

# Loan and Security Agreement

SLS SAMPLE DOCUMENT 07/11/17

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This is a Loan and Security Agreement (“Agreement”), dated as of the date specified in **Exhibit A**, between [\_\_\_\_\_] (“Client”), a California nonprofit public benefit corporation, and the Borrower identified in **Exhibit A** (“Borrower”).

## Background

Client’s mission is to [\_\_\_\_\_] Client operates an independent loan program targeting [\_\_\_\_\_] farmers. Borrower wishes to borrow funds from Client and to grant Client a security interest in Collateral to secure the debt, all on the terms set out in this Agreement.

## Borrower and Client agree as follows:

### 1. Loans, Fees, and Expenses

**1.1 Loans.** Borrower may borrow up to the amount specified in **Exhibit A** (the “Commitment”) from Client during the period beginning on the Closing Date (as defined in Section 1.11) and ending on the maturity date specified in **Exhibit A** (“Maturity Date”). Each such borrowing is called a “Loan.”

**1.2 Interest Rate.** The Loans shall bear interest at the interest rate and on the terms set out in **Exhibit A**.

**1.3 Principal and Interest Payments.** Borrower shall pay to Client the principal amount of all Loans, plus any accrued and unpaid interest, on or before the Maturity Date, in the manner set out in **Exhibit A**.

**1.4 Prepayments.** Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments shall not relieve Borrower of its obligation to continue to make payments. Borrower shall not send Client payments marked “paid in full,” “without recourse,” or similar language. If Borrower sends such a payment, Client may accept it without impairing any of Client’s rights under the Agreement, and Borrower shall remain obligated to pay any remaining amount owed to Client.

**1.5 Late Payments.** If Borrower makes any payment after it is due, Borrower shall compensate Client as defined in **Exhibit A**.

**1.6 Loan Fees.** Borrower shall pay to Client on the Closing Date a one-time fee as set out in **Exhibit A**, which shall be nonrefundable.

**1.7 Procedure for Borrowing.** Borrower shall request a Loan by notifying Client of the amount to be disbursed by call, e-mail, or fax. Any such request for any additional Loan amount shall be considered a confirmation to Client that all representations and warranties within this Agreement are true, correct, and complete in all material respects, and no Event of Default has occurred or is occurring, or would result from the proposed Loan.

**1.8 Procedure for Payments.** Borrower shall make all payments to Client by cash, check or wire transfer of immediately available funds to the account specified in **Exhibit A** no later than 12:00 p.m. Pacific time on the due date, without invoice, demand, or offset. Borrower understands that Borrower is obligated to pay on the due date and that Client will not invoice Borrower. Whenever any payment is due on a day other than a business day, the payment shall be due on the following business day. The extension of time in such case shall be included in the computation of interest or fees. Borrower waives diligence, presentment, protest, demand, and notice of any kind including notice of dishonor.

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**1.9 Revolving Loan.** Borrower may at any time pay all or a portion of the principal of any outstanding Loans and reborrow under this Agreement if the Loans are revolving loans as specified in **Exhibit A**.

**1.10 Computations and Records.** Client shall record the date and amount of each Loan made, the amount of principal and interest due and payable, each payment by Borrower, and the resulting unpaid principal balance. Borrower acknowledges and agrees that Client's books and records relating to the transactions contemplated by this Agreement, including, without limitation, interest computations and payment records, shall be deemed correct, accurate, and binding on Borrower and admissible in any action or proceeding that may arise.

**1.11 Certain Definitions.** "Closing Date" means the date on which Client funds the initial Loan after the conditions precedent set out in Section 3 are fulfilled to Client's satisfaction. "Collateral" has the meaning given it in Section 2. "Event of Default" has the meaning given it in Section 9. "Loan Documents" means this Agreement, the financing statement or statements contemplated by Section 2, any guarantees and assignments of proceeds identified in **Exhibit A**, and any other agreements, instruments or documents now or later existing that evidence, secure, guarantee or otherwise relate to the Obligations or the Collateral. "Obligations" means the obligations of Borrower under this Agreement to pay all principal, interest, expenses, filing or other fees, indemnification amounts, attorneys' fees, and other amounts owed to Client under any Loan Document, due or to become due, now existing or later arising, including any interest that accrues after the commencement of an Insolvency Proceeding (as defined in Section 9.7) and including any debt, liability, or obligation owing from Borrower to others that Client may have obtained by assignment or otherwise.

## **2. Creation of Security Interest; Assignment of Proceeds**

**2.1 Grant of Security Interest.** Borrower grants and pledges to Client a continuing security interest in the property of Borrower described in Section 15 ("Collateral") to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrower of each of its other covenants and duties under this Agreement. Such security interest is intended to and does constitute a valid, first priority security interest in the presently existing Collateral, and is intended to and shall constitute a valid, first priority security interest in later-acquired Collateral. Client's security interest on the Collateral shall remain in effect for so long as any Obligations or other duties are outstanding. This Agreement is intended to be and is a security agreement within the meaning of Section 9102 of the California Commercial Code.

**2.2 Possession.** Except as otherwise provided in this Agreement, Borrower may have possession of the tangible personal property and beneficial use of all Collateral and may use it a manner consistent with this Agreement, including collecting any Collateral consisting of accounts, provided that Borrower's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Client is required by law to perfect Client's security interest in such Collateral, until otherwise notified by Client.

