

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM351866

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	COURT ORDER		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Sunland, Inc.		03/27/2014	CORPORATION: NEW MEXICO
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Clarke C. Coll, Chapter 7 Bankruptcy Trustee of Sunland, Inc.		
<b>Street Address:</b>	P.O. Box 1059		
<b>City:</b>	Portales		
<b>State/Country:</b>	NEW MEXICO		
<b>Postal Code:</b>	88130		
<b>Entity Type:</b>	CORPORATION: NEW MEXICO		
<b>PROPERTY NUMBERS Total: 5</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4237470	REAL FOOD, REAL FAST	
<b>Registration Number:</b>	3879536	TRUEPB	
<b>Registration Number:</b>	3136469	ALMOND BETTER	
<b>Registration Number:</b>	2986937	PEANUT BETTER	
<b>Registration Number:</b>	2543652	PEANUT BETTER	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3146673633		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	3145526000		
<b>Email:</b>	ipdocket@thompsoncoburn.com		
<b>Correspondent Name:</b>	Matthew J. Himich		
<b>Address Line 1:</b>	One US Bank Plaza		
<b>Address Line 4:</b>	St. Louis, MISSOURI 63101		
<b>ATTORNEY DOCKET NUMBER:</b>	53807-130228		
<b>NAME OF SUBMITTER:</b>	Matthew J. Himich		
<b>SIGNATURE:</b>	/matthew j. himich/		
<b>DATE SIGNED:</b>	08/19/2015		

CH \$140.00 4237470

**Total Attachments: 44**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

SUNLAND, INC.,

Case No. 7-13-13301 TR

Debtor.

**ORDER APPROVING SALE OF REAL AND PERSONAL PROPERTY FREE AND  
CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS**

THIS MATTER came before the Court upon (1) the *Trustee's Motion For Orders (A) Authorizing Sale of Assets Free and Clear of All Liens, Claims and Interests, Subject to Higher and Better Offers, (B) Establishing Bidding Procedures, (C) Approving Break-Up Fee, and (D) Approving Surcharge For Trustee's Fees, Commission, And Costs* (the "Motion")<sup>1</sup> (Doc. 319) and the objections thereto, described below, (2) the Court's *Order (A) Authorizing Trustee to Proceed with Sale of Real and Personal Property Free and Clear of All Liens, Claims, and Interests, (B) Approving Bidding Procedures, and (C) Approving Break-Up Fee* (the "Bidding Procedures Order") entered on March 11, 2014 (Doc. No. 366), and (3) the Court's *Order Denying Motion to Approve Sale, Reopening Auction, and Setting Final Hearing on Motion to Sell* (Doc. 402) and its Memorandum Opinion in support of the Order Reopening Auction (Doc. 401). The parties are represented by counsel as shown in the record.

THE COURT, having reviewed the record and considered the Motion, and being sufficiently advised, FINDS:

a. On October 9, 2013, Sunland, Inc. (the "Debtor") filed its voluntary petition under chapter 7 of the Bankruptcy Code ("Petition Date");

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion. In the event of a conflict between defined terms, the definition in this Order first shall control, followed by the definition in the Motion.

b. Clarke C. Coll was appointed and is duly qualified and acting Chapter 7 trustee in this case (the “Trustee”);

c. The Court has jurisdiction over this case and this motion pursuant to 28 U.S.C. §§ 157 and 1334, this is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(N), and venue is proper in this District, pursuant to 28 U.S.C. §§ 1408 and 1409(a);

d. In the Motion, the Trustee requested in part that the Court (a) enter the “Bidding Procedures Order” and approve the Bidding Procedures attached to the Motion and described therein; (b) approve the Break-Up Fee, as described in the Asset Purchase Agreement and in the Bidding Procedures; (c) authorize the Trustee to sell the Acquired Assets free and clear of all liens, claims and interests (i) to the Buyer pursuant to the Asset Purchase Agreement or, (ii) alternatively, in the event that the Court approves a higher and better offer from a party not affiliated with Buyer, to such other party and, in such event, to pay the Break-Up Fee to Buyer as provided in the Bidding Procedures; (d) enter the “Sale Order,” subject to the outcome of the sale procedures and Auction; (e) approve a surcharge pursuant to Section 506(c) from the proceeds of the sale of the Acquired Assets to pay the Trustee’s compensation and other expenses defined in the Motion as the “Trustee’s Allowed Administrative Claims;” (f) authorize the Trustee to take the steps set forth in the Successful Bidder’s form of purchase contract, to close the sale; (g) determine that Buyer is a good faith purchaser as defined in Section 363(m) of the Bankruptcy Code; and (h) not stay the orders arising from the Motion, pursuant Rule 6004(h), so that the Trustee and the Buyer or Successful Bidder may close the sale immediately.

e. On January 31, 2014, Trustee served Notice of Objection Deadline for the Motion (“Notice”) (Doc. # 320) by first class postage prepaid United States mail or by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed. R. Civ. P. 5(b)(3) and NM LBR 9036-1, and pursuant to Fed. R. Bank. P. 2002(a)(2) and

2002(a)(6), on all creditors and other parties in interest, including but not limited to all parties specifically identified herein, as shown on the complete mailing list maintained by the Clerk of the Bankruptcy Court for this case, and attached to the Notice, specifying an objection deadline of 21 days from the date of service, to which 3 days was added under Fed. R. Bank. P. 9006(f);

f. Pursuant to the Bidding Procedures, Trustee caused a copy of the notice attached to the Bidding Procedures as Exhibit D-1 (the “Sale Notice”) to be published for two consecutive weeks in the Wall Street Journal, USA Today, FoodEngineeringmag.com, FoodProcessing.com, and Food Business News (the “Publication”) and sent a copy of the Sale Notice by mail or email to all parties who contacted the Trustee concerning potential purchase of the Acquired Assets as shown on the amended certificate of service filed March 24, 2014 (Doc. No. 396);

g. The Notice was sufficient in form and content;

h. The objection deadline expired on February 24, 2014;

i. Timely objections to the Motion were filed as follows:

(1) Partial Objection to the Motion filed on February 17, 2014 by CoBank, ACB as agent to Production Credit Association of Southern New Mexico, a wholly owned subsidiary of Farm Credit of New Mexico, ACA (“CoBank”), Farm Credit Leasing Services Corporation (“FCL”) and Production Credit Association of Southern New Mexico (“PCA”) (Doc. No. 332);

(2) Objection to the Motion filed on February 21, 2014 by Newman Electric Corporation (“Newman”) (Doc. No. 338);

(3) Limited Objection to the Motion filed on February 21, 2014 by Costco Wholesale Corporation (“Costco”) (Doc. No. 339);

(4) Objection to the Motion filed on February 24, 2014 by Berlin Packaging, LLC (“Berlin”) (Doc. No. 342);

(5) Limited Objection to the Motion filed on February 24, 2014 by Hampton Farms of New Mexico, LLC ("Hampton") (Doc. No. 344);

j. CoBank, FCL, PCA, Newman, Costco, Berlin, and Hampton, collectively, are referred to herein as the "Objecting Parties;"

k. Pursuant to the Motion, Trustee sought in part, approval of sale of the Acquired Assets to Ready Roast Nut Company's ("Ready Roast" or "Buyer"), free and clear of liens, claims and interest, subject to the terms of the Bidding Procedures and subject to the outcome of the Auction if a competing Qualified Bid is submitted to the Trustee.

l. On March 5, 2014 Hampton submitted a Qualifying Bid to purchase the Acquired Assets.

m. No other objections to the Motion were filed, timely or otherwise;

n. Trustee asserts that Hampton is not a party in interest and does not have standing to object to the Motion. Hampton contends that it does have standing;

o. The Bidding Procedures Order, *inter alia*, approved the Bidding Procedures, authorized Trustee to proceed with the sale and the Auction and approved the Break-Up Fee, and reserved for further determination a number of issues raised in the Motion and the objections thereto.

p. Trustee utilized adequate sales procedures, including proper exposure to the market and fair and reasonable notice to all parties in interest;

q. No Objecting Party other than CoBank, FCL, PCA, Costco, and Newman claims an interest in the Acquired Assets and each of the foregoing consents to sale of the Acquired Assets free and clear of any interest in such property in satisfaction of Section 363(f)(2);

r. Trustee conducted the Auction on March 20, 2014; the Successful Bidder at the Auction was Hampton; the Successful Bid was Twenty Million and Fifty Thousand Dollars and

no cents (\$20,050,000.00); the Back-Up Bidder was Ready Roast; and the Back-Up Bid was Twenty Million Dollars and no cents (\$20,000,000.00);

s. On March 21, 2014, immediately prior to the hearing scheduled to consider entry of the Sale Order, the Trustee received an oral offer from Golden Boy Foods Ltd. (“Golden Boy”) in the amount of \$25,000,000.00, about which the Trustee informed the Court and all parties present at the hearing. The Court continued the hearing on the Sale Order until Monday, March 24, 2014 at 1:30 p.m. MDT;

t. On March 25, 2014, the Court entered its Order Denying Motion to Approve Sale, Reopening Auction, and Setting Final Hearing on Motion to Sell, doc. 402 (“Order Reopening Auction”) and its Memorandum Opinion, doc. 401, which are incorporated herein by reference;

u. Pursuant to the Order Reopening Auction and Memorandum Opinion, the Trustee conducted the continued Auction on March 26, 2014 at 10:00 a.m. Golden Boy, Hampton, and Ready Roast (the “Bidders”) each participated in the Continued Auction. Hampton announced that it participated “under protest” and without waiving any appeal rights it may have. At the conclusion of the Continued Auction, each Bidder confirmed on the record that (i) each would stand by its last bid; (ii) each was ready, willing and able to close on a sale of the Acquired Assets on March 28, 2014 at the amount of each Bidder’s respective last bid amount, and (iii) each did not collude with any party in connection with the Auction or Sale.

v. The Successful Bidder at the Continued Auction was Golden Boy; the Successful Bid was \$26,000,000.00; the Back-Up Bidder was by Hampton; Hampton’s Back-Up Bid was \$25,100,000.00; Ready Roast’s highest bid was \$20,000,000.00. A true and correct copy of the Bid Sheets from the Auction and Continued Auction are attached hereto as Exhibit 1.

w. The Successful Bid is fair and reasonable, was negotiated at arm's length or was arrived at by a fair and reasonable procedure, and represents fair market value of the Acquired Assets;

x. No party to the asset purchase agreement<sup>2</sup> between the Trustee and Successful Bidder (the "Final Agreement") has an improper or bad motive;

y. The sale and Auction were conducted in accordance with the Bidding Procedures attached as Exhibit D to the Motion to Sell and in conformance with the Court's Memorandum Opinion and Order Reopening Auction;

z. The Successful Bidder named above, purchased the Acquired Assets in good faith, as that term is used in Section 363(m) of the Bankruptcy Code, and is a good faith buyer of the Acquired Assets under Section 363(m) of the Bankruptcy Code;

aa. The sale price for the Acquired Assets was not controlled by collusion or an agreement among potential bidders at the sale of the Acquired Assets, as the terms "controlled," "agreement," and "potential bidders" are used in §363(n) of the Bankruptcy Code; and

bb. The Motion is well taken and should be granted as and to the extent provided herein.

