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WHEN RECORDED RETURN TO

Texas State Bank  
P.O. Box 4797  
McAllen, TX 78502-4797

DATE/TIME: 10/29/04 1634  
FEE: \$31.00  
PAGES: 19  
FEE NUMBER: 2004-087888

**DEED OF TRUST AND SECURITY AGREEMENT**  
(ARIZONA)

**THIS DEED OF TRUST AND SECURITY AGREEMENT** (hereinafter called "Deed of Trust"), made the 15th day of October, 2004, between **Brian M. Mizokami, Donald R. Lindenborn, Jr., Jack E. Rutledge**, as to their 22% each undivided interest in the real property described on Exhibit A attached hereto and made a part hereof and **Pentagon Produce, Inc.** a Texas Corporation as to its 34% undivided interest in the real property described in Exhibit A, attached thereto and made a part hereof (collectively "Trustors"), and **PAUL S. MOXLEY** (hereinafter called "Trustee"), and **TEXAS STATE BANK**, McAllen, TX (hereinafter called "Beneficiary").

**WITNESSETH:**

**THAT WHEREAS**, Trustors are indebted to Beneficiary in the principal sum of one hundred eighty five thousand dollars and no/100 (U.S. \$185,000.00) as evidenced by Trustors' Note of even date herewith (hereinafter called "Note"), providing for installments of principal and interest at the rate set forth in the Note and all other terms and conditions set forth therein, with the balance of the indebtedness, if not sooner paid, due and payable on or before September 1, 2007.

**TO SECURE** for Beneficiary (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, (b) the payment of all other sums advanced in accordance with the Note or this Deed of Trust, including without limitation, future advances made to or on behalf of Trustors by Beneficiary pursuant to Paragraph 15 hereof (hereinafter called "Future Advances"), and (c) the performance by Trustors of all covenants, conditions, stipulations and agreements herein and in the Note contained.

**Granting Clause**

NOW THEREFORE, for the consideration set forth in the above recitals, Trustors do by these presents **GRANT, BARGAIN, SELL, TRANSFER, PLEDGE, MORTGAGE, WARRANT, HYPOTHECATE** and **CONVEY** to Trustee, its successors and assigns forever, in Trust, with Power of Sale all of the following described property, including all of the rights, title, interest and estate of Trustors, in and to the following:

and estate of Trustor therein, situate, lying and being in the County of Pinal, State of Arizona, legally described as:

Lot 2, Eloy Industrial Park according to the plat of record in the Office of the County Recorder of Pinal County, Arizona, recorded in Cabinet A, Slide 70 through 74,

Except an undivided ½ interest in all mineral rights as reserved by Rubie Louise Baker, a widow, as reserved in Deed in Docket 42, page 238.

Together with all estates, tenements, hereditaments, privileges, easements, franchises, licenses, permits and appurtenances belonging or any wise appertaining to the Land; and all improvements and fixtures (hereinafter referred to as the "Improvements") which are located on the Land including, all buildings, all utility lines and equipment, air conditioning and heating equipment, and all additions, substitutions and replacements thereof. The Land and Improvements are hereinafter collectively referred to as the "Trust Premises".

**B. Leases, Rents and Other Privileges**

All rents, issues, revenues and profits including, without limiting the generality of the foregoing, all interest of Trustor in and to all present and future leases, tenancies and occupancies of the Trust Premises or of the oil, gas or mineral rights or of space in the Improvements and in and to any sublease of the aforementioned Land, and all the estate, right, title and interest, claim and demand whatsoever, at law or in equity, which Trustor now has or may hereafter acquire in and to such property together with the right, but not the obligation, to collect, receive and receipt for all such rents and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable. By acceptance of this Deed of Trust, the Trustee agrees, not as a limitation or condition hereof, but as a covenant available only to the Trustor and subsequent owners of the property, that until an event of default shall occur or shall have been declared by Beneficiary, giving the Beneficiary the right to foreclose this Deed of Trust, Trustor may collect, receive and enjoy such rents. The assignment made by this paragraph shall not impair or diminish the obligation of Trustor under the provisions of such leases nor shall the obligation be imposed upon the Trustee or Beneficiary.

**C. Other Property Conveyed**

- (1) All rights in and to easements, common areas and access or use rights over roads or rights-of-way or utility easements on adjacent properties heretofore granted to Trustor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues, and alleys adjoining the Trust Premises.
- (2) All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the Trust Premises or any part thereof under power of eminent domain. Beneficiary is hereby authorized, on behalf and in the name of the Trustor, to execute and deliver valid acquitances for and to appeal from any such judgments or awards. Beneficiary may apply all such

sums or any part thereof so received, after the payment of all its expenses (including costs and attorney's fees) on the indebtedness secured hereby in such manner as it elects, notwithstanding the fact that the amount owing thereon may not then be due and payable or that the said indebtedness is otherwise adequately secured, or, at Beneficiary's sole option, the entire amount or any part thereof so received may be released to Trustor.

