

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this “**Agreement**”) is made as of September 15, 2017 (“**Effective Date**”), by and between on the one hand The Regents of the University of California, a California corporation, having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 (“**The Regents**”), on behalf of its Davis campus (“**UC Davis**”) (collectively or individually, The Regents and UC Davis, “**UC**”), and on the other hand California Berry Cultivars, LLC, a California limited liability company, having offices at 8 Corporate Park Suite 110, Irvine, California 92606, (“**CBC**”), Douglas Shaw, and Kirk Larson (collectively or individually, CBC, Douglas Shaw, and Kirk Larson, the “**Defendants**” and each of The Regents, CBC, Douglas Shaw, and Kirk Larson individually, a “**Party**,” and collectively, the “**Parties**”).

### RECITALS

**WHEREAS**, The Regents and the Defendants are parties to certain litigation captioned *California Berry Cultivars, LLC v. The Regents of the University of California* filed on May 2, 2016 in California Superior Court and removed on May 6, 2016 to the United States District Court for the Northern District of California (Case No. 16-cv-02477) and later re-captioned *The Regents of the University of California v. California Berry Cultivars, LLC, et al.* (the “**Litigation**”);

**WHEREAS**, the Parties deem it to be in their best interests and to their mutual advantage to settle the Litigation on the terms and conditions set forth in this Agreement in order to achieve certainty in their dealings and avoid the expense of further litigation.

**NOW, THEREFORE**, in view of the foregoing and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.** For purposes of this Agreement, the following terms have the following meanings:

1.1. “**CBC Proposed Release**” means any cultivar to be released (including, without limitation, by entities that acquire all or a portion of CBC’s strawberry breeding program through mergers, acquisitions, changes of control, asset sales, and licenses) from CBC’s strawberry breeding program from the Effective Date through the fifth anniversary of the Effective Date. In the event an entity acquires all or a portion of CBC’s strawberry breeding program through mergers, acquisitions, changes of control, asset sales, and/or licenses, Defendants will require as an express contract term that the acquiring entity be bound by the provisions of this Agreement, including Section 3.7. For the avoidance of doubt, a cultivar supplied at CBC’s direction to a CBC member or CBC member affiliate for any commercial purposes would qualify as a CBC Proposed Release, but non-commercial releases, such as for testing only, would not so qualify.

1.2. “**Transferred 2014 Crosses**” means all progeny (including, without limitation, all plants, plant parts, seeds, germinated materials, and/or clones and derivatives thereof) resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2014. For the avoidance of doubt, all such progeny from crossbreeding performed in

2014 qualifies as Transferred 2014 Crosses and is subject to assignment and transfer to UC as set forth in Section 3.2 notwithstanding any argument CBC might otherwise have made or make that a specific variety's parents were not "Unreleased UC Strawberry Germplasm" as defined in Section 1.13. CBC represents and warrants that Schedule 1.2 contains a listing of all selections resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2014, but Defendants do not represent or warrant that all such selections exist now or will exist as of the Effective Date. CBC further represents and warrants that 2014 was the first year in which breeding was performed by CBC or on behalf of CBC by CBC members and/or their affiliates, and that CBC does not have progeny resulting from crossbreeding performed by CBC or on behalf of CBC members and/or their affiliates in prior years in its release pipeline.

1.3. **"Transferred 2015 Crosses"** means all progeny (including, without limitation, all plants, plant parts, seeds, germinated materials, and/or clones and derivatives thereof) resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2015 that have one or more varieties within the Unreleased UC Strawberry Germplasm in their genetic lineage without an intervening UC-released variety. CBC represents and warrants that Schedule 1.3 contains a listing of all selections resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2015 that have one or more varieties within the Unreleased UC Strawberry Germplasm in their genetic lineage without an intervening UC-released variety, but Defendants do not represent or warrant that all such selections exist now or will exist as of the Effective Date.

1.4. **"Transferred 2016 Crosses"** means all progeny (including, without limitation, all plants, plant parts, seeds, germinated materials, and/or clones and derivatives thereof), if any, resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2016 that have one or more varieties within the Unreleased UC Strawberry Germplasm in their genetic lineage without an intervening UC-released variety.