**2.3 Financing Statements.** Borrower authorizes Client to file, with the California Secretary of State and any other appropriate agencies, a UCC financing statement, or alternatively, a copy of the Loan Documents, to perfect Client's security interest. At Client's request, Borrower shall sign and deliver to Client such security agreements, assignments, financing statements, promissory notes, assignments of proceeds, instruments, documents, and other agreements as Client may reasonably request to evidence and secure the Loans and to perfect and continue the security interests granted under this Agreement.

**2.4 Attorney-in-Fact.** Borrower irrevocably appoints Client as Borrower's attorney-in-fact for the purpose of executing any documents and taking any actions necessary to perfect,

amend, or to continue the security interest granted under this Agreement, and, upon any Event of Default, to preserve, process, maintain, and protect the Collateral. Borrower shall reimburse Client for all expenses for the perfection and the continuation of the perfection of Client's security interest in the Collateral.

**2.5 Assignment of Proceeds.** Borrower shall sign an assignment or assignments of crop proceeds, in favor of Client, and Borrower or Client deliver such document or documents to the persons identified in **Exhibit A**. Borrower, upon Client's request, shall obtain and deliver to Client acknowledgements of this assignment from any such signatories.

### **3. Closing; Conditions to Loans**

**3.1 Closing; Conditions Precedent to Initial Loan.** Client shall fund the initial Loan promptly following the satisfaction of the conditions precedent set out in this Section 3.1. The obligation of Client to make the initial Loan is subject to the conditions precedent that: (i) Borrower's representations and warranties contained in Section 4 are true and correct as of the date of the disbursement, other than any representation and warranty which relates to a specified prior date; (ii) no Event of Default has occurred and is continuing; and (iii) Client shall have received from Borrower, on or before the date of disbursement, the documents identified on **Exhibit A**, all in form and substance satisfactory to Client.

**3.2 Conditions Precedent to Later Loans.** The obligation of Client to make any later Loans is subject to the conditions precedent that: (i) Borrower's representations and warranties contained in Section 4 are true and correct as of the date of the disbursement as though made on such date, other than any representation and warranty which relates to a specified prior date; (ii) no Event of Default has occurred and is continuing; and (iii) Client shall have received from Borrower, on or before the date of disbursement, such documents and information as Client may reasonably request.

### **4. Representations and Warranties**

Borrower represents and warrants to Client the following:

**4.1 Due Authority.** Borrower, if an entity, is duly organized and validly existing in good standing under the laws of its state of organization, and has all requisite power and authority to conduct its business and own or lease its property. The execution, delivery, and performance of the Loan Documents are within Borrower's individual, limited liability company, corporate, or partnership powers, as the case may be, have been duly authorized by Borrower's governing body, and do not and will not conflict with or breach any provision of Borrower's articles of incorporation, bylaws, operating agreement, partnership agreement, or other governing document, as the case may be.

**4.2 No Conflict.** The execution, delivery, and performance of the Loan Documents does not and will not conflict with or breach any loan or other agreement or instrument binding upon Borrower, or any law, regulation, court decree, or order applicable to Borrower or Borrower's properties.

**4.3 Consents.** Borrower has obtained all consents, approvals, and authorizations of, made all filings with, and given all notices to, all governmental authorities and other third parties that are necessary in connection with the execution, delivery, and performance by Borrower of its obligations under the Loan Documents.

**4.4 Enforceable Agreement.** This Agreement has been duly executed and delivered by Borrower and is the legal, valid, and binding obligation of Borrower, enforceable against it in accordance with its terms.

**4.5 Security Interests.** The provisions of this Agreement and the other Loan Documents create valid security interests in all Collateral in favor of Client, and such security interests constitute perfected and continuing security interests in all Collateral, having priority over all other security interests or liens on Collateral, except for those liens permitted under Section 5.9.

**4.6 Business Address and Assumed Names.** Borrower maintains its principal office at the location set out in **Exhibit A**. Borrower keeps its books and records, including, without limitation, its records concerning the Collateral, at such principal office. Borrower does not operate under any trade or assumed name except as set out in **Exhibit A**. Borrower has filed or recorded all documents or filings required by law relating to all trade or assumed business names used by Borrower.

**4.7 Properties.** Except as disclosed in Borrower's loan application or otherwise in writing to Client, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good and marketable title to all of Borrower's properties, including, without limitation, all Collateral, free and clear of all liens and security interests, and all such properties are titled solely in Borrower's name.

**4.8 Additional Debt.** Borrower does not have any debt and has not given any guarantees of any third party's obligations to pay debt that are not reflected in the financial statements provided to Client or otherwise has not been disclosed to the Client in Borrower's loan application.

**4.9 Liens.** Except as disclosed to Client in Borrower's loan application, Borrower in the five-year period preceding the date of this Agreement has not entered into or granted any security or pledge agreements, or permitted the filing or attachment of any security interests, liens, or other charges, on or affecting any of the Collateral, or signed any financing statements relating to the Collateral, except for the security interests and related financing statements in favor of Client as provided by this Agreement.

**4.10 Solvency; Payment of Debts.** Borrower is solvent prior to and after giving effect to the Loans it expects to obtain under this Agreement and is able to pay its liabilities (including accounts payable) as they become due.

**4.11 Compliance.** Borrower is not in violation of any law, regulation, order or judgment applicable to it, the violation of which could reasonably be expected to materially adversely affect Borrower's financial condition or property.

