



ACCELERATED/DEFERRED PAYMENT SCHEDULE AGREEMENT

Deferred agreements must be submitted at least one (1) week prior to your first delivery

THIS AGREEMENT is made between BLUE DIAMOND GROWERS ("BLUE DIAMOND") and

("PAYEE NAME") \_\_\_\_\_ ("PAYEE NUMBER") \_\_\_\_\_

A. PAYEE is: ( ) a member of BLUE DIAMOND or an almond grower under contract with BLUE DIAMOND (hereinafter referred to as "Member/Grower") ( ) a sharecropper/lessee of almond-producing lands of a Member/Grower of BLUE DIAMOND and as such is entitled to receive, and has been assigned by the Member/Grower, a percentage of Member's/Grower's crop and crop proceeds.

B. Member/Grower is a party, and Member's/Grower's almond-producing lands are committed to a standard Crop Agency Agreement or Purchase and Sale Agreement with BLUE DIAMOND pursuant to which Member/Grower has agreed to deliver to BLUE DIAMOND the entire almond crop from the almond-producing lands under contract and BLUE DIAMOND has agreed to process and market the almond crop for Member/Grower.

C. Under the terms of the Crop Agency Agreement or Purchase and Sale Agreement, and subject to the Bylaws of BLUE DIAMOND, BLUE DIAMOND is under an obligation to return to Member/Grower the net proceeds from the marketing of Member's/Grower's almond crops in each year at such times and in such amounts as the Board of Directors of BLUE DIAMOND shall determine.

D. PAYEE and BLUE DIAMOND desire to modify in certain respects the schedule of crop payments which BLUE DIAMOND would normally make to PAYEE for the Crop Year (as hereinafter defined) pursuant to the Crop Agency Agreement or Purchase and Sale Agreement and the Bylaws of BLUE DIAMOND.

BLUE DIAMOND and PAYEE, by their execution of and signature to this agreement immediately below, agree as follows:

BLUE DIAMOND GROWERS, By: \_\_\_\_\_ PAYEE, By: \_\_\_\_\_

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

1. This Agreement shall apply to all crops (or PAYEE'S share of crops as applicable) harvested and delivered to BLUE DIAMOND for the following account(s) ONLY (enter EACH contract number to be affected): Crop Year: \_\_\_\_\_, Contracts #(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ The Crop Year of this Agreement shall mean that period commencing July 1 of the year specified above and ending June 30 of the following calendar year.

YES ( ) NO ( ) ACCELERATED PAYMENT ELECTION (If "Yes", select acceleration date below.) 2. On the date marked below, BLUE DIAMOND shall pay to PAYEE, as net crop proceeds from the marketing of PAYEE'S crop, or share of the crop, an estimated amount (subject to later adjustment) to be determined by BLUE DIAMOND which in the absence of this Agreement, would be paid to PAYEE as progress payments in the calendar year following the year of delivery ("Accelerated Payment"). MARK ONE CHOICE: ( ) On payment of the Delivery Advance Payments ( ) Within ten (10) days after the following date: \_\_\_\_\_ ( ) As Soon As Possible

YES ( ) NO ( ) DEFERRED PAYMENT(S) ELECTION (If "Yes", complete the appropriate sections below) 3. The crop payments or portion thereof hereafter described which would otherwise be made to PAYEE for the Crop Year before the date provided in paragraph C. below shall be (Mark EITHER box A. OR box B.): A. Withheld as to all amounts in excess of the "Non-deferred Amount(s)" indicated to the right \$ \_\_\_\_\_ for Account # \_\_\_\_\_ \$ \_\_\_\_\_ for Account # \_\_\_\_\_ The Non-deferred Amount shall be paid by BLUE DIAMOND to PAYEE from the first payments to be made to PAYEE until the Non-deferred Amount is paid. OR B. Withheld in full by BLUE DIAMOND as to all payments designated below (Mark the box(s) for the payment(s) you wish to be deferred). ( ) The Delivery Advance Payment. ( ) The First Progress Payment. ( ) The Second Progress Payment. ( ) The Third Progress Payment. ( ) The Patronage Dividend Payment. ( ) All Payments ( ) Other: (List Payment(s)): \_\_\_\_\_ AND C. The crop payments or a portion thereof which are withheld and deferred as provided in Paragraphs A and B above shall be paid by BLUE DIAMOND to PAYEE on the day and month of the calendar year following the year of delivery as follows: MARK ONE: ( ) Within the first 5 days of business in January ( ) Within the first 5 days of business in March ( ) Within the first 5 days of business in February ( ) Other \_\_\_\_\_