1.5. **"Transferred 2017 Seeds"** means all progeny (including, without limitation, all plants, plant parts, seeds, germinated materials, and/or clones and derivatives thereof) resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2017 that have one or more varieties within the Unreleased UC Strawberry Germplasm in their genetic lineage. CBC represents and warrants that it has turned over to Iron Mountain, as escrow agent, all seeds resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2017 that have one or more varieties within the Unreleased UC Strawberry Germplasm in their genetic lineage.

1.6. **"Other CBC Germplasm"** has the meaning provided in Section 2.3(b).

1.7. **"CSC Litigation"** means the litigation captioned *California Strawberry Commission v. The Regents of the University of California* filed on October 8, 2013 in California Superior Court and removed on October 29, 2014 to the United States District Court for the Northern District of California (Case No. 14-cv-04801).

1.8. **"Litigation"** has the meaning provided in the Recitals.

1.9. “**Patent Agreements**” means the University of California State Oath of Allegiance and Patent Agreement executed by Kirk Larson dated July 1, 1991, and the University of California State Oath of Allegiance and Patent Agreement executed by Douglas Shaw dated February 25, 1986 (attached as Exhibits 1 and 2 to CBC’s Verified Complaint at Dkt. 2-2, 24-27).

1.10. “**Transferred Germplasm**” has the meaning provided in Section 3.2.

1.11. “**Transferred Germplasm and Progeny**” has the meaning provided in Section 3.2.

1.12. “**Transferred Progeny Information and Materials**” has the meaning provided in Section 3.2.

1.13. “**Unreleased UC Strawberry Germplasm**” means the strawberry breeding program germplasm developed and/or maintained by Drs. Shaw and/or Larson at UC Davis while they were employees of UC that has not been released commercially by UC Davis as of the Effective Date including, without limitation, the currently unpatented strawberry germplasm referred to in the Litigation as the Core Strawberry Germplasm (and disclosed in U.S. Plant Patent Application Publication No. US-2015-0359150-P1) and the Transition Cultivars. For the avoidance of doubt, Unreleased UC Strawberry Germplasm excludes cultivars that Drs. Shaw and Larson have already assigned to The Regents as of the Effective Date (including, but not limited to, Sunset, Cuesta, Camarosa, Anaheim, Laguna, Carlsbad, Gaviota, Aromas, Diamante, Pacific, Camino Real, Ventana, Albion, Palomar, Portola, Monterey, San Andreas, Mojave, Benicia, Merced, Fronteras, Petaluma, Grenada, and Cabrillo) and excludes the Transferred Germplasm. For the avoidance of doubt, varieties that are Unreleased UC Strawberry Germplasm as of the Effective Date will cease being Unreleased UC Strawberry Germplasm in a particular country after they are commercially released in that country for any activities in that country that take place solely after such release.

## **2. Terms of Settlement**

2.1. **Dismissal.** Within ten (10) days after the Effective Date, the Parties will dismiss with prejudice, pursuant to stipulation under Fed. R. Civ. P 41(a)(1)(A)(ii) by the Parties in the form attached hereto as **Exhibit A**, all claims against each other that were, could or should have been asserted in this case; provided, however, that the parties stipulate that the United States District Court for the Northern District of California will maintain jurisdiction to enforce the terms of this Agreement as provided in Section 6.3.

### **2.2. Defendants’ Releases.**

(a) Upon the Effective Date, the Defendants, each acting on behalf of itself or himself and its or his respective predecessors, successors, assigns, and members, do hereby now and forever release, acquit, and discharge The Regents and UC Davis, and their predecessors, successors, and assigns, and each of their respective current and former trustees, officers, directors, employees, agents, attorneys, representatives, distributors, resellers, licensees, and direct or indirect customers, from and against, with respect to the period before the Effective Date, any and all claims, causes of action, charges, grievances, obligations, rights, demands, debts, damages, costs, losses and liabilities of any nature arising under or related to: (i) the allegations in the

complaint and in the Litigation; (ii) claims, causes of action, charges, grievances, obligations, rights, demands, debts, damages, costs, losses and liabilities that could or should have been raised in the Litigation; and (iii) the conduct of settlement negotiations occurring before the Effective Date (except for representations and obligations expressly included in this Agreement).

(b) Without limiting the generality of the foregoing, upon the Effective Date, the Defendants give up all claims to any right, title, or interest in any and all Unreleased UC Strawberry Germplasm (other than Drs. Shaw and Larson's respective rights to existing or future royalties under Drs. Shaw and Larson's Patent Agreements or under Section 3.4, including royalties that may be due from UC's release and sale of any Unreleased UC Strawberry Germplasm invented by Drs. Shaw and Larson), including any and all Transferred Germplasm and Progeny.