**4.12 Litigation.** No litigation, claim, investigation, administrative proceeding, or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which could reasonably be expected to materially adversely affect Borrower's financial condition or property, other than litigation, claims, or other events, if any, that have been disclosed to Client in writing.

**4.13 Taxes.** Borrower has filed all tax returns and reports that are or were required to be filed or have been filed, and all taxes, assessments, and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which Borrower has established adequate reserves.

**4.14 Environmental Laws.** The operations and properties of Borrower comply in all respects with all applicable Environmental Laws except where such noncompliance could not reasonably be expected to materially adversely affect Borrower's financial condition or property, and no circumstances exist that could reasonably be expected to (i) form the basis of an Environmental Claim against Borrower or any of Borrower's properties, or (ii) cause any such

property to be subject to any restrictions on ownership, occupancy, use, or transferability under any Environmental Law. "Environmental Laws" mean all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances, and codes, together with all administrative orders, directed duties, licenses, authorizations, and permits of, and agreements with, any governmental authority, in each case relating to environmental, health, safety, and land use matters. "Environmental Claim" means any claim by any governmental authority or other person alleging potential liability for (i) violation of any Environmental Law; (ii) a release, spill, leak, disposal, discharge, leaching, migration, or dispersal of any waste, hazardous substance, pollutant, toxic substance, hazardous substance, petroleum or petroleum-derived substance, asbestos, or any constituent of any such substance; or (iii) an injury to the environment.

**4.15 No Event of Default.** There is no event which is, or with notice or lapse of time or both would be, an Event of Default.

**4.16 Full Disclosure.** No representation, warranty, or other statement made by Borrower or any guarantors of the Obligations in any loan application, business plan, financial statement, insurance report, customer list, certificate or written statement given to Client, taken together with all such documents given to Client, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in such documents not misleading.

## **5. Operating Covenants**

**5.1 Loan Proceeds.** Borrower shall use all Loan proceeds solely for the purposes specified in **Exhibit A**.

**5.2 Operations and Organization.** Borrower shall conduct its farming operations and business in a timely, diligent, thorough and prudent manner in accordance with good farming and husbandry practices and consistent with past practice, including, without limitation, taking appropriate actions to: (i) grow, cultivate, irrigate, fertilize, manage pests, harvest, prune, clean, preserve and protect crops; (ii) feed, care for, and attend to livestock; and (iii) not commit waste to the land. Borrower shall pay all expenses, fees, and charges Borrower incurs in the process of operating its business. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present personnel. If an entity, Borrower shall maintain its legal existence and its qualification and good standing in all jurisdictions in which it does business.

**5.3 Property Upkeep.** Borrower shall maintain the Collateral in an orderly and efficient manner and in good working order. Borrower shall keep in good standing, and not permit the lapse or termination of, any registrations, water rights, rights to rangeland, grazing privileges, or any other permits, licenses, or leases now or later owned by Borrower that are necessary to the continued operation of Borrower's business.

**5.4 Continuity; Sale of Collateral.** Borrower shall not, without prior written consent of Client: (i) engage in any business activities substantially different than those in which Borrower is presently engaged; (ii) cease operations, liquidate, merge, transfer, acquire, or consolidate with any other entity, voluntarily change ownership, or dissolve; (iii) sell, contract for sale, or otherwise dispose of any of the Collateral except in the ordinary course of business; (iv) change the physical location of the Collateral except in the ordinary course of business; or (v) sell or deliver any crops, livestock, or other farm products to any buyer, merchant, or agent not on the most current list delivered by Borrower to Client under Section 3.1.

**5.5 Actions upon Sale of Collateral.** If Borrower, with prior Client consent as provided by Section 5.4, sells, contracts for sale, or otherwise disposes of Collateral outside of the ordinary course of business, Borrower at Client's direction shall immediately deliver or otherwise make available to Client all proceeds of any such disposition of Collateral and all other

proceeds of the Collateral, in a form acceptable to Client. Client in its sole discretion may apply such amounts to any of: (i) accrued unpaid interest owing on the Agreement, (ii) outstanding principal on the Agreement, or (iii) any other amounts owing by Borrower to Client under the Loan Documents.

**5.6 Consignment or Bailment.** Borrower shall not deliver any Collateral under any consignment or bailment without first obtaining the consent of Client and executing such additional documents as Client may require to continue and to perfect the security interests granted under this Agreement. Borrower shall cooperate with Client in obtaining control agreements, bailee acknowledgements, and/or other acknowledgements and agreements requested by Client.

**5.7 Collections.** Borrower shall diligently collect all accounts due to Borrower, contract rights, chattel paper, instruments, letters of credit, letter of credit rights, and/or general intangibles included in the Collateral.

**5.8 Additional Debt.** Borrower shall not borrow money and shall not create, incur, assume, guarantee, or be or remain liable with respect to any indebtedness for borrowed money other than indebtedness to Client, without first notifying Client.

**5.9 Liens.** Borrower shall not create, assume, or allow any security interest or lien (including judicial liens) on the Collateral or any other property that Borrower now or later owns except: (i) liens and security interests in favor of Client; (ii) liens for taxes not yet due; (iii) liens outstanding on the date of this Agreement disclosed in Borrower's loan application to Client; (iv) liens arising by operation of law; and (v) liens arising in the ordinary course of Borrower's business securing amounts Borrower owes in the operation of the Borrower.