All of the property, rights and interest described in the foregoing Granting Clause, and intended to be encumbered hereby, being collectively hereinafter referred to as the "Property".

**TO HAVE AND TO HOLD** the Property unto the Trustee, its successors and assigns, forever.

**PROVIDED, ALWAYS**, that this Deed of Trust is upon the express condition that if the Trustor shall pay or cause to be paid all indebtedness secured hereby and shall keep, perform and observe, all and singular, the covenants and promises in the Note, and the Trustor shall keep, perform and observe, all and singular, the covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed and observed by the Trustor, then this Deed of Trust and the estate and rights hereby granted shall cease, determine and be void and this Deed of Trust shall be released by Beneficiary upon the written request of the Trustor. Otherwise, this Deed of Trust shall remain in full force and effect, and provided that the Trustor comply with each and every covenant, condition, term and agreement hereof, possession and the right of possession shall be reserved to Trustor.

Trustor covenants and agrees with Trustee and Beneficiary as follows:

1. **TITLE TO THE PREMISES.** Trustor covenants that the Trustor is lawfully seized of the Property, in fee simple, and has the right to grant this Deed of Trust; that the Property is free from all liens and encumbrances except as otherwise listed herein in Exhibit A-1; that Trustee and Beneficiary shall quietly enjoy the Property; and that Trustor does warrant and will defend the title to the Property against all claims, whether now existing or hereafter arising, except for those shown on Exhibit A-1 attached hereto and made a part hereof which are expressly excepted. The covenants and warranties of this paragraph shall survive foreclosure of this Deed of Trust and shall run with the Land.

2. **PAYMENT OF PRINCIPAL AND INTEREST.** Trustor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note and the principal of and interest on any Future Advances secured by the Deed of Trust.

3. **TAXES AND ASSESSMENTS.** Trustor shall pay, when due before penalty, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Property by making payment directly to the payee thereof or, if the Beneficiary so designates, by making payment in accordance with Paragraph 5 hereof and Trustor shall promptly deliver to Beneficiary any official receipts received by Trustor. Trustor shall likewise pay all taxes,

assessments and other charges levied upon or assessed, placed or made against or measured by this Deed of Trust or the recordation hereof or the indebtedness secured hereby, provided that the Trustor shall not be obligated to pay any such tax, assessment or other charge if such payment would be contrary to law or would result in the payment of an unlawful rate of interest on the indebtedness secured hereby. Trustor shall promptly furnish to Beneficiary all notices received by Trustor of amounts delinquent under this paragraph. Trustor agrees to pay a one time fee to reimburse Beneficiary for costs incurred in engaging a tax service to provide periodic reports to Beneficiary on the status of real estate taxes on the Trust Premises. In the event of the passage after the date of this Deed of Trust of any applicable law creating or providing for any tax, assessment or charge which may not be lawfully paid by Trustor, the entire indebtedness secured hereby, together with interest due thereon, shall, at the option of Beneficiary, be immediately due and payable.

4. **LIENS.** Trustor shall keep the Property free from all liens, whether prior or subordinate to this Deed of Trust, other than the lien of current real estate taxes and installments of official assessments with respect to which no penalty is yet payable.

5. **FUNDS FOR TAXES AND INSURANCE.** If requested at any time or from time to time by Beneficiary, Trustor shall make monthly deposits with Beneficiary in addition to the payments required by the Note until the Note is paid in full in a sum (hereinafter "Funds") equal to one-twelfth of the yearly taxes and assessments levied against the Property plus one-twelfth of yearly premium installments on insurance required under Paragraph 8 hereof, all as estimated initially and adjusted from time to time by Beneficiary to be applied by Beneficiary to pay such taxes, assessments and insurance premiums. Unless an agreement is made or applicable law requires that interest be paid on the funds, no earnings or interest shall be payable to Trustor on the Funds. The Funds are pledged as additional security for the sum secured by this Deed of Trust. Such Funds shall not be, nor be deemed to be, trust funds and, unless applicable law provides otherwise, Beneficiary shall have the right to hold the Funds in any manner Beneficiary elects and may commingle the Funds with other monies held by Beneficiary.

Any insufficiency of the Funds to pay the aforesaid charges when due shall be paid by Trustor to Beneficiary on demand upon notice from Beneficiary. If, by reason of default by Trustor and under any provision of this Deed of Trust, Beneficiary declares all sums secured hereby to be due and payable, Beneficiary may then apply any or all of the Funds against the indebtedness secured hereby.

Beneficiary may from time to time waive and after such waiver reinstate any or all provisions hereof requiring such deposits by notice to Trustor in writing. While any such waiver is in effect, Trustor shall pay taxes, assessments and insurance premiums as herein elsewhere provided and provide Beneficiary with proof of payment of the same.

