

2017-000588

Klamath County, Oregon

01/20/2017 09:44:00 AM

Fee: \$102.00

PREPARED BY,  
RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

White & Case LLP  
555 South Flower Street, Suite 2700  
Los Angeles, CA 90071-2433  
Attention: Brenda T. Dieck, Esq.  
File No. 1448012-0011

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**LINE OF CREDIT INSTRUMENT**

**LINE OF CREDIT INSTRUMENT – AMENDMENT NO. 2 TO TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FINANCING STATEMENT AND FIXTURE FILING (OREGON)**

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**LINE OF CREDIT INSTRUMENT (Oregon)**

This Amendment is a LINE OF CREDIT INSTRUMENT and secures all present and future advances made under the Secured Debt Agreements (as hereinafter defined). (A) The maximum principal indebtedness amount to be advanced pursuant to the Secured Debt Agreements is One Billion One Hundred Forty Million U.S. Dollars (\$1,140,000,000). (B) The maximum principal indebtedness amount to be advanced pursuant to the Secured Debt Agreements may be exceeded by advances for matters referenced in ORS 86.155(2). (C) The term or maturity date, if any, under the Secured Debt Agreements, exclusive of any option to renew or extend such term or maturity date, is: **April 6, 2025.**

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THIS LINE OF CREDIT INSTRUMENT – AMENDMENT NO. 2 TO TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FINANCING STATEMENT AND FIXTURE FILING (OREGON) (this “**Amendment**”) is dated as of December 19, 2016 and effective as of January 20, 2017 by and from DRISCOLL’S, INC. (f/k/a Driscoll Strawberry Associates, Inc.), a California corporation (“**Grantor**”), whose address is 345 Westridge Drive, Watsonville, California 95076-4169, to AmeriTitle Inc. (“**Trustee**”), having an address at 300 Klamath Avenue, Klamath Falls, Oregon 97601, for the benefit of AMERICAN AGCREDIT, PCA, as collateral agent (in such capacity, “**Collateral Agent**”) for and representative of the Secured Parties (Collateral Agent, together with its successors and assigns, “**Beneficiary**”), having an address at 5560 South Broadway, Eureka, California 95503. All initially capitalized terms used in this Amendment but not otherwise defined herein shall have the respective meanings ascribed thereto in the Amended and Restated Intercreditor

Agreement dated as of April 6, 2015 entered into by and between Collateral Agent, Wells Fargo Bank, National Association, as the Authorized Representative for the Revolving Loan Lender Creditor (in such capacity and together with its successors (including successors in accordance with Section 2.08 of the Intercreditor Agreement), "**Revolver Administrative Agent**"; together with the Revolving Loan Lender Creditor and the Revolving Loan Secured Hedging Creditors, collectively, the "**Revolving Loan Secured Parties**") and Term Loan Administrative Agent (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "**Intercreditor Agreement**"). This Amendment is subject to the provisions of the Intercreditor Agreement.

### **RECITALS**

**WHEREAS**, the parties hereto are parties to that certain Trust Deed, Security Agreement, Assignment of Rents and Leases, Financing Statement and Fixture Filing (Oregon), dated as of December 23, 2010, executed by Grantor for the benefit of Beneficiary, and recorded on December 23, 2010 as Instrument/Recorder's No. 2010-014519 in the Official Records of Klamath County, Oregon (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, up to but not including the date hereof, the "**Existing Trust Deed**", and as amended by this Amendment and as further amended, restated, supplemented and/or otherwise modified from time to time, the "**Trust Deed**") encumbering certain real property as more particularly described in **Exhibit A** hereto.

**WHEREAS**, pursuant to that certain Certificate of Amendment of Amended and Restated Articles of Incorporation attached hereto as **Exhibit B**, Grantor is now known as "Driscoll's, Inc.".

**WHEREAS**, Beneficiary and Grantor desire to execute this Amendment to (i) amend the Trust Deed to reflect Grantor's name change and (ii) confirm that Driscoll's, Inc. is now the "Grantor" as defined in the Trust Deed and is responsible for the duties and obligations set forth therein.