IT IS THEREFORE ORDERED:

1. The Motion is granted to the extent provided in this Order and the in the Order Reopening Auction and Memorandum Opinion in support of the Order Reopening Auction entered on March 25, 2014.

2. The Trustee is hereby authorized to take any and all actions necessary to:

a. Close the sale of the Acquired Assets according to the terms of this Order,

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<sup>2</sup> A true and correct copy of Amendment One to the Asset Purchase Agreement is attached hereto as Exhibit 2. A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit 3.



the Bidding Procedures, the Bidding Procedures Order and the Final Agreement

b. Execution and deliver Trustee's deeds, bills of sale, or other documents evidencing the transfer of the Acquired Assets or necessary to effectuate the Final Agreement at closing;

c. Pay closing costs incident to the Sale, property taxes prorated through Closing and other amounts necessary to transfer the Acquired Assets;

d. Use such portion of the proceeds of Sale necessary to pay off the balances of the Farm Cred Leasing leases, obtain title to and transfer all leased equipment to the Successful Bidder;

e. At closing, Successful Bidder shall pay the Trustee the Successful Bid amount on the terms set forth in the Final Agreement;

f. As set forth in the Final Agreement, Successful Bidder and the Trustee shall execute all documents necessary to effectuate the Final Agreement at closing, and any other documents reasonably necessary to carry out terms of the Final Agreement.

g. Notwithstanding anything to the contrary in the Successful Bidder's Final Agreement, because the Acquired Assets were sold at Auction to a Successful Bidder other than Buyer, if the sale closes to the Successful Bidder for an amount that exceeds Buyer's Purchase Price by at least one million dollars, the Trustee shall pay from proceeds at closing the Break-Up Fee and shall return Buyer's Earnest Money to the Buyer by wire transfer in immediately available funds to an account designated by Buyer;

h. If the Successful Bidder fails to close or otherwise defaults under the terms of the Final Agreement and the Bidding Procedures, the Trustee shall proceed to closing the sale of the Acquired Assets to the Back-Up Bidder for the amount of the Back-Up Bid, each as identified above, in which event, (1) the Back-Up Bidder shall pay at closing the Back-Up Bid

amount (which, in such event, the Back-Up Bid shall become the "Successful Bid") on the terms set forth in the Final Agreement and Back-Up Bidder shall execute all documents necessary to effectuate the Final Agreement at closing.

3. The Final Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not reduce the Successful Bid and does not have a material adverse effect on the Estate as determined by Trustee.

4. In the event of any conflict or inconsistency between this Order and the Final Agreement, the terms of this Order shall control and be binding in all respects.

5. This Court retains exclusive jurisdiction to resolve disputes involving the Final Agreement up to and including Closing.

6. At closing on the sale, the Successful Bid shall be paid to the Trustee. The Earnest Money or Good Faith Deposit will be transferred to the Trustee and credited against the Successful Bid. If Buyer is the Successful Bidder the Break-Up Fee will be credited against Buyer's Successful Bid.

7. Pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets made pursuant to this Order, unless otherwise expressly provided in the Final Agreement and any related agreements or documents, shall be free and clear of all (a) mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, license, options, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens (including, without limitation, mechanic's, materialman's or other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of any kind, remedies of any kind, restrictions of any kind, of rights of first refusal, offsets,

contracts, rights of recoupment, rights of recovery, claims for reimbursement, claims for contribution, claims for indemnity, claims for exoneration, all product liability claims asserted against Debtor, as well as all other claims sounding in products liability which have not been asserted against Debtor but which arose prior to Closing, claims sounding in alter-ego, claims for environmental liability, claims for tax liability, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, including but not limited to any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, of the Trustee, of the Debtor, or the Debtor's predecessors or affiliates, claims (as that term is defined in Title 11 of the United States Code), reclamation claims, obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests, and matters of any kind or nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether *in rem* or *in personam*, whether arising prior to or subsequent to the commencement of this bankruptcy case, whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability, senior or subordinate, whether at law or equity, including all claims or rights based on any theory of successor or transferee liability, (b) all environmental claims, all changes in control provisions, (c) all rights to object or consent to the effectiveness of the transfer of the Acquired Assets to the Successful Bidder, and (d) all rights at law or equity (collectively, "Interests or Claims"), with all such Interests or Claims to attach to the cash proceeds of the sale of the Acquired Assets in the order of their priority with the same validity, force and effect and to the extent that they now have as against the Acquired Assets, subject to

any claims or defenses the Trustee or any other party in interest may possess with respect thereto pursuant to 11 U.S.C. §363(e), and all claims and rights pursuant to 363(k) are preserved. Following the closing of the sale of the Acquired Assets, no holder of any Interests or Claims in the Acquired Assets shall interfere with the Successful Bidder's use and enjoyment of the Acquired Assets based on or related to such Interests or Claims, or any actions that the Trustee may take in the bankruptcy case, and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Final Agreement and any related agreements, documents or instruments, or this Order. Furthermore, transfer of the Acquired Assets made pursuant to this Order and the terms of the Final Agreement shall be free and clear of all interests in the Acquired Assets of any entity other than the estate pursuant to Section 363(f) including but not limited to liens, claims (as defined by section 101(5) of the Bankruptcy Code), liabilities, encumbrances, rights, remedies, and restrictions of any kind or nature whatsoever whether arising before or after the Petition Date, whether *in rem* or *in personam*, liquidated or unliquidated, (collectively, "Claims"). Without limiting the foregoing, the liens and claims identified in Exhibit 4, attached hereto, shall be deemed released upon the closing of the sale of the Acquired Assets pursuant to this Order.

8. The Court finds that the Notice given by the Trustee is adequate in all respects and surpasses those necessary under the bankruptcy code and bankruptcy rules and finds that the Publication of the Notice constitutes adequate Notice to all parties having known, unknown, contingent and/or liquidated claims against the Debtor. Therefore, all persons and entities who have asserted, could have asserted, or otherwise may in the future assert a cause of action against the Debtor, the Trustee or the Acquired Assets relating to their Interests or Claims are hereby forever barred, estopped and permanently enjoined from asserting such causes of action or Interests or Claims against the Successful Bidder, its successors in interest, its affiliates, and its

assignees and against the Acquired Assets of whatsoever nature.

9. The Successful Bidder is a good faith purchaser of the Acquired Assets as that term is used in Section 363(m) of the Bankruptcy Code. The transactions contemplated by the Final Agreement, and any related agreements, documents or other instruments, have been bargained for and undertaken by Successful Bidder and Trustee at arms' length, without collusion, and with each party giving and taking on certain issues, and in good faith within the meaning of 11 U.S.C. § 363(m). Successful Bidder and Trustee are presumed not to have engaged in any conduct that would cause or permit the Final Agreement to be avoided and the provisions of Section 363(n) of the Bankruptcy Code have not been violated. Accordingly, the Successful Bidder is entitled to all the protection and benefits of Section 363(m) of the Bankruptcy Code, afforded to an entity that purchases assets in good faith pursuant to Section 363 of the Bankruptcy Code.

10. Pursuant to 11 U.S.C. §363(m), if any or all of the provisions of this Order are hereby reversed, modified, or vacated by a subsequent order of this Court, or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any transfer under the Final Agreement, or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal), and notwithstanding any such reversal, modification or vacatur, shall be governed in all respects by the original provisions of this Order and the Final Agreement, as the case may be.

11. Except as expressly provided in the Final Agreement, Successful Bidder is not assuming nor shall it or any of its affiliates be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtor in any way whatsoever relating to or arising out of the Debtor's ownership or use of the Acquired Assets prior to the consummation of the transactions contemplated by the Final Agreement (including, without

limitation, any Interests or Claims), or any liabilities calculable by reference to the Debtor or its assets or operations, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Final Agreement, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Successful Bidder or any affiliate of Successful Bidder.

12. Except as otherwise expressly provided in the Final Agreement, and documents executed in connection therewith, Successful Bidder is not assuming nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any liabilities, debts, commitments or obligations of the Debtor (including without limitation, any Interests or Claims), whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise, or any liabilities, debts, commitments or obligations in any way whatsoever relating to or arising from the Acquired Assets or the Debtor's operations or use of the Acquired Assets on or prior to the closing of the sale, or any such liabilities, debts, commitments or obligations that in any way whatsoever relate to periods on or prior to the closing of the sale or are to be observed, paid, discharged or performed on or prior to the closing of the sale (in each case including any liabilities that result from, relate to, or arise out of tort or other product liability claims), or any liabilities calculable by reference to the Debtor or its assets or operations, or relating to continuing conditions existing on or prior to the closing of the sale, which liabilities, debts, commitments and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments or obligations has delivered to Successful Bidder a release thereof. Without limiting the generality of the foregoing, except as provided in the Final Agreement, Successful Bidder shall not be liable or responsible, as a successor or otherwise for the Debtor's liabilities, debts, commitments or obligations, whether calculable by reference to the Debtor, arising on or

prior to the closing of the sale and under or in connection with (i) any employment or labor or collective bargaining agreements, consulting agreements, severance agreements, change in control agreements, or other similar agreements to which the Debtor is a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, programs, including without limitation, any pension plan of the Debtor, (iii) the cessation of the Debtor's operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, obligations that might otherwise arise from or pursuant to the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Americans with Disabilities Act of 1991, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, or the Worker Adjustment and Retraining Notification Act, (iv) environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to closing of the Sale (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et seq., (v) any bulk sales or similar law, (vi) any liabilities, debts, commitments or obligations of or required to be paid by the Debtor for any taxes of any kind for any period, (vii) any liabilities, debts, commitments or obligations for any taxes relating to the business of the Debtor or the Acquired Assets for or applicable to the pre-closing period, and (viii) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise.