6. **FAILURE TO MAKE PAYMENTS.** In the event the Trustor fails to pay any taxes, liens or judgments, as herein provided or fails to maintain insurance as herein provided, Beneficiary, at its sole option, may make such payment(s) or provide such insurance and the amount paid therefore shall be immediately due and payable by Trustor and, until paid, shall be secured by this Deed of Trust and shall bear interest at the default rate provided for in the Note until paid. Such

payment by Beneficiary shall not in any way restrict Beneficiary's other rights afforded hereunder or by operation of law. Nothing contained herein shall be construed as requiring Beneficiary to make any payment or maintain any insurance whatsoever pertaining to the subject Property.

7. **HAZARD INSURANCE.** Trustor shall keep the buildings, irrigation wells, and other improvements now existing or hereafter erected on the Trust Premises insured by insurance carriers satisfactory to Beneficiary against loss by fire, lightening and other hazards included in the term "Extended Coverage". The provider of the insurance and the form of policy shall be acceptable to Beneficiary. The policy or policies of insurance shall have loss payable provisions in favor and form acceptable to Beneficiary.

Trustor shall pay all premiums on such insurance by making payment, when due, directly to insurance carriers or, if Beneficiary so designates, by making payment in accordance with Paragraph 5 hereof. Beneficiary shall have the right to hold the policies and renewals thereof and Trustor shall promptly furnish to Beneficiary all renewal notices and paid premium receipts. In no event shall Beneficiary be held responsible for failure to pay for any insurance written where the funds deposited pursuant to paragraph 5 are insufficient for such payment or for any loss or damage growing out of a defect in any policy or growing out of any failure of any insurance company to pay for any loss or damage insured against.

In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor. Trustor and Beneficiary shall jointly adjust the insurance provided, however, that if the claim is not paid within forty-five (45) days following the damage or destruction, the insurance may be adjusted by Beneficiary alone at any time after said forty-five day period. Beneficiary is authorized and empowered to collect and receive insurance proceeds and to apply the insurance proceeds or any part thereof, at the sole discretion of Beneficiary, to the restoration or repair of the Property damaged or to the reduction of the indebtedness secured hereby, in such order of application as Beneficiary may determine. Any such application to the principal of the Note shall not extend or postpone the due date of any installments referred to in the Note or change the amount of such installments.

All policies of insurance are hereby assigned to Beneficiary as additional security for the payment of the indebtedness secured hereby. In the event of foreclosure of this Deed of Trust, all right, title and interest of the Trustor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

8. **DUE ON SALE OR ENCUMBRANCE.** In the event Trustor, without the prior written consent of Beneficiary, shall sell, convey, transfer, alienate, mortgage, sell on installment contract or encumber the Trust Premises or any part thereof, or any interest therein or shall be divested of its title, or any interest therein in any manner or way, whether voluntary or involuntary, or in the event of any merger, consolidation or dissolution affecting Trustor or a transfer of a majority interest in Trustor or a transfer of a majority interest in any general partner of any Trustor which is a joint venture or general or limited partnership, or in the event of the transfer or other disposition of any interest in Trustor or any entity in Trustor's chain of ownership, whereby control of the

management and operation of the Trust Premises is no longer in Trustor, then in any of such events at the sole option of Beneficiary, Beneficiary may either (a) declare the entire outstanding principal balance, together with all accrued interest calculated in accordance with terms set forth in the Note, to be immediately due and payable, or (b) raise the interest rate due on the Note in which event such rate shall immediately increase to the maximum lawful rate of interest for the jurisdiction in which the Property is located unless the Beneficiary shall otherwise give the Trustor written notice of Beneficiary's election, at its sole option, to accept a specified increased rate of interest which is less than the maximum lawful rate. This provision shall not apply to transfers of title or interest under any Will or Testament or applicable law of descent.

9. **BANKRUPTCY.** In the event that (a) any Borrower (hereinafter defined) shall file or there shall be filed against such Borrower a petition in bankruptcy or insolvency or a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the bankruptcy laws of the United States or under any other applicable Federal, State or other statute or law and such proceeding shall not be dismissed within thirty (30) days after commencement thereof, or (b) a receiver, trustee or liquidator shall have been appointed with respect to Borrower or all or any substantial part of any Borrower's property and such appointment shall not have been vacated within thirty (30) days then, in any such event, Beneficiary may, at its option, declare the principal of the Note hereby secured and then outstanding to be due and payable immediately and upon such declaration the entire said principal so declared to be due and payable together with any other sums secured hereby shall become and be due and payable immediately, anything in this Deed of Trust or in said Note to the contrary notwithstanding, to the extent permitted by law. For the purposes of this paragraph, "Borrower" shall mean any person who executed or assumed the Note or any guarantor of the Note or any owner of the Trust Premises, or of any interest therein, including any shareholder of a partnership, joint venture or joint venturer, general or limited partnership or general partner, or land trustee or beneficiary (or any general partner or joint venturer of any joint venture or general or limited partnership which is a beneficiary).

