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**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**LINE OF CREDIT INSTRUMENT**

**TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND LEASES AND FIXTURE FILING**

**by and from**

**GP KLAMATH FARMLAND LAND, LLC,  
Grantor**

**to**

**FIDELITY NATIONAL TITLE COMPANY,  
Trustee**

**for the benefit of**

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

**Dated as of August 10, 2023**

**Property Name: 700 Ranch; 800 Ranch; 900 Ranch  
County: Klamath  
State: Oregon**

(A) THIS TRUST DEED IS A LINE OF CREDIT INSTRUMENT AND SECURES ALL PRESENT AND FUTURE ADVANCES MADE UNDER THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). (B) THE MAXIMUM PRINCIPAL INDEBTEDNESS AMOUNT TO BE ADVANCED PURSUANT TO THE LOAN DOCUMENTS IS TWO HUNDRED FIFTY MILLION DOLLARS (\$250,000,000). (C) THE MAXIMUM AGGREGATE PRINCIPAL INDEBTEDNESS AMOUNT TO BE ADVANCED PURSUANT TO THE LOAN DOCUMENTS MAY BE EXCEEDED BY ADVANCES TO COMPLETE CONSTRUCTION PURSUANT TO ORS 86.155(2)(C). (D) THE TERM OR MATURITY DATE, IF ANY, UNDER THE LOAN DOCUMENTS, EXCLUSIVE OF ANY OPTION TO RENEW OR EXTEND SUCH TERM OR MATURITY DATE WITH RESPECT TO THE TERM LOANS AND REVOLVING LOANS UNDER THE CREDIT AGREEMENT, IS AUGUST 10, 2028

ATTENTION: COUNTY RECORDER: THIS DEED OF TRUST COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS DEED OF TRUST SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL

**PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF GRANTOR (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THE FIRST PARAGRAPH OF THIS DEED OF TRUST.**

Unofficial  
Copy

**LINE OF CREDIT INSTRUMENT  
TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND LEASES AND FIXTURE FILING**

**THIS TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (this “**Deed of Trust**”) is dated as of August 10, 2023 by and from GP KLAMATH FARMLAND LAND, a Delaware limited liability company (“**Grantor**”), whose address is 14271 Jeffrey Road #315, Irvine, CA 92620, to FIDELITY NATIONAL TITLE COMPANY, a Florida Corporation (“**Trustee**”), with an address at 555 S. Flower Street, Suite 4420, Los Angeles, CA 90071, for the benefit of AMERICAN AGCREDIT, PCA, as collateral agent (together with its successors and assigns, in such capacity, “**Collateral Agent**”) for and representative of the Secured Parties (hereinafter defined), having an address at 5560 South Broadway, Eureka, California 95503 (Collateral Agent, together with its successors and assigns, “**Beneficiary**”).

**RECITALS**

WHEREAS, pursuant to that certain Credit Agreement, dated as of August 10, 2023 (as amended, restated, amended and restated or otherwise modified from time to time, the “**Credit Agreement**”), by and among GEM-PACK BERRIES, LLC, a Delaware limited liability company (the “**Borrower**”), as borrower, the lenders and issuing lenders party thereto from time to time (the “**Lenders**”), and American AgCredit, PCA, as administrative agent and collateral agent for such Lenders (in such capacity, the “**Agent**”), the Lenders have made certain loans and other extensions of credit to the Borrower (collectively, the “**Facility**”) upon the terms and subject to the conditions set forth therein.

WHEREAS, Grantor is the owner of fee simple title to the Trust Property (hereinafter defined).

WHEREAS, Grantor is a wholly-owned subsidiary of Borrower and is a Guarantor of Borrower’s obligations under the Loan Documents pursuant to that certain Subsidiary Guaranty of even date herewith (“**Subsidiary Guaranty**”) and Grantor is required by the Credit Agreement to execute and deliver this Deed of Trust as security for the Secured Obligations as defined herein which Grantor is willing to do in consideration of the agreement of the Lenders to make the Facility available to Borrower pursuant to the terms of the Credit Agreement.

WHEREAS, it is a condition to the obligation of the Lenders to enter into the Credit Agreement and to make their respective extensions of credit to the Borrower under the Credit Agreement that Grantor shall have executed and delivered this Deed of Trust to Beneficiary, for the benefit of the Secured Parties.

NOW THEREFOR, as security for the Secured Obligations (hereinafter defined) and in consideration of the payment of ten dollars (\$10.00) and other benefits accruing to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows.

**ARTICLE 1  
DEFINITIONS**

**Section 1.1. Definitions.** Unless noted otherwise, all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) “**Event of Default**” means any “Event of Default”, as such term is defined in the Credit Agreement.

(b) “**Excluded Assets**” shall mean all Excluded Accounts, as defined in the Security Agreement, and all other assets specifically excluded from the definition of “Collateral” in the Security Agreement.

(c) **“Loan Documents”** means, collectively, the “Loan Documents” as defined in the Credit Agreement.

(d) **“Permitted Encumbrances”** has the meaning set forth in the Credit Agreement.