**5.10 Rights in Collateral.** Borrower shall defend the Collateral against, and take such other action as is necessary to remove, any liens on the Collateral, and shall defend the right, title, and interest of the Client in and to any of the Borrower's rights under the Collateral against the claims and demands of any other parties.

**5.11 Compliance with Law.** Borrower shall comply with all laws, ordinances, rules, regulations, and orders applicable to it and to the ownership, production, disposition or use of the Collateral, including, without limitation, all Environmental Laws, all laws relating to employment, labor, direct marketing, soil conservation, and conversion of wetlands for agricultural production. Borrower may contest in good faith any such law and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Client in writing prior to doing so and so long as, in Client's sole opinion, Client's interests in the Collateral are not jeopardized. Client may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Client, to protect Client's interest.

**5.12 Taxes, Charges, and Liens.** Borrower shall pay and discharge when due all assessments, taxes, governmental charges, levies, and liens, of every kind and nature, imposed upon Borrower and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Borrower shall not be required to pay and discharge any such claim so long as: (i) the legality of the claim shall be contested in good faith by appropriate proceedings, and (ii) Borrower shall have established on Borrower's books adequate reserves with respect to such claim.

**5.13 Agreements.** Borrower shall not enter into any agreements containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or any other Loan Document.

## **6. Recordkeeping, Reporting, and Inspection Covenants**

**6.1 Books and Records.** Borrower shall keep correct and complete books, records, and accounts of its business in which complete, correct, and timely entries of its transactions, including, without limitation, collections of accounts receivable, are made in accordance with accounting principles acceptable to Client and consistent with statements Borrower gave to Client in connection with the loan application. Borrower shall keep records relating to its performance of its duties under this Agreement in a manner such that Client can evaluate compliance with this Agreement. Borrower shall cooperate with Client in providing information relating to its activities under this Agreement in connection with any financial or tax audit, grant, loan, or similar matter, in which Client may be engaged.

**6.2 Financial Reports and Other Information.** Borrower shall deliver to Client the financial statements and other reports set out in **Exhibit A**, and such other information and documents as Client may reasonably request, including, without limitation, information and certifications about Borrower's business practices, Collateral, and compliance with covenants.

**6.3 Notice to Client.** Borrower shall notify Client of the events and matters as set out in **Exhibit A**.

**6.4 Inspection.** Borrower shall permit Client, or any persons designated by Client, at any reasonable time, to inspect, audit, and examine Borrower's books, records, and accounts and to make copies or extracts, at Borrower's expense. Client may upon reasonable notice enter upon Borrower's premises for the purpose of inspecting the Collateral and Borrower's business operations. If a third party maintains any of Borrower's records, Borrower, upon request of Client, shall notify such party to permit Client free access to such records at all reasonable times and to provide Client with copies of any records it may request, all at Borrower's expense.

## **7. Insurance Covenants**

**7.1 Insurance.** Borrower shall maintain and keep in force fire and other risk insurance, public liability insurance, and such other insurance as Client may require with respect to Borrower's properties, operations, and Collateral, in form, amounts, coverages, and with insurance companies acceptable to Client. Each insurance policy shall include an endorsement providing that coverage in favor of Client shall not be impaired in any way by any act, omission, or default of Borrower or any other person. In connection with all policies covering Collateral, Borrower shall provide Client with such loss payable or other endorsements as Client may require. If Borrower at any time fails to obtain or maintain insurance as required under this Agreement, Client may (but is not obligated to) obtain such insurance as Client believes appropriate, including if Client so chooses "single interest insurance," which shall cover only Client's interest in the Collateral.

**7.2 Application of Insurance Proceeds.** As provided in Section 6, Borrower shall promptly notify Client of loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Client may make proof of loss if Borrower fails to do so within fifteen (15) days of the casualty. Client shall hold, as part of the Collateral, any and all proceeds of any insurance on the Collateral, including accrued proceeds. If Client consents to repair or replacement of the damaged or destroyed Collateral, Client shall, upon satisfactory proof of expenditure, pay or reimburse Borrower from the proceeds for the reasonable cost of repair or restoration. If Client does not consent to repair or replacement of the Collateral, Client shall retain a sufficient amount of the proceeds to pay all of the Obligations, and shall pay the balance to Borrower.

## **8. Additional Client Rights**

**8.1 Collateral Preservation.** If (i) Borrower fails to care for the Collateral as provided in this Agreement or otherwise fails to comply with any other provision of this Agreement; (ii) Borrower fails to pay when due any rent, taxes, levies, assessments, insurance premiums, or other claims; or (iii) any action or proceeding is commenced that would materially affect Client's interest in the Collateral, then Client, in each such case at its option and in its sole discretion, and without waiving its rights under this Agreement, may take any action that Client believes appropriate. Such actions may include, without limitation, entering upon Borrower's premises and performing all tasks which may be necessary to preserve or market the Collateral, discharging or paying all taxes, liens, security interest, encumbrances, and other claims at any time levied or placed on the Collateral, and paying all costs for insuring, maintaining, and preserving the Collateral. All such expenditures incurred or paid by Client under this Section 8.3 including, without limitation, reasonable attorneys' fees and legal expenses, shall bear interest at the rate set out in Section 1.2 from the date incurred or paid by Client to the date of repayment by Borrower. All such expenses shall become a part of the Obligations and, at Client's option, shall: (i) be payable on demand; or (ii) be added to the balance of the Loans and be apportioned among and be payable with any installment payments to become due during either: (x) the term of any applicable insurance policy; (y) the remaining term of this Agreement; or (z) treated as a balloon payment which shall be due and payable at the maturity of this Agreement.