### 2.3. UC's Releases.

(a) Upon the Effective Date, The Regents and UC Davis do hereby now and forever release, acquit, and discharge the Defendants, and their predecessors, successors, and assigns, and each of their respective current and former members, trustees, officers, directors, employees, agents, attorneys, representatives, distributors, resellers, licensees, and direct or indirect customers, from and against, with respect to the period before the Effective Date, any and all claims, causes of action, charges, grievances, obligations, rights, demands, debts, damages, costs, losses and liabilities of any nature arising under or related to: (i) the allegations in the cross-complaint and in the Litigation; (ii) claims, causes of action, charges, grievances, obligations, rights, demands, debts, damages, costs, losses and liabilities that could or should have been raised in the Litigation; and (iii) the conduct of settlement negotiations occurring before the Effective Date (except for representations and obligations expressly included in this Agreement).

(b) Without limiting the generality of the foregoing, upon the Effective Date, The Regents and UC Davis give up all claims to any right, title, or interest in (i) any selections resulting from crossbreeding performed in 2015 for CBC's benefit that include no genotypes within the Unreleased UC Strawberry Germplasm in their genetic lineage without an intervening UC-released variety (but may include, for the avoidance of doubt, patented cultivars that were released in California when the cross was designed but not in Spain, regardless of where the cross was performed), and (ii) any selections resulting from crossbreeding performed in 2016 for CBC's benefit that include no genotypes within the Unreleased UC Strawberry Germplasm in their genetic lineage without an intervening UC-released variety (but may include, for the avoidance of doubt, patented cultivars that were released in California when the cross was designed but not in Spain, regardless of where the cross was performed) (the "**Other CBC Germplasm**").

2.4. **Unknown Claims.** The Regents and Defendants acknowledge that Section 1542 of the California Civil Code provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

(a) The Parties hereby agree to waive and release all rights under this Cal. Civ. Code Section 1542 (as well as any comparable rights provided for by the laws of any other jurisdiction) and hereby and forever agree that the releases set forth in Sections 2.2 and 2.3 extend to all of such claims, including those which are contingent, un-matured, unknown or unsuspected by any Party at this time.

(b) The Parties represent and warrant that each and every term of this release has been carefully read and is fully understood and that this release is being signed freely and voluntarily for the purpose of making a full, complete and final resolution and settlement.

2.5. **Terms of the Agreement.** Notwithstanding anything to the contrary in this Article 2, the dismissal provided in Section 2.1 and the releases in Sections 2.2 and 2.3 will not affect the rights and obligations of the Parties as expressly set forth or preserved in this Agreement.

### 3. Covenants.

3.1. **Ownership of Unreleased UC Strawberry Germplasm.** In furtherance of the release of Section 2.2(b), the Defendants agree that The Regents own, and agree to assign and hereby assign to The Regents, any and all of Defendants' right, title, and interest in the Unreleased UC Strawberry Germplasm (other than Defendants' rights to royalties under Drs. Shaw and Larson's Patent Agreements, under Section 3.5, and royalties that may be due from UC's release and sale of any Unreleased UC Strawberry Germplasm invented by Drs. Shaw and Larson). Pedigree and performance records collected from Drs. Shaw and Larson by Morrison & Foerster LLP in connection with the CSC Litigation (but not any material solely collected in discovery in this Litigation) may be released from the possession of Morrison & Foerster LLP to UC Davis, even if designated confidential by a Party under the Protective Order in the Litigation, and will be UC's confidential information

3.2. **Ownership of Transferred Germplasm and Progeny.** The Defendants agree that The Regents own, and agree to assign and hereby assign to The Regents, any and all of Defendants' right, title, and interest in all progeny (no matter how many generations removed) from Unreleased UC Strawberry Germplasm including, without limitation, (a) the Transferred 2014 Crosses, (b) the Transferred 2017 Seeds, (c) the Transferred 2015 Crosses, (d) the Transferred 2016 Crosses, (collectively (a)-(d), the "**Transferred Germplasm**") and (e) the progeny of any of the foregoing (no matter how many generations removed) (collectively (a)-(e), the "**Transferred Germplasm and Progeny**"), other than as set forth in this Agreement. For the avoidance of doubt, Defendants do not by Section 3.2 agree that The Regents own, nor do they assign, any right, title, or interest in Other CBC Germplasm, and such germplasm is excluded from the definitions of Transferred Germplasm and Transferred Germplasm and Progeny. As soon as possible but within thirty (30) days of the Effective Date, Defendants will transfer all Transferred Germplasm and Progeny (including, without limitation, all plants, plant parts, seeds, germinated materials, and/or clones and derivatives thereof) and a summary of all observations to date about the selections and complete breeding records regarding the Transferred Germplasm and Progeny to UC for use as it deems fit (the "**Transferred Progeny Information and Materials**"). UC may grant, in its sole discretion, extensions of the date by which to conduct this transfer if Defendants request such extensions to ensure plant health and viability. In accordance with Section 3.7, with

