



(including 11 U.S.C. § 1225), and the Bankruptcy Rules (including Local Rule 2002.4).

This Objection to Confirmation is based on the following grounds and reasons:

1. Land View is an Idaho Corporation that at all times material hereto has been licensed and qualified to conduct business and has conducted business within the State of Idaho.

**1. LAND VIEW HAS A SECURED CLAIM ON PROPERTY OF THE DEBTOR**

2. Land View sold chemicals and fertilizer to the debtor on credit, with a balance of such financing amounting to \$42,806.18. The balance due was to be repaid with interest at the rate of 14.5% per annum on or before December 31, 1996. No payment has been made.

3. Land View and debtor agreed to attach a security interest in debtor's 1995 sugar beet crops and 1996 wheat crop by a written security agreement. A true and correct copy of the Security Agreement is attached hereto as Exhibit "A". The Security Agreement also secured certain farm equipment held by the debtor.

4. A financing statement was filed on or about May 15, 1996 with the Idaho Secretary of State, perfecting Land View's security interest in debtor's 1995 sugar beet crops and 1996 wheat crop. A true and correct copy of the UCC - 1F Form is attached hereto as Exhibit "B".

5. Therefore, Land View holds a perfected secured lien on the debtor's 1995 sugar beet crops and 1996 wheat crop. The security interest in such collateral continues

to be perfected as to the proceeds of the sale of these crops. Land View has a senior crop lien to the proceeds.

6. In addition, Land View holds a mortgage against debtor's real property located in Canyon County. Land View's lien secures a promissory note dated May 6, 1996 in the sum of \$126,563.46 of which a \$60,759.63 installment was due on December 1, 1996. See Note and Mortgage Agreement attached to Proof of Claim. The note carries interest at the rate of 14.5% per annum. Payment has not been made.

7. Under the plan, debtor has wrongfully classified Land View as an unsecured creditor. As set forth above, Land View Fertilizer, Inc. has a senior perfected security interest in the proceeds of the 1995 sugar beet crops and 1996 wheat crop and also holds a second position lien on the Canyon County property.

8. Therefore, the plan does not comply with 11 U.S.C. § 1225(a)(5) since the allowed secured claim of Land View is treated as an unsecured claim. Moreover, Land View does not consent to this treatment under the plan.

## II. THE PLAN IS NOT FEASIBLE

9. Debtor's future income projections necessary to finance the plan are unrealistic and speculative. Thus, the debtor will not be able to make all payments under the plan and to comply with the plan, as required by 11 U.S.C. § 1225(a)(6).

WHEREFORE, it is prayed that the plan as proposed not be approved by this court.

DATED this 27<sup>th</sup> day of January, 1997.

WHITE, PETERSON, PRUSS, MORROW  
& GIGRAY, P.A.

John D. Harrington

John D. Harrington

Attorney for Land View Fertilizer, Inc.

P. O. Box 247

Nampa, Idaho 83563-0247

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing  
OBJECTION TO CONFIRMATION OF THE CHAPTER 12 PLAN was served upon

Office of the U.S. Trustee  
304 N. 8<sup>th</sup> St., Suite 347  
P. O. Box 110  
Boise, Idaho 83701

Mailed  
 Faxed  
 Hand delivered

Howard R. Foley  
Foley & Freeman  
77 E. Idaho St., Suite 300  
P. O. Box 10  
Meridian, Idaho 83680

Mailed  
 Faxed  
 Hand delivered

Ronald D. Schoen  
Standing Chapter 12 Trustee  
P. O. Box 216  
Payette, Idaho 83661

Mailed  
 Faxed  
 Hand delivered

Terry L. Hipwell  
30932 Shelton Road  
Parma, Idaho 83660

Mailed  
 Faxed  
 Hand delivered

this 27<sup>th</sup> day of January, 1997.

John D. Harrington  
John D. Harrington

mr/objection  
jdhwrk/andview - 16500.01

LAND VIEW FERTILIZER, INC. ACCOUNT AGREEMENT

Terry L. Hipwell the "Buyer", enters into the following agreement with Land View Fertilizer, Inc. The terms of this agreement shall control all purchases by the Buyer from Land View Fertilizer, Inc.

