perceived breaches of any 2016-2017 or 2017-2018 Labor Certification would not flow to TOGHC, its parent, or any related entity. The clear case law and statutory authority bestowed on the Receiver in this case do not support such a notion. As such, to the extent the DOL concludes there is any liability associated with any employment action prior to July 2, 2018 such liability should be borne by GFF, not TOGHC.

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is effective as of May 22, 2018 ("Effective Date"), by and between JAMES L. THIEMAN, solely in his capacity as the court appointed Receiver of GOLDEN FRESH FARMS ENTERPRISES, L.P., an Ohio limited partnership, and Golden Fresh Farms Holdings, Inc., an Ohio corporation (the "Receiver") and MASTRONARDI PRODUCE – USA, INC., a Michigan corporation ("Buyer").

RECITALS

A. The Receiver was appointed receiver over the assets of each of (a) Golden Fresh Farms Enterprises, L.P., an Ohio limited partnership ("Enterprises") by order entered January 23, 2018 in case No. 2017 CV 0144 in the Court of Common Pleas of Auglaize County, Ohio (the "Court") wherein Paul Mastronardi is the Plaintiff and Luis Chibante and others are the Defendants (the "Case") and (b) Golden Fresh Farms Holdings, Inc. ("Holdings"), the general partner of Enterprises, by order entered September 29, 2017 in case No. 2017 CV 0144 in the Court;

B. Enterprises owns and operates a hydroponic greenhouse fresh produce facility in Auglaize County, Ohio known as Golden Fresh Farms (the "Business");

C. Receiver is selling the assets of Enterprises and Holdings (collectively, the "Sellers") pursuant to a court-approved and controlled blind auction process ("Auction") in which Buyer wishes to participate through the submission of a bid ("Bid");

D. This Agreement constitutes a written proposal that remains available for acceptance for sixty (60) days from the bid deadline of May 22, 2018, or until the Sale Order (as defined below) is filed, whichever occurs first; and

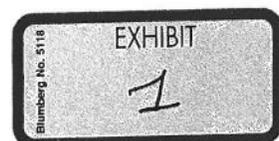
E. In the event that Buyer's Bid is selected by Receiver in the Auction, Buyer desires to purchase from the Receiver, and the Receiver desires to sell to Buyer, on the terms and subject to the conditions of this Agreement, substantially all of the assets and properties of Sellers.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the adequacy of which is hereby acknowledged, Receiver and Buyer do mutually agree as follows:

1. Sale of Business and Assets.

1.1 The Receiver agrees to sell, convey, transfer, assign and deliver to Buyer, and Buyer agrees to purchase from the Receiver, free and clear of any and all liens, except with respect to the Real Estate (as defined below) the liens of the Treasurer of Auglaize County, all of Sellers' right, title and interest in and to all of the Purchased Assets. "Purchased Assets" means all of the assets, properties, undertakings, and claims of any kind of Sellers that the Sellers own, in which they claim any interest, or may claim any interest (other than the Excluded Assets as defined in Section 1.2), including, without limitation, all tangible and intangible assets, crops, inventory, machinery, equipment that Sellers have an interest as of the Effective Date (except



dispositions in the ordinary course of business) and that certain real property known as Auglaize County, Ohio Auditor's Parcel Nos. I45-00401600 and I45-00401699, including, all structures and improvements located on such real property, easements, rights-of-way, licenses, privileges, appurtenances, surface and subsurface rights, if any (collectively, the "Real Estate"), which is more particularly described in the legal description set forth in Schedule 1.1.

1.2 The Purchased Assets shall not include any of the right, title, or interest of Sellers in any of the contracts or the assets set forth on Schedule 1.2, incorporated by reference (collectively, the "Excluded Assets").

1.3 "Liabilities" means all debts, obligations, duties and liabilities of every type and trade, known or unknown. Except for Assumed Liabilities (as defined below), Buyer is not assuming any Liabilities of Sellers. Buyer will accept an assignment of and assume the following Assumed Liabilities: Sellers' obligations under those certain agreements Sellers have entered into with or for, (i) the City of Wapakoneta, (ii) vehicle leases, and (iii) a vehicle purchase, as more fully set forth on Schedule 1.3 to this Agreement. For clarity, except for the Assumed Liabilities, Buyer is not assuming any other liabilities whatsoever of any kind or nature, including, but not limited to, any contract liabilities, any employment related liabilities, independent contracts, H-2A workers, or otherwise.

2. **Consideration for Purchased Assets.** In addition to the title policy premium and allocation of taxes provided for below, the consideration for the Purchased Assets (the "Purchase Price") shall consist of (a) Buyer's assumption at Closing of the Assumed Liabilities, plus (b) Buyer's payment of cash in the sum of **Twenty-Nine Million (\$29,000,000) USD**. The portion of the Purchase Price allocated solely to the Real Estate being sold shall be Twenty-Five Million \$25,000,000 USD.