10. **PRESERVATION OF PROPERTY.** Trustor shall keep the buildings and other improvements now or hereafter erected on the Trust Premises in good repair and condition and shall provide all utility services necessary for the operation and preservation of the Property. Trustor shall commit or permit no waste and shall not materially alter the design or structural character of the buildings now or hereafter erected on the Land without the prior written consent of Beneficiary and in no event shall Trustor do any act or thing which would unduly impair or depreciate the value of the Property. Trustor shall not abandon the Property. Trustor shall conform to the standards of good husbandry and shall, at all times, act so as to minimize erosion and depletion of the soil. Trustor shall utilize available water in conformance with current agricultural practices so as to avoid excessive depletion of available water supplies. Trustor, at its sole expense, shall take all reasonable steps to preserve and protect its rights to surface water of the Gila River as set forth in Attachment "B".

11. **RIGHT TO INSPECT.** Beneficiary, or its agents, shall have the right, at all reasonable times, to enter upon the Trust Premises for the purposes of inspection thereof without thereby becoming liable to Trustors or any person in possession holding under Trustors provided, however, Beneficiary shall give Trustors notice prior to any such inspection.

12. **PROTECTION OF BENEFICIARY'S SECURITY.** If Trustors fail to perform any of the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which does or may adversely affect the Trust Premises or Property or the interest of Trustors or Trustee or Beneficiary therein, or the title of Trustors thereto, or if Trustee or Beneficiary shall be made a party to any such action or proceeding, including a Bankruptcy or proceeding in which Trustors or any Borrower as defined in Paragraph 9 is a debtor, then the Beneficiary, at its sole option, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, obtain appraisals and take such other action as Beneficiary deems necessary to protect Beneficiary's interest. Beneficiary shall be the sole judge of the legality, validity and priority of claims, liens, encumbrances, taxes, assessments, charges and premiums paid by it and of the amount necessary to be paid in satisfaction thereof. In the event that, after damage to or destruction of the Trust Premises or condemnation of a portion thereof or a sale under threat thereof, the Beneficiary elects to restore the Trust Premises and the insurance, sale or condemnation proceeds as the case may be which are paid to Beneficiary are not sufficient for such restoration, Beneficiary may effect the restoration in such manner as it determines. Beneficiary is hereby given the irrevocable power of attorney (which power is coupled with an interest given for security and is irrevocable) to enter upon the Trust Premises as Trustors' agent and in Trustors' name to perform any and all covenants to be performed by the Trustors as herein provided. All amounts disbursed or incurred by Beneficiary pursuant to this Paragraph 12, including but not limited to reasonable attorney fees, shall be payable upon demand, shall bear interest at the default rate set forth in the Note from the date of disbursement or the date incurred and shall become an additional amount secured hereunder. Beneficiary shall, at its option, be subrogated to any encumbrances, lien, claim or demand, paid or discharged by Beneficiary, and to all the rights and securities for the payment thereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust. Nothing contained in this Paragraph 12 shall require Beneficiary to incur any expense or do any act hereunder and Beneficiary shall not be liable to Trustors for any damages or claims arising out of action taken or not taken by Beneficiary pursuant to this Paragraph 12.

13. **FORBEARANCE BY BENEFICIARY NOT WAIVER.** Any delay or forbearance by Beneficiary in exercising any right or remedy hereunder or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of any such right or remedy or any other right or remedy hereunder or at law or equity. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured hereby. Beneficiary's receipt of any awards, proceeds or damages under Paragraph 7 or Granting Clause C (2) hereof shall not operate to cure or waive default by Trustors.

14. **TRUSTORS NOT RELEASED; PRIORITY SUBSEQUENT TO MODIFICATION.** Extension of time for payment of modification of amortization of sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustors shall not operate to release, in any manner, the liability of the original Trustors and Trustors' successors in interest. Beneficiary shall not be required to commence proceedings against any such successor and may or may not refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustors and Trustors' successors in interest. Any agreement hereafter made by Trustors and Beneficiary relative and pursuant to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

15. **FUTURE ADVANCES.** Upon request of Trustors, Beneficiary, at its option, prior to discharge of this Deed of Trust, may make Future Advances to Trustors. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust. Nothing herein contained shall imply any obligation on the part of any holder of the Note to make any such additional loan. Future advances, if any, will not exceed 25% of the principal amount set forth on the first page of this Deed of Trust.

16. **DEFAULT.** Each of the following occurrences shall constitute an event of default hereunder:

- a. Failure of Trustors to pay when due any amount payable under the Note or any other indebtedness secured by this Mortgage;
- b. Failure of Trustors to duly perform or observe any of the other covenants contained in this Deed of Trust and/or the Note;
- c. Commission by Trustors or any Borrower as defined in paragraph 9, of any act of Bankruptcy or a general assignment for the benefit of creditors, or if any proceeding is instituted by or against Trustors for any relief under an bankruptcy or insolvency laws, or if a receiver is appointed or a writ or order of attachment or garnishment is made or issued, or if any proceeding or procedure is commenced or any remedy supplementary to or in enforcement of a judgment is employed against, or with respect to any property of Trustors;
- d. Any representation or warranty made by Trustors herein or in any documents given Beneficiary by Trustors in connection with this loan is untrue or misleading in any material respect; or
- e. A default in any other security instrument taken in conjunction with the Deed of Trust shall constitute a default in the Deed of Trust.