1. **PAYMENT TERMS:** The Account shall be paid in full on or before 12/31/96. Balances shall accrue interest at the rate of 14.5% per annum from the date of delivery.
2. **DELINQUENT ACCOUNTS:** An account is delinquent when any balance is not paid when due.
3. **ACCELERATION:** At any time the account exceeds the agreed credit limit or the account is delinquent, all amounts owing under this contract shall be immediately due and payable and be subject to a finance charge.
4. **FINANCE CHARGE:** Delinquent accounts shall incur a finance charge of 1 3/4% per month, an annual rate of 21%. All payments shall be first applied to accrued interest and finance charges with the balance applied to the oldest unpaid invoice.
5. **SUSPENSION OF DELIVERIES:** Land View Fertilizer, Inc. shall have the right, at its election, to suspend deliveries during any period of time the account is delinquent.
6. **CONFIRMATION:** Land View Fertilizer, Inc. shall send an invoice to the Buyer of each purchase.
7. **MERCHANT:** The Buyer warrants that all purchases made under the terms of this agreement shall be for commercial purposes and that the Buyer is a merchant with respect to the types of goods which will be purchased.
8. **SECURITY AGREEMENT:**

A. To secure this Account Agreement, Purchase Contracts and all other obligations owing by Buyer to Land View Fertilizer, Inc., the Buyer hereby grants to Land View Fertilizer, Inc., a security interest in the following crops:

CROP	DESCRIPTION OF LAND WHERE GROWN (Attach additional pages if necessary)	COUNTY WHERE STORED
Wheat	all lands owned or leased including but not limited to those described in Exhibit "B" here to Attached.	Canyon + Payette Counties of Idaho
Beets (1995)		
Barley		

- B. The Buyer hereby represents and warrants to Land View Fertilizer, Inc. that the crops will be grown on the land described above and stored in identified counties.  
 C. The business of the Buyer is commercial farming.  
 D. The Buyer warrants the collateral: a. Will not be wasted or allowed to deteriorate, and b. Will be insured by "all risk" crop insurance during the term of this Security Agreement, and c. Will not be transferred or removed from the counties identified above without the prior written consent by Land View Fertilizer, Inc., and will not be sold without express disclosure of Land View's interest, and d. Will not be subject to any lien, whether voluntary or involuntary, without the prior written consent of Land View Fertilizer, Inc.  
 E. The Buyer will execute required financing statements or other documents necessary to perfect the security interest of Land View Fertilizer, Inc. under this agreement, and in this regard, appoints any employee of Land View Fertilizer, Inc., to act as the Buyer's attorney-in-fact in execution of such documents in the event of the unavailability or refusal of the Buyer.  
 F. Any breach of the terms of this Agreement or other obligation owing by Buyer to Land View Fertilizer, Inc. shall constitute a default by the Buyer. In addition, the Buyer shall be in default if bankruptcy or insolvency proceedings are instituted by or against the Buyer or if the Buyer makes any assignment for the benefit of creditors. In the event of default Land View Fertilizer, Inc. shall be entitled to exercise all of its rights and remedies as provided by the Idaho Uniform Commercial Code, which rights include, but are not limited to the right to enter upon the Buyer's premises to take possession of, assemble, and collect the collateral, and to request the Buyer to assemble the collateral and make it available at a place that Land View Fertilizer, Inc. designates, which is mutually convenient to allow Land View Fertilizer, Inc. to take possession or dispose of the collateral, or to take possession of collateral held by any third party.  
 G. This security agreement includes after-acquired collateral, that is collateral of the type described above but to be grown by the Buyer after the execution of this agreement.  
 H. The collateral described above shall include proceeds, accessions, and products of all collateral.  
 9. **DEFAULT:** Any breach of the terms of this agreement including failure to pay delinquent accounts in full shall be a default. Upon default the non-defaulting party may proceed without notice, to pursue all lawful remedies.  
 10. **COLLECTION COSTS:** In the event of default, the defaulting party shall be obligated to pay all costs of collection, including any attorneys fees reasonably incurred.  
 11. **PERSONAL GUARANTEES:** In the event the Buyer is a corporation, partnership or trust, all shareholder-partners-beneficiaries shall execute a personal guarantee as a condition of this account.  
 12. **TERMINATION:** Land View Fertilizer, Inc. shall be entitled to terminate the Buyer's right to purchase at any time without cause. Upon termination, the terms of this agreement shall continue to apply to any unpaid accounts.  
 13. **ENTIRE AGREEMENT:** This agreement is the entire agreement of the parties, intended to be the final expression of its terms. All prior negotiations are incorporated herein. Any amendment or modification or supplement to this agreement shall be by a signed writing. Any other written agreements between the parties not expressly modifying or superseding this agreement shall be considered supplemental except that in the event of conflict the provisions of this agreement shall control. Invoices for purchases pursuant to this agreement shall not modify, amend, supersede or waive any provision hereof and in the event of conflicting terms the provisions of this agreement shall control.  
 14. **ACCOUNT CONDITION:** Land View Fertilizer, Inc. hereby agrees to open this account on the following basis:

[ ] Open Account Credit Limit 40,000 [ ] Other \_\_\_\_\_  
 NOTICE: Pursuant to Idaho Code § 9-505(5) a promise or commitment to lend money or to grant or extend credit in an original principal amount of \$50,000 or more is valid only if in writing signed by the party charged or his agent.

15. **APPLICABLE LAW AND JURISDICTION:** This agreement shall be governed by the law of the State of Idaho. Buyer hereby agrees to be subject to personal jurisdiction in the State of Idaho which will be the exclusive jurisdiction for actions brought under this agreement.

16. **SPECIAL PROVISIONS:**
1. THIS ACCOUNT IS ALSO SECURED BY THE FARM EQUIPMENT DESCRIBED IN EXHIBIT "A" HERE TO ATTACHED.
  2. LAND VIEW FERTILIZER IS GRANTED BY HIPWELL THE RIGHT TO INTERVENE AND OVERSEE THE GROWING OF THE CROP IF IT BELIEVES HIPWELL IS NOT SATISFACTORILY MARKETING THE CROP.
  3. HIPWELL AGREES TO FORWARD CONTRACT A MINIMUM OF 75% OF PROTECTED YIELD BY 7/1/96.

17. **SALES PROVISIONS:** This contract applies to all purchases of goods and services by the Buyer from the seller. Sales of goods and services shall be subject to the following provisions:  
 A. The Idaho Uniform Commercial Code shall apply to all sales of goods and services under this agreement.  
 B. In the event of circumstances beyond the reasonable control of Land View Fertilizer, Inc., preventing its performance hereunder, Land View Fertilizer, Inc. may cancel without liability. This contract presupposes as a condition that Land View Fertilizer, Inc. will be able to acquire the goods from its current sources of supply at existing market prices.  
 C. Land View Fertilizer, Inc. has made no warranty to the Buyer. The goods are sold AS IS. **IMPLIED WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS ARE EXPRESSLY EXCLUDED.**  
 D. IN NO EVENT SHALL Land View Fertilizer, Inc. BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. If the goods fail to meet the contract description in any particular, the Buyer shall give immediate notice to Land View Fertilizer, Inc. and submit a sample for inspection. If the inspection establishes the goods fail to conform to the contract description, Land View Fertilizer, Inc. may, at its election, either replace the goods with conforming goods within a reasonable time, or pay to the Buyer the difference between the contract price and the fair market value of the goods delivered. **THE REMEDIES PROVIDED IN THIS PARAGRAPH ARE EXCLUSIVE.**

