

Filed for Record at the Request of:
Chmelik Sitkin & Davis P.S.
1500 Railroad Avenue
Bellingham, WA 98225

MORTGAGE

Grantor: KLOOT FARMS, INC.

Beneficiaries: BANK OF NOVA SCOTIA

Abbreviated Legal Description: PTN OF SW ¼, SW ¼, S21, T35N, R4 E, W.M.;
PTN OF NW ¼, NW ¼, S28, T35N, R4 E, W.M.;
PTN OF SW ¼, S21, T35N, R4 E, W.M.;
PTN OF SE ¼, S20, T35N, R4 E, W.M.

[Full Legal on Pages 7 – 8 of Document]

Tax Parcel No(s): P36980 / 350420-4-001-0002;
P36981 / 350420-4-001-0101;
P36983 / 350420-4-002-0001;
P36990 / 350420-4-006-0007;
P37016 / 350421-3-006-0008;
P37021 / 350421-3-006-0503;
P37022 / 350421-3-007-0007;
P37976 / 350428-2-003-0006

MORTGAGE

KLOOT FARMS, INC. (the "MORTGAGOR") hereby mortgages to **BANK OF NOVA SCOTIA** (the "MORTGAGEE"), this 6th day of May, 2022 to secure payment of the sum of Two Million Nine Hundred Thousand U.S. Dollars (\$2,900,000.00) together with any future amounts extended to MORTGAGOR by MORTGAGEE on credit, the real estate described in **Exhibit "A"** attached hereto and incorporated herein by this reference and all improvements located thereon (the "Subject Property").

MORTGAGOR desires to mortgage to MORTGAGEE, its successors and assigns, all of MORTGAGOR's interest in and to the Subject Property together with all rights and interests thereunto pertaining, and all rents, issues and profits thereof, all fixtures and equipment now or hereafter attached thereto, and all of the interest therein which may hereafter be acquired by MORTGAGOR, all of which shall be construed as a part of the real property above-described and which is herein sometimes called collateral.

MORTGAGOR and MORTGAGEE hereby agree as follows:

I. GENERAL TERMS

1.1 Recitals True. The above recitals are true and correct and incorporated herein by this reference as if fully set forth herein.

1.2 Grant of Mortgage. MORTGAGOR hereby mortgages the Subject Property to MORTGAGEE to have and to hold the said premises and properties with the appurtenances thereunto belonging unto the said MORTGAGEE, its successors and assigns forever.

1.3 Obligation Secured by Mortgage. This Mortgage is intended to secure the payment or performance of obligations of MORTGAGOR to MORTGAGEE as described in the Commitment Letter between MORTGAGOR and MORTGAGEE dated April 21, 2022 (the "Commitment Letter").

The date of maturity of the debt or obligation secured by this Mortgage is as stated in the Commitment Letter.

1.4 Title of Mortgagor. MORTGAGOR is lawfully seized of the property in fee simple subject only to this Mortgage, and subject to, and as set forth in 1.5 below, and MORTGAGOR will warrant and defend the same and has good right to place this first position mortgage, except as set forth in the encumbrances in 1.5 below, on the Subject Property and convey the same in accordance with the terms hereof.

1.5 Prior or Other Encumbrances. The Subject Property is free of prior liens and encumbrances except this Mortgage, and except those matters set forth in First American Title Insurance Company commitments for title insurance issued under (i) File No.: 22-15264-KH with a commitment date of April 19, 2022, and (ii) File No.: 22-15263-KH with a commitment date of April 28, 2022. The MORTGAGOR will keep the property free from and promptly pay any encumbrances other than the lien hereby created, and the obligations secured by this Mortgage will be promptly paid or performed when due according to their terms.

1.6 Taxes and Assessments. MORTGAGOR will promptly pay all taxes and assessments levied or imposed on the Subject Property and this Mortgage or the debt hereby secured prior to delinquency and deliver receipts evidencing such payment to MORTGAGEE immediately after such payment, if requested by MORTGAGEE in writing.

1.7 Insurance of Structures. MORTGAGOR will keep all structures, if any, situated on the Subject Property insured at all times against loss by fire and other hazards for which, in the judgment of MORTGAGEE, insurance protection is reasonably necessary, in a company or companies acceptable to MORTGAGEE and in amounts sufficient to protect MORTGAGEE against loss or damage to the collateral and will pay the premiums thereof; such policy or policies of insurance will be delivered to secured endorsement in favor of MORTGAGEE as its interest may appear, all in form and content satisfactory to MORTGAGEE. If MORTGAGOR shall fail to secure such insurance as is hereby required, MORTGAGOR hereby constitutes and appoints MORTGAGEE as MORTGAGOR's attorney to secure such insurance at MORTGAGOR's sole cost and expense. MORTGAGOR further appoints MORTGAGEE as MORTGAGOR's attorney for purposes of adjusting, settling, and cancelling such insurance and for endorsing any drafts resulting from such adjustment, settlement, or cancellation.