13. Successful Bidder is deemed not to be, as a result of the consummation of the transaction contemplated by the Final Agreement: (a) the successor to the Debtor; (b) de facto or

otherwise, merged with or into the Debtor; (c) a mere continuation or substantial continuation of the Debtor or the enterprise of the Debtor; or (d) responsible for any liability of the Debtor or for payment of any benefit accruing to the Debtor, except as specifically provided for in the Final Agreement.

14. This Order constitutes authorization under all applicable jurisdictions' versions of the Uniform Commercial Code ("UCC") for the Successful Bidder to file amendments to UCC financing statements terminating the effectiveness of all security interests in or liens on the Acquired Assets, and otherwise evidencing the sale free and clear of all security interests in or liens on the Acquired Assets. A copy of this Order may be filed and/or recorded with the appropriate clerk, Secretary of State and other appropriate recorder to act to cancel any liens, claims or interests of record against the Acquired Assets. All UCC financing statements filed against the Acquired Assets are terminated at Closing and all parties asserting liens against the Acquired Assets shall have their liens attach to the sale proceeds, in the order of their priority, with the same validity, force and effect and to the extent that they now have as against the Acquired Assets, subject to any claims or defenses the Trustee or any other party in interest may possess with respect thereto pursuant to 11 U.S.C. §363(e), and all claims and rights pursuant to 363(k) are preserved.

15. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing



persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by this Order.

16. Issues raised by the Trustee in the Motion and by the Objecting Parties in objections to the Motion that are not resolved herein are preserved for determination by further order of the Court, including: (a) approval of a surcharge pursuant to Section 506(c) from the proceeds of the sale of the Acquired Assets to pay the Trustee's Allowed Administrative Claims; (b) distribution of the proceeds of the sale, except as otherwise authorized herein.

17. The Court retains exclusive jurisdiction to interpret, enforce and implement the terms and provisions of this Order and the Final Agreement.

18. This Order is not stayed as provided by Rule 6004(h) and the Trustee and the Successful Bidder may close on the sale set forth in the Final Agreement immediately.<sup>3</sup>

19. By participating in the Continued Auction, Hampton did not waive any appellate rights it may have.



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Hon. David T. Thuma  
United States Bankruptcy Judge

Entered March 27, 2014.

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<sup>3</sup> Based on the strong, uncontradicted evidence in the record about the need to complete the sale as soon as possible, with a closing on or about March 28, 2014 (a deadline Hampton has been aware of since at least January, 2014), the Court finds good cause to waive or eliminate the 14-day stay. Further, the language of paragraph 18 was agreed to by Hampton on March 19, 2014, when it executed the Stipulation Approving Form of Order Approving Sale or Real and Personal Property Free and Clear of All Liens, Claims and Interests, doc. 382. Previously, when Hampton objected to the Motion, it did not object to the Trustee's proposal to waive the 14-day stay. The Bidding Procedures Order contains similar stay waiver language. As recently as March 19, 2014, Hampton argued to the Court that the sale must occur immediately to avoid substantial harm. Based on the foregoing, the Court finds that Hampton waived its right to object to eliminating the 14-day stay.

Copies to:

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Paul M. Fish  
P.O. Box 2168  
Albuquerque, NM 87103-2168

John J. Hall  
600 Washington Ave. Suite 2500  
St. Louis, MO 63101

Gail Gottlieb  
P.O. Box 1945  
Albuquerque, NM 87103

Ed Mazel  
201 3d Street NW, #505  
Albuquerque, NM 87102

Victor Carlin  
P.O. Box 27047  
Albuquerque, NM 87125

Roderick W. O'Donoghue  
2601 Oberlin Rd., Ste. 100  
Raleigh, NC 27608



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: SUNLAND, INC., a New Mexico Corporation,  
EIN 85-0365109,

Case No. 13-13301-17

Debtor.

AUCTION BID SHEET  
March 20, 2014

Bid Amount	Hampton Farms of New Mexico, LLC	Ready Roast Nut Company
\$17,475,000.00 (Starting Back up Bid)		
\$18,480,000.00 (Starting Bid)		X
<del>\$18,550,000.00</del>	X	
<del>\$18,600,000.00</del>		
<del>\$18,850,000.00</del>	X	X
<del>\$18,900,000.00</del>		X
<del>\$19,150,000.00</del>	X	
<del>\$19,200,000.00</del>		X
<del>\$19,450,000.00</del>	X	
<del>\$19,500,000.00</del>		X
<del>\$19,750,000.00</del>	X	
<del>\$19,800,000.00</del>		X
<del>\$20,000,000.00</del>	X	
<del>\$20,050,000.00</del>		X
Victor E. Cook HAMPTON FARMS		
Chris New Ready Roast		
<i>[Signature]</i> TRUSTEE		
3-20-14		

**AMENDMENT NO. ONE TO ASSET PURCHASE AGREEMENT BETWEEN  
CHAPTER 7 TRUSTEE AND GOLDEN BOY FOODS LTD. OR ITS DESIGNEE OR  
ASSIGNEE**

This **AMENDMENT NO. ONE** (“Amendment”) to the **ASSET PURCHASE AGREEMENT** dated as of March 24, 2014 (as amended, the “Agreement”) is made and entered into as of March 26, 2014 by and between **Golden Boy Foods Ltd.** or its designee or assignee (“Golden Boy”), and **Clarke C. Coll** (“Seller”) acting solely and exclusively in his capacity as the duly appointed Chapter 7 Trustee of the Sunland, Inc. (the “Debtor”) Bankruptcy Estate (the “Estate”), Case Number 13-13301-7 (“Bankruptcy Case”), United States Bankruptcy Court for the District of New Mexico (“Court”).

**WHEREAS**, pursuant to the Order Denying Motion to Approve Sale, Reopening Auction, and Setting Final Hearing entered by the Bankruptcy Court on March 25, 2014 (Doc. No. 402), the Seller conducted the Auction of the Acquired Assets on March 26, 2014;

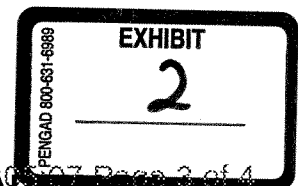
**WHEREAS**, Golden Boy participated in the Auction and made as its final bid the amount of Twenty Six Million Dollars and no cents (\$26,000,000.00), which is the highest bid and is the Successful Bid; and

**WHEREAS**, Seller and Golden Boy desire to amend the Agreement as provided herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in the Agreement and in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties, intending legally to be bound, agree that the Purchase Price set forth in Section 3.2 of the Agreement is amended to be Twenty Six Million Dollars and no cents (\$26,000,000.00).

All provisions of the Agreement not expressly amended hereby remain in full force and effect.

[Signature page follows]

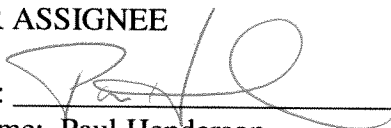


IN WITNESS WHEREOF, each party hereto has duly executed this Asset Purchase Agreement on the date set forth next to their signatures below.

GOLDEN BOY:

GOLDEN BOY FOODS LTD. OR ITS DESIGNEE  
OR ASSIGNEE

Date: 3-26-2014

By:  \_\_\_\_\_

Name: Paul Henderson

Title: President, Nut Butter Business Unit

SELLER:

CLARKE C. COLL, CHAPTER 7 TRUSTEE

Date: 3-26-2014

By:  \_\_\_\_\_

Name: Clarke C. Coll

Title: Chapter 7 Trustee

**Asset Purchase Agreement**  
**by and among**  
**CLARKE C. COLL, CHAPTER 7 TRUSTEE**  
**of the Bankruptcy Estate of Sunland, Inc.,**  
**a New Mexico corporation,**  
**Debtor in Chapter 7 Bankruptcy Case Number 13-13301-7**  
**Pending in the United States Bankruptcy Court for the District of New Mexico**  
**and**  
**A TO-BE-FORMED AFFILIATE OF GOLDEN BOY FOODS LTD.**



## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** is made and entered into as of the later of the dates indicated next to the signature lines of Golden Boy and Seller on the signature page to this Agreement (however, for purposes hereof, the term "Agreement Date" shall mean and be March 24, 2014) by and among a to-be-formed affiliate of Golden Boy Foods Ltd., a British Columbia corporation ("Golden Boy"), and Clarke C. Coll ("Seller") acting solely and exclusively in his capacity as the duly appointed Chapter 7 Trustee of the Sunland, Inc. (the "Debtor") Bankruptcy Estate (the "Estate"), Case Number 13-13301-7, United States Bankruptcy Court for the District of New Mexico.