DATED this 6 day of May 19 96

[Signature]  
 Land View Fertilizer, Inc.  
Terry L. Hipwell  
 Buyer

30932 Shelton Rd., Parma, ID 83660  
 Address

722-7223  
 Telephone  
 Mobile Telephone \_\_\_\_\_

**EXHIBIT A**

# Original List

## EXHIBIT "A"

- ~~1994~~ Case IH 7140 Magnum Tractor, Serial #JJA0025885;
- ~~1994~~ ~~20' Combination Grain and Beet Bed with Hoist, No Serial #;~~
- ~~1994~~ ~~IH 1480 Combine and IH 22 foot Platform 01883;~~
- 1994 Chevy extended cab 4 X 4 pickup;
- 1977 Ford Courier;
- 1979 GMC Pickup;
- 2-13.6 x 28 tires and rims;
- 1976 Ford Ln 9000 290 Cummins 10 speed 20' bed and hoist;
- 1973 Ford Lt 8000 1,160 cat 5 speed auto 20' bed and hoist;
- 1973 GMC C65 V6 gas 5&4 20' bed and hoist;
- 1976 Ford Ln 750 390 Gas 5&2 16' bed and hoist;
- 1980 Ford Lt 8000 3208 cat 5 speed auto 20' bed and hoist;
- ~~1979~~ IHC 1480 axial flow combine 22.5' header;
- ~~1977 JD 4600 Plow 5 Bottom;~~
- 1981 IHC 986 Turbo;
- ~~1982 John Deere 4540 MFD;~~
- Woods 14' mower;
- IHC 140 4 bottom plow;
- ~~1980~~ JD Model 230 20' disc;
- JD Model 900 7 shank ripper;
- 6 - 14.9 x 38 tires and rims;
- 4 - 14.9 x 38 duals;
- Milton 12 row beet planter;
- Brillion 12 row beet cultivator;
- Dammer diker 12 row;
- 12 row bedding bar with markers;
- 24 row band spraying bar;
- ~~Ace 6 row beet topper;~~
- ~~1980~~ Parma model 910 beet harvester;
- Landpride 10' blade;
- Ace saddle tanks - 2 sets;
- Farmall Model H tractor;
- Pipe trailer;
- Fertilizer and spraying equipment;
- ~~1980~~ - Used Brittonya Sprayer 36 row 500 gallon, 02166240617;
- ~~1980~~ - Used Northwest 12 Row Power Harrow Tag 000473;
- ~~1980~~ - New Parma 12 Row Tripple Drum Defoilator, 14249-95;
- ~~1980~~ - Used Parma 6 Row Harvester, 23095;
- ~~1980~~ - Used Case 2470 Tractor, 8793720;
- ~~1980~~ - Used JD 4600 Plow 5 Bottom, 12847;
- ~~1980~~ - Used Miller Disk 18' Offset, 48525;
- ~~1980~~ - Used JD 4850 Tractor, RW4850P002569;
- ~~1980~~ - Used JD 4630 Tractor, 4630H012320R;
- ~~1980~~ - 1989 Parma 6-Row lifter loader beet harvester;
- ~~1980~~ - Parma 12 row tripple drum beater and hydraulic trimmers;
- ~~1980~~ - John Deere 4540 MFD.

EXHIBIT "K"

The South One-half of the Northeast Quarter; The South One-half of the Northwest Quarter; the Southwest Quarter; and the Southeast Quarter of Section 26, Township 6 North, Range 5 West, Boise Meridian, Payette County, Idaho.

Tract I:

The North One-half of the Northwest Quarter of Section 35, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho.

Tract II:

The Northwest Quarter of the Northeast Quarter of Section 35, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho.

INITIAL T.H.

STATE OF IDAHO - FARM PRODUCTS FINANCING  
STATE UT - FORM UCC-1F

customer number:

10-  
2146

See instructions, fee schedule and tables of codes on reverse.

Form approved by Pete T. Conarusa, Secretary of State, UCC Division, Statehouse, Boise, ID 83720, Ph 208-334-3191.

Debtor #1 (Last name, first, middle, title & mailing address) Hipwell, Terry L. 30932 Shelton Road Parma, ID 83660	SSN or TIN 519-86-2600	Debtor #3
Debtor #2		Debtor #4

Name and Address of Secured Party Land View Fertilizer, Inc. P.O. Box 86 Minidoka, ID 83343	Assignee and address
--	----------------------

Mailing Address for acknowledgment, if not Secured Party	Filing office use only
--	------------------------

Item No.	Product Code	Product Name (optional)	County Code(s)	Crop Year(s), if Less than All	Amount, if Necessary	Unit	Acc Intc.
1	010	wheat	14, 37, 38				
2	020	barley	14, 37, 38				
3	060	sugar beets	14, 37, 38	1995			
4							
5							
6							
7							
8							
9							

Signature(s) of Debtor(s)  
*Terry L Hipwell*

Secured Party Signature Land View Fertilizer, Inc.  
by *Randall K Ashline*, Controller

TERMINATION STATEMENT-The Secured Party no longer claims a security interest under the financing statement.

Secured Party or Assignee of Record

Filing Office Use Only  
IDAHO SECRETARY OF STATE  
DATE 05/15/1996 0900 62703  
CR #: 30272 CUST# 2146  
UCC1F FILE  
1@ 10.00= 10.00

EXHIBIT B

#: F 51465  
Revised 8/91