

## Hold Harmless Letter Agreement

**Equipment Finance Agreement Number** [REDACTED] **-000**

Balboa Capital Corporation (hereinafter "Balboa", "We", "Us", or "Our") does not typically pay any equipment supplier(s) until all of the equipment set forth in the Equipment Finance Agreement ("EFA") or any Schedules thereto ("Equipment") has been delivered, installed, and has been approved by Balboa. ECO FARMS SALES, INC.

("You" or "Your") is requesting that We pay Your supplier(s) prior to delivery, installation, and acceptance of some or all of the Equipment set forth in the EFA and any Schedule(s) thereto. Your signature below authorizes Us, in Our sole and absolute discretion, to make payment(s) to all or some of Your supplier(s) and You agree to the following.

1. Our payment to Your supplier(s) prior to delivery, installation, and acceptance of all of the Equipment is being made solely as an accommodation to You. If You are dissatisfied with the Equipment or fail to take delivery of the Equipment or installation, training, or any other aspect with respect to the use of the Equipment is not satisfactory, You still agree to make all payments called for in Your EFA, any Schedule(s) thereto, and this Hold Harmless Letter Agreement ("Agreement"). You hereby acknowledge and understand that by signing this Agreement, You agree that You shall be responsible for taking delivery/installation of the Equipment and that You shall hold Us and Our assignees or successors in interest harmless for any failure to take delivery and installation of the Equipment and shall seek recovery against the supplier(s) and/or manufacturer(s) of the Equipment only and not as against Us or any of Our assignees. You further agree that You will remain absolutely responsible to Us, or Our assignees and successors in interest, for all payments required under this Agreement and the EFA and waive any and all claims against Us, Our assignees and successors in interest, arising out of the failure of the Equipment to be delivered, installed, or made operational. Even in the event that Your supplier(s) fail to deliver or install or make the Equipment operational, if We choose not to commence EFA as discussed below, You agree to pay Us all amounts We have paid to the supplier(s), plus all prefund rent (as described below) within five (5) days of Our written demand for repayment.

2. You have been advised that California Commercial Code section 10407 states that, in the case of a EFA, the lessee's promises under the EFA contract become irrevocable and independent upon lessee's acceptance of the goods. Even though the Equipment has not been delivered, installed, and is not accepted for all purposes, You agree that upon execution of this Agreement that Your promise to abide by the terms of the EFA is irrevocable and not subject to cancellation, termination, repudiation, excuse or substitution. The EFA is **NON-CANCELLABLE UPON YOUR EXECUTION OF THIS AGREEMENT**. But for Your execution of this Agreement, no prefunding would be made to the supplier(s) and Balboa is relying on the terms of this Agreement to make the payments You have requested.

3. Notwithstanding the foregoing, if You do not sign, date and return Our Delivery and Acceptance Certificate within thirty (30) days of Our first payment to Your supplier(s), We may, at Our sole option and discretion, pursue any one of the following options:

(1) extend the time for You to sign, date and return a Delivery and Acceptance Certificate; or (2) commence the term of the EFA and payments will become due as described in the EFA; or (3) decide not to commence the term of the EFA and instead cancel or terminate the EFA. If We decide to cancel or terminate the EFA, You agree to pay Us all amounts We have paid to the supplier(s), plus all prefund rent, and late charges at the rate of 18% or if 18% is not allowed by law, the maximum amount which is allowed by law on any payments that We made, within five (5) days of Our written demand for repayment. Thus, Our option is to extend the time for You to sign, date and return our Delivery and Acceptance Certificate; or make the EFA non-cancellable, irrevocable, and require You to pay all sums due under the EFA; or cancel or terminate the EFA and obtain reimbursement for the sums set forth herein.