**WHEREAS**, Debtor was engaged in the business of processing conventional and organic peanuts and related products and the manufacturing of conventional and organic peanut butter (the "Business"); and

**WHEREAS**, Debtor filed a voluntary petition under Chapter 7 (the "Bankruptcy Petition") of the United States Bankruptcy Code, 11 U.S.C. §101, et seq. (the "Bankruptcy Code"), on or about October 9, 2013 (the "Petition Date"), in the United States Bankruptcy Court for the District of New Mexico, (the "Bankruptcy Court") initiating Case Number 13-13301-7 (the "Bankruptcy Case"); and

**WHEREAS**, Clarke C. Coll was appointed Chapter 7 Trustee in the Bankruptcy Case and continues to serve as Trustee; and

**WHEREAS**, Seller desires to sell and assign to Golden Boy, and Golden Boy desires to purchase and assume from Seller, certain assets, rights and obligations related to the Business on the terms set forth in this Agreement; and

**WHEREAS**, in connection with a possible third-party transaction for the sale of the Acquired Assets, Seller filed a Motion for Orders (A) Authorizing Sale of Assets Free and Clear of All Liens, Claims and Interests, Subject to Higher and Better Offers, (B) Establishing Bidding Procedures, (C) Approving Break-Up Fee, and (D) Approving Surcharge for Trustee's Fees, Commission, and Costs, filed on January 31, 2014 as Document 319 in the Bankruptcy Case (the "Sales Motion"), objections to which were due 21 days after service plus 3 days for mailing;

**WHEREAS**, on March 11, 2014, the Bankruptcy Court entered a Stipulated Order (A) Authorizing Trustee to Proceed with Sale of Real and Personal Property Free and Clear of All Liens, Claims, and Interests, (B) Approving Bidding Procedures, and (C) Approving Break-Up Fee;

**WHEREAS**, on March 19, 2014, the Trustee filed a Stipulation among the Trustee and parties objecting to the Sales Motion Approving Form of Order Approving Sale of Real and Personal Property Free and Clear of all Liens, Claims, and Interests;

**WHEREAS**, on March 20, 2014, the Trustee conducted an Auction of the Acquired Assets, at which Golden Boy was not present and did not participate; and



**WHEREAS**, Golden Boy submits this Agreement following an auction of the assets but prior to the entry by the Bankruptcy Court of any sale order approving the sale to any bidder at the auction; and

**WHEREAS**, the Purchase Price offered by Golden Boy provides substantial additional consideration to the Estate over and above any prior offers received by Seller.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties, intending legally to be bound, agree as follows:

## ARTICLE I

### CERTAIN MATTERS OF CONSTRUCTION AND DEFINITIONS

1.1 Construction and Definitions. Certain matters of construction of this Agreement and the definition of capitalized terms used herein but not otherwise defined in Article I through Article X are set forth on Schedule I.

## ARTICLE II

### PURCHASE AND SALE OF ACQUIRED ASSETS

2.1 Acquired Assets. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller agrees to sell, transfer, convey, assign and deliver to Golden Boy (or a designated Affiliate of Golden Boy), and Golden Boy agrees to purchase and accept (directly or through a designated Affiliate) from Seller, all of the assets, properties, rights and claims described in Exhibit A to this Agreement (collectively, the "Acquired Assets") free and clear of all Liens except for those in respect of Assumed Liabilities.

2.2 Excluded Assets. The purchase of the Acquired Assets by Golden Boy and sale of the Acquired Assets by Seller shall not include any of the assets described in Exhibit B to this Agreement (the "Excluded Assets"), which shall not constitute part of the Acquired Assets for any purpose.

2.3 Access and Disposition of Information.

(a) Seller Access to Information. During the pendency of the Bankruptcy Case, Seller retains the right to access any and all information held by Golden Boy about the Acquired Assets and, at Seller's expense, may obtain copies of any documents, data or information reasonably necessary or desirable to Seller to perform Seller's continuing duties and responsibilities in the Bankruptcy Case and Golden Boy agrees to reasonably cooperate with Seller's requests for such information, documents and data and access to personnel.

(b) Disposition of Information. Upon completion of the Seller's duties as chapter 7 trustee of the Estate, final closing of the Bankruptcy Case, and discharge of Seller as

chapter 7 trustee of the Estate, Seller shall, at Golden Boy's direction, destroy or turn over to Golden Boy any and all of the information about the Acquired Assets in Seller's possession.

#### 2.4 Liabilities.

(a) Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Golden Boy agrees, effective as of the Closing Date, to assume all liabilities and obligations of Debtor under any contract acquired hereunder ("Purchased Contract"), to the extent that any such liabilities and obligations accrue and first arise after the close of business on the Closing Date for reasons other than any breach, violation or default by the Estate or Seller (the "Assumed Liabilities").

(b) Excluded Liabilities. The Estate shall remain solely responsible for any and all claims, damages, penalties or other liabilities, whether known or unknown, disclosed or undisclosed, absolute, contingent, fixed or otherwise, that arise with respect to the Acquired Assets or the use thereof prior to the Closing Date. Golden Boy shall not assume or become liable directly, indirectly, contingently or otherwise, for the payment or performance of, and the Acquired Assets shall not be liable for or subject to, any liabilities, debts, loans, damages, losses, accounts payable, bank indebtedness, mortgages or other obligations of the Estate or any related party of any nature whatsoever, whether related to the Acquired Assets or otherwise. Golden Boy shall not have any liability, successor or otherwise, to any creditors or other parties for any such liabilities, whether such liabilities are known or unknown, now existing or arising hereafter from contract, tort, or otherwise, of whatever nature or character, absolute, contingent, liquidated or disputed, foreseen or unforeseen, asserted or unasserted. Without limiting the foregoing, Golden Boy is not assuming, and shall have no liability for, any claims or penalties asserted by any governmental or regulatory agency with respect to health, safety, environmental or other conditions which originated prior to the Closing Date with respect to the Acquired Assets. Notwithstanding any provision in this Agreement or any other writing to the contrary, Golden Boy is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of whatever nature, whether presently in existence or arising or discovered hereafter, including any other liabilities of Debtor or Seller (or any predecessor of Debtor or Seller or any current or prior owner of all or part of its businesses and assets) (all such liabilities and obligations not being assumed being herein referred to as the "Excluded Liabilities"). Notwithstanding anything to the contrary in this Agreement, the term "Excluded Liabilities" includes by enumeration and without limitation:

(i) all liabilities and obligations of Debtor or Seller owing to any Affiliates, stockholders, directors, officers, employees, former employees, independent contractors, agents, representatives or other personnel of Debtor or Seller or its agents or representatives;

(ii) all liabilities and obligations relating to any compensation or benefits of any current or former director, officer, partner, principal, manager, employee, independent contractor, consultant, agent, representative or other personnel (hereinafter "Personnel") of Debtor or Seller or any Employee Benefit Plans, including in respect of worker's compensation, wage and hour, independent contractor misclassification, civil rights, discrimination or other

claims, charges or complaints brought by any Person (including any Governmental Entity) in connection with labor and employment Laws or otherwise relating to employment by, or provision of services to, Debtor or Seller, and including all retirement, severance, deferred compensation, incentive, stock option, vacation, bonus, commission, unemployment, partnership or other payments, distributions or benefits payable to or accrued in favor of such Persons on or prior to the Closing Date, whether or not pursuant to any Employee Benefit Plans and whether or not such Persons otherwise obtain employment with Golden Boy or an Affiliate of Golden Boy;

- (iii) all liabilities and obligations relating to any Excluded Asset;
- (iv) all liabilities and obligations relating to Sunland's or Seller's issuance or endorsement of any check, note, draft or instrument;
- (v) all liabilities and obligations relating to any claim of any third party arising out of the ownership or operation of the Business or the Acquired Assets prior to the Closing, including, without limitation, all liabilities or obligations identified in Sunland's Schedules of Assets and Liabilities and Statement of Financial Affairs, as amended, filed in the Bankruptcy Case and all liabilities or obligations arising out of or otherwise related to any products manufactured, sold or distributed by Seller or Sunland;
- (vi) all liabilities and obligations relating to any lease of real property;
- (vii) all liabilities and obligations of Debtor or Seller or any of its shareholders for Taxes, including all liabilities or obligations of Debtor or Seller or any of its shareholders for Taxes of any Person (other than Debtor or Seller or any of its shareholders) under Treas. Reg. Section 1.1502-6 (or any similar provision of Law), as a transferee or successor by contract, or otherwise;
- (viii) all liabilities and obligations relating to any payables of Debtor or Seller or its shareholders; and
- (ix) all liabilities or obligations arising from or relating to the rights of the holders of any shares of capital stock or any other equity interest of Debtor or Seller or any options, warrants, subscriptions or other rights, calls or commitments to issue, or any obligations or commitments to purchase, any capital stock or other equity interest of Debtor or Seller or any securities convertible into or exchangeable for any of the capital stock or other equity interest of Debtor or Seller.

## ARTICLE III

### GOOD FAITH DEPOSIT; PURCHASE PRICE; CLOSING

#### 3.1 Good Faith Deposit.

(a) Concurrently with the execution and delivery of this Agreement by Golden Boy, Golden Boy shall deliver the sum of Twenty Five Million Dollars (\$25,000,000.00) as a good faith deposit (together with any interest that may accrue thereon, shall be collectively referred to as the "Good Faith Deposit") to Graham Title Company in Portales, New Mexico (the "Escrow Agent"). All amounts stated herein are in U.S. Dollars.

(b) The Good Faith Deposit shall be applied toward and be a credit against the Purchase Price at Closing. The Escrow Agent shall pay the applicable amount of Good Faith Deposit to the settlement agent at Closing (if not Escrow Agent), or shall disburse the Good Faith Deposit as otherwise expressly provided herein.

(c) The Good Faith Deposit shall be non-refundable to Golden Boy, except that the Good Faith Deposit shall be refundable to Golden Boy if (i) the Bankruptcy Court does not enter a Sale Order approving the sale to Golden Boy pursuant to this Agreement, or after entering such Sale Order the Sale Order does not become a Final Sale Order; or (ii) this Agreement is terminated or the transaction contemplated by this Agreement fails to be consummated in each case as a result of: (x) a Seller Default as said term is defined in Section 9.1(c); or (y) the failure of one or more of Golden Boy Conditions to be satisfied to the reasonable satisfaction of Golden Boy as set forth in Section 7.1; or (iii) Seller enters into a contract to sell the Acquired Assets to a third party who makes a higher and better offer which is approved by the Bankruptcy Court.