Upon occurrence of any such event of default, Beneficiary may declare immediately due and payable all indebtedness secured by this Deed of Trust and foreclose the Deed of Trust by power of sale, pursuant to the statutes of the State in which the Trust Premises are located with Beneficiary

and Trustors having the full power of sale granted by said statutes. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to reasonable attorney fees and costs of title evidence to the full extent permitted by law; (b) to all sums secured by this Mortgage/Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

17. **WAIVER: HOMESTEAD AND SEPARATE TRACTS.** Trustors acknowledge that the Property has been offered to Beneficiary as a single economic unit, and has been valued as such by Beneficiary for the purpose of appraising the security furnished thereby. Trustors, for themselves and for all others claiming through or under it, hereby irrevocably waives and relinquishes (to the extent, if any, permitted by applicable law) all benefit from and agrees to never plead or take advantage of any and all present and future laws, regulations or decisions, in every jurisdiction, state or federal, relating to (a) homestead, dower, courtesy, or other similar exemptions; (b) requirement that the Property be sold as separate tracts or units in event of foreclosure hereof and Trustors hereby authorizes and empowers Beneficiary, in such event, to sell the Property in one tract or otherwise at its sole option, anything in this Deed of Trust to the contrary notwithstanding; (c) the valuation or appraisal of the Property prior to any sale thereof; (d) any stay, moratorium or extension of the time of any sale of the Property; and (e) marshaling of assets.

18. **SEPARATE ESTATES.** As an express inducement to Beneficiary to make the loan secured hereby and for other good and valuable consideration to Trustors, in hand paid, receipt whereof is hereby acknowledged, Trustors do hereby waive for itself, its heirs, executors and assigns, in the event of foreclosure of this Deed of Trust, any equitable right, otherwise available to either, in respect to marshalling of assets hereunder so as to require the separate sales of the fee estate and leasehold estate encumbered hereby or to require Beneficiary to exhaust its remedies as against either the fee estate or leasehold estate before proceeding against the other and further, in the event of such foreclosure, Trustors do hereby expressly consent to and authorize, at the option of the Beneficiary, the sale, either separately or together, of the fee estate and leasehold estate, or otherwise, the merger, prior to sale, of the leasehold estate into the fee estate in order that the fee estate may be sold free and clear of such leasehold estate.

19. **ADDITIONAL SECURITY DOCUMENTS.** This Deed of Trust shall constitute a security agreement with respect to (and Trustors hereby grants the Beneficiary a security interest in) all personal property and fixtures included in the Property. Trustors, upon request by Beneficiary, will execute, acknowledge and deliver to Beneficiary a Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Beneficiary, covering any Property which, in the sole opinion of Beneficiary, is essential to the operation of the Trust Premises and concerning which there may be any doubt whether the title to same has been conveyed by or a security interest perfected by this Deed of Trust under the laws of the State in which the Trust Premises is located and Trustors will further execute, acknowledge and deliver any financing statement, affidavit, continuation statement or certificate or other document as Beneficiary may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of such security instrument. Trustors further agrees to pay to Beneficiary, on demand, all costs and expenses incurred by Beneficiary (including reasonable attorney's fees) in connection with the preparation,

execution, recording, filing and refiling of any such document and in connection with the exercise of any right or remedy hereunder. Trustors further agrees to execute or re-execute any and all documents as may be necessary to correct or perfect the interest of the Beneficiary granted by this instrument.

20. **ADDITIONAL FILINGS.** Trustors shall, as may be requested by Beneficiary from time to time, execute such documents and assist in filing or recording thereof as may be necessary in the sole judgment of Beneficiary to perfect Beneficiary's lien upon any or all of the Property.

21. **COLLECTION OF RENTS/APPOINTMENT OF RECEIVER.** With respect to rents, issues and profits herein assigned, Trustors do hereby appoint Beneficiary his attorney-in-fact (which power is coupled with an interest given for security and is irrevocable) to receive, collect and receipt for all sums due and owing for such use, rents and occupations as the same may accrue and out of the amount so collected to pay and discharge all sums delinquent under the terms of this Deed of Trust. For the purpose aforesaid, Beneficiary may enter upon and take possession of the Trust Premises and/or Property and manage and operate the same and take any action which, in Beneficiary's sole judgment, is necessary or proper to conserve the value of the same. Beneficiary may also take possession of and, for these purposes, use any and all of the property used by Trustors in the operation, rental or leasing thereof or any part thereof. The expense, including any Receiver's fees incurred pursuant to the powers herein contained, shall be secured by this Mortgage. Beneficiary shall not be liable to account to Trustors for any action taken pursuant hereto other than to account for any rents actually collected by Beneficiary. To the fullest extent permitted by law, Trustors do hereby consent to the appointment of a Receiver for the Trust Premises by any court of competent jurisdiction upon Beneficiary's request at any time Trustors are in default or shall have been declared by Beneficiary to be in default under any of the provisions of the Note or the provisions of paragraph 16 above.