**NOW, THEREFORE**, in consideration of the execution and delivery by Beneficiary of (x) the Intercreditor Agreement, (y) the Revolving Loan Credit Agreement and (z) the Term Loan Credit Agreement and other benefits provided therein to Grantor and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor hereby covenants and agrees with Beneficiary as follows:

### **AMENDMENTS**

1. The Existing Trust Deed is hereby amended to replace the text "Driscoll Strawberry Associates" each time it appears therein with the text "Driscoll's".
2. Grantor hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that the Trust Deed, as amended by this Amendment, and each and every other document and/or instrument which evidences and/or secures payment of the Secured Obligations (as defined in the Trust Deed) represent the valid, enforceable and collectible obligations of Grantor. The Secured Obligations

secured by the Trust Deed, as amended by this Amendment, are continuing obligations and nothing contained herein shall be deemed to release, terminate or subordinate any lien, security interest or assignment created or evidenced by the Trust Deed and all such liens, security interests and assignments created or evidenced by the Trust Deed and the priority thereof shall relate back to the date that the Trust Deed was filed as referenced in the recitals above. This Amendment is not intended and shall not be deemed or construed to in any way affect the enforceability or priority of the Trust Deed or constitute a novation, termination or replacement of all or any part of the Secured Obligations.

3. This Amendment is limited as specified and other than the specific amendments contained herein shall not constitute an amendment, modification or waiver of, or otherwise affect, in any way, any other provisions of the Trust Deed.

4. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

6. It is hereby acknowledged and agreed that any reference to the "Trust Deed" in the Trust Deed shall be deemed to mean the Trust Deed as amended by this Amendment and as it may hereafter be further amended, restated, supplemented and/or otherwise modified from time to time.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their duly authorized officers as of the date first set forth above.

**BENEFICIARY:**

**AMERICAN AGCREDIT, PCA,  
in its capacity as Collateral Agent**

By: [Signature]  
Name: Edwin A. Adams, Jr.  
Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

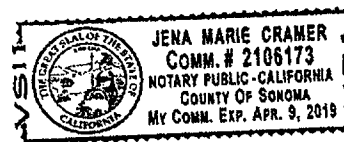
County of Sonoma

On January 12, 2017 before me, Jena Marie Cramer, personally appeared Edwin A. Adams Jr., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

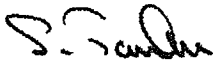
WITNESS my hand and official seal.

Signature [Signature] (Seal)



GRANTOR:

**DRISCOLL'S, INC., a California  
corporation (f/k/a Driscoll Strawberry  
Associates, Inc.)**

By:   
Name: Sanjeev Tandon  
Title: Chief Financial Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

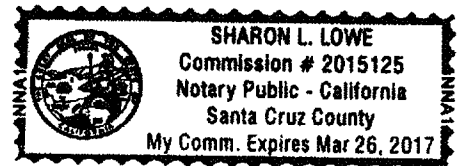
County of Santa Cruz )

On December 19, 2016, before me, Sharon L. Lowe, Notary Public, personally appeared Sanjeev Tandon, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



## **EXHIBIT A**

### **Legal Description of Property ("Land")**

#### **PARCEL A: (Orem)**

##### **PARCEL 1:**

Parcels 2 and 3 of Land Partition 16-99, said Land Partition being situated in the NW1/4, SW1/4, W1/2 SE1/4 of Section 9 and N1/2 of Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon,

ALSO

Parcel 3 of Land Partition 124-06, said Land Partition being a replat of Parcel 1 of Land Partition 16-99 and including other property, said Land Partition being situated in the NE1/4 of Section 8 and in the NW1/4 of Section 9, all in Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

##### **PARCEL 2:**

The SE1/4 SE1/4 and that portion of Government Lot 8 lying Southerly of the USBR D-10 Lateral in Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

##### **PARCEL 3:**

The following described property in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

Government Lot 13; that portion of Government Lot 9 in the NW1/4 SE1/4 and, all that portion of the W1/2 NE1/4 and of the NW1/4 lying Northerly and Easterly of Lost River, EXCEPT the following described portion thereof: That part of Government Lot 2 and of Government Lot 9 of Section 16 lying South of "J" Canal and Easterly of the new State Highway.

SAVING AND EXCEPTING from the above described property the following:

That portion of Government Lot 13 lying Easterly of a line lying 180 feet West of the East line of said lot.

Right of way conveyed to the Modoc Northern Railway Company by deed recorded in Volume 30, page 138, Deed Records of Klamath County, Oregon and recorded in Volume 34, page 528, Deed Records of Klamath County, Oregon.

Right of way conveyed to the Great Northern Railway Company by deed recorded in Volume 84 on pages 627 and 628, Deed Records of Klamath County, Oregon.

Right of way conveyed to the Great Northern Railway Company by deed recorded in Volume 85, page 322, Deed Records of Klamath County, Oregon.