**8.2 Additional Rights Relating to Collateral.** Client has the following additional rights:

**(a)** At any time and even though no Event of Default exists, Client may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Client for application to the Obligations as they may be payable.

**(b)** If Client at any time has possession of any Collateral, whether before or after an Event of Default, Client shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Client takes such action for that purpose as Borrower shall request or as Client, in Client's sole discretion, shall believe appropriate under the circumstances. Failure to honor any request by Borrower shall not of itself be considered to be a failure to exercise reasonable care.

**(c)** Client shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve, or maintain the security interest created under this Agreement.

**(d)** Upon request of Client, Borrower shall deliver to Client any and all of the documents evidencing or constituting the Collateral, and shall note Client's interest upon any chattel paper and instruments if not delivered to Client for possession by Client. If any Collateral is or becomes the subject of any negotiable document of title, including any warehouse receipt or bill of lading, Borrower shall promptly deliver such document to Client. Borrower shall endorse or assign all such Collateral and documents to Client's satisfaction.

**(e)** If ownership of the Collateral becomes vested in a person other than Borrower, Client, without notice to Borrower, may deal with Borrower's successors and assigns with reference to this Agreement and the Obligations by way of forbearance or extension without releasing Borrower from its obligations under this Agreement.

**(f)** If any crops, livestock, or other farm products included as all or a part of the Collateral are sold, consigned, leased, licensed, exchanged, transferred or disposed of outside of the ordinary course with the consent of Client, then Client may require that all proceeds of any of the preceding actions shall be made immediately available to Client in a form jointly payable to Borrower and Client.



**8.3 Other Security and Guarantees.** Client, without notice or demand and without affecting any of the Obligations or Borrower's other duties under this Agreement, may: (a) take from any guarantor and hold collateral for the payment of all or any part of the Obligations and exchange, enforce, or release such collateral or any part thereof; and (b) accept and hold any endorsement or guarantee of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor, or any other party who has given any lien in any other collateral as security for the payment of all or any part of the Obligations, or any other party in any way obligated to pay all or any part of the Obligations.

**8.4 Borrower's Sole Responsibility.** Notwithstanding any other provision of this Agreement, Borrower shall remain responsible for and liable under each of its contracts, leases and licenses. Client shall have no obligation or liability under any contract, lease, or license by reason of or arising out of this Agreement, nor shall Client be required or obligated in any manner to perform or fulfill any of the obligations of Borrower under any such contract, lease, or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by Borrower, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to Borrower or to which Borrower may be entitled at any time.

**8.5 Preference Payments.** Any monies Client pays because of an asserted preference claim in Borrower's bankruptcy shall become a part of the Obligations and, at Client's option, shall be payable by Borrower as provided in this Agreement.

## **9. Events of Default**

Any one or more of the following events shall constitute an Event of Default:

**9.1 Payment Default.** Borrower fails to make any interest or principal payment or payment of any other Obligation when due.

**9.2 Misrepresentations.** Borrower makes a material misrepresentation or material misstatement in any representation, warranty, loan application, financial statement or report, or other document Borrower delivers to Client under this Agreement.

**9.3 Loan Documents.** This Agreement or any other Loan Document becomes void or unenforceable, or for any reason fails to, or no longer creates, a valid and perfected security interest in the Collateral.

**9.4 Any Other Default.** Borrower fails or neglects to perform or observe any other term of this Agreement or any of the other Loan Documents, and, as to any default under such other term that can be cured, has failed to cure such default within twenty (20) days after Borrower receives notice of default from Client or otherwise becomes aware of such default.

**9.5 Material Adverse Change.** There occurs a material adverse change in Borrower's financial condition, ability to operate, ability to perform its obligations under this Agreement, or in the value of any Collateral, or Client believes in good faith the prospect of payment or performance of the Obligations is impaired.

**9.6 Death or Dissolution.** The death of persons named in **Exhibit A**, if any, or the dissolution or termination of Borrower's existence as a going business.

**9.7 Insolvency.** Borrower becomes insolvent, or an Insolvency Proceeding is commenced by Borrower or commenced against Borrower and is not dismissed or stayed within thirty (30) days. "Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or

under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, the appointment of a receiver for any part of Borrower's property, formal or informal moratoria, compositions, extensions generally with Borrower's creditors, or proceedings seeking reorganization, arrangement, or other relief.

**9.8 Creditor or Forfeiture Proceedings.** Any creditor of Borrower or any governmental agency commences foreclosure or forfeiture proceedings against any Collateral, whether by judicial proceeding, self-help, repossession, or any other method.

**9.9 Judgments.** A judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$10,000 is rendered against Borrower and remains unsatisfied and unstayed for a period of ten (10) days.

**9.10 Other Agreements.** There is a default or other failure to perform by Borrower under any agreement to which Borrower is a party with a third party resulting in a right by such third party, whether or not exercised, to accelerate the maturity of any indebtedness in an amount in excess of \$10,000 or that would reasonably be expected to have a materially adverse effect on Borrower's financial condition, ability to operate, or ability to perform its obligations under this Agreement.

