

WHEN RECORDED RETURN TO

Adelstein, Sharpe & Serka LLP  
400 North Commercial Street  
Bellingham, WA 98225



200905060145  
Skagit County Auditor

5/6/2009 Page 1 of 9 3:38PM

DOCUMENT TITLE: Deed of Trust  
GRANTOR: Berry Star Farms, L.L.C.  
BENEFICIARY: Farm Credit Canada  
GRANTEE (Trustee): Chicago Title Insurance Company  
LEGAL DESCRIPTION: Lot 2, Skagit County SP#5-90  
TAX PARCEL I.D. Nos.: P33785, P33731, and P33727

CHICAGO TITLE CO.

620002899

**DEED OF TRUST**

(For Use in the State of Washington Only)

THIS DEED OF TRUST, made this 29<sup>th</sup> day of April, 2009, between Berry Star Farms, L.L.C., GRANTOR, whose address is 313 Fourth Street, Lynden, Washington, 98264; Chicago Title Insurance Company, TRUSTEE, whose address is 425 Commercial Street, Post Office Box 638, Mt. Vernon, Washington, 98273, and Farm Credit Canada, BENEFICIARY, whose address is 5460 - 152nd Street, Surrey, British Columbia, Canada, V3S 5J9.

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real properties in ~~Whatcom~~ Skagit County, Washington:

Lot 2, SKAGIT COUNTY SHORT PLAT NO. 5-90, approved January 31, 1990 and recorded February 5, 1990, in Volume 9 of Short Plats, page 198, under Auditor's File No. 9002050001, records of Skagit County, Washington; being a portion of Government Lot 1 in Section 4, Township 35 North, Range 3 East of the Willamette Meridian, and Government Lots 3 and 4 in Section 3, Township 35 North, Range 3 East of the Willamette Meridian.

Situated in Skagit County, Washington ("Property").

together with additional collateral as defined herein. Collateral includes:

(a) All land lying in streets and roads adjoining the Property, and all access rights and easements pertaining to the Property.

(b) All the lands, tenements, privileges, reversions, remainders, irrigation and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Property.

(c) All buildings, structures, improvements, fixtures and property now or hereafter attached to or used in the operation of the Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, motors, dynamos, generating equipment, computers, computer workstations and terminals, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilation, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, underpadding, elevators, escalators, partitions, mangles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants. All property mentioned in this Subsection (c) shall be deemed part of the realty and not severable wholly or in part without material injury to the Property.

(d) All rents, issues and profits of the Property, all existing and future leases of the Property (including extensions, renewals and subleases), all agreements for use and occupancy of the Property (all such leases and agreements whether written or oral, are hereafter referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any right and claims of any kind which Grantor may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents").

(e) All of Grantor's rights further to encumber said Property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Grantor hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt junior to this Deed of Trust and (ii) covenanting that there are to be none as of the date when this Deed of Trust becomes of record, except in either case encumbrances having the prior written approval of Beneficiary, and all Grantor's rights to enter into any lease or lease



200905060145  
Skagit County Auditor

agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

**Collateral.** The following described estate, property and rights of Grantor are also included as security for the performance of each covenant and agreement of Grantor contained herein and the payment of all sums of money secured hereby:

(a) All furniture, supplies, furnishings, appliances, machinery, vehicles, equipment and all other property of any kind now or hereafter located on the Property, used or intended to be used on the Property wherever actually located and all rights of Grantor as lessee of any property described herein.

(b) All compensation, awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, injury or decrease in the value of the Property.

(c) All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property.

(d) All plans, specifications, contracts, agreements and purchase orders pertaining or incidental to the design or construction of any improvements on the Property, Grantor's rights under any payment, performance, or other bond in connection with construction of improvements on the Property, and all construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction of improvements on the Property wherever actually located.

(e) All contracts and agreements pertaining to or affecting the Property including management, operating and franchise agreements and licenses.

(f) All commitments or agreements, now or hereafter in existence, which will provide Grantor with proceeds to satisfy the Guarantees referred to herein and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees.

(g) All additions, accessions, replacements, substitutions, proceeds and products of the property described in this section and of any of the Property which is personal property.

The real property is not used principally for agricultural purposes in order for the deed of trust to be foreclosed nonjudicially. If this statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used



200905060145  
Skagit County Auditor

for agricultural purposes if it is used in an operation that produces crops, livestock or aquatic goods.

This deed is for the purpose of securing performance of each agreement of Grantor herein contained, and all obligations of Grantor arising under the Guarantee executed by Grantor in favor of Beneficiary dated the 29<sup>th</sup> day of April, 2009, or under the Credit Agreement between Beneficiary as Lender, 0803610 B.C., Ltd. as Borrower, and Grantor (and others) as Guarantors dated the 1st day of April, 2009, including, but not limited to, an Eight Hundred Fifty Thousand Dollars and 00/100ths (\$850,000.00) loan made by Beneficiary to 0803610 B.C., Ltd. and any additional loans made pursuant the Credit Agreement together with interest (collectively "Debt Obligations"). The Guarantee and Credit Agreement shall hereinafter collectively be referred to as the "Debt Instruments".