(e) **“Secured Obligations”** has the meaning set forth for “Obligations” in the Credit Agreement and shall include, without limitation, as to Grantor (x) all of the “Obligations” under and as defined in the Credit Agreement and each of the other Loan Documents executed in connection therewith (including, without limitation, the payment and performance of all obligations and liabilities of each “Grantor” thereunder (whether now existing or hereafter arising)), (y) all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with any Secured Party in connection with any Secured Obligation.

Notwithstanding anything to the contrary in this Deed of Trust, this Deed of Trust secures only the Secured Obligations of Grantor and does not secure any obligations or liabilities of any other Person.

(f) **“Secured Parties”** means, without limitation, the Administrative Agent, the Collateral Agent, the Swap Counterparties and the Lenders (including, for the avoidance of doubt, any L/C Issuers).

(g) **“Security Agreement”** means the Security Agreement dated as of August 10, 2023, by the Borrower, the other Grantors (as defined therein) party thereto from time to time, and the Collateral Agent, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

(h) **“Trust Property”** means all of Grantor’s right, title and interest in and to (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Grantor (the **“Land”**), (2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**; the Land and Improvements are collectively referred to as the **“Premises”**), (3) all materials, supplies, equipment, fixtures, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (including, but not limited to, all furniture, furnishings, apparatus, machinery, vats, bottling lines, racks, racking equipment, storage equipment, tanks, conveyors, testing and monitoring equipment, cooperage equipment, gas equipment, electric equipment, power equipment and other equipment, engines, pipes, pumps, motors, elevators, fittings, radiators, ranges, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, communications apparatus, awnings, shades, all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment) (the **“Personalty”**), (5) all reserves, escrows or impounds required under the Loan Documents and all deposit accounts maintained by Grantor with respect to the Trust Property (the **“Deposit Accounts”**), (6) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Trust Property, together with all related security and other deposits (the **“Leases”**), (7) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable

by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Trust Property (the “**Rents**”), (8) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Trust Property (the “**Property Agreements**”), (9) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances, mineral rights, oil and gas rights, air rights, farm products, livestock, vines, trees, bulbs, flowers and other plants, growing stock, crops, fruits, berries and crops of nursery products, of any size, any age and any species, whether now located in or on or hereafter planted or growing in or on the Land, Water Assets, including without limitation and to the extent not already covered by the definition thereof, all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with the Land, whether decreed or undecreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in any water, canal, ditch or reservoir company, and all well permits, water service contracts, drainage rights and other evidence of such rights appertaining to the foregoing, (10) all property tax refunds (the “**Tax Refunds**”), (11) to the extent associated with the Land, Improvements, Fixtures or Personalty, all carbon credits, carbon sequestration units, carbon financial instrument contracts, renewal energy credits and the like, now or hereafter created, produced or acquired, arising out of methane capture, carbon sequestration and renewal energy systems, including without limitation credits tradable under any greenhouse gases commodity exchange such as, by way of example and not limitation, trading units commonly referred to as Exchange Soil Offsets (XSOs), Exchange Methane Offsets (XMOs) and Exchange Forest Offsets (XFOs) under the Chicago Climate Exchange (CCX) (the “**Carbon Credits**”), (12) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”), (13) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the “**Insurance**”), (14) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty (the “**Condemnation Awards**”) and (15) all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Trust Property, hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor on the Land, and all conversions of the security constituted thereby (the “**After Acquired Property Interests**”). As used in this Deed of Trust, the term “Trust Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein. The listing of specific rights or property shall not be interpreted as a limitation of general terms. Notwithstanding the foregoing, the term “Trust Property” shall not include, and no Lien or security interest shall be granted or shall attach to, any Excluded Assets.

(i) “**UCC**” means the Uniform Commercial Code of Oregon or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Oregon, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

(j) “**Water Assets**” means all right, title, and interest at any time of Grantor (or any of its bailees, agents or instrumentalities), whether now existing or hereafter arising or acquired, whether direct or indirect, whether owned legally, of record, equitably or beneficially, whether constituting real or personal property (or subject to any other characterizations), whether created or authorized under existing or future laws or regulations and however arising to utilize water on the Land, including without limitation, the following insofar as they relate to, or provide the right to use water on, the Land:

1. All water (including any water inventory in storage), water rights and entitlements, other rights to water and other rights to receive water or water rights of every kind or nature whatsoever including (i) the groundwater on, under, pumped from or otherwise available to the Trust Property, whether as the result of groundwater rights, contractual rights or otherwise, (ii) Grantor’s right to remove and extract any such groundwater including any permits, rights or

licenses granted by any Government Authority or agency or any rights granted or created by any use, easement, covenant, agreement, or contract with any person or entity, (iii) any rights to which the Land is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive, decreed or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water, (iv) any water, water right, water allocation, distribution right, delivery right, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Land by virtue of the Land being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity;

2. All stock, interest or rights (including any water allocations, voting or decision rights) in any entity, together with any and all rights from any entity or other person to acquire, receive, exchange, sell, lease, or otherwise transfer any Water Assets, to store, deposit or otherwise create water credits in a water bank or similar or other arrangement for allocating water, to transport or deliver water, or otherwise to deal with any Water Asset;