22. **COMPLIANCE WITH LAW; HAZARDOUS MATERIALS.** Trustors will at all times comply and will cause all tenants/occupants of the Trust Premises to comply with all present and future laws and requirements of any governmental body relevant to the Trust Premises and Trustors' ownership and operation of the Trust Premises including, without limitation, all laws and regulations regarding the use, discharge, generation, removal, transportation, storage, disposal or handling or any insecticides, pesticides, herbicides and other toxic, hazardous or dangerous chemicals, substances and materials, or the containers in which they are shipped, handled or stored, on or about the Trust Premises. Any breach of this provision by Trustors will be deemed a default under the Deed of Trust and Beneficiary will be entitled to exercise all rights granted by the Deed of Trust in the event of a default by Trustors or otherwise available at law or in equity including, without limit, the foreclosure of its lien on all or some of the Trust Premises, expressly reserving the right to exclude from such foreclosure any portions thereof which are, have or may become contaminated by or with toxic/hazardous materials or substances.

Upon request of Beneficiary, Trustors shall periodically perform and provide Beneficiary with the results of environmental inspections or audits. If at any time, levels of contamination exceed any relevant standard established by applicable laws and regulations, Trustors shall promptly

correct the problem. Trustors shall promptly provide Beneficiary with copies of all notices received from any federal, state or local governmental agency with regard to the possible or actual violation of a statute that would be a violation of this condition.

Trustors will not license, authorize, permit, agree or consent to the dumping or disposal on the property of any products, materials, chemicals, substances or by-products, of any nature whatsoever, by any third-party during the term of the Deed of Trust.

Beneficiary will have the right during the term of the Deed of Trust to enter the Trust Premises for purpose of inspection thereof to enforce compliance with this condition and any other term or condition of the loan. Trustors hereby grants Beneficiary, its agents and employees an irrevocable and non-exclusive license to enter upon the Trust Premises, at Beneficiary's sole option, to conduct testing and to remove or arrange for the removal of hazardous/toxic wastes or substances and the costs of testing and removal shall immediately become due to Beneficiary and shall be secured by this Deed of Trust. Nothing contained herein shall be construed as requiring Beneficiary to conduct tests or undertake removal of hazardous/toxic waste or substances from the Trust Premises. Similarly, if Beneficiary shall begin testing or removal activities upon the Trust Premises, nothing contained herein shall be construed as requiring Beneficiary to complete any such activities once the same are begun. Rather, Beneficiary shall have the absolute right to cease and terminate any testing or removal activities on the Trust Premises, at any time and at its sole election, without any duty, responsibility or liability for completion of the same.

Trustors shall not install or permit to be installed in the Trust Premises, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws respecting such material. With respect to any such material currently present in the Trust Premises, Trustors shall promptly comply with such federal, state or local laws, rules, regulations or orders, at Trustors' expense. If Trustors shall fail to so comply, Beneficiary may declare this Deed of Trust to be in default.

Trustors will indemnify and hold Beneficiary harmless from and against any or all loss, cost, damage, expense or liability it may suffer (including without limitation, attorney fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion of any claim relating to the presence or removal of any hazardous waste or substance described in this section or a breach of this section by Trustors, any agent or employee of Trustors, or any predecessor or successor in interest with respect to the Trust Premises. The indemnities described in this section shall survive any termination, satisfaction or foreclosure of this Deed of Trust.

23. **ABANDONMENT OF PERSONAL PROPERTY.** Any personal property remaining upon the Trust Premises after the Trust Premises has been possessed or occupied by Beneficiary following foreclosure of this Deed of Trust or any deed in lieu of foreclosure shall be conclusively presumed to have been abandoned by Trustors or any other former owner thereof. Beneficiary shall in no way incur any liability or obligation to Trustors or any former owner of said personal property by reason of any action which Beneficiary in its sole discretion chooses to take

with respect to said personal property. In no event shall Beneficiary be required to take any affirmative action in preserving, protecting or otherwise overseeing the deployment or storage of said personal property, nor shall Beneficiary incur any liability to Trustors or any former owner of said personal property because of failure to take such affirmative action with respect thereto.

24. **BENEFICIARY'S REMEDIES CUMULATIVE.** All remedies of Beneficiary are distinct and cumulative to any other remedy and right under this Deed of Trust or afforded by law or equity and may be exercised concurrently or independently and as often as the occasion therefore arises. If the indebtedness secured hereby is now or hereafter, in whole or in part, further secured by security agreements, financing statements, pledges, contracts of guaranty, assignment of leases or other securities, Beneficiary may, at its sole option, exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

25. **SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind and the rights hereunder shall inure to the respective heirs, legal representatives, successors and assigns of the Beneficiary and Trustors. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All covenants and agreements of Trustors shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

26. **ASSIGNMENT OF DEED OF TRUST.** Beneficiary shall have the right, in its sole discretion, at any time during the term of this Deed of Trust to sell, assign, syndicate or otherwise transfer and/or dispose of all or any portion of its interest in the Note and this Deed of Trust and Trustors hereby permits and consents to Beneficiary's submission to its assignees of all financial data and all other information furnished by Trustors to Beneficiary.