1.8 Condition/Maintenance of Collateral – Inspections. MORTGAGOR will keep the Property in good condition and repair, reasonable wear and tear excepted, and will permit MORTGAGEE to enter upon the Subject Property for the purpose of examining the collateral. MORTGAGEE shall give twenty-four (24) hours' advance notice prior to entering the Subject Property unless a bona fide emergency exists.

1.9 Costs of Enforcement of Mortgage or Protection of Collateral. MORTGAGOR will pay as a part of the debt hereby secured all amounts, including reasonable fees for attorneys or other agents of MORTGAGEE, with interest thereon, expended or paid by MORTGAGEE for: taxes, levies, repairs to or maintenance of the collateral, protection of the collateral or MORTGAGEE's security interest in the collateral and in taking possession of, disposing of, or preserving the collateral after any default herein or as hereinafter described.

1.10 Current Address. MORTGAGOR will immediately notify MORTGAGEE of any change of MORTGAGOR's mailing or business address.

1.11 Later Encumbrances. Without the prior written consent of MORTGAGEE, MORTGAGOR will not permit any new liens or security interests (other than this interest) to attach to any of the collateral nor permit any of the collateral to become subject to any legal process; nor sell nor offer to sell the collateral; nor remove nor permit the removal of the collateral from the location or locations set forth above; nor do or permit anything to be done which might impair the collateral or its value.

1.12 Due on Sale. The obligation owed under the Commitment Letter secured by this Mortgage shall be paid in full upon sale, assignment, or transfer of any interest in the Subject Property by MORTGAGOR. Upon breach of this provision, MORTGAGEE may declare all sums due under the Commitment Letter and this Mortgage immediately due and payable.

1.13 Further Assurances, Attorney-in-Fact. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

A. Further Assurances. At any time, and from time to time, upon the request of MORTGAGEE, MORTGAGOR will make, execute and deliver, or will cause to be made, executed or delivered, to MORTGAGEE, and when requested by MORTGAGEE, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as MORTGAGEE may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the sole reasonable opinion of MORTGAGEE, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve: (1) MORTGAGOR's obligations under the Commitment Letter, this Mortgage, and any related documents; and (2) the liens and security interests created by this Mortgage on the collateral, whether now owned or hereafter acquired by MORTGAGOR. MORTGAGOR shall reimburse MORTGAGEE for all costs and expenses incurred in connection with the matters referred to in this paragraph.

B. Attorney-in-Fact. If MORTGAGOR fails to do any of the things referred to in this preceding paragraph, MORTGAGEE may do so for and in the name of MORTGAGOR and at MORTGAGOR's expense. For such purposes, MORTGAGOR hereby irrevocably appoints MORTGAGEE as MORTGAGOR's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in MORTGAGEE's sole opinion, to accomplish the matters referred to in the

preceding paragraph.

1.14 Construction.

A. This Mortgage shall be construed in accordance with and under the laws of the State of Washington and the Parties agree that in any such action, venue shall lie exclusively in Skagit County, Washington.

B. This Mortgage shall inure to the benefit of MORTGAGEE, its successors and assigns, and shall be binding upon the successors and assigns of MORTGAGOR.

C. Masculine, feminine, and neuter words have been used interchangeably herein and plural words have been used to include the singular and vice versa, except where the context clearly requires another construction.

D. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the collateral at any time held by or for the benefit of MORTGAGEE in any capacity, without the written consent of MORTGAGEE.

E. All parties to this Mortgage hereby waive the right to any jury trial, trial in any action, proceeding, or counterclaim brought by any party against any other party.

F. MORTGAGEE shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by MORTGAGEE. No delay or omission on the part of MORTGAGEE in exercising any right shall operate as a waiver of such right or any other right. A waiver by MORTGAGEE of a provision of this Mortgage shall not prejudice or constitute a waiver of MORTGAGEE's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by MORTGAGEE, nor any course of dealing between MORTGAGEE and MORTGAGOR shall constitute a waiver of any of MORTGAGEE's rights or of any of MORTGAGOR's obligations as to any future transaction. Whenever the consent of MORTGAGEE is required under this Mortgage, the granting of such consent by MORTGAGEE in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of MORTGAGEE.