3. All licenses, permits, approvals, contracts, decrees, rights and interests to acquire or appropriate any Water Assets, water bank or other credits evidencing any right to Water Assets, to store, carry, transport or deliver Water Assets, to sell, lease, exchange, or otherwise transfer any Water Asset, or to change the point for diversion of water, the location of any Water Asset, the place of use of any Water Asset, or the purpose of the use of any Water Asset;

4. All rights, claims, causes of action, judgments, awards, and other judicial, arbiter or administrative relief in any way relating to any Water Asset;

5. All storage and treatment rights for any Water Asset, whether on or off the Land or other property of Grantor, together with all storage tanks, and other equipment used or usable in connection with such storage and any water bank deposit credits, deposit accounts or other rights arising on account of the storage or nonuse of any Water Asset;

6. All rights to transport, carry, allocate or otherwise deliver Water Assets by any means wherever located;

7. All systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Trust Property;

8. All guaranties, warranties, marketing, management or service contracts, indemnity agreements, and water right agreements, other water related contracts and water reallocation rights, all insurance policies regarding or relating to any Water Asset, to the extent transferable; and

9. All rents, issues, profits, proceeds and other accounts, instruments, chattel paper, contract rights, general intangibles, deposit accounts, and other rights to payment arising from or on account of any use, nonuse, sale, lease, transfer or other disposition of any Water Asset.

References to “water” and “water rights” are used herein in the broadest and most comprehensive sense of the term(s). The term “water” includes water rights and rights to water or whatever rights to money, proceeds, property or other benefits are exchanged or received for or on account of any Water Assets or any conservation or other nonuse of water, including whatever rights are achieved by depositing one’s share of any Water Assets in any water bank or with any water authority, or any other water reallocation rights.



## ARTICLE 2

### GRANT

**Section 2.1. Grant.** To secure the full and timely payment and performance of the Secured Obligations of Grantor, Grantor GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, to Trustee the Trust Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Trust Property, IN TRUST, WITH POWER OF SALE, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND (i) the title to the Trust Property unto Beneficiary and its successors and assigns, subject only to Permitted Encumbrances and (ii) the validity and priority of the Lien of this Deed of Trust, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever, for so long as any of the Secured Obligations remain outstanding.

## ARTICLE 3

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1. Title to Trust Property and Lien of this Instrument.** Grantor has good and marketable title to the Trust Property free and clear of any Liens, except the Permitted Encumbrances. This Deed of Trust creates valid and enforceable Liens against the Trust Property, subject to Permitted Encumbrances.

**Section 3.2. Payment and Performance.** To the extent not paid and performed by Borrower, Grantor shall pay and perform the Secured Obligations in full when they are required to be paid and performed under the Loan Documents.

**Section 3.3. Inspection.** Grantor shall permit Beneficiary and the other Secured Parties, and their respective agents, representatives and employees, upon reasonable prior written notice to Grantor and subject to the rights of tenants, to inspect the Trust Property in accordance with the terms of the Loan Documents.

**Section 3.4. Payment of Taxes and Other Obligations.**

(a) Grantor will pay and discharge from time to time prior to the time when the same shall become delinquent, and before any interest or penalty accrues thereon or attaches thereto, all taxes and other obligations with respect to the Trust Property or any part thereof or upon the Rents from the Trust Property or arising in respect of the occupancy, use or possession thereof in accordance with, and to the extent required by, the Loan Documents.

(b) In the event of the passage of any state, Federal, municipal or other governmental law, order, rule or regulation subsequent to the date hereof (i) deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or in any manner changing or modifying the laws now in force governing the taxation of this Deed of Trust or debts secured by mortgages or deeds of trust (other than laws governing income, franchise and similar taxes generally) or the manner of collecting taxes thereon and (ii) imposing a tax to be paid by Beneficiary, either directly or indirectly, on this Deed of Trust or any Loan Documents, or requiring an amount of taxes to be withheld or deducted therefrom, Grantor will promptly (i) notify Beneficiary of such event, (ii) enter into such further instruments as Beneficiary may determine are reasonably necessary or desirable to obligate Grantor to make any additional payments necessary to put the Secured Parties in the same financial position they would have been if such law, order, rule or regulation had not been passed and (iii) make such additional payments to Beneficiary for the benefit of the Secured Parties.

**Section 3.5. Maintenance and Preservation of Trust Property.** Subject to the provisions of the Loan Documents, Grantor covenants:

(a) to keep the Trust Property in good condition and repair, reasonable wear and tear excepted;

(b) except with Beneficiary's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, not to remove, demolish or materially alter any portion of the Improvements if such removal, demolition or alteration shall substantially decrease the value of the Improvements, except to the extent that any Lease allows the tenant to perform such removal, demolition, or alteration without the consent of Grantor;

(c) not to initiate or acquiesce in any change in any zoning or other land classification which affects the Trust Property without the prior written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed;

(d) to restore promptly and in good workmanlike manner any portion of the Improvements which may be damaged or destroyed;

(e) to comply with in all material respects and not to knowingly permit any material violation of any or all of the following which govern acts or conditions on, or otherwise affect the Trust Property: (1) laws, ordinances, regulations, standards and judicial and administrative rules and orders; and (2) covenants, conditions, restrictions and equitable servitudes, whether public or private;

(f) not to commit or permit material physical waste of the Trust Property (ordinary wear and tear excepted); and

(g) in the Grantor's reasonable business judgment, to do all other acts which from the character or use of the Trust Property may be reasonably necessary to maintain and preserve its value.