27. **APPOINTMENT OF RECEIVER.** Trustors hereby grants to Beneficiary the right upon a default by Trustors, to secure and receive a court appointed Receiver for the Trust Premises. The appointment of the Receiver (the "Receiver") may be upon ex parte motion by Beneficiary without notice to Trustors. Trustors hereby waives any right to notice for the appointment of a Receiver, but Trustors reserves the right to contest, at a later date, the existence of Trustors' default. The Receiver shall have the right to immediately take possession of the Property, collect rents, engage a farm, ranch or grove management company to oversee daily activities, hire attorneys and accountants, expend funds for the preservation of the Property, sell crops and otherwise control the Property under direction of the Court. All costs and expenses of the Receiver, including fees and commissions payable to the Receiver and the Receiver's attorneys and accountant's fees, shall be paid by Trustors, and such repayment is secured by this Deed of Trust.

28. **LITIGATION, COLLECTION AND BANKRUPTCY FEES AND EXPENSES.** Beneficiary may appear in or defend any action or proceeding at law or in equity, purporting to affect the security hereof, and Trustors hereby agree to pay to Beneficiary (to the full extent permitted by law) all costs, charges and expenses, including costs of evidence of title and attorney fees, in a reasonable sum, incurred in any such action or proceeding in which Beneficiary may appear or

defend. Upon the commencement of any proceedings to collect the indebtedness or disbursements secured hereby, or any part thereof, by foreclosure of this Deed of Trust or otherwise, there shall become due and Trustors agree to pay (to the full extent permitted by law) all costs, fees and expenses of such proceeding, including a reasonable sum as and for an attorney fee, as an additional indebtedness hereunder and under the Note secured hereby and it is agreed that this Deed of Trust shall stand as security therefore. It is also agreed that Trustors will pay any amount Beneficiary may incur or pay for any abstract or continuation of abstract of title, certificate of insurance or title or other evidence of title, subsequent to this date, on any of the Property and this Deed of Trust shall secure payment thereof.

29. **CONTINUING LIABILITY OF TRUSTORS.** Without affecting the liability of Trustors or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of said Note, and without notice or consent, (a) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Beneficiary may have; (d) accept additional security of any kind; and (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property herein described.

30. **ERISA.** Trustors represents and warrants that the Trust Premises are not the assets of an employee benefit plan and that neither the Note nor the exercise of Beneficiary's rights under the Note and Deed of Trust constitute a nonexempt prohibited transaction under the Employee Retirement Income Security Act of 1974 ("ERISA"). In addition, Trustors represents and warrants to Beneficiary that neither it nor any of its partners or stockholders, as the case may be, will engage in any transaction which would cause the Note and Deed of Trust (or the exercise by Beneficiary of any of its rights under the Note and Mortgage) to be a nonexempt prohibited transaction under ERISA.

31. **NOTICE.** Any notice from Beneficiary to Trustors hereunder shall be deemed to have been given by Beneficiary and received by Trustors when mailed by certified mail by Beneficiary to Trustors at the Property or at such other address as Trustors may designate, in writing, to Beneficiary. Any notice from Trustors to Beneficiary under this Deed of Trust shall be deemed to have been given by Trustors and received by Beneficiary when received by Beneficiary at the Beneficiary's address stated above or at such other address as Beneficiary may designate to Trustors.

32. **ANNUAL BALANCE SHEETS AND OPERATING STATEMENTS.** Upon Beneficiary's request and within thirty days thereafter, Trustors shall furnish Beneficiary with current balance sheets and/or operating statements of like kind and quality and containing similar information as to income and expenses as was submitted by Trustors at the time of Trustors' loan application. The right of the Beneficiary to request financial information as provided herein shall include the right to request information for multiple years but this right shall not be exercised more

frequently than once each calendar year and no single request shall require Trustors to produce financial information for a period of greater than the three (3) preceding years.

33. **APPOINTMENT OF SUBSTITUTE TRUSTEE.** Without consent of or notice to Trustors, Beneficiary has the absolute right and power, with or without reason, to appoint a successor substitute trustee to act in the place of Trustee or a substituted trustee without any formality other than a designation in writing or a successor substitute trustee. Following an appointment of a successor substitute trustee by Beneficiary, the substituted trustee shall have all rights, powers, benefits, indemnities and authority herein granted to the Trustee in this Deed of Trust. The Beneficiary may act as Trustee or substituted Trustee through any authorized officer, or by any agent or attorney-in-fact properly authorized by any such officer.

