

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	
	§	
COLOR STAR GROWERS OF	§	Chapter 11
COLORADO, INC., VAST, INC.,	§	
and COLOR STAR, LLC,	§	Case No. 13-42959
	§	
Debtors	§	Jointly Administered

**SECOND STIPULATION AUTHORIZING LEXINGTON INSURANCE
COMPANY TO PAY POLICY PROCEEDS TO
DEBTOR COLOR STAR GROWERS OF COLORADO, INC.**

Debtors and debtors-in-possession Color Star Growers of Colorado, Inc., Vast, Inc., and Color Star, LLC (collectively, the "*Debtors*") and Lexington Insurance Company ("*Lexington*") submit the following second stipulation (the "*Second Stipulation*") authorizing Lexington to pay certain insurance policy indemnification proceeds to Debtor Color Star Growers as payee, as described in further detail herein.

RECITALS

A. On December 15, 2013 (the "*Commencement Date*"), each of the Debtors filed voluntary petitions for relief under of chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are being jointly administered.

B. On December 20, 2013, the Court entered the *Interim Order Granting Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Scheduling Final Hearing ("First Interim Order")* (Docket No. 34), which was in effect until January 6, 2014.

C. On January 30, 2014, the Court entered the *Second Interim Order Granting Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Scheduling Final Hearing* ("*Second Interim Order*") (Docket No. 132), which was in effect until January 31, 2014.

D. On February 14, 2014, the Court entered the *Third Interim Order Granting Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Scheduling Final Hearing* ("*Third Interim Order*") (Docket No. 147), which was in effect until February 28, 2014.

E. On March 4, 2014, the Court entered the *Fourth Interim Order Granting Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Scheduling Final Hearing* (the "*Fourth Interim Order*" and collectively with the First Interim Order, Second Interim Order, and Third Interim Order, the "*Interim Cash Collateral Orders*") (Docket No. 181), which was in effect until April 14, 2014.

F. The Interim Cash Collateral Orders define "*Cash Collateral*" to include any insurance proceeds arising from any casualty loss. The Interim Cash Collateral Orders define "*Lenders*" as Regions Bank and Comerica Bank and "*Prepetition Lenders*" as Regions Bank, Comerica Bank, and MCG Capital Corporation, and such terms shall have the same definitions herein.

G. As of the Commencement Date, debtor and debtor-in possession, Color Star Growers of Colorado, Inc. ("*Color Star Growers*") was in the business of growing and selling plants and flowers to retailers such as Walmart and Lowes.

H. Lexington issued to Color Star Growers all-risk property insurance policy number 019946867, with effective dates of July 1, 2013 to July 1, 2014 (the "*Policy*"), which provided coverage to various scheduled locations, including the Fort Lupton Location (defined below).

I. On or about September 12, 2013, Color Star Growers sustained significant flood damage at 11610 Weld County Rd 14.5, Fort Lupton, CO 80621 location (the "*Fort Lupton Location*").

J. Color Star Growers has notified Lexington that it sustained substantial losses and damages and has sought payment under the *Policy* for the losses, damages, and expenses it sustained (the "*Claim*"). The Claim seeks recovery for, among other things, Property Damage, Loss of Inventory, Extra Expense, and Business Interruption (collectively, the "*Components of the Claim*").

K. On January 14, 2014, the Court entered three (3) orders approving the sale of substantially all of the Debtors' assets to three (3) winning bidders (the "*Purchasers*") (Docket Nos. 95, 96, and 98, collectively, the "*Sale Order*"). That same day, the Debtors closed a sale of substantially all of their assets to the Purchasers free and clear of all claims, liens, and encumbrances.

L. Lexington investigated and adjusted portions of the Claim, and Lexington and Color Star Growers entered into a Stipulation on March 28, 2014 (the "*March Stipulation*") concerning resolution of the Actual Cash Value of the Property Damage component of the Claim attributable to damage to the buildings Lexington had investigated and adjusted as of that time as well as advances to Color Star Growers in respect of additional losses and damages against Lexington's liability for loss of contents, inventory, and equipment; and loss of business income

and extra expense. The *March Stipulation* was approved by the Court on April 14, 2014, and subsequently Lexington timely delivered the agreed-to payment to Color Star Growers.

M. Lexington has further investigated and adjusted the Claim, and Lexington and Color Star Growers have agreed that the Actual Cash Value of the component of the Claim attributable to loss of contents, inventory, and equipment investigated and adjusted to date is One Million Four Hundred and Eighty-three Thousand One Hundred and Thirty-four Dollars and thirty-three cents (\$1,483,134.33), which amount is net of depreciation of Twenty-five Thousand Sixty-three Dollars and sixty-seven cents (\$25,063.67). Any liability of Lexington in respect of any additional claim for loss of contents, inventory, and equipment, for additional Property Damage or other Components of the Claim not addressed herein or in the *March Stipulation*, and Color Star Grower's right to recover the Twenty-five Thousand Sixty-three Dollars and sixty-seven cents (\$25,063.67) in depreciation hold-back, have not been determined yet or agreed to by the Parties.