3. **Deposit.** The Receiver acknowledges that Buyer has deposited the sum of **Five Hundred Eighty Thousand (\$580,000) USD** (the "Deposit") with Receiver in Receiver's trust account as directed by the Court's Sale Order dated April 25, 2018 in the Case ("Auction Process Order"). In the event that Buyer's Bid is selected by Receiver and is the subject of an application to the Court for authority to sell, then the amount of the Deposit will be applied toward the Purchase Price at Closing. In the event that Buyer's Bid is not selected by Receiver or approved by the Court, than upon the filing of the Sale Order approving a different bid this Agreement will not be binding and the Deposit will be promptly returned to Buyer in accordance with the terms of the Auction Process Order.

4. **Buyer's Conditions to Close.** Buyer's obligation to purchase the Purchased Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

4.1 **Title Policy.** Buyer shall have received from a title company appointed by Sellers (the "Title Company"), with respect to the Real Estate, a commitment to issue an ALTA owner's policy of title insurance, in an aggregate amount at least equal to the portion of the Purchase Price to be allocated to the Real Estate and showing fee simple title in the Real Property to be

vested in the Buyer and attaching all endorsements and including all coverages agreed to by Buyer and the Title Company (the "Title Policy").

4.2 Removal of Liens. Receiver shall have removed by the entry of a Court order in the Case that all liens affecting title to the Purchased Assets except, with respect to the Real Estate, the liens of the Treasurer of Auglaize County.

5. Closing.

5.1 Court Approval; Sale Order. This Agreement is subject to approval by the Court in the Case. The obligations of Buyer and the Receiver to proceed to Closing are contingent upon the Court issuing an order approving the sale of the Purchased Assets to Buyer (the "Sale Order"). The Sale Order shall, among other things, approve: (a) the execution, delivery and performance by the Receiver of this Agreement, (b) the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all liens except, with respect to the Real Estate, the liens of the Treasurer of Auglaize County, and (c) the performance by the Receiver of its obligations under this Agreement.

5.2 Right of First Refusal. Enterprises is a party to a Grant of Right of First Refusal dated June 3, 2016 and filed for record at Book 665, Page 532 of the Official Records of Auglaize County, Ohio and a Grant of Right of First Refusal dated June 3, 2016 and filed for record at Book 665, Page 540 of the Official Records of Auglaize County, Ohio (collectively, the "ROFR Agreements"), each by and between Enterprises and Wapakoneta Area Job-Ready Sites Community Improvement Corporation ("ROFR Holder"). Pursuant to the ROFR Agreements, the ROFR Holder has rights of first refusal to purchase the Real Estate (each a "ROFR" and collectively, the "ROFRs"). Receiver agrees to provide notice of its intent to accept an offer to the ROFR Holder as may be required under the ROFRs.

5.3 Closing Date. The closing of the transactions contemplated in this Agreement (the "Closing") shall occur on the date that is no later than fourteen days following the entry of the Sale Order (the "Closing Date"), unless mutually extended by the Receiver and Buyer, subject to any Court approval.

5.4 Prorations. At the Closing, ad valorem taxes and tangible property taxes on the Purchased Assets and the expenses related to the Purchased Assets, including any prepaid expenses, if any, shall be apportioned pro rata on a daily basis so that a portion equal to that portion of calendar year 2018 occurring before the Closing Date shall be borne by Sellers, and a portion equal to that portion of calendar year 2018 occurring on and after the Closing Date shall be borne by Buyer. With respect to the Real Estate: (1) any delinquent real estate taxes and assessments which are a lien on the Real Estate and are due and payable as of the Closing Date shall be borne by Enterprises; (2) real estate taxes and assessments which are a lien (but not delinquent) on the Real Estate as of the Closing Date shall be prorated as of the Closing Date based upon the most recently available tax rates, assessments and valuations so that the portion attributable to the time period occurring before the Closing Date shall be borne by Enterprises and the portion attributable to the time period occurring on and after the Closing Date shall be borne by Buyer; (3) any title search fees, Title Policy premiums and recording fees for the Deed (as defined in Section 6.4) and the removal of any liens shall be borne by Buyer; (4) the transfer

tax applicable to the transfer of title to the Real Estate including, but not limited to, all state, county and local municipality taxes, shall be borne by Enterprises; and (5) any unpaid utilities or other charges that may become a lien against the Real Estate shall be prorated so that the portion attributable to the time period occurring before the Closing Date shall be borne by Enterprises and the portion attributable to the time period occurring on and after the Closing Date shall be borne by Buyer.

5.5 Possession of the Real Estate. Receiver will transfer possession of the Real Estate to Purchaser on the Closing Date.

6. Receiver's Closing Deliverables. At the Closing, the Receiver shall deliver or cause to be delivered to Buyer the following:

6.1 a Bill of Sale in the form agreed to by the parties hereto, that includes the assignment of and assumption of liabilities Buyer is required or otherwise agrees to assume, executed by the Receiver, but in no event shall contain material representations and warranties of the Receiver beyond what is provided for in this Agreement;

6.2 such forms of assignment or transfer of the intellectual property as may be reasonably requested by Buyer in the form prescribed or required by the Ohio Secretary of State or the Federal Patent and Trademark Office to record the transfer in the public records of such governmental offices;

6.3 a transferable and recordable limited warranty deed (the "Deed") conveying marketable and insurable fee simple title in the Real Estate to Buyer;

6.4 completed real estate transfer tax declarations, as required to complete the transfer of the Real Estate; and

6.5 any other items reasonably required by Title Company to cause the Title Company to issue the Title Policy.

