

## **SUNFLOWER SEED STATUS AND HANDLING AGREEMENT**

This Agreement is entered into by and between the North Dakota Public Service Commission ("ND PSC") and Legumex Walker, Inc. ("LWI") and is effective as of July 10, 2012.

**WHEREAS** LWI purchased sunflower seed from Anderson Seed Company, Inc., on January 13, 2012, pursuant to a Purchase Order and Security Agreement dated that day, a true copy of which is attached hereto (the "January 13 Agreement"); and

**WHEREAS** LWI has been advised post-purchase that seed delivered to LWI by Anderson Seed Company, Inc. pursuant to the January 13 Agreement originated from grain storage facilities in North Dakota; and

**WHEREAS** Anderson Seed Company, Inc. is insolvent and the ND PSC has been appointed as trustee by the Cass County District Court, Case No.: 09-2012-CV-00693; and

**WHEREAS** claims have been lodged with the ND PSC by farmers that they delivered sunflower seed to Anderson Seed Company, Inc. but have not yet been paid by Anderson Seed Company; and

**WHEREAS** some or all of the grain purchased by LWI may be subject to a producer's statutory lien(s) pursuant to N.D.C.C. § 60-02-25 and N.D.C.C. § 60-02-25.1; and

**WHEREAS** LWI claims the status of a buyer in the ordinary course of business pursuant to N.D.C.C. § 60-02-25.1, and asserts that its ownership of the seed supersedes any liens under North Dakota law as set forth in N.D.C.C. § 60-02-25 and N.D.C.C. § 60-02-25.1; and

**WHEREAS** the doctrine of extra-territoriality is asserted by LWI as a further bar against any lien claims against seed once it leaves the State of North Dakota; and

**WHEREAS** the seed is a perishable commodity and temperatures and humidity levels

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have been unseasonably high; and

**WHEREAS** the parties hereto desire to avoid any potential allegations of misconduct by LWI or laches by the ND PSC and desire to maintain the *status quo ante* without causing a potential material or total loss in the value of the seed,

**IT IS HEREBY AGREED** that:

1. As between LWI and the ND PSC, in ND PSC's capacity as trustee, LWI shall be entitled to process all seed it purchased from Anderson Seed Company pursuant to the January 13 Agreement.
2. In the event that the ND PSC or any claimant takes the position that LWI was not a buyer in the ordinary course and that any and all other and further defenses which may be asserted by LWI, including, but not limited to the extraterritoriality defense, should not apply, ND PSC or the claimant shall be entitled to commence all proceedings necessary to recover the value and percentage of the seed associated with such claim. LWI waives any defense based upon the assertion that the seed is no longer in its possession.
3. The value of the seed is hereby stipulated to be \$1,593,400.00, based on the market value of such seed as of February 15, 2012 (the "Seed Value"), determined by multiplying 62,000 cwt by \$25.70 per cwt.
4. To the extent necessary, the parties agree that the seed shall be assumed to remain in existence notwithstanding its processing, but that any final, non-appealable, or other order to turn over the seed to the ND PSC shall be effected by turning over instead the relevant percentage of the Seed Value, by payment to the ND PSC of the relevant percentage of the sum of \$ 1,593,400.00, in a check or by wire.
5. Other than as set forth herein, all parties maintain all claims and defenses they may

otherwise possess.

LEGUMEX WALKER, INC.

By Joel Horn  
Its President  
Joel Horn

NORTH DAKOTA PUBLIC  
SERVICE COMMISSION

By Susan K. Richter  
Its Permitting Division Director  
July 20, 2012