. In addition, You shall pay Us prefund rent from the date Your supplier(s) are paid based upon the aggregate amount of Our payments to Your supplier(s) multiplied by the daily equivalent EFA rate set forth in the EFA. The daily equivalent EFA rate is equal to one-thirtieth (1/30) of the quotient that results when dividing the monthly rental payment of Your EFA by the aggregate invoice amount. Prefund rent which is not paid within five (5) days of its due date shall be subject to a late charge equal to 18% of each such delayed payment or any other such maximum amount allowed by law in a lesser sum. Failure to pay prefund rent is a breach of this Agreement. Once all of the Equipment has been delivered and installed, You shall sign and date and return our Delivery and Acceptance Certificate. Prefund rent shall continue to accrue from the date Your supplier(s) are paid to the date of the execution of the Delivery and Acceptance Certificate or thirty (30) days, whichever period is shorter, as is discussed above.

5. You shall provide to Us such financial statements and similar documents as We shall request. Further, You shall furnish to Us (a) fiscal year-end financial statements including federal and state income tax returns, balance sheets and profit and loss statements within 120 days of the close of each fiscal year and (b) quarter-end financial statements including balance sheets and profit and loss statements within 45 days of the close of each fiscal quarter end and (c) such other further financial and other information and documents not specifically mentioned herein relative to this Agreement as We may request. All such information shall be audited (or if audited information is not available, compiled or reviewed) by an

independent certified public accountant under generally accepted accounting principles. You shall also be required to reimburse Us for all search and filing fees incurred by Us related to the EFA, the Equipment, and this Agreement.

6. We hereby reserve the right not to commence the term of the EFA and instead cancel or terminate the EFA at any time, for whatever reason, including but not limited to, if We determine, in Our sole and absolute discretion, there has been an adverse change in Your financial condition or for a breach of the terms of this Agreement or the EFA. If We decide to cancel or terminate the EFA, You agree to pay Us all amounts We have paid to the supplier(s), plus all prefund rent, and any applicable late charges, within five (5) business days of Our written demand for repayment.

7. In the event a demand for repayment is made by Us and You fail to pay Us in accordance with the terms herein, such failure to pay Us in accordance with the terms herein shall constitute an event of default as set forth in the EFA and this Agreement and You shall waive any right to cure or remedy the event of default and We shall be entitled to pursue all available remedies in this Agreement and in the EFA.

8. We both agree that the EFA and this Agreement shall be binding when accepted in writing by Us at Our offices. This Agreement shall be governed under and by the laws of the State of California and is deemed to have been entered into, made and to be performed in Orange County, California. You consent to the jurisdiction of California and agree that the Superior Courts of Orange County, California shall have exclusive jurisdiction over the determination of any and all disputes arising under or related to this Agreement. In the event of litigation concerning the terms of this Agreement, You shall pay all of Our reasonable attorneys' fees and costs incurred in connection with the enforcement, administration, defense, and/or interpretation of the terms of and conditions of this Agreement and the EFA. This Agreement and any other agreements mentioned herein contain the entire agreements between You and Us and it may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by both You and Us. A limiting endorsement on a check or other form of payment will not be effective to modify any of the other terms and conditions of this Agreement, and We may apply any payment received without being bound by such limiting endorsements. Delivery of this Agreement bearing a facsimile signature, electronic signature, or other signature which is not in ink shall have the same force and effect as if this document bore an original ink signature.

Debtor: ECO FARMS SALES, INC.

**sign** By: *Andrew Hamilton* Date: 04/14/2017

Name: Andrew Hamilton Title: CEO

By execution below, the undersigned guarantors agree to the terms above and unconditionally guarantee performance when due of all the obligations of Debtor under this Hold Harmless Letter Agreement and EFA No. [REDACTED]-000.

**sign** \_\_\_\_\_ **sign** \_\_\_\_\_

Name: \_\_\_\_\_, Guarantor Name: \_\_\_\_\_, Guarantor

**sign** \_\_\_\_\_ **sign** \_\_\_\_\_

Name: \_\_\_\_\_, Guarantor Name: \_\_\_\_\_, Guarantor

BALBOA CAPITAL CORPORATION,  
a California corporation

By: [REDACTED]

Its: Vice President