7. Buyer's Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to the Receiver a Bill of Sale in the form agreed to by the parties hereto that includes the assignment of and assumption of liabilities Buyer is required or otherwise agrees to assume, executed by the Buyer, in accordance with the terms of this Agreement.

8. Warranties and Representations of the Receiver. The Receiver hereby warrants and represents to Buyer that as of the Closing Date:

8.1 Except for express representations and warranties made by the Receiver in this Agreement, the Buyer and the Receiver acknowledge and agree that the sale of the Purchased Assets is "AS IS," "WHERE IS," and "WITH ALL FAULTS." RECEIVER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH MIGHT OTHERWISE BE IMPLIED WITH RESPECT TO ANY OF THE PURCHASED ASSETS.

8.2 Subject to the discretion of the Court in ordering the sale free and clear liens except, with respect to the Real Estate, the liens of the Treasurer of Auglaize County, the Receiver has the necessary power and authority to sell the Purchased Assets, free and clear of all liens, except with respect to the Real Estate, the liens of the Treasurer of Auglaize County.

8.3 Upon the entry of the Sale Order, the Receiver will have obtained all necessary authorizations and approvals for the execution and delivery of this Agreement and performance of his obligations hereunder.

8.4 Upon the entry of the Sale Order, no provisions exist in any agreement, article, document, or instrument to which the Receiver is a party or by which the Purchased Assets are bound which should be violated by consummation of the transactions contemplated by this Agreement.

9. Warranties and Representations of Buyer. Buyer represents and warrants to the Receiver that as of the Closing Date:

9.1 Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Michigan. Buyer has all corporate power to own all of its property and assets and to carry on business together with the necessary power and authority to purchase the Purchased Assets from the Receiver.

9.2 Buyer has obtained all necessary authorizations and approvals for the execution and delivery of this Agreement and performance of its obligations hereunder.

9.3 No provisions exist in any agreement, article, document, or instrument to which Buyer is a party or by which it is bound which should be violated by consummation of the transactions contemplated by this Agreement.

10. Further Assurances. (a) After Closing, Buyer shall provide Receiver and his authorized representatives reasonable access to any business records of Enterprises and Holdings that were conveyed as part of the Purchased Assets to facilitate the completion of their 2017 and 2018 tax returns, for use in an ongoing claims procedure, and for any other reasonable purpose; and (b) each party shall, from time to time, at another party's request, and without further consideration, perform such acts and execute and deliver to the other party or parties such other and further instruments, documents and other considerations as the other party or parties may reasonably request for the more effective consummation of the transactions contemplated hereby and the satisfaction by each party of its obligations under this Agreement.

11. Miscellaneous.

11.1 Finder's or Broker's Fee, Expenses. Each party shall pay its own legal fees, filing and recording fees and other expenses, incident to the preparation and the closing of the transactions hereunder. Each of the parties represents and warrants that it has not dealt with any broker or finder in connection with any of the transactions contemplated hereunder.

11.2 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service

if hand delivered, on the first business day after transmission if sent by nationally recognized overnight courier, or on the date received if sent by confirmed electronic mail transmission, and properly addressed as follows:

Receiver: James L. Thieman
Faulkner, Garmhausen, Keister & Shenk LPA
Courtview Center, Suite 300
100 S. Main Avenue
Sidney, Ohio 45365

Buyer: David Einsteadig, Vice President and General Counsel
Mastronardi Produce – USA, Inc.
28700 Plymouth Road
Livonia, MI 48150
Email: David.Einsteadig@sunsetgrown.com

With a copy to: Robert M. Zimmerman
Dinsmore & Shohl LLP
255 East Fifth Street, #1900
Cincinnati, Ohio 45202
Email: robert.zimmerman@dinsmore.com

Either party may change the address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

11.3 Governing Law; Venue. This Agreement will be governed by and construed under the laws of the State of Ohio without regard to conflicts-of-laws principles that would require the application of any other law. The parties agree that any and all claims arising from or in connection with this Agreement may be brought in the state or federal courts of the State of Ohio.

11.4 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11.5 Modification of Agreement. This Agreement, together with its Exhibits and Schedules, constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties. No waiver of any of the provisions hereof shall be deemed a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each Agreement shall be deemed to be originals, and all together shall constitute one instrument for legal purposes.

11.7 Waiver of Breach. The waiver by any party of a breach of any provision hereof shall not operate nor be construed as a waiver of any subsequent breach of the party.

11.8 Construction. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

11.9 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

[Signatures contained on next page]

(Signatures to Asset Purchase Agreement)

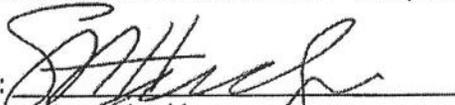
IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement on June 28, 2018 to be effective on the date first written above.