34. **GOVERNING LAW; SEVERABILITY.** This Deed of Trust shall be governed by the laws of the State in which the Trust Premises is located. In the event any provision of clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions and, to this end, the provisions of the Deed of Trust are declared to be severable. In the event that any applicable law in effect on the date hereof limiting the amount of the interest or other items which may be lawfully charged against Trustors is interpreted in a manner such that any payment provided for in this Deed of Trust or in the Note, whether considered separately or together with other payments that are considered a part of this Deed of Trust and Note transaction, violates such law and Trustors are entitled to the benefit of such law, such payment is hereby reduced to the extent necessary to eliminate such violation.

35. **DELIVERY OF NOTE AND DEED OF TRUST.** Trustors shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

36. **DISSEMINATION OF INFORMATION** If the Beneficiary determines at any time to sell, transfer or assign the Note, this Mortgage/Deed of Trust and any other security instruments, and any or all servicing rights with respect thereto, or to grant participations therein ("Participations") or issue, in a public offering or private placement, mortgage pass-through certificates or other securities evidencing a beneficial interest in the loan ("Securities"), Beneficiary may forward to each purchaser, transferee, assignee, servicer, participant, investor, or their respective successors in such Participations and/or Securities ("collectively, the "Investor"), any rating agency rating such Securities and each prospective Investor, all documents and information which Beneficiary now has or may hereafter acquire relating to the Note and to the Borrower, any Guarantor, any Indemnitors and the Property, which shall have been furnished by Borrower, and Guarantor or any Indemnitors, as Beneficiary determines necessary or desirable.

IN TESTIMONY WHEREOF, Trustors have hereunto set its hand and seal the day and year first above written.

*[Signature]*  
Brian M. Mizokami

STATE OF Colorado )  
 ) ss:  
COUNTY OF Rio Grande

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 2004 by Brian M. Mizokami.

*[Signature]*  
Notary Public

My Commission Expires: 12/15/07

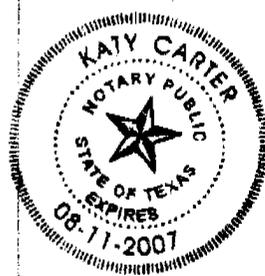
*[Signature]*  
Donald R. Lindenborn, Jr.

STATE OF Texas )  
 ) ss:  
COUNTY OF Uvalde

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2004 by Donald R. Lindenborn, Jr.

*[Signature]*  
Notary Public

My Commission Expires: 08-11-2007



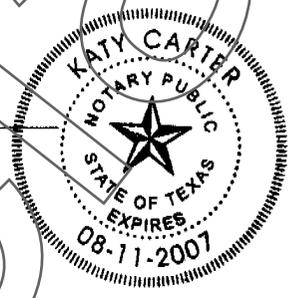


Jack E. Rutledge  
Jack E. Rutledge

STATE OF Texas )  
 ) ss:  
COUNTY OF Uvalde )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2004 by Jack E. Rutledge.

Katy Carter  
Notary Public



My Commission Expires: 08-11-2007

Pentagon Produce, Inc.

BY: \_\_\_\_\_  
Brian M. Mizokami  
ITS: President

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2004 by Brian M. Mizokami, President of Pentagon Produce, Inc.

\_\_\_\_\_  
Notary Public

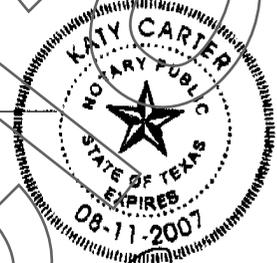
My Commission Expires: \_\_\_\_\_

Jack E. Rutledge  
Jack E. Rutledge

STATE OF Texas )  
 ) SS:  
COUNTY OF Uvalde )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2004 by Jack E. Rutledge.

Katy Carter  
Notary Public



My Commission Expires: 08-11-2007

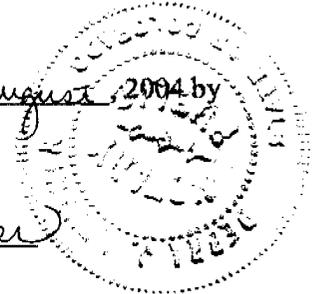
Pentagon Produce, Inc.

BY: Brian M. Mizokami  
ITS: President

STATE OF Colorado )  
 ) SS:  
COUNTY OF Rio Grande )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> of August, 2004 by Brian M. Mizokami, President of Pentagon Produce, Inc.

Dore J. Benzner  
Notary Public



My Commission Expires: 12/15/07

EXHIBIT A  
LEGAL DESCRIPTION

Lot 2, Eloy Industrial Park according to the plat of record in the Office of the County Recorder of Pinal County, Arizona, recorded in Cabinet A, Slide 70 through 74,

Except an undivided  $\frac{1}{2}$  interest in all mineral rights as reserved by Rubie Louise Baker, a widow, as reserved in Deed in Docket 42, page 238.