**Section 3.6. Required Insurance; Use of Proceeds.** Grantor will, at its expense, at all times provide, maintain and keep in full force and effect policies of property, hazard and liability insurance in accordance with the Loan Documents with respect to the Trust Property, together with statutory workers' compensation insurance with respect to any work to be performed on or about the Trust Property. If any portion of the Improvements is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or any successor thereto or other applicable agency, Grantor shall purchase flood insurance in an amount satisfactory to Beneficiary, but in no event less than the maximum limit of coverage available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, each as amended from time to time. Grantor shall give prompt written notice to Beneficiary of the occurrence of any damage to or destruction of the Improvements (which term as used in this Section 3.6 shall include Fixtures). In the event of foreclosure of the lien of this Deed of Trust or other transfer of title or assignment of the Trust Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Grantor in and to all proceeds then payable under any policy of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Grantor, or the purchaser or grantor of the Trust Property. Beneficiary shall have the right to participate in and approve the settlement of any claim made by Grantor against any insurance company, which approval shall not be unreasonably withheld, conditioned or delayed.

**Section 3.7. Other Covenants.** All of the covenants by Grantor in the Loan Documents are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.



### **Section 3.8. Condemnation Awards and Insurance Proceeds.**

(a) Condemnation Awards. Subject to the terms of the Loan Documents, Grantor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor.

(b) Insurance Proceeds. Subject to the terms of the Loan Documents, Grantor assigns to Beneficiary all proceeds of any insurance policies maintained by Grantor insuring against loss or damage to the Trust Property. Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly.

**Section 3.9. Transfer or Encumbrance of the Trust Property.** Grantor shall not, except as and to the extent permitted in the Loan Documents, sell, convey, alienate, mortgage, encumber, pledge, lease or otherwise transfer the Trust Property or any part thereof, or permit the Trust Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged, leased or otherwise transferred; provided that the foregoing will not restrict Grantor from entering into Leases of the Trust Property (or a portion thereof) or amendments or modifications to Leases, in the ordinary course of business, so long as any such Lease, after giving effect thereto, will not (i) have a material adverse effect on the use of the Trust Property for its primary intended use; (ii) materially adversely affect the marketability of the Trust Property; (iii) materially adversely affect legal or physical access to the Trust Property; (iv) materially violate any local, state or federal laws; or (v) materially and adversely affect the insurability of title to the Trust Property. Upon request of the Collateral Agent, Grantor shall promptly request and use commercially reasonable efforts to obtain from the tenant under any Lease an estoppel certificate to the Collateral Agent and such documentation as may be necessary to cause the Lease to be subordinated to the Liens under the Collateral Documents, in each case, pursuant to documentation reasonably satisfactory to the Collateral Agent.

**Section 3.10. After Acquired Property Interests.** All After Acquired Property Interests, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further deed of trust, conveyance, assignment or other act by Grantor, shall become subject to the Lien of this Deed of Trust (as provided in the granting clauses hereof) as fully and completely, and with the same effect, as though owned by Grantor on the date hereof and specifically described in the granting clauses hereof. Grantor shall execute and deliver to Beneficiary all such other assurances, deeds of trust, conveyances or assignments thereof as Beneficiary may reasonably require for the purpose of expressly and specifically subjecting such After Acquired Property Interests to the Lien of this Deed of Trust. Grantor hereby irrevocably authorizes and appoints Beneficiary as the agent and attorney-in-fact of Grantor, following the occurrence and during the continuance of an Event of Default, to execute all such documents and instruments on behalf of Grantor, which appointment shall be irrevocable and coupled with an interest.

## **ARTICLE 4**

### **DEFAULT AND FORECLOSURE**

**Section 4.1. Remedies.** If an Event of Default has occurred and is continuing, Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise, subject to applicable law, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Declare the Secured Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Entry on Trust Property. Enter the Trust Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Grantor remains in possession of the Trust Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) Operation of Trust Property. Hold, lease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 4.7 of this Deed of Trust.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by power of sale, in which case the Trust Property may be sold for cash or credit in one or more parcels as Beneficiary may determine. With respect to any notices required or permitted under the UCC, Grantor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary or any of the other Secured Parties may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Secured Obligations in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisal of the Trust Property is waived.

(e) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Secured Obligations, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7 of this Deed of Trust.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

**Section 4.2. Separate Sales.** The Trust Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 4.3. Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary, the other Secured Parties, and Trustee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Loan Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, the other Secured Parties, or Trustee, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee or the other Secured Parties in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 4.4. Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Trust Property. For payment of the Secured Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 4.5. Waivers and Releases.** To the fullest extent permitted by law, Grantor, for itself and all who may claim under it, hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, (c) any right to a marshalling of assets or a sale in inverse order of alienation, (d) any right to appraisal or valuation of any portion of the Trust Property, and (e) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption or sale of the Trust Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency. Each successor and assign of Grantor, including, without limitation, a holder of a Lien subordinate to the Lien created hereby (without implying that Grantor has, except as expressly provided herein, a right to grant an interest in, or a subordinate Lien on, the Trust Property), by acceptance of its interest or Lien agrees that it shall be bound by the above waiver, as if it gave the waiver itself.

