2024-007164

Klamath County, Oregon 08/16/2024 12:49:02 PM

Fee: \$152.00

PREPARED BY, AND AFTER RECORDING, MAIL TO: Brenda Dieck, Esq. White & Case LLP 555 South Flower Street, Suite 2700 Los Angeles, CA 90071 1448012-0022

NOTICE: THE TRUST DEED AMENDED AND MODIFIED HEREBY IS A LINE OF CREDIT TRUST DEED. THE MAXIMUM PRINCIPAL INDEBTEDNESS AMOUNT TO BE ADVANCED PURSUANT TO THE LOAN DOCUMENTS AND SECURED BY THE TRUST DEED, AS AMENDED AND MODIFIED HEREBY, IS THREE HUNDRED MILLION DOLLARS (\$300,000,000).

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 REVOLVING LOANS UNDER THE CREDIT AGREEMENT, IS AUGUST 10, 2028.

APNs: 114 483453; 114 874972; 036 483417; 114 483435; 114 483462; 018 R106192; 018 107235; 018 886107; 018 107173; 018 107244; 018 106218; 018 106165; 018 106174; 036 474034; 114 609513; 036 474025; 114 62087; 036 770703; 114 474016; 301 02440

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

# LINE OF CREDIT INSTRUMENT

FIRST AMENDMENT TO TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

by and between

GP KLAMATH FARMLAND LAND, LLC, Grantor

and

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

Dated as of June 25, 2024

Property Name: 700 Ranch; 800 Ranch; 900 Ranch

County: Klamath State: Oregon

AMERICAS 126645328
Project Monterey - First Amendment to Trust Deed (Klamath County, Oregon)

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#### LINE OF CREDIT INSTRUMENT

# FIRST AMENDMENT TO TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

This FIRST AMENDMENT TO TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "First Amendment") is entered into as of June 25, 2024 by and among GP KLAMATH FARMLAND LAND, LLC, a Delaware limited liability company ("Grantor"), having an address at 14271 Jeffrey Road #315, Irvine, California 92620, and AMERICAN AGCREDIT, PCA, as collateral agent (together with its successors and assigns in such capacity, "Collateral Agent") for and representative of the Secured Parties (as defined in the Deed of Trust) (Collateral Agent, together with its successors and assigns, "Beneficiary"), having an address at having an address at 5560 South Broadway, Eureka, California 95503.

#### RECITALS

WHEREAS, GEM-PACK BERRIES, LLC, a Delaware limited liability company ("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 capacities, together with its successors and assigns in such capacities, together with its successors and assigns in such capacities, "Administrative Agent") entered into that certain Credit Agreement, dated as of August 10, 2023 (as may have been amended, restated, amended and restated, supplemented and/or otherwise modified prior to the First Amendment Effective Date, the "Existing Credit Agreement"), pursuant to which the Lenders made certain loans and other extensions of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, in connection with the execution of the Existing Credit Agreement, Grantor executed that certain Trust Deed, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of August 10, 2023, by and from Grantor, to Fidelity National Title Company, a Florida corporation, as trustee therein, for the benefit of Beneficiary, for and representative of the Secured Parties, recorded on August 11, 2023, as Document Number 2023-006851 in the Recorder's Office for Klamath County, Oregon (the "Existing Deed of Trust"), encumbering Grantor's right, title and interest in the Trust Property (as defined in the Deed of Trust), which includes the Land (as defined in the Deed of Trust) more particularly described in Exhibit A annexed to the Existing Deed of Trust and in Exhibit A annexed hereto;

WHEREAS, Grantor is the owner of the fee simple title to the Trust Property;

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 dated as of August 10, 2023, as the same may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time;

WHEREAS, Borrower, the Guarantors (as defined in the First Amendment to Credit Agreement) party thereto, including Grantor, the Lenders listed on the signature pages thereof and Administrative Agent entered into that certain First Amendment and Limited Waiver to Credit Agreement, dated as of April 1, 2024 (the "First Amendment to Credit Agreement"; the Existing Credit Agreement, as amended and modified by the First Amendment to Credit Agreement, and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), which provided, inter alia, for (i) the waiver by the Lenders of the Specified Events of Default (as defined in the First Amendment to Credit Agreement), (ii) the increase of the Revolving Loan Commitments under the Existing Credit Agreement in an aggregate original principal amount equal to \$27,500,000 (the "First Amendment Revolving Loan Commitments"), and (iii) the making of certain other amendments as set forth in the First Amendment to Credit Agreement, subject to the terms and conditions set forth therein and in the Credit Agreement;