(d) The Escrow Agent's duties and responsibilities shall be limited to holding the Good Faith Deposit and disbursing the Good Faith Deposit in accordance with the terms and provisions set forth in this Agreement. The Escrow Agent shall not be liable for any loss or damage resulting from: (i) any default, error, action or omission of any other party; (ii) the expiration of any time limit unless such time limit was known to Escrow Agent and such loss is solely caused by failure of Escrow Agent to proceed in its ordinary course of business; or (iii) Escrow Agent complying with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed. In the event that (i) any dispute shall arise between the parties with respect to the disposition or disbursement of the Good Faith Deposit, or (ii) the Escrow Agent shall be uncertain as to how to proceed in a situation not explicitly addressed by the terms of this Agreement whether because of conflicting demands by the other parties hereto or otherwise, the Escrow Agent shall be permitted to interplead the Good Faith Deposit held hereunder into the registry of the Bankruptcy Court, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The Seller and Golden Boy further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to same.

3.2 Purchase Price. As consideration for the purchase of the Acquired Assets, and in addition to assuming any Assumed Liabilities, on the Closing Date, subject to the terms and conditions hereof, Golden Boy shall pay to Seller Twenty Five Million Dollars (\$25,000,000.00) (collectively, the "Purchase Price") by application of the Good Faith Deposit. The Purchase Price, after crediting the Good Faith Deposit in accordance with Section 3.1 and subject to the prorations and adjustments described herein, shall be paid by Golden Boy to Seller in immediately available funds on the Closing Date. In the event that following the prorations and adjustments the Purchase Price is less than the Good Faith Deposit, the Escrow Agent shall remit the difference to Golden Boy.

3.3 Inventory. Intentionally Deleted.

3.4 Closing. The closing of the sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities (the "Closing") shall, subject to the satisfaction or waiver of the Golden Boy Conditions set forth in Section 7.1, take place at the offices of Graham Title Company, 121 West Second Street, Portales, New Mexico 88130, on the date which is three (3) business days after the Bankruptcy Court enters the Sale Order described in Section 5.3(c), or such earlier date as Golden Boy may elect (the "Closing Date"). Upon Closing, all proceeds will be paid to the Bankruptcy Estate.

3.5 Allocation. Intentionally Deleted.

#### ARTICLE IV

##### SELLER COOPERATION

4.1 Due Diligence. [Intentionally Deleted]

4.2 Access to Information. [Intentionally Deleted]

4.3 Access to Property. [Intentionally Deleted]

4.4 Title; Survey. Golden Boy shall have the right to obtain, at Golden Boy's sole cost and expense, an owner's title insurance commitment issued by a title insurance company of Golden Boy's selection, showing the status of title to the Real Property and committing to issue to Golden Boy at Closing an owner's title policy, at Golden Boy's sole cost and expense, with any endorsements required by Golden Boy. Monetary liens that are encumbrances against the Real Property shall be removed from exceptions of title at Closing.

4.5 Environmental Reports; Investigations; Indemnity. [Intentionally Deleted]

4.6 Assumption of Purchased Contracts. During the period between the date hereof and Closing, Golden Boy shall advise Seller of those Purchased Contracts that Golden Boy desires to assume at Closing and, with respect to those Purchased Contracts, Seller and Golden Boy shall promptly enter into good faith negotiations for the consideration for Seller's assumption and assignment to Golden Boy of the Purchased Contracts and, upon agreement to terms for the assignment of Purchased Contracts, Seller shall use its best efforts (i) promptly to obtain all consents, approvals and waivers required for the purpose of processing, entering into

and completing any necessary assignment to each Purchased Contract, including but not limited to approval of the Bankruptcy Court, and (ii) provide all information and take all other actions necessary to execute and consummate each such assignment. Seller shall pay any cure costs associated with the assumption and assignment of the Purchased Contracts, which shall be paid out of the Purchase Price. Without limiting the generality of the foregoing and for the avoidance of doubt, Seller and Golden Boy agree that Golden Boy shall not assume any liabilities under any Contract (including, without limitation, any Purchased Contract) unless and until all approvals and documentation necessary to effect the assumption and assignment of such Purchased Contract pursuant to applicable law and to the terms and conditions of such Purchased Contract have been completed and delivered and Golden Boy has agreed in writing to accept such Purchased Contract. Unless expressly identified in a writing signed by Seller, Purchased Contracts will not include any alleged or un-alleged claims or causes of action in favor of Debtor or Seller and against any third party including those set forth in Sunland's Bankruptcy Schedule B.21, as amended, filed in the Bankruptcy Case.

## ARTICLE V

### SELLER RESPONSIBILITIES

Seller warrants that:

5.1 Authorization. Subject to the transaction identified herein being confirmed by a Final Sale Order as contemplated in Section 5.3(a), (i) Seller has all requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which Seller is a party and to perform its obligations hereunder and thereunder; and (ii) the execution, delivery and performance of this Agreement and the Transaction Documents to which Seller is a party have been duly authorized and approved by all necessary actions on the part of Seller; and (iii) this Agreement and the Transaction Documents to which Seller is a party have been or will have been, as the case may be, duly executed and delivered by Seller, and (assuming that this Agreement and the Transaction Documents to which Golden Boy is a party have been duly authorized, executed and delivered by Golden Boy) constitute or will constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.

5.2 No Violations or Conflicts. Neither the execution and delivery of, or performance under, this Agreement or the Transaction Documents by Seller nor the consummation by Seller of the transactions contemplated by this Agreement or the Transaction Documents does or will (i) result in a violation or breach of, or constitute a default or an event of default under, any indenture, mortgage, bond, contract, license, lease, agreement, permit, instrument or other obligation to which it is a party or by which it is bound or to which any of its properties or any of the Acquired Assets is subject, (ii) violate any Law, writ, judgment, injunction or court decree to which it or its properties is subject, or (iii) result in the creation or imposition of any Lien on any Acquired Asset.

5.3 Title to Acquired Assets; Bankruptcy Court Approval.

(a) The Seller shall request and use all reasonable efforts to pursue an order from the Bankruptcy Court (the "Sale Order") that, among other things: (i) approves this

Agreement and the sale of the Acquired Assets to Golden Boy and authorizes and directs the Seller to proceed with the sale; (ii) includes a specific finding that Golden Boy is a good faith buyer of the Acquired Assets under section 363(m) of the Bankruptcy Code and that the provisions of section 363(n) of the Bankruptcy Code have not been violated; (iii) conveys good and marketable title to the Acquired Assets to Golden Boy free and clear of all Liens whatsoever; (iv) determines that Golden Boy is not a successor to Sunland, or otherwise liable for any claim or liability of Sunland, and permanently enjoins each and every holder of such claim or liability from commencing, continuing or otherwise pursuing or enforcing any remedy, claim or cause of action against Golden Boy relative to such claim or liability of Sunland, and (v) contains such other terms and provisions as Golden Boy requires. Without limiting the foregoing, the Sale Order, as proposed, shall specifically contain the following language: "(i) the Acquired Assets shall be free and clear of all Liens, claims and other interests and all debts arising in any way in connection with any acts or omissions of Sunland, claims (including but not limited to "claims" as that term is defined in the Bankruptcy Code) and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Chapter 7 case, and holders thereof shall be permanently enjoined from asserting claims against the Acquired Assets and shall look solely to the proceeds of the sale; (ii) Golden Boy shall have no liability or responsibility for any liability or other obligation of Debtor related to the Acquired Assets other than for the Purchase Price payable under this Agreement; (iii) the transfer of the Acquired Asset will not subject Golden Boy to any liability for claims against Debtor or the Acquired Assets, including but not limited to, claims for successor or vicarious liability, by reason of such transfer under the laws of the United States, any state, territory or possession thereof or the District of Columbia applicable to such transaction; and (iv) Golden Boy shall not be deemed, as a result of the consummation of the transaction contemplated by this Agreement to: (a) be the successor of Sunland; (b) have, de facto or otherwise, merged with or into Sunland; (c) be a mere continuation or substantial continuation of Debtor or the enterprise of Sunland; or (d) be responsible for any liability of Debtor or for payment of any benefit accruing to Sunland, except as specifically provided for in this Agreement."

(b) Without limiting the foregoing and notwithstanding any language herein to the contrary, Seller shall convey title to all of the Acquired Assets, free and clear of any Liens at Closing. Upon consummation of the transactions contemplated hereby, Golden Boy will have acquired title in and to, or, in each of the Acquired Assets, free and clear of all Liens other than the Assumed Liabilities.

5.4 Leases and Rental Agreements. To the extent any Acquired Assets are subject to leases or rental arrangements, Seller shall secure pay-off statements from all lenders or lessors with respect to any such Acquired Asset so as to otherwise be able to convey title to all Acquired Assets to Golden Boy free and clear of all Liens, interests and rights of others; provided, however, if Seller notifies Golden Boy that Seller is unable to convey title for any Acquired Asset subject to lease or rental arrangement and if Golden Boy subsequently notifies Seller that it desires to assume any such lease or rental arrangement, and, in such a contingency, the parties are able to agree on an adjustment to the Purchase Price, then Seller and Golden Boy shall use reasonable efforts to cause said lease to be transferred to Golden Boy in the manner set forth in Section 4.6 (each an "Assumed Lease").

5.5 Employee Benefit Plans; ERISA. To Seller's actual knowledge, there are no plans, programs, policies, arrangements and agreements that Seller has maintained after the filing of the Bankruptcy Petition with respect to Seller's Personnel that provides or promises bonuses or other forms of incentive pay, retirement benefits, deferred compensation, severance benefits, welfare benefits, fringe benefits or equity compensation.

5.6 Insurance. To Seller's actual knowledge, Exhibit F sets forth a true, complete and correct list, and a summary description of the coverage provided thereby, of all liability insurance policies maintained by Seller after the filing of the Bankruptcy Petition with respect to Seller, the Acquired Assets, Seller's business operations and Seller's Personnel. All of such policies are in full force and effect. All premiums due on such insurance policies have been paid.

5.7 Taxes.

(a) Intentionally Deleted.

(b) Intentionally Deleted.

5.8 Intentionally Deleted.

5.9 Brokers and Finders. No broker or finder has acted for Seller in connection with this Agreement or any Transaction Document or the transactions contemplated hereunder or thereunder, and no broker or finder retained by Seller is entitled to any brokerage or finder's fee with respect to this Agreement or any Transaction Document or such transactions.