respect to any selections for which the Expert Consultant's DNA results indicate one or more varieties that should have been assigned to UC under Section 3.2, Defendants will transfer all such selections to UC within thirty (30) days of CBC's receipt of such DNA results. UC may, in its sole discretion, approve destruction (rather than transfer) of redundant plant materials that Defendants are required to transfer under Section 3.2.

**3.3. UC Use of the Transferred Germplasm and Progeny.** UC will exercise decision making with respect to the selections and seeds within the Transferred Germplasm and Progeny, and will assess and advance the Transferred Germplasm and Progeny as it deems appropriate in its sole discretion subject to the royalty obligations set forth in Section 3.4. For any cultivar within the Transferred Germplasm and Progeny for which UC elects to seek patent protection, UC will request of CBC, and CBC will promptly provide, information regarding potential inventive contributions and access to potential inventors employed by CBC upon written request, and UC's patent counsel will make the final decision regarding inventorship. It is UC's understanding that the breeders from CBC who designed the crosses resulting in the Transferred Germplasm or otherwise co-invented the cultivars will be listed as inventors. All patenting, release, and licensing decisions as to selections from the Transferred Germplasm and Progeny will be made by UC in its sole discretion. UC will base commercial release decisions for such selections on objective measures of their commercial viability as cultivars.

**3.4. Payments to CBC.** If UC decides in its sole discretion to patent or release any of the Transferred Germplasm, UC will share with CBC any royalties received at the same rate and on the same terms as UC would under the most recent version of the patent agreement terms of UC, attached as **Exhibit B**, as if any inventors employed or otherwise affiliated with CBC were employed by UC, except that the royalty payments will be made to CBC rather than the CBC inventors. For the avoidance of doubt, in no case would UC pay an inventor share to Drs. Shaw or Larson under their Patent Agreements and also pay an inventor share for that same inventorship contribution to CBC under this paragraph, nor would UC pay an inventor share to any of Defendants for progeny of Transferred Germplasm that is not also Transferred Germplasm.

**3.5. Payments to The Regents.** The Regents will withhold, as payment by Defendants to The Regents under this Agreement, (a) five hundred thousand dollars (\$500,000) as an offset only against future royalties otherwise due to the Defendants under the Patent Agreements for any cultivars from the Unreleased UC Strawberry Germplasm invented by Drs. Shaw and Larson prior to their retirement but patented and released by UC after the Effective Date, and (b) two million dollars (\$2,000,000) as an offset against future royalties otherwise due to the Defendants pursuant to Section 3.4 from the Transferred Germplasm that UC, in its own discretion, chooses to patent and release as referenced in in Sections 3.3 and 3.4, above.

**3.6. Confirmation of Royalty Payment Obligations to Drs. Shaw and Larson.** For the avoidance of doubt, The Regents' royalty obligations to Drs. Shaw and Larson under the Patent Agreements otherwise remain unchanged by this Agreement or Litigation. The Regents will not offset any of the payments referenced in Section 3.5, any of the costs or fees of this Litigation (or costs or fees of the CSC Litigation not already offset), or any of the costs or fees for testing and compliance with this Agreement against the royalties due to Drs. Shaw and/or Larson for any cultivars that were released prior to the Effective Date.