**9.11 Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor of any of the Obligations or any guarantor becomes incompetent, or revokes or disputes the validity of, or liability under, any guarantee, or any such guarantee becomes void or unenforceable; or, if the United States Department of Agriculture ("USDA") or other government agency guarantees the Loans, the USDA or such other government agency revokes such guarantee or it otherwise becomes unenforceable.

**9.12 Tax Status.** Client has concluded that continuation of lending arrangements under this Agreement may have an adverse impact on the tax-exempt status of Client.

## **10. Client Rights and Remedies**

**10.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Client may, at its sole option and in its sole discretion, without notice of its election and demand, do any one or more of the following, all of which are authorized by Borrower:

- (a) reduce the total amount available under the Commitment;
- (b) refuse to make any more Loans;
- (c) terminate this Agreement and declare any or all Obligations immediately due and payable;
- (d) require Borrower to assemble the Collateral and the records pertaining to any accounts, contract rights, chattel paper, instruments, letters of credit, letter of credit rights, and/or general intangibles included in the Collateral, and make them available to Client at a place designated by Client;
- (e) enforce the security interest created under this Agreement under the California Commercial Code or any other law;
- (f) foreclose the security interest created under this Agreement or any other agreement relating to the Collateral or to take possession of the Collateral by any available judicial procedure or without judicial process;

(g) use, assemble, complete, produce, grow, raise, develop, harvest, process, market, or operate the Collateral to the extent that Client believes appropriate for the purposes of caring for, preserving, or disposing of the Collateral, or for any other purpose which Client deems appropriate;

(h) use, sell, assign, lease, or otherwise dispose of the Collateral or any part thereof and at any location, either at public or private sale or any brokers' board, in lots or in bulk, for cash or credit or otherwise, with or without representations or warranties, and upon such terms as shall be acceptable to Client, with no obligation to clean-up or otherwise prepare the Collateral for sale;

(i) enter any premises where any Collateral may be located for the purpose of taking possession of or removing the same;

(j) collect the payments, rents, income, and revenues from the Collateral, either itself or through a receiver;

(k) take or bring, in Client's name or in the name of Borrower, all steps, actions, suits, or proceedings deemed by Client necessary or desirable to effect collection of or to realize upon the Collateral;

(l) seek the appointment of a receiver, trustee, examiner, or other similar official to take possession of the Collateral and to enforce any of Client's remedies with respect to the Collateral;

(m) obtain a judgment against Borrower for any deficiency remaining on the Obligations due to Client after application of all amounts received from the exercise of the rights provided in this Agreement, if Client chooses to sell any or all of the Collateral; or

(n) grant extensions, compromise claims and settle any accounts, contract rights, chattel paper, instruments, letters of credit, letter of credit rights, and/or general intangibles for less than face value.

**10.2 Cumulative Remedies.** All Client's rights, powers, and remedies under this Agreement, including, without limitation, those set out in Sections 8 and 10, are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to Client at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's right to exercise any other right or remedy.

**10.3 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Client has any obligation to make Loans. The obligations of Borrower under Section 12.3 to indemnify Client Parties shall survive until all applicable statute of limitations periods with respect to actions that may be brought against any Client Party have run.

## **11. Relationship**

**11.1 No Guarantees.** Borrower acknowledges that Client has not made and is not making any representations, warranties, promises, or guarantees of any kind about Borrower's success, including, without limitation, representations about Borrower's business plan, land, sales, or profits. Borrower has made its own independent evaluation in deciding to enter into this Agreement and borrow money for its farming business.

**11.2 Relationship.** Borrower is and shall be an independent enterprise. Nothing in this Agreement creates a partnership, joint venture, fiduciary, or similar relationship between Borrower and Client for any purpose. Neither Client nor Borrower shall hold itself out as an agent

or representative of, or purport to speak or act on behalf of, the other, and neither shall have the power or authority to act for the other or to bind or obligate the other to a third party or commitment, in any manner, except as contemplated by Sections 8 and 10.

**11.3 Program Assessment.** Client collects, analyzes, and disseminates data about its programs. Such work is intended to help Client evaluate the effectiveness of its charitable and educational programs, better assist farmers, comply with its external reporting obligations, and carry out its internal and external communication efforts. Borrower consents to Client using Borrower's business and financial performance information for data analysis and aggregation purposes and incorporating such information in its external reporting and communications activities. Client shall disclose information about Borrower on a no-name basis unless Client has Borrower's prior approval to disclose Borrower's name.

**11.4 Publicity.** Client in its discretion may identify Borrower as a borrower with whom Client works, including using Borrower's trade name and logo and describing its products and Borrower in Client's internal and external communications, including on Client's website and outreach materials.

**11.5 Media Consent.** Client may film, tape, photograph, interview, and otherwise document Borrower's operations and activities. All video, photographic, audio, written, and other materials produced by Client in connection with such activities and all copyrights in these materials will be the sole property of Client and may be made available by Client to third parties, on Client's website, in Client's publications, or through any other media, in Client's sole discretion. Borrower is not entitled to inspect or approve versions of any media prior to its use by Client, nor is Borrower entitled to receive any payment for any such use by Client. Borrower grants to Client all copyrights and other rights it may have in any media created and distributed by Client under this Section 11.5, including, without limitation, any right to copy, edit, change, or transfer the media.