5.10 "As-Is" Sale of Acquired Assets. IT IS UNDERSTOOD AND AGREED THAT EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT OR THE DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING, AND TO THE EXTENT PERMITTED BY APPLICABLE LAWS, SELLER IS NOT MAKING, AND SPECIFICALLY DISCLAIMS, ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE ACQUIRED ASSETS AND THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO GOLDEN BOY AND GOLDEN BOY SHALL ACCEPT THE ACQUIRED ASSETS "AS IS, WHERE IS AND WITH ALL FAULTS."

5.11 Tax Clearance Certificate. Seller shall secure and provide at or prior to Closing a certificate (the "Tax Clearance Certificate") from the New Mexico Secretary of Taxation and Revenue as contemplated in the New Mexico Tax Administration Act, as codified in Sections 71-61 through 7-1-63 of NMSA 1978 (the "Act"), that, without limitation, certifies that no taxes are due.

5.12 Further Actions Pre-Closing. During the period from the Agreement Date to the Closing Date, the Seller shall:

(a) present this Agreement to the Bankruptcy Court;



- (b) not sell or otherwise transfer any of the Acquired Assets to any other person unless directed to so by the Bankruptcy Court;
- (c) use commercially reasonable efforts to maintain the Acquired Assets and avoid deterioration of the Acquired Assets; and
- (d) cooperate with Golden Boy to undertake any such actions or make any public filings as may be required by law.

## ARTICLE VI

### GOLDEN BOY RESPONSIBILITIES

Golden Boy warrants that:

6.1 Organization and Qualification. Golden Boy is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Golden Boy has all requisite power and authority to conduct its business as presently conducted and to own and lease its properties and assets. Golden Boy is (or shall be at the time of Closing) qualified to do business in New Mexico and is in good standing in each jurisdiction in which the ownership or lease of property or the conduct of its business requires such qualification.

6.2 Authorization. Golden Boy has all requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which Golden Boy is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the Transaction Documents to which Golden Boy is a party have been duly authorized and approved by all necessary actions on the part of Golden Boy. This Agreement and the Transaction Documents to which Golden Boy is a party have been or will have been, as the case may be, duly executed and delivered by Golden Boy and (assuming that this Agreement and the Transaction Documents to which Seller is a party have been duly authorized, executed and delivered by Seller) constitute or will constitute, as the case may be, legal, valid and binding obligations of Golden Boy, enforceable against Golden Boy in accordance with their terms.

6.3 Brokers and Finders. No broker or finder has acted for Golden Boy or its Affiliates in connection with this Agreement or any Transaction Documents or the transactions contemplated hereunder or thereunder and no broker or finder retained by Golden Boy or its Affiliates is entitled to any brokerage or finder's fee with respect to this Agreement or any Transaction Documents or such transactions.

## ARTICLE VII

### CONDITIONS PRECEDENT

7.1 Golden Boy's Conditions. Golden Boy's obligation to purchase the Acquired Assets is expressly conditioned on the satisfaction or waiver of the following conditions precedent ("Golden Boy Conditions"): (a) Seller securing the Sale Order identified in Section 5.3(a) on or before 5:00 p.m. of March 26, 2014; (b) Seller securing and providing at or prior to Closing the Tax Clearance Certificate identified in Section 5.11; (c) Seller having

executed and delivered all documents required in this Agreement; (d) Seller having timely performed each obligation and covenant of Seller under this Agreement; (e) Seller being able to deliver the Acquired Assets free and clear of all Liens in accordance with the terms of this Agreement; and (f) no Material change having occurred since the Agreement Date in the title, condition, quantity or quality of any of those assets identified in Exhibit A. If any of the Golden Boy Conditions expressly set forth herein fails to be satisfied (or waived in writing by Golden Boy) prior to the Closing Date, to the satisfaction of Golden Boy, Golden Boy shall have the right to terminate this Agreement by sending to Seller and Escrow Agent a notice terminating this Agreement whereupon Escrow Agent shall immediately release to Golden Boy all of the Good Faith Deposit, and neither Golden Boy nor Seller shall have any further rights or obligations pursuant to this Agreement, except as expressly set forth in this Agreement.

**7.2 Conditions to Each Party's Obligations.** The respective obligations of each party hereto to consummate the transactions contemplated hereby shall be subject to: (a) Seller securing the Final Sale Order that permits Seller to convey to Golden Boy the Acquired Assets free and clear of all Liens, and neither the Final Sale Order nor the consummation of the transactions contemplated by this Agreement shall have been stayed or enjoined by a court of competent jurisdiction as of the Closing Date; and (b) no Law having been enacted, entered, promulgated or enforced by any Governmental Entity prior to Closing that prohibits or prevents the consummation of the transactions contemplated hereby. In the event the Sale Order issued by the Bankruptcy Court is stayed, or an appeal to the Sale Order is filed and an injunction is issued preventing the parties from consummating this transaction, Golden Boy agrees to remain bound under this Agreement until the date that such appeal is dismissed, denied, or otherwise resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought, or reconsideration, re-argument or rehearing sought, in a manner that allows the parties to close; provided, however, that if the parties are not legally allowed to close by April 24, 2014, Golden Boy shall have the option to terminate this Agreement and receive a full refund of its Good Faith Deposit.

**7.3 Conditions to Obligations of Golden Boy.** The obligations of Golden Boy to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by Golden Boy:

- (a) Satisfaction of all Golden Boy Conditions, including without limitation, securing the Final Sale Order;
- (b) At the Closing, Seller shall have delivered to Golden Boy:
  - (i) Final Sale Order authorizing all Acquired Assets to be transferred free and clear of all Liens in accordance with the terms of this Agreement;
  - (ii) Deed;
  - (iii) Bill of Sale;
  - (iv) all other Transaction Documents to which Seller is a party; and

(v) such other documents or instruments as Golden Boy may reasonably request to carry out the intent and purposes of this Agreement.

7.4 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by Seller:

(a) Final Sale Order authorizing all Acquired Assets to be transferred free and clear of all Liens in accordance with the terms of this Agreement;

(b) At the Closing, Golden Boy shall have delivered to Seller:

(i) the balance of the Purchase Price (if any), subject to all credits, prorations and adjustments described herein;

(ii) all other Transaction Documents to which Golden Boy is a party;  
and

(iii) such other documents or instruments as Seller may reasonably request to carry out the intent and purposes of this Agreement.

## ARTICLE VIII

### EXPENSES; PRORATIONS

#### 8.1 Allocation of Taxes.

(a) All real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to any Acquired Assets for a taxable period which includes (but does not end on) the Closing Date, whether or not imposed or assessed before or after the Closing Date, shall be apportioned between Seller and Golden Boy based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days of such taxable period after the Closing Date (with respect to any such taxable period, the "Post-Closing Tax Period"). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Golden Boy shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period; notwithstanding the foregoing, if Seller is exempt for paying any Taxes attributable to the Pre-Closing Tax Period under federal bankruptcy Law, nothing herein shall be construed to impose any liability or obligation on Golden Boy for such Taxes attributable to the Pre-Closing Tax Period as it is specifically agreed that all such Taxes shall be an Excluded Liability. Upon receipt of any bill for such Taxes, Golden Boy or Seller, as applicable, shall present a statement to the other party setting forth the amount of reimbursement to which it shall be entitled under this Section 8.1(a) upon payment of such bill, together with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Payment of such reimbursement amount shall be made by the party owing it to the party to which it is owed within ten (10) days after delivery of such statement. In the event that Seller or Golden Boy shall make any payment for which it is entitled to reimbursement under this Section 8.1(a), the other party shall make such reimbursement promptly, but in no event later than ten (10) days after the presentation of a statement setting

forth the amount of reimbursement to which the presenting party is entitled, along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement.

(b) All excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and similar Taxes, levies, charges and fees, if any, (collectively, "Transfer Taxes") incurred in connection with the transactions contemplated by this Agreement shall be paid by Seller. Golden Boy shall cooperate with Seller, and Seller shall cooperate with Golden Boy, with respect to the provision of any appropriate resale exemption certifications and other similar documentation. The party that is required by Law to make the filings, reports, or returns with respect to any applicable Transfer Taxes shall do so, and the other party shall cooperate with respect thereto as necessary.

8.2 Fees and Expenses. Except as expressly set forth in this Article VIII, all fees, costs and expenses incurred in connection with the preparation, negotiation, execution, delivery or performance of this Agreement, the Transaction Documents and the transactions contemplated hereby or thereby shall be the responsibility of and paid by the party incurring such fees, costs or expenses.

## ARTICLE IX

### TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing upon the occurrence of any of the following:

- (a) by mutual written agreement of Seller and Golden Boy;
- (b) by Golden Boy if any of the Golden Boy Conditions expressly set forth herein fails to be satisfied (or waived in writing by Golden Boy) prior to the Closing Date, to the satisfaction of Golden Boy;
- (c) by either party if the other party has committed a Material breach of its obligations under this Agreement (a "Default");
- (d) upon notice by either Seller or Golden Boy, if the Sale Order has not been secured on or before 5:00 p.m. of March 26, 2014.

9.2 Effect of Termination. If this Agreement is terminated as provided in this Article IX, this Agreement shall forthwith become void and there shall be no liabilities on the part of any party to this Agreement except for those provisions by their nature require performance after termination. The Good Faith Deposit, upon such a termination, shall be disbursed by Escrow Agent in accordance with this Agreement.

9.3 Default by Golden Boy. Notwithstanding any language herein to the contrary, if Golden Boy is in Default under this Agreement and Seller tenders performance under this Agreement, Seller's sole and exclusive remedy for such Default is to terminate this Agreement pursuant to Section 9.1(c) and receive all of the Good Faith Deposit then being held by Escrow Agent. Golden Boy and Seller agree that such amount shall be liquidated damages (and not a

penalty) for Default by Golden Boy under this Agreement and is reasonable under the circumstances because of the difficulty, inconvenience and uncertainty of ascertaining damages for such Default. Seller hereby specifically waives any right to pursue any other remedy at law or in equity for such Default by Golden Boy.

9.4 Default by Seller. If Seller is in Default under this Agreement, Golden Boy may as its sole and exclusive remedy, terminate this Agreement pursuant to Section 9.1(c) and receive a return of all of the Good Faith Deposit.