WHEREAS, in connection with the execution of the First Amendment to Credit Agreement, Grantor and Beneficiary desire to execute and deliver this First Amendment and amend the Existing Deed of Trust pursuant to the terms of this First Amendment (the Existing Deed of Trust, as amended and modified by this First Amendment, and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Deed of Trust") to, inter alia, (i) make certain amendments to the Existing Deed of Trust, as detailed herein, (ii) give notice of the execution and delivery of the First Amendment to Credit Agreement and the increase in the Obligations pursuant thereto, and (iii) give notice that the Existing Deed of Trust, as modified by this First Amendment, continues to secure the Secured Obligations, as such are amended as a result of the Existing Credit Agreement, as amended and modified by the First Amendment to Credit Agreement; and

WHEREAS, the Existing Deed of Trust, as amended and modified by this First Amendment, remains in full force and effect, and the liens and security interests and the priority of such liens and security interests granted to Beneficiary for the benefit of the Secured Parties continue (without interruption) thereunder.

NOW, THEREFORE, in consideration of the foregoing and other benefits provided and accruing to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby makes the following representations and warranties and hereby covenants and agrees with Beneficiary as follows:

- 1. All of the foregoing recitals are acknowledged by Grantor as being true and correct and shall be deemed incorporated by reference herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement.
- 2. The Existing Deed of Trust is hereby amended by deleting the text "TWO HUNDRED FIFTY MILLION DOLLARS (\$250,000,000)" where it appears in Clause (B) on the cover page thereof and replacing such text with "THREE HUNDRED MILLION DOLLARS (\$300,000,000)".

- 3. Section 9.6 of the Existing Deed of Trust is hereby amended by deleting the text "August 9, 2028" and footnote next to it and replacing such text and footnote with "August 10, 2028".
- 4. Grantor hereby acknowledges and agrees that the Existing Deed of Trust, as amended and modified by this First Amendment, secures all Secured Obligations, including without limitation, the First Amendment Revolving Loan Commitments and the Loans advanced thereunder, which constitute Secured Obligations, and are guaranteed pursuant to the Subsidiary Guaranty. The terms of the First Amendment Revolving Loan Commitments shall be on the same terms as the Revolving Loans and the Revolving Loan Commitments under the Existing Credit Agreement. The First Amendment Revolving Loan Commitments shall constitute an increase to the aggregate Revolving Loan Commitments. For the avoidance of doubt, the First Amendment Revolving Loan Commitments and the Loans advanced thereunder are not a separate tranche or Class of Loans under the Credit Agreement and shall be deemed to be Revolving Loan Commitments and Revolving Loans for all purposes under the Credit Agreement.
- 5. Each reference to the "Secured Obligations" as defined in the Existing Deed of Trust and as it appears herein or in the Existing Deed of Trust shall mean and be a reference to the Secured Obligations, as amended and modified by this First Amendment, and as may be further amended or modified from time to time if and when the Credit Agreement is further amended, restated, amended and restated, refinanced, supplemented, and/or otherwise modified from time to time, including any modification changing the amount, the interest rate, the maturity date or other terms of the Loans and/or the other Secured Obligations. The defined term "Secured Obligations" shall include, without limitation, all obligations of Borrower, Grantor or any other Guarantors with respect to the Revolving Loans incurred or to be incurred pursuant to the First Amendment Revolving Loan Commitments as set forth in the First Amendment to Credit Agreement.
- 6. Each reference in the Existing Deed of Trust or this First Amendment to the "Credit Agreement" shall mean and be a reference to the Existing Credit Agreement, as amended and modified by the First Amendment to Credit Agreement, and as may be further amended, restated, amended and restated, refinanced, supplemented, and/or otherwise modified from time to time, including any modification changing the amount, the interest rate, the maturity date or other terms of the Loans and/or the other Secured Obligations. The recording of this First Amendment shall not set a precedent under the Credit Agreement requiring the recordation of future amendments to the Deed of Trust in conjunction with future amendments to the Credit Agreement.
- 7. Each reference in the Existing Deed of Trust, this First Amendment, or any other document executed or to be executed in connection therewith to the "Deed of Trust," "this Deed of Trust," "hereunder," "hereof" or words of like import referring to the Deed of Trust shall mean and be a reference to the Existing Deed of Trust, as amended and modified by this First Amendment, and as may be further amended, restated, amended and restated, supplemented, and/or otherwise modified from time to time.
- 8. Each reference in the Existing Deed of Trust or this First Amendment to the "Secured Parties" as defined in the Existing Deed of Trust and as it appears herein or in the Existing