**Section 4.6. Discontinuance of Proceedings.** If Beneficiary, the other Secured Parties, or Trustee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary, the other Secured Parties, or Trustee, as the case may be, shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary, the other Secured Parties, and Trustee shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary, the other Secured Parties, and Trustee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary, the other Secured Parties, or Trustee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 4.7. Application of Proceeds.** Subject to the provisions of the Loan Documents, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

**Section 4.8. Occupancy After Foreclosure.** Any sale of the Trust Property or any part thereof in accordance with Section 4.1(d) will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 4.9. Additional Advances and Disbursements; Costs of Enforcement; Indemnity.**

(a) If any Event of Default has occurred and is continuing, Beneficiary and each of the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary or any other Secured Party under this Section 4.9, or otherwise under this Deed of Trust or any of the Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Secured Obligations, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all actual out-of-pocket expenses (including reasonable attorneys' fees and expenses, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy (including, without limitation, any adversary proceeding, contested matter or motion) or otherwise) reasonably incurred by Beneficiary in connection with the perfection and enforcement of this Deed of Trust and the Loan Documents, or the enforcement, compromise or settlement of the Secured Obligations or any claim under this Deed of Trust and the Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise. All amounts due under this Section 4.9 shall be payable within five (5) Business Days after Grantor's receipt of written demand therefor. Grantor's obligations under this Section 4.9 shall survive the termination of the Loan Documents and payment of the obligations thereunder.

**Section 4.10. No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary, any other Secured Party, or Trustee to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary, any Secured Party, or Trustee to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 5**  
**ASSIGNMENT OF RENTS AND LEASES**

**Section 5.1. Assignment.** In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Grantor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Secured Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice to Grantor by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor to the extent permitted by applicable law). Additionally, while any Event of Default exists Beneficiary shall be entitled to: (a) notify any person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Trust Property; (b) settle, compromise, release, extend the



time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Trust Property; (e) lease all or any part of the Trust Property; and/or (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. Grantor hereby irrevocably authorizes and directs each tenant under any Lease to rely upon any written notice of an Event of Default sent by Beneficiary to any such tenant and thereafter to pay Rents to Beneficiary, without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from Grantor, who shall have no right or claim against any such tenant for any such Rents so paid to Beneficiary.

**Section 5.2. Perfection Upon Recordation.** Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Grantor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 5.3. Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 5.4. No Merger of Estates.** So long as part of the Secured Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Trust Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise.

## **ARTICLE 6**

### **SECURITY AGREEMENT**

**Section 6.1. Security Interest.** This Deed of Trust constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Carbon Credits, Proceeds, Insurance and Condemnation Awards and all other Trust Property which is personal property under the UCC. To this end, Grantor grants to Beneficiary a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Carbon Credits, Proceeds, Insurance, Condemnation Awards and all other Trust Property which is personal property to secure the payment and performance of the Secured Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Carbon Credits, Proceeds, Insurance and Condemnation Awards and all other Trust Property which is personal property sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor.



**Section 6.2. Financing Statements.** Grantor shall execute (to the extent execution is required by applicable law) and deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor hereby irrevocably authorizes Beneficiary to cause any financing statements (and amendments thereto and continuations thereof) to be filed, at such times and places and in such jurisdictions and in such filing offices as Beneficiary may determine are necessary or advisable to perfect the security interests granted to Beneficiary in connection herewith. Such financing statements may describe the collateral in the same manner as described in this Deed of Trust or may contain an indication or description of collateral that describes such property in any other manner as Beneficiary may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the collateral granted to Beneficiary in connection herewith, including, without limitation, describing such property as "all assets of the debtor whether now owned or hereafter acquired" or words of similar meaning.

**Section 6.3. Fixture Filing.** This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust. Grantor is the record owner of the real property on which goods are or are to become fixtures.

## **ARTICLE 7**

### **CONCERNING THE TRUSTEE**

**Section 7.1. Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties and to reasonable compensation for Trustee's services hereunder as shall be rendered. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of Trustee; however, Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's gross negligence or willful misconduct. Grantor's obligations under this Section 7.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

**Section 7.2. Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 7.3. Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

**Section 7.4. Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 7.5. Trustee Liability.** In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise.

**Section 7.6. Acceptance by Trustee.** Trustee accepts the trust created by this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as required by applicable law.