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. When and if Grantor and Beneficiary shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Beneficiary's sole election. Grantor and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Property that is the subject of this Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained in the short form Deed of Trust or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

2. As further security for the payment of all indebtedness herein mentioned, all Grantor's rents and profits of said Property and the right, title and interest of the Grantor in and under all leases now or hereafter affecting said Property, are hereby assigned and transferred to the Beneficiary. So long as no default shall exist in compliance with any requirement hereof or of any further instrument at any time executed with respect to this Deed of Trust the Grantor may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, or at such later time as the Beneficiary in its sole discretion may fix by written notice, all right of the Grantor to



200905060145  
Skagit County Auditor

collect or receive rents or profits shall wholly terminate. All rents or profits of Grantor received from or in respect to said Property which it shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said Property and the sums owing the Beneficiary as they become due and payable as provided in this Deed of Trust or in the said Debt Instruments or in any modification of either. The balance of such rents and profits after payment of such operating expenses, taxes and sums due the Beneficiary, and after the setting aside of accruals to date of such expenses, taxes and sums, including amortization, shall be Grantor's absolute property. No lease of the whole or any part of the property involving an initial term of more than three years shall be modified or terminated without the written consent of the Beneficiary, nor shall the surrender of any such lease be accepted nor any rental thereunder be collected for more than two months in advance without like written consent. In the event of any default hereunder and the exercise by the Beneficiary of its rights hereby granted, Grantor agrees that payments made by tenants or occupants to the Beneficiary shall, as to such tenants, be considered as though made to Grantor and in discharge of tenants' obligations as such to Grantor. Nothing herein contained shall be construed as obliging the Beneficiary to perform any of Grantor's covenants under any lease or rental arrangement. Grantor shall execute and deliver to the Beneficiary upon demand any further or supplemental assignments necessary to effectuate the intentions of this paragraph and upon failure of the Grantor so to comply, Beneficiary may, in addition to any other right or remedy it has, declare the maturity of the indebtedness hereby secured.

3. To keep the Property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
4. To pay before delinquent all lawful taxes and assessments upon the Property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.
5. To keep all buildings now or hereafter erected on the Property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
6. In the event of any default under this Deed of Trust, or in the event that any dispute arises relating to the interpretation, enforcement, or performance of any



200905060145  
Skagit County Auditor

obligation secured by this Deed of Trust, or in the event of bankruptcy or insolvency proceedings as described below, Beneficiary shall be entitled to collect from Grantor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators, and court reporters. Without limiting the generality of the foregoing, Grantor shall pay all such costs and expenses incurred in connection with (a) arbitration or other alternative dispute resolution proceedings, trial court actions, and appeals; (b) bankruptcy or other insolvency proceedings of Grantor, any guarantor or other party liable for any of the obligations secured by this Deed of Trust, or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) postjudgment collection proceedings; (e) all claims, counterclaims, cross-claims, and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Deed of Trust; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

7. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute and including any costs incurred by the Beneficiary in connection with a suit for a deficiency judgment against Grantor and/or any Guarantor such as appraisal fees, and any other costs and expenses incurred by the Beneficiary.

8. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the Property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the Debt Instruments secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

**IT IS MUTUALLY AGREED THAT:**

1. In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation. The Grantor assigns the rights to any proceeds to the Beneficiary to the extent of the amount of any unpaid balance remaining to be paid to the Beneficiary.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.



200905060145

Skagit County Auditor

4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto. To the extent permitted by law, including without limitation RCW 61.24.100, Beneficiary may seek and obtain a deficiency judgment following the completion of a judicial foreclosure or a trustee's sale of all or a portion of the security on the obligations secured by this Deed of Trust.

5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrances for value.

6. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to and inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the Debt Instruments secured hereby, whether or not named as Beneficiary herein.

9. If the Property, or any part thereof, is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, whichever event occurs first, then the Beneficiary shall declare all sums secured by this Deed of Trust immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Beneficiary has consented or waived their



200905060145  
Skagit County Auditor





=====

**REQUEST FOR FULL RECONVEYANCE**

Do not record. To be used only when the Debt Instruments have been paid.

TO: TRUSTEE

The undersigned are the legal owner(s) and holder(s) of the Debt Instruments and all other indebtedness secured by the within Deed of Trust. Said Debt Instruments, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said Debt Instruments above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

DATED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

S:\Farm Credit Canada\Berry Star Farm LLC\Deed of Trust.doc



200905060145  
Skagit County Auditor

5/6/2009 Page

9 of

9 3:38PM