G. If any provision to this Mortgage shall be held invalid or unenforceable, by a court of competent jurisdiction, such invalidity or unenforceability shall attach only to such provision and shall not in any way affect or render invalid or unenforceable any other provision of this Mortgage and this Mortgage shall be deemed modified by such court to the minimum extent required by law.

H. This Mortgage applies to, inures to the benefit of, and is binding not only on the Parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors and assigns.

II. ENFORCEMENT TERMS

Should MORTGAGOR default in any of the foregoing covenants, warranties or agreements, the following provisions shall apply:

2.1 All or any of such defaults may, at the option of MORTGAGEE, be cured by

MORTGAGEE, in which event MORTGAGOR agrees, upon demand, to reimburse MORTGAGEE for any sums expended by MORTGAGEE in effecting such cure, including reasonable attorneys' fees, together with interest thereon at the maximum lawful rate, and such sums shall be secured by the lien hereby created without waiver of any right or remedy otherwise arising from such default or the cure thereof.

2.2 No delay or failure by MORTGAGEE to exercise any right or remedy shall be a waiver of such right or remedy and no single or partial exercise by MORTGAGEE of any right or remedy or failure of the exercise of any other right or remedy at any other time for the same or a similar default of MORTGAGOR.

2.3 MORTGAGEE shall be the sole judge of the validity of any tax or assessment or lien asserted against the collateral and payment thereof shall establish the right of MORTGAGEE to recover the same from MORTGAGOR, and MORTGAGOR may contest any such tax, assessment or lien upon written notice to MORTGAGEE of such contest and the making provisions acceptable to MORTGAGEE for payment of such lien, assessment or tax, in full, with interest and penalties, if any, upon a determination of the contest adverse to the interests of MORTGAGOR or MORTGAGEE; and so long as such contest shall be continued in good faith by MORTGAGOR, MORTGAGEE shall take no action by reason of such default.

2.4 MORTGAGEE shall have the option to declare the obligations hereby secured fully due or matured without advance notice to MORTGAGOR of MORTGAGEE's intent so to do, and this Mortgage may be foreclosed at any time thereafter.

2.5 MORTGAGEE shall have the right to foreclose this Mortgage for principal of and interest on all sums paid by MORTGAGEE hereunder at any time MORTGAGOR shall be in default of any covenant, warranty, or agreement herein and for default of MORTGAGOR at any time upon the minimum notice which may be required by law.

2.6 This Mortgage may be foreclosed by any statutory authorized proceeding available to MORTGAGEE for default in the State of Washington and in any such foreclosure, MORTGAGEE shall have the maximum rights and privileges available to it under law.

2.7 MORTGAGOR agrees to pay all actual costs and expenses incurred of MORTGAGEE in any foreclosure of this Mortgage, regardless of the method of foreclosure, to the maximum extent permitted by law, specifically including, but not limited to, reasonable attorneys' fees, title reports and title searches, all statutory costs and disbursements, and filing fees, and if an appeal be taken from such foreclosure, all such sums expended by MORTGAGEE in such appeal, all of which to the maximum extent permitted by law, shall be included in the decree or instrument of foreclosure.

2.8 MORTGAGOR authorizes MORTGAGEE to apply to any court having jurisdiction of the matter for the appointment of a receiver to collect the rents and profits arising out of the collateral during the pendency of any foreclosure and apply the same, after first deducting all of said receiver's proper charges and expenses, to the payment of any amount due or the performance of any obligation secured by this Mortgage.

2.9 If permitted by applicable law, MORTGAGEE may obtain a judgment for any deficiency remaining in the amount owed to MORTGAGEE by MORTGAGOR and secured hereby after application of all amounts received from the exercise of any of the rights provided for in this Section 2.

2.10 If MORTGAGOR remains in possession of the collateral after the collateral is sold as provided above or MORTGAGEE otherwise becomes entitled to possession of the collateral upon default of MORTGAGOR, MORTGAGOR shall become a tenant at sufferance of MORTGAGEE, or the purchaser of the collateral and shall, at MORTGAGEE's option, either: (1) pay a reasonable rental for the use of the collateral; or (2) vacate the collateral immediately upon the demand of MORTGAGEE.

2.11 Election by MORTGAGEE to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of MORTGAGOR under this Mortgage, after MORTGAGOR's failure to perform, shall not affect MORTGAGEE'S right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to MORTGAGEE following an event of default, or in any way to limit or restrict the rights and ability of MORTGAGEE to proceed directly against MORTGAGOR, and/or against any other co-Makers, guarantor, surety, or endorser and/or to proceed against any other collateral directly or indirectly securing the indebtedness.

MORTGAGOR:

KLOOT FARMS INC.

President

DOMINION OF CANADA)

) ss.