## **ARTICLE 8 MISCELLANEOUS**

**Section 8.1. Notices.** All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

if to Trustee or Beneficiary, to it at:

c/o American AgCredit, PCA  
5560 South Broadway  
Eureka, CA 95503  
Attention: Gem-Pack Assigned Servicer  
Telephone: 707-445-8871  
E-mail: [corporate-operations@agloan.com](mailto:corporate-operations@agloan.com)

with a copy to:

White & Case LLP  
555 South Flower Street, Suite 2700  
Los Angeles, CA 90071  
Attention: Brenda Dieck, Esq.  
Telephone: (213) 620-7717  
E-mail: [bdieck@whitecase.com](mailto:bdieck@whitecase.com)

if to Grantor, to it at:

c/o Gem-Pack Berries, LLC  
14271 Jeffrey Road #315  
Irvine, CA 92620  
Attention: Michael D. Etchandy  
Telephone: (949) 861-4919  
E-mail: [mike@gem-packberries.com](mailto:mike@gem-packberries.com)

With a copy to:

Rutan & Tucker LLP

18575 Jamboree Road, Suite 900  
Irvine, California 92612  
Attention: Shige Itoh  
Email: [sitoh@rutan.com](mailto:sitoh@rutan.com)

**Section 8.2. Covenants Running with the Land.** All obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Trust Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property. All Persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 8.3. Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) Business Days after Grantor's receipt of written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Carbon Credits, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Trust Property, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Secured Obligations and shall bear interest at the rate or rates at which interest is then computed on the Secured Obligations; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 8.3.

**Section 8.4. Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, the other Secured Parties, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or Secured Obligations hereunder.

**Section 8.5. No Waiver.** Any failure by Beneficiary, the other Secured Parties or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary, the other Secured Parties or Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 8.6. Release or Reconveyance.**

(a) At such time as all Secured Obligations have been paid in full, Beneficiary, at Grantor's sole expense, shall release the Liens created by this Deed of Trust or reconvey the Trust Property to Grantor (in each case without recourse to, or representation or warranty by, Beneficiary).

(b) If any of the Trust Property shall be sold or otherwise disposed of by Grantor in a transaction permitted by the Credit Agreement, then Beneficiary, at the request and sole expense of Grantor,

shall, within a commercially reasonable period of time but in all events at or prior to the closing of such sale or transfer, execute and deliver to Grantor all releases or reconveyances (in each case without recourse to, or representation or warranty by, Beneficiary) reasonably necessary or desirable to evidence the release of the Liens created hereby on such Trust Property.

**Section 8.7. Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Secured Obligations secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary, the other Secured Parties or Trustee.

**Section 8.8. Applicable Law.** This Deed of Trust of Trust shall be governed by, and construed in accordance with, the laws of the State of Oregon.

**Section 8.9. Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 8.10. Entire Agreement.** This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 8.11. Beneficiary as Collateral Agent.** Collateral Agent has been appointed to act as Collateral Agent hereunder by the other Secured Parties. Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Deed of Trust with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting from or arising out of this Deed of Trust shall, as between the Collateral Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and Grantor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and Grantor shall not be under any obligation, or entitlement to make any inquiry respecting such authority.

**Section 8.12. Partial Invalidity.** If any of the provisions of this Deed of Trust or the application thereof to any person, party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

**Section 8.13. [Reserved]**

**Section 8.14. [Reserved]**

**Section 8.15. Multisite Real Estate Transaction.** Grantor acknowledges that this Deed of Trust is one of a number of other deeds of trust and security documents that secure the Secured Obligations. Grantor agrees that the lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Beneficiary of any security for or guarantees of any of the Secured Obligations hereby secured, or by any



failure, neglect or omission on the part of Beneficiary to realize upon or protect any Secured Obligation or indebtedness hereby secured or any collateral security therefor including the other deeds of trust and other security documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Secured Obligations secured or of any of the collateral security therefor, including the other deeds of trust and other security documents or of any guarantee thereof, and Beneficiary may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the other deeds of trust and other security documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Beneficiary's rights and remedies under any or all of the other deeds of trust and other security documents shall not in any manner impair the indebtedness hereby secured or the lien of this Deed of Trust and any exercise of the rights or remedies of Beneficiary hereunder shall not impair the lien of any of the other deeds of trust and other security documents or any of Beneficiary's rights and remedies thereunder. Grantor specifically consents and agrees that Beneficiary may exercise its rights and remedies hereunder and under the other deeds of trust and other security documents separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

**Section 8.16. Future Advances.** This Deed of Trust is given to secure the Secured Obligations under, or in respect of, the Loan Documents and shall secure not only Secured Obligations with respect to presently existing indebtedness under the foregoing documents and agreements but also any and all other obligations which may hereafter be owing to the Secured Parties under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, whether such advances or obligations are obligatory or to be made at the option of the Secured Parties, or otherwise, to the same extent as if such future advances or obligations were made on the date of the execution of this Deed of Trust. The lien of this Deed of Trust shall be valid as to all Secured Obligations secured hereby, including future advances and obligations, from the time of its filing for record in the recorder's office of the county in which the Trust Property is located. This Deed of Trust is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby and Liens permitted under the Loan Documents related thereto. Although this Deed of Trust is given to secure all future advances and obligations made by Beneficiary and/or the other Secured Parties to or for the benefit of Grantor and any other Grantor and/or the Trust Property, whether obligatory or optional, Grantor and Beneficiary hereby acknowledge and agree that Beneficiary and the other Secured Parties are obligated by the terms of the Loan Documents to make certain future advances or obligations, including advances of a revolving nature, subject to the fulfillment of the relevant conditions set forth in the Loan Documents.