Right of way conveyed to the United States of America for Lower Lost River Channel Improvement by deed recorded in Volume 261, page 168, Deed Records of Klamath County, Oregon.

AND ALSO EXCEPTING THEREFROM any portion of Parcel 3 of said Land Partition 16-99.

PARCEL 4:

The following described parcel of land in Section 8, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

All that portion of the E1/2 E1/2, Section 8, lying North and East of Lost River and South of the Southern Pacific Railroad right of way.

PARCEL 5:

The following described property in Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

That portion of the SW1/4 of said Section 9 lying Northerly and Easterly of Lost River and Southwesterly of the Southern Pacific Railroad right of way.

PARCEL 6:

That portion of Government Lot 1 in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Northerly of the USBR "J" Canal.

PARCEL 7:

All that portion of the S1/2 N1/2 SW1/4 and S1/2 SW1/4 of Section 10, and all that portion of Government Lots 2 and 3 of Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, which lies West of the West line of the 9-E-2 Drain which runs North and South through the SE1/4 SW1/4 and which lies West of the West line

of said Drain extended North to the North line of the S1/2 NE1/4 SW1/4 and South to the South line of Government Lot 2 in said Section 15.

ALSO

All that portion of the SE1/4 SW1/4 lying East of the 9-E-2 Drain in Section 10, EXCEPT THEREFROM the North 351 feet thereof and that portion of Lot 2, in Section 15, lying East of the 9-E-2 Drain and North of the North right of way line of the "J" Canal, all being in Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

ALSO

That portion of the S1/2 N1/2 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, which lies Easterly of the Northerly extension of the East line of the 9-E-2 Drain which runs North and South through the SE1/4 SW1/4 of said Section 10.

EXCEPTING THEREFROM that portion thereof in Wilson Road.

ALSO

All that portion of the property in the S1/2 NE1/4 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian in Klamath County, Oregon, not previously granted in the deeds to Orem & Son recorded 11/28/77 in Volume 77, page 23045, and recorded March 10, 1970 in Volume M70, page 1936, all in Microfilm Records of Klamath County, Oregon, lying within the boundaries of the area that would be included in the USBR 9-E-2 Drain if the West and East lines of said drain were extended North to the North line of said S1/2 NE1/4 SW1/4 of Section 10.

AND EXCEPTING THEREFROM any portion thereof lying South of the USBR Canal in the NW1/4 of Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

#### PARCEL 8

A tract of land situated in the N1/2 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the NW corner of the S1/2 N1/2 SW1/4 of said Section 10; thence East along the North line of said S1/2 N1/2 SW1/4 to the East line of the SW1/4; thence North along said East line 164 feet; thence West parallel with the North line of said S1/2 N1/2 SW1/4 to the West line of the SW1/4; thence South along said line 164 feet to the point of beginning, EXCEPTING THEREFROM that portion thereof in Wilson Road.

Exhibit A-3



**PARCEL B: (Chin)**

**PARCEL 1**

The SW1/4 SE1/4 and that portion of Lot 7 (NW1/4 SE1/4), Section 10, Township 41 South, Range 11 East of the Willamette Meridian lying Southerly of the Great Northern Railway Right of Way.

All that portion of Government Lot 1 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, lying West of the East line of the SW1/4 of the SE1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extended South to the South line of said Lot 1.

**PARCEL 2**

A portion of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range, thence South 89° 58' East 3.51 chains, more or less, to the projection of the center line of the 9-E-2 drain; thence South 34° 26' East along said center line 14.11 chains to its intersection with the North line of the S1/2 N1/2 SW1/4 of said Section 10; thence Easterly along said North line of S1/2 N1/2 SW1/4, 30.80 chains, more or less, to the East line of the SW1/4 of said Section 10; thence Northerly along the East line of the SW1/4 of said Section 10, 10 chains, more or less, to the Northeast corner of the NE1/4 SW1/4 of said Section 10; thence Westerly along the Northerly line of said NE1/4 SW1/4 to the intersection of the said Northerly line with the Southwesterly right of way line of the Great Northern Railway Company Railroad right of way; thence Northwesterly along said Southerly railroad right of way line to its intersection with the West line of said Section 10; thence Southerly along said West line of said Section 10 to the place of beginning.