## ARTICLE X

### GENERAL PROVISIONS

10.1 Notices. All notices, requests, demands, consents and other communications hereunder among the parties hereto shall be in writing and shall be deemed given: (i) upon personal delivery; (ii) three (3) days after being mailed by certified or registered mail, postage prepaid, return receipt requested; (iii) the next Business Day after being sent via a nationally recognized overnight courier service; or (iv) upon receipt of electronic or other confirmation of transmission if sent via facsimile or e-mail (if an e-mail address is specified in this section) to the parties hereto, their successors in interest or their assignees at the following addresses and facsimile numbers, or at such other addresses or facsimile numbers as the parties may designate by written notice in accordance with this Section 10.1:

(a) if to Golden Boy, to:

Paul Henderson  
President; Nut Butter Business Unit  
Golden Boy Foods Ltd.  
7725 Lougheed Hwy  
Burnaby, BC V5A 4V8, Canada  
Email: Paul.Henderson@goldenboyfoods.com  
Fax: 604-433-0051

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

Lewis, Rice & Fingersh, L.C.  
600 Washington, Suite 2500  
St. Louis, Missouri 63101-1311  
Fax: (314) 612-1321  
Email: bbouquet@lewisrice.com  
Attn: Brian D. Bouquet

(b) if to Seller, to:

Sunland, Inc.  
P.O. Box 2288  
408 West College Blvd.  
Roswell, New Mexico 88202-2288  
Fax: (575) 627-0122  
Email: [clarkecoll@gmail.com](mailto:clarkecoll@gmail.com)  
Attn: Clarke C. Coll, Esq., Chapter 7 Trustee

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

Walker & Associates, P.C.  
500 Marquette N.W., Suite 650  
Albuquerque, NM 87102  
Fax: (505)766-9287  
Email: [twalker@walkerlawpc.com](mailto:twalker@walkerlawpc.com)  
Attn: Thomas D. Walker

10.2 Entire Agreement; No Third-Party Beneficiaries. This Agreement, together with the exhibits and schedules to this Agreement, and the Transaction Documents, constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and understandings, both written and oral, among any of the parties, or any of them, with respect to the subject matter herein and therein. No provisions of this Agreement are intended, nor should they be interpreted, to provide or create any third party beneficiary rights or remedies, or any other rights or remedies, of any kind whatsoever under or by reason of this Agreement in any Person, or the legal representatives of such Person, other than the parties to this Agreement.

10.3 Mutual Cooperation. After the Closing Date, Seller will use its reasonable efforts to provide to Golden Boy, and Golden Boy will use its reasonable efforts to provide to Seller (the party providing such records or information or making available such personnel, the "providing party", and the party or parties requesting such records, information or personnel, the "requesting party") such records and information and to make available to the requesting party such personnel, in each case as may be reasonably requested in writing by the requesting party, for the purpose of reasonably assisting the requesting party in responding to governmental or professional inquiries, making required governmental filings or defending or prosecuting any action or other proceeding relating to or arising out of the conduct of the Business prior to or after the Closing Date, involving any Person; provided, however, that (a) the requesting party shall promptly reimburse the providing party for any reasonable out-of-pocket expenses incurred by the providing party in connection with the provision of any such assistance (including reasonable legal fees and disbursements), but the requesting party shall not be responsible to reimburse the providing party for such party's time spent in such cooperation or the salaries or costs of fringe benefits or other similar expenses paid by the providing party to its Affiliates or related entities or their respective stockholders and personnel while such Persons are providing any such assistance, and (b) no providing party shall be required to (i) provide information, records or personnel under circumstances which the providing party believes in its sole reasonable determination may expose it to liability to any Person or may prejudice any

commercial, legal or other interest of the providing party or (ii) take any action that, in the providing party's sole determination, unreasonably interferes with its business.

10.4 Further Assurances. At the Closing and from time to time thereafter, Seller shall execute, deliver, file, record, or cause to be executed, delivered, filed and recorded, any and all agreements, instruments, certificates or other documents and take such other actions as reasonably requested by Golden Boy or as may be reasonably necessary or desirable to consummate or implement the transactions contemplated by this Agreement. Without limiting the foregoing, Seller shall promptly perform all actions reasonably requested by Golden Boy to vest, establish and confirm ownership of the Acquired Assets, including Purchased Contracts and Intellectual Property, in Golden Boy (or an Affiliate of Golden Boy), and enable Golden Boy, or Affiliate of Golden Boy, to enjoy the benefit of the Acquired Assets.

10.5 Governing Law. This Agreement shall be governed, including as to validity, interpretation and effect, by, and construed in accordance with, the Laws of the State of New Mexico. The Bankruptcy Court shall have exclusive jurisdiction and venue shall lie with the Bankruptcy Court to hear and determine any matter arising in connection with this Agreement. Each party hereto also hereby irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court and further waives any claim that any such suit, action or proceeding which has been brought in the Bankruptcy Court has been brought in an inconvenient forum. In addition to any other form of service of process authorized by Law, service of process in any suit, action or proceeding hereunder shall be sufficient if mailed to the address specified in Section 10.1, and such service shall constitute "personal service" for purposes of such suit or proceeding.

10.6 Assignment. Except as expressly provided herein, neither this Agreement nor any of the rights, interests and obligations under this Agreement may be assigned by Golden Boy or Seller without the prior written consent of the other party, except that Golden Boy may assign this Agreement or any of its rights, interests or obligations hereunder to an Affiliate without requiring the consent of Seller. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

10.7 Waiver; Amendment; Remedies Cumulative. No waiver of any term, condition or obligation of this Agreement shall be valid unless in writing and signed by the waiving party. No failure or delay by any party hereto at any time to require the other parties hereto to perform strictly in accordance with the terms hereof shall preclude any party hereto from requiring performance by the other parties hereto at any later time. No waiver of any one or several of the terms, conditions or obligations of this Agreement, and no partial waiver thereof, shall be construed as a waiver of any of the other terms, conditions or obligations of this Agreement. This Agreement may not be amended, changed or modified in any fashion except by written instrument signed by Golden Boy and Seller. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.8 Public Announcements. Intentionally Deleted.

10.9 Severability. If any provision of this Agreement, or any part thereof, or the application of any such provision to any Person or circumstances shall be determined by the

Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision hereof shall be enforced to the fullest extent permitted by Law, unless such determination and enforcement (a) would result in a Material adjustment of the Purchase Price, (b) result in a Material change in the Acquired Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities, or (c) would interfere with the intent of the parties hereunder to a Material degree.

**10.10 Representation by Counsel.** Each party hereto acknowledges that such party has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or such party's representatives drafted such provision.

**10.11 Exclusivity; Solicitation.**

(a) Golden Boy and Seller acknowledge that under the Bankruptcy Code, the sale of Acquired Assets is subject to approval of the Bankruptcy Court. Golden Boy and Seller acknowledge that to obtain such approval, Seller must demonstrate that he has taken reasonable steps to obtain the highest or best price possible for the Acquired Assets, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Acquired Assets to responsible bidders, entertaining higher or better offers from responsible bidders and, if necessary, conducting an Auction.

(b) Seller represents that, other than the transactions contemplated by this Agreement, Seller is not a party to or bound by any agreement with respect to a possible merger, sale, restructuring, refinancing or other disposition of all or any of the Acquired Assets.

**10.12 Intentionally Deleted.**

**10.13 Facsimile Signature; Counterparts.** Facsimile or electronic transmission of any signed original document or retransmission of any signed facsimile or electronic transmission will be deemed the same as delivery of an original. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute but one and the same agreement.

**10.14 Capacity of Seller; No Personal Liability.** Seller is acting solely and exclusively in his capacity as the duly appointed Chapter 7 Trustee of the Estate. Golden Boy affirmatively acknowledges, agrees and understands that (i) Clarke C. Coll is not a party to this or any agreement with Golden Boy in his personal capacity or in any capacity on behalf of any person or entity other than as Chapter 7 Trustee of the Estate, (ii) Clarke C. Coll has no personal liability whatsoever for any aspect or part of this Agreement, and (iii) Seller has no knowledge or duty to Golden Boy to acquire knowledge about Debtor or the Business prior to the Petition Date. Notwithstanding the foregoing, nothing herein shall abrogate Seller's duties as Trustee including, without limitation, those duties secured by the Trustee bond filed with the Bankruptcy Court.

[Signature page follows]

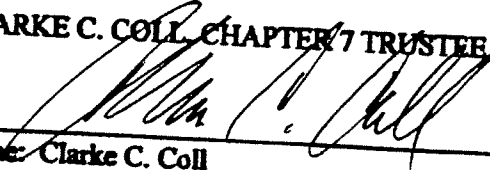


IN WITNESS WHEREOF, each party hereto has duly executed this Asset Purchase Agreement on the date set forth next to their signatures below.

**SELLER:**

CLARKE C. COLL, CHAPTER 7 TRUSTEE

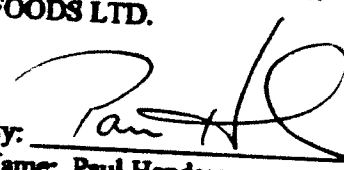
Date: 3-26-2014

By:   
Name: Clarke C. Coll  
Title: Chapter 7 Trustee

**BUYER:**

A To-Be-Formed Affiliate of GOLDEN BOY FOODS LTD.

Date: March 27, 2014  
PH

By:   
Name: Paul Henderson  
Title: Its President; Nut Butter Business Unit

## Schedule I

### **Certain Matters of Construction; Definitions**

#### **I. Construction of this Agreement and Certain Terms and Phrases.**

(a) Unless the context of this Agreement clearly indicates otherwise, (i) words of any gender include each other gender; (ii) words denoting the singular shall include the plural and vice versa; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement and not to any particular provision of this Agreement; and (iv) the terms "Article," "Section," "Schedule" and "Exhibit" without any reference to a specified document refer to the specified Article, Section, Schedule and Exhibit, respectively, of this Agreement.

(b) The words "including," "include" and "includes" are not exclusive and shall be deemed to be followed by the words "without limitation."