**Section 8.17. Consent to Jurisdiction and Service of Process; Waiver of Jury Trial.**

**(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, RELATING TO THIS DEED OF TRUST MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SAN FRANCISCO COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, AND GRANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. GRANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE**



JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS DEED OF TRUST OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT BENEFICIARY OR ANY OTHER SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION, LITIGATION OR PROCEEDING RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT AGAINST GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, THE COURTS OF THE STATE WHERE THE TRUST PROPERTY IS LOCATED.

(b) GRANTOR HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION, LITIGATION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION. GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) GRANTOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE CREDIT AGREEMENT. NOTHING IN THIS DEED OF TRUST WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.17. WITHOUT LIMITATION OF THE FOREGOING, THE PROVISIONS OF SECTION 10.17 OF THE CREDIT AGREEMENT IN EFFECT ON THE DATE HEREOF, EACH PERTAINING TO JUDICIAL REFERENCE, ARE INCORPORATED HEREIN BY REFERENCE AS IF FULLY STATED HEREIN AND SHALL APPLY TO ANY ACTION OR PROCEEDING RELATED IN ANY MANNER HERETO OR THE TRANSACTIONS CONTEMPLATED HEREBY.

## **ARTICLE 9**

### **LOCAL LAW PROVISIONS**

**Section 9.1. Conflicts or Inconsistencies; Statutory and Codal Provisions.** In the event of a conflict or any inconsistency between the terms and provisions of this Article 9 and the terms and provisions of the rest of this Deed of Trust, the terms and provisions of this Article 9 shall govern and control. All references in this Deed of Trust to State of Oregon statutory or codal provisions include any subsequent amendments to such statutory or codal provisions and, if any such statutory or codal provision is superseded by another statute or codal provision, the successor statute or codal provision.

**Section 9.2. OREGON NOTICES.**

(a) Under Oregon law (if it were applicable for any reason, contrary to the parties' choice of law), Beneficiary is (or may be) required to advise Grantor that for non-consumer, non-credit card loans, an agreement, promise or commitment (i) to lend money, (ii) to otherwise extend credit, (iii) to forbear with respect to the repayment of any debt payable in money, (iv) to modify or amend the terms under which the person has lent money or otherwise extended credit, (v) to release any guarantor or cosigner, or (vi) to make any other financial accommodation pertaining to an existing debt or other extension of credit, is void and therefore unenforceable, unless such agreement is in writing, expresses consideration and is signed by the party to be charged. In compliance with this law, please read carefully and, by execution of this Deed of Trust, Grantor acknowledges receipt and understanding of the following statement made pursuant to ORS 41.580:

**UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY BENEFICIARY CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY TO BE ENFORCEABLE.**

(b) Under Oregon law (if it were applicable, contrary to the parties' choice of law), Beneficiary also is (or may be) required to notify Grantor of certain matters related to Beneficiary's right to place insurance on the property that is collateral for our loan in certain circumstances. In compliance with this law, please read carefully and, by execution of this Deed of Trust, Grantor acknowledges receipt and understanding of the following warning made pursuant to ORS 746.201:

**WARNING:**

**UNLESS GRANTOR PROVIDES BENEFICIARY WITH EVIDENCE OF INSURANCE COVERAGE AS REQUIRED BY THIS DEED OF TRUST AND THE CREDIT AGREEMENT, BENEFICIARY MAY PURCHASE INSURANCE AT GRANTOR'S EXPENSE TO PROTECT BENEFICIARY'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT GRANTOR'S INTEREST. IF THE TRUST PROPERTY BECOMES DAMAGED, THE COVERAGE BENEFICIARY PURCHASES MAY NOT PAY ANY CLAIM GRANTOR MAKES OR ANY CLAIM MADE AGAINST GRANTOR. GRANTOR MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT GRANTOR HAS OBTAINED COVERAGE ELSEWHERE.**

**GRANTOR IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY BENEFICIARY PURSUANT TO THE TERMS OF THIS SECTION 9.2. THE COST OF THIS INSURANCE WILL BE TREATED AS AN EXPENSE AND REIMBURSED TO BENEFICIARY IN ACCORDANCE WITH THE CREDIT AGREEMENT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE GRANTOR'S PRIOR COVERAGE LAPSED OR THE DATE GRANTOR FAILED TO PROVIDE PROOF OF COVERAGE.**

**THE COVERAGE BENEFICIARY PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE GRANTOR CAN OBTAIN ON ITS OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

**Section 9.3. Foreclosure.** Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In the event that this Deed of Trust is foreclosed by judicial procedure, Beneficiary shall be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy such judgment, execution may issue for any amounts by which the unpaid balance of the Secured Obligations secured by this Deed of Trust exceeds the net sale proceeds payable to Beneficiary, subject to any exculpatory provisions set forth in the Loan Documents.

**Section 9.4. Warranty of Business Purpose.** Grantor warrants that the proceeds of the loan represented by the above described Loan Documents and this Deed of Trust are for an organization or are for business purposes, not primarily for personal, family or household purposes.