PROVINCE OF BRITISH COLUMBIA)

On this day personally appeared before me J. Scott Birch, to me known to be the **PRESIDENT** of the **KLOOT FARMS, INC.**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 3 day of May, 2022.

Print Name:

NOTARY PUBLIC in and for the
Province of British Columbia.

My Commission Expires: N/A

J. SCOTT BIRCH
Barrister & Solicitor
9202 Young Road
P.O. Box 372
Chilliwack, BC V2P 6J4

[NOTARY SEAL]

UNOFFICIAL DOCUMENT

**EXHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY**

PARCEL A:

The South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 21, Township 35 North, Range 4 East, W.M., EXCEPT the East 20 feet conveyed to Skagit County for road purposes by Deed dated April 14, 1910 and recorded May 3, 1910, under Auditor's File No. 79227, in Volume 81 of Deeds, page 53, being a portion of Tract "B" of Revised Short Plat No. 86-78, approved October 26, 1978 and recorded October 27, 1978, under Auditor's File No. 890223.

Situated in Skagit County, Washington.

PARCEL B:

The Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 28, Township 35 North, Range 4 East, W.M., EXCEPT the East 20 feet thereof conveyed to Skagit County for road purposes by Deed dated April 14, 1910 and recorded May 3, 1910, in Volume 81 of Deeds, page 53, records of Skagit County, Washington.

TOGETHER WITH the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 28, Township 35 North, Range 4 East, W.M., EXCEPT the East 30 feet thereof conveyed to Skagit County for road purposes by Deeds dated April 27, 1911 and April 20, 1911 and recorded May 8, 1911 in Volume 85 of Deeds, pages 319 and 321, records of Skagit County, Washington., ALSO EXCEPT the following described tract:

The South 500.00 feet of the East 730.00 feet of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 28, Township 35 North, Range 4 East, W.M., EXCEPT the East 30 feet thereof conveyed to Skagit County for road purposes by Deeds dated April 27, 1911 and April 20, 1911, in Volume 85 of Deeds, pages 319 and 321, records of Skagit County, Washington.

Situated in Skagit County, Washington.

PARCEL C:

The West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 21, Township 35 North, Range 4 East, W.M.;

EXCEPT the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section;

AND EXCEPT the North 25 feet thereof conveyed to Skagit County for road purposes by Deeds recorded under Auditor's File No. 19199, in Volume 28 of Deeds, page 549, and Auditor's File No. 770324, records of Skagit County, Washington;

AND EXCEPT the East 20 feet thereof conveyed to Skagit County for road purposes by deed recorded under Auditor's File No. 79227, in Volume 81 of Deeds, page 53, records of Skagit County, Washington;

AND EXCEPT that portion thereof lying within the North 30 feet of the East 125 feet of the West 1,166.01 feet of said subdivision, as conveyed to Skagit County for road purposes by Deed recorded under Auditor's File No. 890414, records of Skagit county, Washington;

AND ALSO EXCEPT that portion thereof lying within the boundaries of the following described tract:

Tract "A" of Short Plat No. 86-78, approved October 26, 1978 and recorded October 27, 1978, under Auditor's File No. 890223, in Volume 3 of Short Plats, page 35, records of Skagit County, Washington; being a portion of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 21, Township 35 North, Range 4 East, W.M.,

AND ALSO EXCEPT that portion conveyed for to Skagit County for road by Deed recorded November 30, 1983, under Auditor's File No. 8311300001, records of Skagit County, Washington.

AND ALSO EXCEPT that portion conveyed to Skagit County for road by Deed recorded September 15, 1999, under Auditor's File No 199909150102.

(Being a portion of Tract "B" of Revised Short Plat No. 86-78, approved October 26, 1978 and recorded October 27, 1978, under Auditor's File No. 890223.)

Situated in Skagit County, Washington.

PARCEL D:

The East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 20, Township 35 North, Range 4 East, W.M.,

EXCEPT the North 25 feet thereof conveyed to Skagit County for road purposes by deeds recorded April 25, 1894, under Auditor's File No. 19199, in Volume 28 of Deeds, page 549, and recorded June 27, 1972, under Auditor's File No. 770211, records of Skagit County, Washington.

ALSO, the East 24.75 feet of the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 20, Township 35 North, Range 4 East, W.M.,

EXCEPT the North 20 feet thereof conveyed to Skagit County for road purposes by deed recorded April 25, 1894, under Auditor's File No. 19199, in Volume 28 of Deeds, page 549, records of Skagit County, Washington.

EXCEPT that right of way as conveyed by right of way deed dated July 8, 1999 and recorded September 23, 1999 under Auditor's File No. 9909230058, a re-recording of Auditor's File No. 9907220011, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.