### 3.7. Strawberry Germplasm Compliance Assessment.

(a) In order to ensure compliance with this Agreement, the Parties will jointly contract a qualified independent party selected in accordance with Section 3.7(a) (the “**Expert Consultant**”). The Expert Consultant will be engaged under a joint contract to collect samples on the terms set out in Section 3.7(b). During the month of October 2017 (or as soon as possible thereafter) the Expert Consultant, the Expert Consultant’s designee, or another individual agreed to by the Parties will collect samples from one selection of each family (which will be representative of all selections in the family) of the progeny resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2016 and perform DNA testing of them, the results to be provided to the Parties within three (3) months of such sampling or as soon as possible thereafter. Defendants represent and warrant that Schedule 3.7 contains a listing of all families resulting from crossbreeding performed by CBC or on behalf of CBC by CBC members and/or their affiliates in 2016, but Defendants do not represent or warrant that all such families exist now or will exist as of the Effective Date .

(b) For any CBC Proposed Release, CBC will provide written notice to the Expert Consultant and UC Davis of any such release at least six (6) months prior to the scheduled release. Upon receipt of any such notice, the Expert Consultant will: (i) collect samples from the cultivar to be released and pedigree information regarding the cultivar (the confidentiality of which shall be maintained pursuant to 3.7(e)(i)) within one (1) month of such notification; (ii) conduct DNA testing on the samples; (iii) provide a report to CBC and UC as to whether the DNA testing results demonstrate the pedigree of the cultivar to be released includes Unreleased UC Strawberry Germplasm (and, if and only if the cultivar to be released includes Unreleased UC Strawberry Germplasm in its pedigree, the DNA testing results themselves to UC) within three (3) months of such sampling or as soon as possible thereafter.

(c) For any sampling conducted pursuant to this Agreement, each Party, or its designee, shall have the right to be present during any such sampling. The method and manner of sampling and genetic analyses (including evaluation of pedigree) shall be chosen by the Expert Consultant without any requirement for input from and approval by the Parties and their experts, provided, however, the Expert Consultant must make use of DNA genotyping and/or sequencing technologies (such as the iStraw35) to generate data for the comparisons needed to validate pedigree.

(d) Each of UC and CBC will select and identify to the other Party by written notice a qualified expert in plant genotyping and DNA analysis within thirty (30) days of the Effective Date. Thereafter, the two qualified experts will promptly meet and confer to agree upon the identity of a mutually agreeable qualified independent party not affiliated with either Party to be the Expert Consultant within forty five (45) days of the Effective Date but no later than October 1, 2017. If the two qualified experts are unable to select a mutually qualified independent party, either UC or the CBC may move the United States District Court for the Northern District of California for selection of the Expert Consultant, and neither UC nor CBC will oppose the matter being heard by the Court on an expedited basis, preferably no later than November 1, 2017, and earlier if the Court’s schedule allows.

(e) The joint contract between The Regents, CBC and the Expert Consultant will include: (i) reasonable confidentiality obligations whereby the Expert Consultant may not disclose information regarding any genotype or pedigree data obtained from UC to CBC or third parties or any genotype or pedigree data obtained from CBC to UC or third parties except to indicate where a CBC sample is progeny of one or more varieties within the Unreleased UC Strawberry Germplasm and provide analysis of the DNA testing of such CBC sample; (ii) the right for the Expert Consultant to request samples (and the obligation for The Regents and CBC to provide the requested samples), as needed, from the genetic lineage of any samples provided for testing; (iii) reasonable payment for the services of the Expert Consultant to be shared equally by The Regents and CBC; (iv) prohibition against any Party (or its representatives or agents, including experts) communicating (in any mode or fashion) with the Expert Consultant without inclusion of the other Party; and (v) such other reasonable terms and conditions as shall be agreed upon by the Parties and the Expert Consultant, including (a) reasonable confidentiality and non-disclosure obligations vis-à-vis non-parties, and (b) limitations of use of any information acquired to this engagement only and requirements for destruction of any such information after its termination.

(f) The evaluation and results of the Expert Consultant with respect to the pedigree of any sample tested shall be final and binding upon the Parties, with no right to appeal except for fraud or violation of law, this Agreement, or the joint contract.

3.8. **Non-Disparagement and Media.** From the Effective Date to the third anniversary of the Effective Date, the Parties will not make or publish, either orally or in writing, any disparaging public statement about The Regents, UC Davis, its strawberry breeding program, or any faculty, administrators, or staff of The Regents or UC Davis with respect to its strawberry breeding program, or about Dr. Shaw, Dr. Larson, CBC, its members, principals, employees or its strawberry breeding program (subject to the requirements of law, including the California Public Records Act). Any statements to the media and/or press releases regarding settlement or this Agreement must be approved by the Parties. The Parties have approved a press release in the form attached hereto as **Exhibit C**.