RECEIVER:

BUYER:

MASTRONARDI PRODUCE - USA, INC.

By: 
James L. Thieman, solely in his capacity as the court appointed Receiver of Golden Fresh Farms Enterprises, L.P., an Ohio limited partnership, and Golden Fresh Farms Holdings, Inc., an Ohio corporation

By: 
Name: Steve Attridge
Title: Chief Financial Officer

Schedule 1.1

Legal Description of the Real Estate

TRACT I:

Situate in the Township of Pusheta, County of Auglaize and State of Ohio, to-wit:

The east half of the northwest quarter of Section 4, Town 6 South, Range 6 East, containing Eighty (80) acres, more or less, subject to all easements and rights-of-way of record.

EXCEPTING THEREFROM THE FOLLOWING:

The following described tract of land is part of the Northwest Quarter of Section 4, Town 6 South, Range 6 East, Pusheta Township and in the City of Wapakoneta, Auglaize County, Ohio, and is more particularly described as follows:

Commencing at a 1-inch dia Iron Bar found at the Northwest corner of the Northwest Quarter of Section 4, Pusheta Township;

Thence S. 89° 47' 33" E. along the North line of the Northwest Quarter of Section 4, a distance of 1,711.13 feet to an iron pin set, which is the PLACE OF BEGINNING for the tract of land herein described;

Thence continuing S. 89° 47' 33" E. along the above described line, a distance of 194.40 feet to an iron pin set;

Thence S. 01° 14' 11" W. a distance of 671.77 feet to an iron pin set, passing thru an iron pin set for reference at 161.98 feet in the Southerly right-of-way line of relocated Canning Factory Road (by record);

Thence N. 89° 49' 06" W. a distance of 190.83 feet to an iron pin set;

Thence N. 00° 55' 54" E. a distance of 671.80 feet to the iron pin set, passing thru an iron pin set for reference at 549.68 feet in the Southerly right-of-way line of relocated Canning Factory Road (by record), said iron pin was the true PLACE OF BEGINNING.

Containing in all 2.970 acres of which 0.629 acre being subject to easement for highway purposes. The above-described tract of land is subject to all legal easements, restrictions and reservations, if any, of record or in use on said premises. This plat is recorded in Survey Book "M", Page 430, in the Auglaize County Engineer's Office. Basis of bearing is the North line of the Northwest Quarter of Section 4 and the centerline of Canning Factory Road as S 89° 47' 33" E. (Auglaize County G.P.S. data). This description is based on an actual field survey, performed by me, John W. Jauert in October 2001.

Subject to legal highways, easements, conditions and restrictions of record.

Prior Instrument Reference: Official Record Book 666, Page 1506

TRACT II:

The following described tract of land is part of the Northwest Quarter of Section 4, Town 6 South, Range 6 East, Pusheta Township and in the City of Wapakoneta, Auglaize County, Ohio, and is more particularly described as follows:

Commencing at a 1-inch dia Iron Bar found at the Northwest corner of the Northwest Quarter of Section 4, Pusheta Township;

Thence S. 89° 47' 33" E. along the North line of the Northwest Quarter of Section 4, a distance of 1,711.13 feet to an iron pin set, which is the PLACE OF BEGINNING for the tract of land herein described;

Thence continuing S. 89° 47' 33" E. along the above described line, a distance of 194.40 feet to an iron pin set;

Thence S. 01° 14' 11" W. a distance of 671.77 feet to an iron pin set, passing thru an iron pin set for reference at 161.98 feet in the Southerly right-of-way line of relocated Canning Factory Road (by record);

Thence N. 89° 49' 06" W. a distance of 190.83 feet to an iron pin set;

Thence N. 00° 55' 54" E. a distance of 671.80 feet to the iron pin set, passing thru an iron pin set for reference at 549.68 feet in the Southerly right-of-way line of relocated Canning Factory Road (by record), said iron pin was the true PLACE OF BEGINNING.

Containing in all 2.970 acres of which 0.629 acre being subject to easement for highway purposes. The above-described tract of land is subject to all legal easements, restrictions and reservations, if any, of record or in use on said premises. This plat is recorded in Survey Book "M", Page 430, in the Auglaize County Engineer's Office. Basis of bearing is the North line of the Northwest Quarter of Section 4 and the centerline of Canning Factory Road as S 89° 47' 33" E. (Auglaize County G.P.S. data). This description is based on an actual field survey, performed by me, John W. Jauert in October 2001.

Subject to legal highways, easements, conditions and restrictions of record.