EXCEPTING THEREFROM that portion described as follows: A triangular parcel of land located in the Northeast corner of the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Commencing at the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extending thence West along the Northerly line of said SW1/4 366 feet, more or less, to the intersection of said line with the Northeasterly right of way line of the Great Northern Railway; thence Southeasterly along the Northeasterly right of way line of said Railway a distance of 399 feet, more or less, to the North-South center line of said Section 10; thence North along said center line a distance of 162 feet, more or less, to the point of beginning.

ALSO EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet; thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning.

PARCEL 3

A portion of Lot 5, Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range; thence South 89° 58' East 3.51 chains, more or less, to the projection of the center line of the 9-E-2-Drain; thence South 34° 26' East along the said center line 14.11 chains to its intersection with the North line of S1/2 N1/2 SW1/4 of said Section 10; thence West along said North line to the West line of said Section 10; thence North along said West line to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet; thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning

PARCEL 4

A tract of land situated in Government Lot 5 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Being that portion of Government Lot 5 lying Northerly of the North right of way line (Easement Line) of the J Canal.

PARCEL C: (Lyons)

PARCEL 1

Parcel 2 of Land Partition 27-03, said Land Partition being a replat of Parcel 2 of Minor Partition No. 80-53, situated in the W1/2 of Section 4 and the E1/2 of Section 5, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion thereof conveyed to James E. Henry and Lillian A. Henry, as tenants by the entirety, by deed completing Property Line Adjustment 36-06 recorded December 26, 2006 in Volume 2006, page 025348, Microfilm Records of Klamath County, Oregon, described as follows:

Beginning at the Northwest corner of said Parcel 2; thence along the boundary of said Parcel 2, North 86° 00' 00" East 1127.70 feet, South 68° 10' 07" East 90.20 feet and South 87° 19' 34" East 71.17 feet; thence leaving the said boundary of Parcel 2, on the arc of a curve to the left (radius point bears South 01° 59' 12" East 1551.00 feet and central angle equals 36° 56' 28") 1000.00 feet; thence South 51° 04' 20" West 100.00 feet; thence on the arc of a curve to the left (radius point bears South 47° 29' 59" East 1000.00 feet and central angle equals 22° 41' 18") 395.98 feet; thence West 77.65 feet to a point on the West line of said Parcel 2; thence North 701.18 feet to the point of beginning, with bearings based on the plat of LAND PARTITION 27-03 on file at the office of the Klamath County Clerk.

#### PARCEL 2

Parcel 3 of Land Partition 27-03, said Land Partition being a replat of Parcel 2 of Minor Partition No. 80-53, situated in the W1/2 of Section 4 and the E1/2 of Section 5, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

#### PARCEL D: (Pope)

That portion of the NE1/4 NE1/4 of Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying South of the Burlington Northern Railroad;

ALSO Government Lot 1 and that portion of Government Lot 8 in said Section 9, lying North of the U.S.B.R. Irrigation Lateral known as the Robinson Lateral as now located and constructed, which lateral extends across said Government Lot 8 in an Easterly – Westerly direction.

EXCEPTING THEREFROM that portion thereof conveyed to Great Northern Railway Company by deed from Fred L. Pope and Dora C. Pope, his wife, dated May 27, 1931, recorded May 28, 1931 in Volume 95, page 370, Deed Records of Klamath County, Oregon

**EXHIBIT B**

**Certificate of Amendment of Amended and Restated Articles of Incorporation**

Exhibit B-1

A0789441

027/361

**Certificate of Amendment of  
Amended and Restated Articles of Incorporation of  
DRISCOLL STRAWBERRY ASSOCIATES, INC.**

**FILED**  
Secretary of State  
State of California

OCT 04 2016 *EPB*

*IPC*

*CP*

The undersigned certify that:

1. They are the **president** and the **secretary**, respectively, of DRISCOLL STRAWBERRY ASSOCIATES, INC., a California corporation.

2. Article I of the Amended and Restated Articles of Incorporation of this corporation is amended to read as follows:

The name of the corporation is:

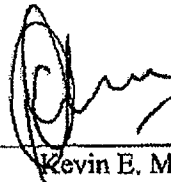
DRISCOLL'S, INC.

3. The foregoing amendment of the Amended and Restated Articles of Incorporation has been duly approved by the board of directors.

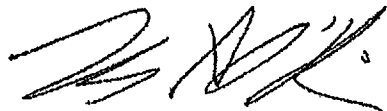
4. The foregoing amendment of the Amended and Restated Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 1,199,266. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

September 30, 2016



Kevin E. Murphy, President



Thomas A. O'Brien, Secretary