#### **4. Confidentiality.**

4.1. Non-public information, physical specimens, research data, and proprietary information relating to the Unreleased UC Strawberry Germplasm, the Transferred Germplasm and Progeny and the Transferred Progeny Information and Materials, will be UC Davis' confidential information. Non-public information, physical specimens, research data and proprietary information relating to the Other CBC Germplasm will be CBC's confidential information.

4.2. A Party that receives the confidential information (the "**Receiving Party**") of another Party (the "**Disclosing Party**") will not disclose any such confidential information to any third party, except:

- (a) With the prior written consent of the Disclosing Party;



(b) To the extent such disclosure may be required in judicial, administrative, or regulatory proceedings in response to a valid subpoena or as otherwise may be required by applicable law, statute, or regulation, provided that the Receiving Party gives the Disclosing Party notice and a reasonable opportunity to contest or minimize such disclosure; and

(c) To the Receiving Party's affiliates, accountants, auditors, legal counsel, insurers, bankers, and other professional advisors, but only subject to an obligation of confidentiality and/or privilege (as applicable).

## **5. Representations and Warranties.**

5.1. Each Party hereby represents and warrants to the other Parties that:

(a) In the case of The Regents and CBC, such Party is duly organized under applicable law, and in the case of each Party, has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement by such Party have been duly and validly authorized by all requisite action;

(b) This Agreement has been duly executed and delivered by a duly authorized officer of such Party and constitutes the valid and binding agreement of such Party enforceable in accordance with its terms;

(c) Such Party has received all consents, approvals, and permits necessary for such Party to enter into this Agreement and perform its obligations hereunder; and

(d) The execution, delivery, and performance of this Agreement by such Party will not violate (i) the organizational documents of such Party in the case of The Regents or the CBC, as applicable; (ii) any material agreement under which such Party is bound; or (iii) any law, ordinance, rule, regulation, judgment, writ, injunction, or order of any court or governmental, administrative, or regulatory authority to which such Party or its assets are subject.

5.2. In addition to the representations and warranties in Article 1, above, Defendants represent and warrant that they do not have Unreleased UC Strawberry Germplasm in their possession, custody, or control, and that if, to the knowledge of Defendants, any Unreleased UC Strawberry Germplasm has or does come into their possession, custody, or control through any channel other than through sales by a UC licensee authorized to make such sales or subsequent sellers in a distribution chain from an authorized UC licensee following the commercial release of such germplasm, Defendants will promptly give written notice of the issue to UC and destroy all copies of such germplasm.

5.3. Except as expressly set forth in this Article 5, each Party hereby disclaims all other warranties, express or implied, including without limitation, the warranties of merchantability, non-infringement, and fitness for a particular purpose.

5.4. In entering this Agreement, the Parties acknowledge and represent that they have not relied upon any statement or representation, written or oral, by another Party except those expressly set forth in this Agreement.

**6. Miscellaneous Provisions.**

6.1. **Attorneys' Fees and Costs.** Each Party is responsible for its own attorneys' fees and costs, if any, in connection with this Agreement and the Litigation settled herein.

6.2. **Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the Parties.

6.3. **Dispute Resolution.** The United States District Court for the Northern District of California will maintain jurisdiction to enforce the terms of this Agreement (including under California Code of Civil Procedure § 664.6). The venue of any other future litigation arising out of or relating to this Settlement Agreement will be the Northern District of California. Each Party consents to the jurisdiction of the United States District Court for the Northern District of California to adjudicate any such future litigation or enforcement.

6.4. **Severability.** If the application of any provision of this Agreement to any particular facts or circumstances is for any reason held to be invalid, illegal or unenforceable by a court, arbitration panel or other tribunal of competent jurisdiction, then (a) the validity, legality and enforceability of such provision as applied to any other particular facts or circumstances, and the other provisions of this Agreement, will not in any way be affected or impaired thereby and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the Parties. If, moreover, any provision contained in this Agreement is for any reason held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with applicable law.