Deed of Trust shall include, without limitation, the Lenders party to the First Amendment to Credit Agreement.

- 9. Grantor hereby reaffirms the Secured Obligations and any and all guarantees, security interests and Liens it has granted (or made) to Administrative Agent and/or Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations. Grantor hereby acknowledges and agrees that each such Secured Obligation, guarantee, security interest and Lien contained in the Existing Deed of Trust and the other Collateral Documents is reaffirmed and shall remain and continue in full force and effect in accordance with its terms notwithstanding this First Amendment and the First Amendment to Credit Agreement and shall include and extend to any new obligations assumed by Grantor under this First Amendment and the First Amendment to Credit Agreement or otherwise under the Loan Documents. Without limiting the generality of the foregoing, Grantor further acknowledges and agrees that the Existing Deed of Trust, as amended and modified by this First Amendment, all of the Trust Property described therein, and all the liens, security interests and assignments created or evidenced thereby, do and shall continue to secure (without interruption) the payment and performance of all Secured Obligations.
- 10. Grantor hereby reaffirms to Beneficiary and the other Secured Parties each of the representations, warranties, covenants and agreements of Grantor set forth in the Existing Deed of Trust with the same force and effect as if each were separately stated herein and made as of the date hereof.
- 11. Grantor acknowledges there are no existing claims, defenses, personal or otherwise, or rights of set-off whatsoever with respect to the Existing Deed of Trust, as amended and modified by this First Amendment, and further acknowledges and represents that as of the date hereof, to Grantor's knowledge, no event has occurred and no condition exists which would constitute an Event of Default under the Deed of Trust either with or without notice or lapse of time or both.
- 12. This First Amendment is limited as specified and other than the specific amendments and modifications contained herein shall not constitute an amendment, modification or waiver of, or otherwise affect, in any way, any other terms and provisions of the Existing Deed of Trust. The Existing Deed of Trust, as specifically amended and modified by this First Amendment, is and shall continue to be in full force and effect and is hereby ratified, reaffirmed and confirmed in all respects.
- and modified by this First 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 Deed of Trust and all such liens, security interests and assignments created or evidenced by the Deed of Trust and the priority thereof shall relate back to the date that the Existing Deed of Trust was recorded as referenced in the recitals above. This First Amendment amends the Existing Deed of Trust and is not intended and shall not be deemed or construed to in any way affect the enforceability or priority of the Deed of Trust or constitute a novation, termination or replacement of all or any part of the Secured Obligations or an accord and

satisfaction of any of Grantor's duties, obligations and liabilities contained in the Deed of Trust. Except as expressly set forth herein, this First Amendment shall not be deemed to be an amendment to, modification of or consent to the departure from any provisions of the Deed of Trust or any other Loan Document or any right, power or remedy of Administrative Agent, Collateral Agent or the Lenders, nor constitute a waiver of any provision of the Deed of Trust or any other Loan Document, or any other document, instrument and/or agreement executed or delivered in connection therewith or of any Event of Default or Potential Event of Default under any of the foregoing, in each case, whether arising before or after the date hereof or as a result of performance hereunder or thereunder (other than as set forth in Section 2 of the First Amendment to Credit Agreement with respect to the Specified Events of Default). Beneficiary expressly reserves all of its rights and remedies in connection with the Deed of Trust, at law and in equity, which shall remain in full force and effect.