**11.6 Future Funding or Relationship.** Borrower understands and agrees that Client shall not be, as a result of entry into or performance by either party under this Agreement, obligated to provide future loans or other financial or technical support to Borrower, or to extend the relationship with Borrower in any respect, or to engage in any other transaction and relationship with Borrower. Borrower acknowledges and confirms that Client has not made to Borrower any representations, promises, or assurances about future loans or other support except in respect of Loans, as provided in this Agreement.

## **12. Liability, Waivers, and Indemnification**

**12.1 Responsibility for Claims.** Borrower shall be solely responsible for any claims, liabilities, losses, or damages to either persons or property sustained by Borrower, or any third party, in each case caused by or arising from Borrower's operations including those related to the use, sale, license, possession, or other disposition of the Collateral, or otherwise.

**12.2 Waiver and Release.** To the fullest extent allowed by law, Borrower waives and releases all claims and rights against Client and Client's directors, officers, employees, affiliates, and assigns (together, the "Client Parties"), including, without limitation: (i) claims arising from any injury, accident, or death of any person or loss or damage to any property on or about Borrower's property or related to possession and use of the Collateral; (ii) claims arising from or relating to Client's actions or inactions under the Loan Documents or otherwise; (iii) claims relating to Client's use and ownership of media under Section 11.5; and (iv) claims against Client for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any Environmental Laws, regardless of cause, and even if caused by the negligence, active or passive, of any Client Party. Borrower agrees not to sue Client on the basis of these waived and released claims. Borrower understands that the releases and waivers in this Agreement extend to

claims that it does not know of or does not expect to exist at this time, and it waives the protections of Section 1542 of the California Civil Code.

**12.3 Indemnification.** Borrower shall defend, indemnify, and hold the Client Parties harmless from and against any and all claims, liabilities, losses, damages, and attorney's fees that may be suffered by any Client Party arising directly or indirectly from: (i) this Agreement or any document referred to or transaction contemplated by this Agreement; (ii) any action or inaction by Client under or otherwise in connection with any Loan Document; (iii) any breach by Borrower of its obligations under any Loan Document; (iv) any claim by a third party adverse to Client's interest in the Collateral; (v) any claim by any third party present on Borrower's land or in Borrower's facilities; (vi) sale and consumption of food grown or processed by Borrower; (vii) any claim by any of Borrower's customers, employees, suppliers, creditors, tax authorities, regulators, or other persons in a relationship with Borrower; or (viii) any other act or omission by Borrower in connection with this Agreement, except to the extent the liability is solely caused by the gross negligence or willful misconduct of the relevant Client Party.

**12.4 Limitation of Liability.** Client shall not be liable to Borrower for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement (including, without limitation, claims for loss of revenue, loss of profits, or loss of use), even if Client has been apprised of the likelihood of such damages. Under no circumstances shall Client be liable to Borrower for any failure by Borrower to meet its own sales or profit expectations. Notwithstanding any other provision of this Agreement, Client's total liability for all damages and other amounts under or relating to this Agreement shall not exceed the amount of money loaned by Client to Borrower.

## **13. Co-Obligor Matters**

**13.1 Joint and Several Liability.** If there are multiple Borrowers under this Agreement, then all obligations of any Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower.

**13.2 Client Actions.** Each Borrower understands and agrees that, with or without notice to such Borrower or to any guarantor or any other person, Client may with respect to any other Borrower: (i) make one or more additional secured or unsecured loans or otherwise extend additional credit; (ii) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (iii) exchange, enforce, waive, subordinate, fail, or decide not to perfect, and release any security, with or without the substitution of new collateral; (iv) apply such security and direct the order or manner of sale thereof, including, without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Client in its discretion may determine; (v) release, substitute, agree not to sue, or deal with any Borrower or one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Client may choose; (vi) determine how, when, and what application of payments and credits shall be made on any other indebtedness owing by such other Borrower; and (vii) amend this Agreement without obtaining the consent of any person other than Borrower.

**13.3 Waiver of Co-Obligor's Rights.** If more than one person is obligated under this Agreement, each such person irrevocably waives, disclaims, and relinquishes all claims against any other person which such person has or would otherwise have by virtue of payment of the Obligations or any part, including, without limitation, all rights of indemnity, contribution, or exoneration.

## **14. General Provisions**

**14.1 Entire Agreement.** This Agreement, including its Exhibits, is the entire agreement between Borrower and Client, and supersedes prior or contemporaneous written and

oral agreements, negotiations, correspondence, course of dealing, and communications between Borrower and Client relating to the same subject matter. Client rejects any term or condition in any letter, e-mail, or other document of Borrower which conflicts with or adds to this Agreement.

**14.2 Amendment.** This Agreement may be amended only as stated in a writing signed by both Borrower and Client that recites that it is an amendment to this Agreement.

**14.3 Severability.** If any provision in this Agreement is held invalid or unenforceable, the other provisions shall remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

**14.4 Waiver.** Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Failure, neglect, or delay by Client or Borrower at any time to enforce the provisions of this Agreement or their rights or remedies shall not be construed as a waiver of their rights, powers, or remedies under this Agreement. Waiver of any breach or provision of this Agreement, including, without limitation, any Event of Default, shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**14.5 No Presumption Against Drafter.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

**14.6 Translations Not Binding.** Client may provide Borrower with a Spanish translation of this Agreement and other materials. Client does so as a convenience. Should there be any ambiguity or conflict between the English and Spanish language versions of these documents, the English language versions will control. They, not the Spanish translations, are the official, legally-binding documents.