Prior Instrument Reference: Official Record Book 664, Page 1440

As such property is also described as follows:

TRACT I

BEING A TRACT OF LAND OWNED BY EMERSON WAGNER REALTY COMPANY AS DESCRIBED IN OFFICIAL RECORD 414, PAGE 38 OF THE AUGLAIZE COUNTY DEED RECORDS, SITUATE IN SECTION 4, TOWN 6 SOUTH, RANGE 6 EAST, CITY OF WAPAKONETA, PUSHETA TOWNSHIP, AUGLAIZE COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference at a 1-inch iron pin found at the northwest corner of the northwest quarter of Section 4;

thence, South 89°-47'-32" East, 1314.12 feet, along the north line of said quarter section to an iron pin with cap set and being the northeast property corner of a tract of land owned by Jeta Farms, LLC and being the principal place of beginning of the tract herein conveyed;

thence, South 89°-47'-32" East, 396.96 feet, along the north line of said quarter section to an iron pin found and being the northwest property corner of a 2.97-acre tract of land owned by Timothy M. Smith and Kendra R. Smith as conveyed in Official Record 483, Page 879;

thence, South 00°-55'-54" West, 671.80 feet, along the west property line of said Smith tract to an iron pin found with "Jauret" cap, passing for reference an iron pin found with "Jauret" cap found at 122.12 feet;

thence, South 89°-49'-06" East, 190.83 feet, along the south property line of said Smith tract to an iron pin found with "Jauret" cap;

thence, North 01°-14'-11" East, 671.77 feet, along the east property line of said Smith tract to an iron pin found with "Jauret" cap on the north line of said quarter section, passing for reference an iron pin found with "Jauret" cap at 509.79 feet;

thence, South 89°-47'-32" East, 737.30 feet, along the north line of said quarter section to an iron pin with cap set at the northeast corner of said quarter section and being the northwest property corner of a 6.778-acre tract of land owned by James D. Schneider and Nova G. Schneider, Co-Trustees as conveyed in Official Record 582, Page 666;

thence, South 00°-56'-44" West, 2728.71 feet, along the east line of said quarter section and the west property line of said Schneider tract to an iron pin with cap set at the southeast corner of said quarter section and being the northeast property corner of a 25.00-acre tract of land owned by Nancy L. Freymuth as conveyed in Official Record 571, Page 360;

thence, North 89°-06'-39" West, 1316.50 feet, along the south line of said quarter section and the north property line of said Freymuth tract to an iron pin found with "Kent" cap on the east property line of West Central Ohio Industrial Park as shown in Plat Cabinet C, Slides 50-51;

thence, North 00°-41'-27" East, 2712.93 feet, along the east property line of said West Central Ohio Industrial Park to the principal place of beginning, passing for reference an iron pin found with "Kent" cap at 1356.52 feet.

Containing 79.638 acres more or less and all being subject to any legal highways and easements of record.

The bearings are based on NAD 83 CORS 2011 adjustment, Ohio North Zone, ODOT VRS CORS Network.

The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a field survey performed under his direct supervision and dated November 13, 2015.

TRACT II

BEING A TRACT OF LAND OWNED BY TIMOTHY M. SMITH AND KENDRA R. SMITH AS DESCRIBED IN OFFICIAL RECORD 483, PAGE 879 OF THE AUGLAIZE COUNTY DEED RECORDS, SITUATE IN SECTION 4, TOWN 6 SOUTH, RANGE 6 EAST, CITY OF WAPAKONETA, PUSHETA TOWNSHIP, AUGLAIZE COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference at a 1-inch iron pin found at the northwest corner of the northwest quarter of Section 4;

thence, South 89°-47'-32" East, 1711.08 feet, along the north line of said quarter section to an iron pin found and being on the northerly property line of a tract of land owned by Emerson Wagner Realty Co. as conveyed in Official Record 414, Page 879 and being the principal place of beginning of the tract herein conveyed;

thence, South 89°-47'-32" East, 194.40 feet, along the north line of said quarter section to an iron pin found with "Jauret" cap and being a northerly property corner of said Emerson Wagner Realty tract;

thence, South 01°-14'-11" West, 671.77 feet, along the northerly property line of said Emerson Wagner Realty tract to an iron pin found with "Jauret" cap, passing for reference an iron pin found with "Jauret" cap at 161.98 feet;

thence, North 89°-49'-06" West, 190.83 feet, along the northerly property line of said Emerson Wagner Realty tract to an iron pin found with "Jauret" cap;

thence, North 00°-55'-54" East, 671.80 feet, along the northerly property line of said Emerson Wagner Realty tract to the principal place of beginning, passing for reference an iron pin found at 549.68 feet.

Containing 2.970 acres more or less and all being subject to any legal highways and easements of record.

The bearings are based on NAD 83 CORS 2011 adjustment, Ohio North Zone, ODOT VRS CORS Network.

The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a field survey performed under his direct supervision and dated November 13, 2015.