- 14. Grantor will execute and deliver such other documents, certificates and agreements and take all such further actions, in each case, that may be required under any applicable Law or which Administrative Agent and/or Collateral Agent may reasonably request to ensure the creation, validity, perfection and priority of the Liens on the Trust Property created, or purported to be created, under the Deed of Trust.
- 15. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 16. Each of the parties hereto, and the respective representatives thereof executing this First Amendment on their respective behalves, represents that such representative has full power, authority and legal right to execute and deliver this First Amendment and that the same constitutes the valid and binding obligation of such party.
- 17. This First 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.
- 18. The use of the singular shall include the plural when the context requires and vice versa; the use of "a" shall include "an" when the context requires and vice versa.
- 19. This First Amendment shall be governed by, and construed in accordance with, the laws of the State of Oregon.

# [REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgment 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.

County of On May (2024 before me, County

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

WITNESS my hand and official seal.

DEANN SALLY COLLINS
Notary Public - California
Orange County
Commission # 2348924
My Comm. Expires Feb 25, 2025

AMERICAS 126645328
Project Monterey - First Amendment to Trust Deed (Klamath County, Oregon)

Signature Page to Project Monterey - First Amendment to Trust Deed (Klamath County, Oregon) (700 Ranch) IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgment 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 <u>CA</u> County of <u>DY AN A</u>

On May 10, 2024 before me,

personally appeared (insert name and title of the officer) 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 \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

DEANN SALLY COLLINS
Notary Public - California
Orange County
Commission # 2348924
My Comm. Expires Feb 25, 2025

IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgment 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

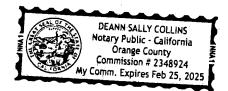
Title: Manager

(Seal)

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.

WITNESS my hand and official seal.

Signature



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

# **BENEFICIARY:**

	Agent	, O D	cas  cd of Corp
A notary public or other officer complet individual who signed the document to truthfulness, accuracy, or validity of that	which this		
State of <u>Ca</u> County of <u>Humbord</u>			
personally appeared ky k was satisfactory evidence to be the person(s) who and acknowledged to me that he/she/the capacity(ies), and that by his/her/their signa upon behalf of which the person(s) acted, ex	ey executed ture(s) on the	the same in instrument th	his/her/their authorized
I certify under PENALTY OF PERJURY until that the foregoing paragraph is true and corre	nder the laws o	of the State of	Ca
WITNESS my hand and official seal.			
Signature Chomis -	(Se	al)	C. MORRISON  Notary Public - California  Humboldt County  Commission # 2436882  My Comm. Expires Feb 28, 2027

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

# **BENEFICIARY:**

AMERICAN AGCREDIT, PCA, as Collateral Agent

By:

Name: Kyle Lucas

Title: Exec Head of Corp

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 Ca County of Humbold+
On 5_15, 2024 before me, (insert name and title of the officer)  personally appeared (insert name and title of the officer), 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
WITNESS my hand and official seal.
Signature (Seal)  C. MORRISON Notary Public - California Humboidt County Commission # 2436882

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

Agent

By:

# **BENEFICIARY:**

AMERICAN AGCREDIT, PCA, as Collateral

CREC HEARE OF COMP				
A notary public or other officer completing this certificate verifies only the ident individual who signed the document to which this certificate is attached, and truthfulness, accuracy, or validity of that document.				
State of County of				
On 5-15, 2024 before me, (insert name and title of the office personally appeared 4712 UCas, who proved to me on the satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within it and acknowledged to me that he/she/they executed the same in his/her/their acapacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or upon behalf of which the person(s) acted, executed the instrument.	nstrument authorized			
I certify under PENALTY OF PERJURY under the laws of the State of that the foregoing paragraph is true and correct.				
WITNESS my hand and official seal.				
Signature (Seal)  Notary Pub Humbo Commissio	ORRISON.  blic - California idt County on # 2436882 pires Fep 28, 2027			

# Exhibit A Legal Description

[Attached]

# 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.