#### **PROVISIONS APPLICABLE TO ACCELERATED PAYMENT ONLY**

4. The payment of net crop proceeds otherwise payable to **PAYEE** as subsequent crop payments for the Crop Year which **PAYEE** has elected to accelerate under Paragraph 2. above shall be reduced by the amount of the Accelerated Payment plus interest (as provided in Paragraph 5. below) in the following manner: **BLUE DIAMOND** shall have no obligation to pay net proceeds to **PAYEE** until the payments which **PAYEE** would otherwise have been entitled to receive in accordance with **BLUE DIAMOND'S** normal payment schedule to its Members/Growers generally (i.e. those who have not entered into an Accelerated/Deferred Payment Schedule Agreement or other advance payment agreement) equals the amount of the Accelerated Payment plus such interest, and thereafter, only in such amount as the net crop proceeds exceed the amount of the Accelerated Payment plus such interest and at such times as crop payments are made by **BLUE DIAMOND** to its Members / Growers generally in accordance with its normal payment schedule.

5. **PAYEE** understands and agrees that **PAYEE** will be receiving a portion of the net crop proceeds in advance of Members/Growers of **BLUE DIAMOND** generally (i.e. those who have not entered into an Accelerated/Deferred Payment Schedule Agreement or other advance payment agreement) and accordingly will be charged with interest to reflect the advance payment. Such interest shall be computed on the balance of the Accelerated Payment not recouped or repaid from time to time as provided in Paragraph 4. Above at the rate hereinafter provided for the period from the date of the Accelerated Payment until recouped or repaid in full. Such interest shall be variable and computed, but not compounded, monthly at an annual rate equal to two and one quarter percent (2 1/4%) in excess of the "Reference Rate" of interest established by the Bank of America on the first day of each month during such period.

#### **PROVISIONS APPLICABLE TO DEFERRED PAYMENT ONLY**

6. **BLUE DIAMOND** shall pay Payee interest on all amounts which **PAYEE**, under Paragraph 3 above, has elected to defer in payment beyond the date **BLUE DIAMOND** would have paid such amounts to **PAYEE** had **BLUE DIAMOND** and **PAYEE** not provided otherwise in accordance with the terms of this Agreement. Such interest shall be determined and paid to **PAYEE** in accordance with the following provisions:

- a. Such interest shall be variable and computed, but not compounded, monthly at an annual rate equal to the "Reference Rate" of interest established by the Bank of America on the first day of each month during the "interest payment period" (as defined in Paragraph 6b, below) less two and three-quarter percent (2 ¾%).
- b. Interest at the rate determined under paragraph 6a. Above shall be earned and accrue to **PAYEE** as to each deferred payment during the "interest payment period" for each such payment. The term "interest payment period" shall mean the period from the date **PAYEE** would have received any such payment during the Crop Year but for the operation and effect of this Agreement until the deferred payment date as provided in Paragraph 3c. Above.
- c. In no event shall any interest be payable to **PAYEE** prior to the deferred payment date provided in Paragraph 3c. Above no later than six (6) weeks following such deferred payment date.
- d. On the date of execution of this Agreement no portion of the crop for which a deferred has been elected under Paragraph 3 above has been delivered to **BLUE DIAMOND** and **PAYEE** is not entitled to any payments from **BLUE DIAMOND** with respect to such crops.

#### **GENERAL PROVISIONS**

7. Except as otherwise provided herein, all crop payments for the Crop Year shall be paid to **PAYEE** at the same time and in the same manner as payments are otherwise made to Members/Growers of **BLUE DIAMOND** not having entered into an Accelerated/Deferred Payment Schedule Agreement or other advance payment agreement.