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(d) Any reference to any federal, state, local or foreign statute or law, including any one or more sections thereof, shall be deemed also to refer to, unless the context requires otherwise, all rules and regulations promulgated thereunder, including Treasury Regulations.

(e) The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

#### **II. Certain Defined Terms.**

As used in this Agreement, the following terms shall have the following meanings:

*"Actual knowledge"* means, knowledge actually known by the person, individually, and not constructively or vicariously or by agency; the term "actual knowledge" expressly excludes information or knowledge that the person should have known or could have known through investigations or inquiries that such person did not undertake. It is expressly understood and agreed that the Seller's actual knowledge does not include and shall not be construed to include knowledge of Debtor that is not actual knowledge of Seller; however, actual knowledge of Seller does include the actual knowledge of its professional advisors including, without limitation, the actual knowledge of Seller's legal counsel.

*"Affiliate"* means, with respect to a specified Person, any other Person which controls, is controlled by or is under common control with such specified Person. For such purposes, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

*"Agreement"* means this Asset Purchase Agreement, together with all Exhibits and Schedules annexed hereto, as the same may be amended, supplemented or modified from time to time.

#### **EXHIBIT 4**

REAL ESTATE DEED OF TRUST executed by SUNLAND, INC., as Grantor and Trustor, on June 5, 2007, and GAIL GOTTLIEB, ESQ., Trustee, in favor of PRODUCTION CREDIT ASSOCIATION OF SOUTHERN NEW MEXICO, A WHOLLY OWNED SUBSIDIARY OF FARM CREDIT OF NEW MEXICO, ACA, Beneficiary; filed June 28, 2007 at 11:35 a.m., and duly recorded in Book 171 at Page 674, of the Real Property Records, Roosevelt County, New Mexico; PARTIAL RELEASE OF DEED OF TRUST filed July 16, 2009 at 3:13 p.m., and duly recorded as Receipt #20090346, with the County Clerk's Office, Roosevelt County, New Mexico; PARTIAL RELEASE OF DEED OF TRUST filed September 2, 2009 at 10:19 a.m., and duly recorded as Receipt #20090902, with the County Clerk's Office, Roosevelt County, New Mexico; and AMENDMENT TO DEED OF TRUST, filed October 26, 2012 at 1:10 p.m., and duly recorded as Receipt #20123328, with the County Clerk's Office, Roosevelt County, New Mexico.

UCC FINANCING STATEMENT by SUNLAND, INC., Debtor, in favor of FARM CREDIT LEASING SERVICES CORPORATION, Secured Party; filed May 5, 2008 at 10:16 a.m., and duly recorded in Book 185 at Page 403, of the Real Property Records, Roosevelt County, New Mexico; UCC FINANCING STATEMENT AMENDMENT, filed July 6, 2009 at 11:28 a.m., and duly recorded as Receipt #20090194, with the County Clerk's Office, Roosevelt County, New Mexico; and a UCC FINANCING STATEMENT AMENDMENT CONTINUATION, filed February 26, 2013 at 12:23 p.m., and duly recorded as Receipt #20130664, with the County Clerk's Office, Roosevelt County, New Mexico.

UCC FINANCING STATEMENT by SUNLAND, INC., Debtor, in favor of FARM CREDIT LEASING SERVICES CORPORATION, Secured Party; filed December 7, 2009 at 10:18 a.m., and duly recorded as Receipt #20091952, with the County Clerk's Office, Roosevelt County, New Mexico and a UCC FINANCING STATEMENT AMENDMENT, filed June 7, 2010 at 9:41 a.m., and duly recorded as Receipt #20101811, with the County Clerk's Office, Roosevelt County, New Mexico.

LINE OF CREDIT REAL ESTATE DEED OF TRUST executed by SUNLAND, INC., as Grantor and Trustor, on November 24, 2009, and COBANK, ACB, ATTN: RICHARD MANNER, as Trustee, in favor of FARM CREDIT LEASING SERVICES CORPORATION, Beneficiary, filed June 8, 2010 at 4:00 p.m., and duly recorded as Receipt #20101824, with the County Clerk's Office, Roosevelt County, New Mexico.

UCC FINANCING STATEMENT by SUNLAND, INC., Debtor, in favor of FARM CREDIT LEASING SERVICES CORPORATION, Secured Party; filed January 9, 2012 at 10:31 a.m., and duly recorded as Receipt #20120071, with the County Clerk's Office, Roosevelt County, New Mexico.

UCC FINANCING STATEMENT by SUNLAND, INC., Debtor, in favor of FARM CREDIT LEASING SERVICES CORPORATION, Secured Party; filed January 9, 2012 at 10:44 a.m., and duly recorded as Receipt #20120074, with the County Clerk's Office, Roosevelt County, New Mexico.

LANDLORD AND MORTGAGEE WAIVER executed by and between FARM CREDIT LEASING SERVICES CORPORATION, Lessor, on December 8, 2011, and SUNLAND, INC., Lessee, filed January 12, 2012 at 4:15 p.m., and duly recorded as Receipt #20120121, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by C&K CONSTRUCTION, INC., on August 23, 2013, against SUNLAND, INC., filed August 23, 2013 at 1:22 p.m., and duly recorded as Receipt #20132685, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by SAM GARCIA, on October 9, 2013, against SUNLAND, INC.; filed October 9, 2013 at 8:38 a.m., and duly recorded as Receipt #20133252, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by TRADER HORNS TRUE VALUE, on October 9, 2013, against SUNLAND, INC., filed October 9, 2013 at 3:22 p.m., and duly recorded as Receipt #20133262, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by MAX MERRICK, on October 9, 2013, against SUNLAND, INC. filed October 9, 2013 at 3:22 p.m., and duly recorded as Receipt #20133263, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by HIGH PLAINS BUILDING SOLUTIONS LLC, on October 10, 2013, against SUNLAND, INC., filed October 0, 2013 at 1:57 p.m., and duly recorded as Receipt #20133272, with the County Clerk's Office, Roosevelt County, New Mexico.

CLAIM OF LIEN executed by NEWMAN ELECTRIC CORP., a New Mexico corporation, on November 8, 2013, against SUNLAND, INC., a New Mexico corporation; filed November 8, 2013 at 11:46 a.m., and duly recorded as Receipt #20133648, with the County Clerk's Office, Roosevelt County, New Mexico.

UCC FINANCING STATEMENT in favor of JP MORGAN CHASE BANK, NA filed with the New Mexico Secretary of State as File No. 990805021 filed August 5, 1999, as continued by File No. 20040002331G filed on February 5, 2005, as amended by File No. 20070013125B filed June 29, 2007, as continued by File No. 20090004357A filed March 17, 2009, as amended by File No. 20090009386J filed June 15, 2009, and continued by File No. 20140003382E filed March 3, 2014.

UCC FINANCING STATEMENT in favor of CoBank, ACB Agent for PCA, filed with the New Mexico Secretary of State as File No. 20070012296M filed June 18, 2007, as continued by File No. 20120001169C filed January 20, 2012, and as amended by File No. 20120020628E filed November 13, 2012.

UCC FINANCING STATEMENT in favor of Farm Credit Leasing Services Corp., filed with the New Mexico Secretary of State as File No. 20080005484B filed on March 21, 2008 and as continued by File No. 20120022696A filed December 19, 2012.

UCC FINANCING STATEMENT in favor of Farm Credit Leasing Services Corp., filed with the New Mexico Secretary of State as File No. 20090018486 filed on December 2, 2009 and as amended by File No. 20100008278K filed June 4, 2010.

UCC FINANCING STATEMENT in favor of CoBank, ACB, Agent for PCA., filed with the New Mexico Secretary of State as File No. 20100009369A filed on June 25, 2010 and as amended by File No. 20120020627C filed on November 13, 2012.

UCC FINANCING STATEMENT in favor of Farm Credit Leasing Services, filed with the New Mexico Secretary of State as File No. 20120000091G filed on January 4, 2012.

UCC FINANCING STATEMENT in favor of Farm Credit Leasing Services, filed with the New Mexico Secretary of State as File No. 20120000179C filed on January 5, 2012.

UCC FINANCING STATEMENT in favor of Tejas Peanut Company, LLC, filed with the New Mexico Secretary of State as File No. 20120021669M filed December 3, 2012.

UCC FINANCING STATEMENT in favor of Costco, filed with the New Mexico Secretary of State as File No. 20120022927J filed December 21, 2012 and as amended by File No. 20130003222G filed February 21, 2013.

LEASES identified generally as follows:

1. March 19, 2008 Lease Agreement for “One (1) Lot of 2008 Peanut Processing Equipment including all attachments . . . “
2. May 28, 2010 Schedule A for “One (1) New 2010 Peanut Storage Building with all attachments . . . Anderson Metal Building . . .”
3. December 8, 2011 Interim Funding Agreement for “46926 Equipment as listed on quotes from Scott Turbon Mixer Inc dated 7/8/11 . . . “ (Peanut and Hazelnut Processing Line)
4. January 3, 2012 Schedule A for “1 / 2011 / SATAKE / 11 820 IE /Scan Master Color Sorter / 1112061”

## Notice Recipients

District/Off: 1084-1  
Case: 13-13301-t7

User: manderson  
Form ID: pdfor1

Date Created: 3/27/2014  
Total: 13

### Recipients of Notice of Electronic Filing:

tr	Clarke C. Coll	clarkecoll@gmail.com
aty	Alice Nystel Page	Alice.N.Page@usdoj.gov
aty	Chris W Pierce	chris@huntedavislaw.com
aty	Clarke C. Coll	clarkecoll@gmail.com
aty	Edward Alexander Mazel	edmazel@askewmazelfirm.com
aty	Gail Gottlieb	gottlieb@sutinfirm.com
aty	George D Giddens, Jr	dave@giddenslaw.com
aty	Patricia A Bradley	pbradley@puccinilaw.com
aty	Paul M Fish	pfish@modrall.com
aty	Roderick W. O'Donoghue	rodonoghue@pjb-law.com
aty	Thomas D Walker	twalker@walkerlawpc.com
aty	Victor E Carlin	vic@moseslaw.com

TOTAL: 12

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

John J. Hall      600 Washington Ave Ste 2500      St. Louis, MO 63101

TOTAL: 1