Parcel 14500401600

Schedule 1.2

Excluded Assets

1. Sellers' cash (including without limitation cash on hand, petty cash and checking and savings accounts) and cash equivalents.
2. Sellers' accounts receivables.
3. The claims asserted by Holdings and/or Enterprises in Mastronardi v. Chibante, Case No. 2017 CV 0144 pending in the Auglaize County Common Pleas Court, as those claims are alleged in the pleadings as of April 25, 2018, as noted by order entered April 25, 2018 in case No. 2017 CV 0144 in the Court of Common Pleas of Auglaize Country, Ohio.
4. The claims asserted by Holdings and/or Enterprises in Chibante v. Mastronardi pending in the Franklin County Common Pleas Court, Case No. 17 CV 008102, as those claims are alleged in the pleadings as of April 25, 2018, as noted by order entered April 25, 2018 in case No. 2017 CV 0144 in the Court of Common Pleas of Auglaize Country, Ohio.
5. Rights, assets, contracts and other properties related to Sellers' employee benefit plans, if any.

Schedule 1.3

Wapakoneta Contracts

1. Wapakoneta Community Reinvestment Area Agreement dated May 2, 2016, by and among Golden Fresh Farms LLC, Golden Fresh Holdings and the City of Wapakoneta, Ohio.
2. Development Agreement Dated May 6, 2016 by and among Golden Fresh Farms LLC, Golden Fresh Holdings, LLC, the City of Wapakoneta, Ohio and the Wapakoneta Area Economic Development Council, Inc.
3. Electric Service Agreement Dated May 2, 2016, as amended by a First Amendment dated December 15, 2016 by and among Golden Fresh Farms LLC, Golden Fresh Holdings, LLC and the City of Wapakoneta, Ohio.

Vehicle Leases

1. Certain 48 month closed-end lease agreement dated on or about December 22, 2016 among Ford Motor Credit Company LLC, as Lessor, to Golden Fresh Farms Enterprises LP, for a 2016 Ford Oxford White Transit Van VIN 1FBAX2CG4GKB30970.

Vehicle Purchase

1. Certain vehicle purchase financing agreement dated on or about January 24, 2017 among Ford Motor Credit Company and Golden Fresh Farms Enterprises LP, as buyer, in connection with the purchase of a 2012 White Ford F550 Truck VIN 1FDAF5GT3CEC46737.

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2018 JUN 25 PM 2:06

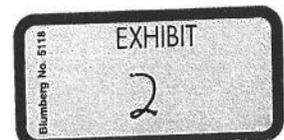
I. JEANNE MASTROTH
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF AUGLAIZE COUNTY, OHIO

PAUL MASTRONARDI)	CASE NO. 2017 CV 0144
)	
Plaintiff,)	JUDGE PEPPLA
)	
vs.)	
)	ORDER OF SALE
LUIS CHIBANTE, et al.)	
)	
Defendants.)	

Introduction: On June 4, 2018, the Receiver for Golden Fresh Farms Holdings, Inc. (“Holdings”) and Golden Fresh Farms Enterprises, L.P. (“Enterprises”) filed an Application for Authority to Sell Real Property in accordance with R.C. 2735.04, along with two Notices of Filing with Affidavits and supporting documentation (collectively, these three filings are referred to as the “Application”).

As provided in the “Order Regarding Sale Procedures” filed April 25, 2018, the Receiver sought to sell all, or substantially all, of the assets of Holdings and Enterprises, including specific real property owned by Enterprises (but not including “Excluded Assets” as that term is defined in the Order Regarding Sale Procedures). Several bids were received, including one from Mastronardi Produce – USA, Inc. in the form of an Asset Purchase Agreement (the “APA”). The APA contained a specific offer to purchase, identified the buyer, and stated the proposed terms of the purchase. The APA proposed to purchase all the assets of Holdings and Enterprises (except for the Excluded Assets as listed in Schedule 1.2 of the APA), including real property,



free and clear of all liens, except the lien of the Auglaize County Treasurer (hereinafter, the assets proposed to be purchased are referred to as the "Assets").

The Receiver determined the APA to be the highest and best offer received as provided in the Order Regarding Sale Procedures, and to be acceptable. In the Application, the Receiver sought the approval of the Court of the APA, as well as authority to accept the APA, to execute and enter into the APA, and to sell the Assets to Mastronardi Produce – USA, Inc., or its assignee, in accordance with the APA.

Notice of Application: R.C. 2735.04 requires that at least ten days prior written notice of the sale of real property be given to all owners of the real property, all parties to the action, and to all other persons with a recorded or filed lien encumbering the real property to be sold as those persons are identified in a title commitment to be filed with the Application. (A title commitment was filed with the Application.) The Assets to be sold include real property, so notice was required. The Receiver filed a Return of Service on June 7, 2018 reflecting that such notice was given as provided in the Return of Service. In addition, the Court ordered service of the Application upon the Auglaize County Treasurer, which the Court finds was accomplished on June 4, 2018.

The Court finds that all who are entitled to notice under R.C. 2735.04 were given notice in accordance with the Rules of Civil Procedure. R.C. 2735.04 provides that all parties entitled to notice may object to the Application, or request a hearing on the Application, within ten days of the notice. The Court finds that the ten-day period expired on June 15, 2018, that no objections or requests for hearing have been made, and that all objections or requests for hearing are now time-barred.