6.5. **Notices.** Any notice, request, demand, or other communication required or permitted hereunder must be in writing and reference this Agreement, and will be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices must be sent to the address set forth on the signature page of this Agreement and to the attention of the person executing this Agreement (or to such other address or person as may be designated by a Party by giving written notice to the other Party pursuant to this Section), and additionally to the attorneys of record in the Litigation as listed below:

For UC:  
Matthew Chivvis  
425 Market St.  
San Francisco CA 94105  
Fax: (415) 268-7522

For the Defendants:  
AG Kawamura  
c/o Orange County Produce, LLC  
11405 Jeffrey Rd.  
Irvine, CA 92602

6.6. **Waiver.** The waiver by any Party of a breach of or a default under any provision of this Agreement will not be effective unless in writing and will not be construed as a waiver of

any subsequent breach of or default under the same or any other provision of this Agreement, nor will any delay or omission on the part of any Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

6.7. **Construction.** This Agreement has been negotiated by the Parties and is to be interpreted fairly in accordance with its terms and without any construction in favor of or against any Party.

6.8. **Captions and Section Headings.** The captions and section and paragraph headings used in this Agreement are inserted for convenience only and do not affect the meaning or interpretation of this Agreement.

6.9. **Counterparts.** This Agreement may be executed (including, without limitation, by facsimile or scanned PDF signature) in one or more counterparts, with the same effect as if the Parties had signed the same document. Each counterpart so executed will be deemed to be an original, and all such counterparts will be construed together and constitute one Agreement.

6.10. **Entire Agreement; Amendment.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether written or oral, between the Parties relating to the subject matter hereof and all past courses of dealing or industry custom. No modification or amendment to this Agreement will be effective unless in writing and signed by all of the Parties.

6.11. **Limitation of Liability.** IN NO EVENT WILL ANY PARTY BE LIABLE TO ANOTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE), EVEN IF SUCH PARTY WAS ADVISED OR OTHERWISE AWARE OF THE LIKELIHOOD OF SUCH DAMAGES.

6.12. **Relationship of Parties.** Nothing contained in this Agreement will be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between any of the Parties. No Party nor its agents have any authority of any kind to bind any other Party in any respect whatsoever, and the relationship of the Parties is, and at all times will continue to be, that of independent contractors.

6.13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, successors and assigns including, without limitation, a third party that acquires rights in all or a portion of CBC's strawberry breeding program whether by merger, acquisition, change of control, asset sale, or license; provided that UC's releases shall only apply to the extent that such legal representative, heir, successor, assign, or third party is bound by the appropriate covenants in this Agreement including, without limitation, Section 3.7.

6.14. **Regental Approval.** This Agreement is contingent upon approval by The Regents. Upon such approval, which will be sought at The Regents' September 2017 meeting, it shall be binding on the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective on the Effective Date.

**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA**

**CALIFORNIA BERRY CULTIVARS**

\_\_\_\_\_

BY: Margaret L. Wu

NAME: Margaret L. Wu

TITLE: Interim Deputy General  
Counsel

ADDRESS:  
University of California  
Office of The General Counsel  
1111 Franklin St., 8th Floor  
Oakland, CA 94607

**DOUGLAS SHAW**

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**KIRK LARSON**

\_\_\_\_\_

ADDRESS:

6.14. **Regental Approval.** This Agreement is contingent upon approval by The Regents. Upon such approval, which will be sought at The Regents' September 2017 meeting, it shall be binding on the Parties.

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**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA**

**CALIFORNIA BERRY CULTIVARS**

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

BY: A.G. Kawamura

NAME: \_\_\_\_\_

NAME: A.G. KAWAMURA

TITLE: \_\_\_\_\_

TITLE: PRESIDENT

ADDRESS:

ADDRESS:

**DOUGLAS SHAW**

**KIRK LARSON**

\_\_\_\_\_

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\_\_\_\_\_  
BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS:

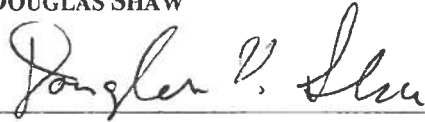
\_\_\_\_\_  
BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS:

**DOUGLAS SHAW**



ADDRESS:

1002 STANFORD DR.  
DAVIS, CA 95616

**KIRK LARSON**

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**CALIFORNIA BERRY CULTIVARS**

\_\_\_\_\_

\_\_\_\_\_

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:**

**ADDRESS:**

**DOUGLAS SHAW**

**KIRK LARSON** *Kirk D. Larson  
by Katherine A. Whitson,  
his attorney in fact*

\_\_\_\_\_

**ADDRESS:**

**ADDRESS:**

*12695 Barrett Lane  
Santa Ana, CA 92705*