N. Lexington has agreed to make another payment in the gross amount of One Million Four Hundred and Eighty-three Thousand One Hundred and Thirty-four Dollars and thirty-three cents (\$1,483,134.33) (the "*Second Claim Payment*") against Lexington's liability under the *Policy*.

O. The Second Claim Payment is subject to an offset of Two Hundred Thousand Dollars (\$200,000.00), which represents an Advance Payment made by Lexington pursuant to the *March Stipulation*. This results in net Second Claim Payment of One Million Two Hundred Eighty-three Thousand One Hundred and Thirty-four Dollars and thirty-three cents (\$1,283,134.33).

P. The *Policy* provides that “[i]n the event there is other insurance covering loss or damage insured under this Policy, then this Policy shall apply only as excess” As a result, the *Second Claim Payment* is subject to a reduction of an additional One Hundred Eighty-seven Thousand Nineteen Dollars and forty-four cents (\$187,019.44) (the “*Additional Hartford Proceeds*”) received by Color Star Growers from Hartford during the period March 28, 2014, through May 23, 2014. Reducing the *Second Claim Payment* by an amount equal to the *Additional Hartford Proceeds* results in a final net *Second Claim Payment* of One Million Ninety-six Thousand One Hundred Fourteen Dollars and eighty-nine cents (\$1,096,114.89). Lexington understands that Color Star Growers may receive additional funds from Hartford, and Color Star Growers and Lexington each reserve all of their rights regarding the amount and propriety of any reduction of Lexington’s liability under the *Policy* as a result of the Hartford Proceeds, including Lexington’s right to assert additional offset should Color Star Growers receive additional funds from Hartford.

Q. Lexington has requested that Color Star Growers seek entry of an order authorizing and approving payment of the *Second Claim Payment*, upon proper notice to Color Star Growers’ creditors.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties to this *Second Stipulation*, in consideration of the foregoing recitals and agreements expressed herein, that:

1. Lexington agrees, subject to the occurrence of the conditions precedent set forth in paragraph 2 below, to pay the One Million Ninety-six Thousand One Hundred Fourteen Dollars and eighty-nine cents (\$1,096,114.88) *Second Claim Payment* to Color Star Growers of Colorado, Inc. as debtor-in-possession, within seven (7) calendar days of entry of an order

accepting and approving this Second Stipulation. The Second Claim Payment is subject to the Lenders' claims as mortgagee under the Policy and as secured party and is Cash Collateral under the Interim Cash Collateral Orders.

2. Each of the following events is a condition precedent to the effectiveness of this Second Stipulation:

- a. the Court shall have accepted and approved the Second Stipulation and entered an order to that effect;
- b. the Second Stipulation shall have become a final, non-appealable order in the Bankruptcy Cases; and
- c. Color Star Growers shall submit an agreed proof of loss to Lexington.

3. Color Star Growers represents and warrants that:

- a. it has not assigned or transferred all or any part of the Claim (other than to the extent the Claim or an interest in the Policy or proceeds therefrom has been assigned or transferred to the Debtors' Pre-petition Lenders under a mortgage and/or loss payee endorsement and/or under the Pre-petition Loan Documents, as such capitalized terms are defined in the First Interim Order, or pursuant to the Interim Cash Collateral Orders), and
- b. pursuant to the procedures specified by the Bankruptcy Court in its Order Granting Motion for Order Limiting Notice and Establishing Additional Notice Procedures dated December 23, 2013, it has provided notice of the filing of this Second Stipulation to (i) any parties, to the Debtors' knowledge, asserting a mechanics' lien against the Debtors' property in Colorado, (ii) persons on the master service list, and (iii) all persons who receive ECF notice of filings in these cases.

4. For purposes of this Second Stipulation, all entities referenced in this Second Stipulation shall include the entity referenced as well as its predecessors, successors, assigns, directors, officers, employees, and attorneys and their respective successors, predecessors, assigns, agents, and representatives.

5. This Second Stipulation shall not be modified, altered, amended, or vacated without the approval of the Bankruptcy Court, and Color Star Growers shall provide notice to Lexington of any attempts to modify, alter, amend, or vacate the Second Stipulation.

6. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Second Stipulation, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Second Stipulation. Any motion or application brought before this Court to resolve a dispute arising from or related to this Second Stipulation shall be brought on notice as provided by and in accordance with the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Eastern District of Texas.

7. If any provision of this Second Stipulation shall for any reason be or become invalid or unenforceable, it shall not affect the remaining provisions of this Second Stipulation, which shall remain in full force and effect.

8. Each person signing this Second Stipulation has been duly authorized to enter into the Second Stipulation on behalf of the entity or entities that person represents.

9. Effect Immediate Upon Entry of Bankruptcy Court Order. Notwithstanding the applicability of Rules 6004, 8001, and 8002 of the Federal Rules of Bankruptcy Procedure, the Parties agree that this Second Stipulation shall be effective immediately upon entry of the Order by the Court.

DATED this ____ day of June, 2014.

Respectfully submitted,

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