UCC Financing Statements: The records of the Ohio Secretary of State reflect that UCC Financing Statements pertaining to Enterprises were filed that purport to extend to all the personal property of Enterprises. Although R.C. 2735.04 requires notice of the filing of an Application as provided above, it does not require notice to those who filed such UCC Financing Statements. On June 22, 2018, the Receiver filed two Notices of Filing that attached forms whereby those who filed UCC Financing Statements that extended to all the personal property of Enterprises both waived notice and accepted notice of such Application, and affirmatively waived any objections to the Application or any request for hearing on the Application. The Court finds such waivers and acceptances to be effective.

Findings Pertaining to Sale: The Court previously found, and re-affirms here, that due to insufficient cashflow, there is a need for a prompt sale of the Assets. Some evidence of this is found in the cash flow projections previously filed and the affidavits that accompanied the Application. Examples of cash flow issues include a recent inability of Enterprises to pay its electric bill. Another is the fact that, as of early May 2018, Enterprises was more than 90 days past due with most of its creditors. The Court finds that the revenue generated since the commencement of the Receivership has been insufficient to service the debt and continue operations, and has previously issued Orders approving loan agreements providing for borrowing to allow operations to continue. The Court notes that future borrowing under the loan agreements is not assured. The Court finds that, without sufficient funding in the near term, it is likely that business operations would cease without a sale.

The Court previously determined that the Assets are best sold as a going concern, and that a liquidation sale of the Assets would likely result in a substantially reduced recovery by the Receivership Estates. There are many reasons for this. They include the fact that the facility is a

greenhouse over 18 acres in size growing more than 200,000 tomato plants. The plants are grown hydroponically, with water and nutrient lines to each, and produce a highly perishable product. There is a constant need to control the temperature and humidity, prune, harvest, see to pollination (achieved by dozens of bee hives with limited useful life and in need of frequent rotation), monitor for disease and pests, and many other activities to keep the facility fully operational. Moreover, there is an assembled workforce of as many as 85 that are trained and knowledgeable, and which workforce is at risk of dispersal if operations were to cease. Approximately 34 members of the workforce are H2A Visa workers from outside of the United States, many of whom do not speak the English language, who reside in housing located on the premises, and who would be placed in jeopardy if operations were suddenly ceased. It is apparent that ceasing operations would diminish the value of the existing Assets and would create additional liabilities and burdens that would reduce the value of the Assets in a liquidation sale. The Court reaffirms its findings that the recovery to the Receivership Estates will be maximized if the Assets are promptly sold as a going concern.

Approval of the Sale and Authority Granted to the Receiver: The Application is supported by evidence. The Court finds the evidence to be persuasive. The Court notes that no one who with a right to object to the Application or request a hearing on the Application has done so, and that the Application is unopposed.

Based upon the evidence presented in the Application and the findings as recited in this Order, the Court determines that the APA is the highest and best offer, approves the Application, authorizes the Receiver to accept the APA, authorizes the Receiver to enter into and execute the APA with Mastronardi Produce – USA, Inc. or its assignee, authorizes the Receiver to close the

transaction contemplated thereby, and authorizes the Receiver to execute and deliver such documents and take such other actions consistent and in furtherance therewith.

The Court orders that the sale of the Assets will be found to have been made at arm's length without collusion and in good faith if the transaction contemplated by the APA is concluded in accordance the terms of the APA and this Order.

Free and Clear of All Liens: The Assets include real property and personal property. R.C. 2735.04(B)(5) authorizes the Receiver to sell and make transfers of real and personal property. The APA proposes to purchase all the Assets, both real property and personal property, free and clear of all liens, except for the lien of the Auglaize County Treasurer. The Application attaches the APA and seeks the Court's approval and authority to sell the Assets free and clear of all liens as set forth in the APA.

R.C. 2735.04(D)(1) applies to the sale of both real property and personal property, and permits the sale of such property to be free and clear of all liens. It states: "Subject to the approval and supervision of the court and the requirements of this section, a receiver may sell property free and clear of liens by private sale pursuant to a written contract between the receiver and the prospective purchaser, by public auction, or by any other method that the court determines is fair to the owner of the property and all other parties with an interest in the property, is reasonable under the circumstances, and will maximize the return from the property to the receivership estate, taking into account the potential costs of holding and operating the property."

With regard to the sale of the Assets that constitute real property, R.C. 2735.04(D)(2) imposes additional several additional requirements. If the Receiver has received a specific offer that is acceptable to the Receiver, the Application must disclose the identity of the buyer and the

proposed terms. The APA is specific and identifies the buyer and the terms. At least ten-days written notice is required to all of the owners of the real property, all parties to the action, and to all other persons with a recorded or filed lien encumbering the real property to be sold as those persons are identified in a title commitment to be filed with the Application. Those entitled to notice may object to the Application or request a hearing. As noted above, the Court finds that the notice was properly given to all those entitled to notice, and that no objections or requests for hearing have been timely made. If an objection is made or hearing requested, then the Court is required to provide an opportunity for all those entitled to notice to be heard, but if there is no objection or request for a hearing, then the Court may proceed without a hearing. Finally, no sale of real property can occur unless the Court issues an Order of Sale that sets forth the procedure for or terms of the sale, which this Order of Sale does.