**Section 9.5. Non-Residential Deed of Trust.** Grantor covenants, represents and warrants to Beneficiary that this Deed of Trust is not, and will not at any time, constitute a "residential trust deed" as that term is defined in ORS 86.705(6), and the provisions of ORS 86.705 through 86.815 applicable to the foreclosure of commercial trust deeds shall apply to this Deed of Trust at the option of Beneficiary.

**Section 9.6. Maturity Date.** The term or maturity date, if any, under the Loan Documents, exclusive of any option to renew or extend such term or maturity date with respect to the Term Loans and the Revolving Loans under the Credit Agreement, is August 9<sup>1</sup>, 2028.

*[The remainder of this page has been intentionally left blank]*

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<sup>1</sup> To be 5 years after the Closing Date.

IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

GRANTOR:

GP KLAMATH FARMLAND LAND,  
LLC,  
a Delaware limited liability company

By: GEM-PACK BERRIES, LLC  
its sole member

By: \_\_\_\_\_  
Name: Michael D. Etchandy  
Title: Manager

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.

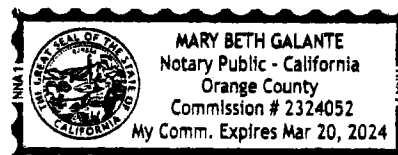
State of CALIFORNIA  
County of ORANGE

On 8/2 2023 before me, Mary BETH GALANTE  
(insert name and title of the officer)  
personally appeared Michael D. Etchandy, 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 Mary Beth Galante (Seal)



IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

**GRANTOR:**

**GP KLAMATH FARMLAND LAND, LLC,**  
a Delaware limited liability company

By: GEM-PACK BERRIES, LLC  
its sole member

By: \_\_\_\_\_  
Name: Michael D. Etchandy  
Title: Manager

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 Orange

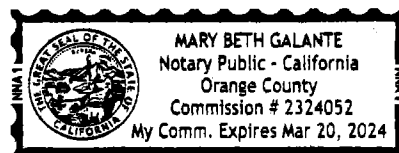
On 8/2 2023 before me, MARY BETH GALANTE  
(insert name and title of the officer)

personally appeared Michael D. Etchandy, 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 Mary Beth Galante (Seal)






IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

**GRANTOR:**

**GP KLAMATH FARMLAND LAND,  
LLC,**  
a Delaware limited liability company

By: GEM-PACK BERRIES, LLC  
its sole member

By:   
Name: Michael D. Etchandy  
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State of CALIFORNIA  
County of ORANGE

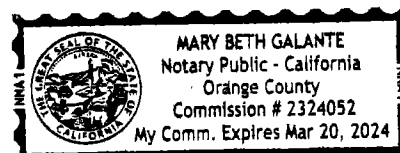
On 8/2 2023 before me, MARY BETH GALANTE  
(insert name and title of the officer)

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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 Mary Beth Galante (Seal)



**Exhibit A**  
**Legal Description**

[Attached]

Unofficial  
Copy

## EXHIBIT "A"

592353AM

PARCEL A: (4111-00800-01700)

Government Lot 6 of Section 8, Township 41 South, Range 11 East, of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM any portion thereof lying within the boundaries of Malone Road.

PARCEL B: (3811-00000-02800; 3811-00000-02900; 3811-00000-3000)

The S1/2 of the NW1/4 and the N1/2 of the SW1/4, Section 23, Township 38 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL C: (3811-V1200-00500; 3811-00700-00602)

Parcel 2 of Land Partition 22-94 being a portion of Parcel 1 of Minor Land Partition 79-134, situated in Government Lots 2 and 3 of Section 7, Township 38 South, Range 11 East of the Willamette Meridian, and the SE1/4 NE1/4 and NE1/4 SE1/4 of Section 12, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL D: (3811-V1200-00400)

The S1/2 NW1/4, SW1/4 NE1/4 Section 12, Township 38 South Range 11 1/2 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM any portion of Bliss Road.

PARCEL E: (3811-V1200-00600, 3811-V1300-00200)

The SW1/4, W1/2 SE1/4 and the SE1/4 SE1/4 of Section 12, Township 38 South, Range 11 1/2 East of the Willamette Meridian, in the County of Klamath, State of Oregon. EXCEPT a portion in the SE1/4 SE1/4 for right of way of Highway 140.

AND

The N1/2 N1/2, Section 13, Township 38 South, Range 11, 1/2 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM that portion of the N1/2 NE1/4 Section 13, Township 38 South, Range 11 1/2 East of the Willamette Meridian, in the County of Klamath, State of Oregon, which lies Easterly and Southeasterly of the Klamath Falls-Lakeview Highway.

PARCEL F: (4111-01700-00200, 4111-01700-00201, 4111-01600-00400

Unsurveyed Parcels 1 and 2 of Land Partition 26-99 situated in Section 17 and NW1/4 of Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL G: (4111-01700-00100, 4111-00900-00600, 4111-00800-01500, 4111-00800-01400)

Parcel 3 of Land Partition 13-89, situated in Sections 8, 9, 16, and 17, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, as adjusted by Boundary Line Agreement recorded in M90, page 1782, Records of Klamath County, Oregon, as adjusted by Boundary Line Agreement recorded in M90, page 1762, Microfilm Records of Klamath County, Oregon.