**14.7 No Third Party Beneficiaries.** This Agreement is for the exclusive benefit of Borrower and Client and not for the benefit of any third party including, without limitation, any employee, affiliate, or vendor of Borrower or Client, except as provided in Section 12.

**14.8 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not, directly or indirectly or by merger or otherwise by operation of law, assign Borrower's rights or delegate Borrower's duties under this Agreement, to anyone else without the prior written consent of Client, which consent Client may grant or withhold in its sole discretion. Client may, without the consent of or notice to Borrower, sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, its rights under this Agreement.

**14.9 Jury Trial Waiver.** Borrower acknowledges that the right to trial by jury is a constitutional one, but that it may be waived under certain circumstances. To the extent permitted by law, each of Client and Borrower, after consulting or having had the opportunity to consult with counsel of its, his or her choice, knowingly and voluntarily, and for the mutual benefit of both parties, waives any right to trial by jury in the event of litigation arising out of or related to this Agreement or any other document, instrument, or agreement between Client and Borrower.

**14.10 Attorneys' Fees.** If there is any mediation, arbitration or legal action to enforce or interpret this Agreement, then the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees and costs, incurred in the action or proceeding. Attorneys' fees and costs shall include paralegal fees, expert witness fees, copy and delivery costs, and all other costs and expenses. Borrower shall pay for all expenses associated with the preparation and interpretation of the Agreement and other Loan Documents.

**14.11 Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**14.12 Notices.** Any notices, approvals, consents or other communications required to be given by either party under this Agreement shall be in writing and personally delivered or sent by certified or registered mail, or by commercial overnight courier service with tracking capabilities, costs prepaid. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Client to any Borrower shall be considered notice given to all Borrowers. Notices shall be sent to the addresses set out in **Exhibit A**. These addresses may be changed by written notice to the other party.

**14.13 Governing Law; Jurisdiction.** This Agreement shall be governed by California law. Client and Borrower consent to the exclusive jurisdiction of the state and federal courts of Santa Cruz, California.

**14.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts will constitute effective delivery.

## **15. Collateral Description**

**15.1 Collateral Description.** For the purposes of this Agreement, "Collateral" means all right, title, interest, claims and demands of the Borrower in and to the following property:

**(a)** All goods and equipment now owned or hereafter acquired, including, without limitation, all farm equipment or agricultural machinery, implements, computer equipment, office equipment, machinery, furniture, fixtures, vehicles, and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

**(b)** All present and future farm products, livestock, aquatic goods produced in aquacultural operations, poultry, agricultural commodities, and other farm products of every type and description, including, without limitation, all replacements and substitutions therefor and additions thereto, and further including, without limitation, any and all offspring, unborn livestock and other products, and other agricultural rights, properties and assets, including, without limitation, Borrower's present and future rights, title, and interest in and to all crops growing or to be planted, cultivated, grown, raised and/or harvested together with any and all agricultural and farm products produced together with all present or future inventory of Borrower and the products thereof;

**(c)** All now existing and hereafter arising accounts, present and future chattel paper, equipment leases, retail installment contracts, contract rights, royalties, license rights, and all other forms of obligations owned by or owed to the Borrower arising out of the sale or lease of goods, the licensing of technology, or the rendering of services by the Borrower (subject, in each case, to the contractual rights of third parties to require funds received by the Borrower to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by the Borrower and the Borrower's books relating to any of the foregoing;

**(d)** All inventories now owned or hereafter acquired, including, without limitation, all consigned inventory, merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, containers, items held for sale, items held for lease, items for which Borrower is lessor, goods to be furnished under contract for services, materials used or consumed in Borrower's business, including such inventories as are temporarily out of the Borrower's custody or possession or in transit and including any returns

upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and the Borrower's books relating to any of the foregoing;

**(e)** All lessor and lessee rights under any and all leases of personal and real properties, including, without limitation, the lessee crop rights, subject to the terms and limitations thereof;

**(f)** All contract rights, general intangibles, health care insurance receivables, payment intangibles, and commercial tort claims, now owned or hereafter acquired, including, without limitation, all patents, patent rights (and applications and registrations therefor), trademarks and service marks (and applications and registrations therefor), wine labels, tradenames and rights thereto, inventions, copyrights, mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs, trade secrets, methods, processes, know-how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, goodwill, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media;

**(g)** All documents, cash, deposit accounts, letters of credit, letter of credit rights, supporting obligations, certificates of deposit, instruments, chattel paper, electronic chattel paper, tangible chattel paper, and investment property, including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and the Borrower's books relating to the foregoing; and

**(h)** Any and all claims, rights, and interests in any of the above and all substitutions for, additions and accessions to, and proceeds thereof, including, without limitation, insurance, condemnation, requisition, or similar payments and the proceeds thereof.

\* \* \* \* \*

*[Signature Page Follows]*



Client and Borrower signed this Agreement as of the date set out in its first paragraph.

**CLIENT:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**[Borrower]:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**[Borrower]:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Exhibits**

- Exhibit A: Loan Information
- Exhibit B: Form of Assignment of Proceeds