Upon compliance with the requirements of R.C. 2735.04(D)(2), pursuant to R.C. 2735.04(D)(3)(a), the Court may order that the real property be sold free and clear of all liens (other than the lien of the treasurer in the county in which the real property is located for real estate taxes and assessments) only upon a finding by the Court that it is in the best interests of the Receivership Estate that the real property be sold free and clear of all liens other than the lien of the county treasurer. The Court finds that it is in the best interests of the Receivership Estate that the real property be sold free and clear of all liens, other than the lien of the Treasurer of Auglaize County.

The Court notes that R.C. 2735.04(D)(3)(b) states: "In the event of a sale free and clear of liens, upon the recording of the deed from the receiver to the purchaser, those liens shall be cancelled as to the real property and shall be transferred to the proceeds of the sale in the hands of the receiver with the same priority as those liens previously attached to the real property sold."

The Court orders that, upon the recording of the deed, those liens shall be cancelled as to the real property and shall be transferred to the proceeds of the sale in the hands of the Receiver with the same priority as those liens previously attached to the real property sold.

The Court determines that the sale as proposed in the APA is fair to the owner of the property and all other parties with an interest in the property, is reasonable under the circumstances, and will maximize the return from the property to the receivership estate, taking into account the potential costs of holding and operating the property, and orders that the Assets (including all real and personal property) be sold by the Receiver free and clear of all liens, including all liens that may arise from any and all UCC Financing Statements. The Court finds that all liens that arise from any and all UCC Financing Statements are hereby released effective upon the closing, and those liens shall be transferred to the proceeds of the sale in the hands of the Receiver with the same priority as those liens previously had.

Based upon these findings, and the standards and requirements set forth in R.C. 2735.04, the Court orders that the Application is approved, authorizes the Receiver to sign the APA of Mastronardi Produce – USA, Inc., and thereafter to promptly proceed to closing of the sale of the Assets to Mastronardi Produce – USA, Inc. or its assignee, with such sale to be free and clear of all liens on all real property and all personal property.

Right of Redemption: R.C. 2735.04 provides for the equity of redemption by the owner and all other parties possessing an equity of redemption in the real property. The statute requires a reasonable time, not less than three days, for the exercise of the right of redemption. The Court finds that three days is reasonable for the exercise of that right. The Court orders that those who have or may have the right of equity of redemption in the real property to exercise that right

within three days of the date of this Order, and that if the right is not timely exercised, it is forever barred.

Closing: Assuming that the equity of redemption is not exercised, the Court orders that the closing shall take place within 14 days of the date of this Order or within such time thereafter that the Receiver and the Mastronardi Produce Limited – USA, Inc. (or its assignee) may agree, but in no event is the closing to take place more than 30 days after the date of this Order unless that deadline is further extended by order of the Court.

The Court authorizes the Receiver to execute all documents necessary to close the sale of the Assets and such other documents as may be necessary for the sale or transfer of the remainder of the Assets, and to issue a Receiver's deed for the real property.

The Court further orders that the terms of the APA may be modified by agreement between the Receiver and Mastronardi Produce Limited – USA, Inc. or its assignee, provided however, that the purchase price shall not be reduced without further order of the Court.

Sale Proceeds: The Court orders that all sale proceeds shall be deemed to be in the hands of the Receiver, subject to the further orders of the Court. The Court orders that the sale proceeds be wired to the trust account of counsel for the Receiver, Faulkner, Garmhausen, Keister & Shenk, A Legal Professional Association, where they are to be retained until further order of the Court. The Court notes that Mastronardi Produce – USA, Inc. timely wired the sum of \$580,000 with its proposed APA to the trust account of counsel for the Receiver, Faulkner, Garmhausen, Keister & Shenk, A Legal Professional Association, and that that sum is to be credited to the purchase price. The Court further orders that the Receiver may use the funds in the trust account to pay costs associated with the closing, and specifically approves the payment from those funds of the transfer tax of Auglaize County for the transfer of the real property, as

well as other incidental and customary expenses of closing to be reflected in the closing documents.

Post-Closing: As provided in R.C. 2735.04, following the delivery of the Receiver's deed as a part of the closing, the Receiver is to file a report of sale to the Court.

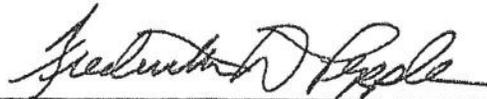
Claims Procedure: The Court orders that the Receivership Estates of Holdings and Enterprises to be continued through the process of winding up. The Court will issue an order regarding the procedures for submission of claims against the sale proceeds.

Service of this Order: The Clerk shall serve a copy of this Order of Sale upon all counsel of record by regular mail.

Upon receipt, the Receiver is ordered to serve via e-mail a copy of this Order of Sale upon all counsel of record and all parties.

The Court further orders that the Sheriff of Auglaize County serve a copy of this Order of Sale upon the Auglaize County Treasurer.

All until further order of the Court.



Judge Frederick D. Pepple