



## IMPERIAL IRRIGATION DISTRICT RESOLUTION NO. 54-2022

### ADOPTING TEMPLATE LEASE FOR IID OWN WESTERN FARM LANDS

**WHEREAS**, On February 5, 2004, the Imperial Irrigation District (“IID”) board of directors approved Resolution 2-2004 which authorized the purchase of approximately 41,700 acres of land (“Western Farm Land”) in order to facilitate the District’s ability to perform its obligations under the District Water Conservation and Transfer Project (“Transfer Project”), including the District/San Diego County Water Authority Water Conservation and Transfer Agreement and the Quantification Settlement Agreement and Related Agreements (collectively, “QSA”); and

**WHEREAS**, IID currently leases Western Farm Land for agricultural production and the Western Farm Land is not necessary for any present or prospective district uses or purposes; and

**WHEREAS**, IID desires to continue to lease Western Farm Land for agricultural production for terms of six months, under the further terms and conditions set forth in the attached Western Farm Land Lease Template, attached hereto as Exhibit A.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that:

- 1) Pursuant to Water Code sections 22500, *et seq.* the IID Board of Directors hereby finds that the property is no longer necessary for present or prospective IID purposes and that the leasing of the Property is in the best interest of IID because this Property will be put to purposeful use.
- 2) The IID Board of Directors hereby further finds that the use of the land under the lease or the purpose of the lease will not interfere or be inconsistent with IID uses or purposes because the lease is for the purpose of agricultural production.

- 3) The IID Board of Directors approves and authorizes the use of the attached Lease Template, attached hereto as Exhibit A and made a part hereof, for all Western Farmland lease, pursuant to Water Code sections 22500, *et seq.*

**PASSED AND ADOPTED** this 1<sup>st</sup> day of November, 2022.

**IMPERIAL IRRIGATION DISTRICT**



*James C. Starks*  
\_\_\_\_\_  
President

*Razul Najera*  
\_\_\_\_\_  
Secretary



1.5. **Term.** \_\_\_\_\_ years and \_\_\_\_\_ months (“**Term**”) commencing on \_\_\_\_\_ (“**Lease Commencement Date**”) and ending on \_\_\_\_\_ (“**Lease Termination Date**”). See **Section 6.**

1.6. **Rent.**

(a) **Annual Rent.** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per net acre per year, for a total of \_\_\_\_\_ Dollars (\$ 0.00) per year. Annual Rent shall be payable in advance, in semi-annual installments, as follows (“**Annual Rent**”):

Installment Due Date	Installment Amount	Installment Due Date	Installment Amount
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$	<b>Total Rent</b>	\$ 0.00

(b) **Harvest Extension Rental Rate.** \_\_\_\_\_ N/A Dollars (\$ \_\_\_\_\_ N/A) per net acre per year, prorated on a monthly basis and payable in full, in advance. See **Section 6.1.**

(c) **Stand Establishment Costs.** \$ \_\_\_\_\_ per net acre planted in Bermuda grass and \$ \_\_\_\_\_ per net acre planted in alfalfa or Kline grass, prorated on a \_\_\_\_\_ year basis. See **Section 6.2.**

(d) **Holdover Rental Rate.** Three hundred percent (300%) of the Annual Rent, pro-rated on a daily basis.

1.7. **Interest Rate; Late Fee.**

(a) “**Interest Rate**” means ten percent (10%) per year, but in no event more than the maximum rate permitted under Article XV, Section 1 of the California Constitution and applicable laws.

(b) “**Late Fee**” means the five percent (5%) of the rent or other sum not timely paid. See **Section 7.1.**

1.8. **Permitted Use.** Agricultural Purposes as defined in **Section 8.**

1.9. **Insurance.** Tenant is required to obtain and maintain insurance coverage and to deliver one or more Certificates of Insurance to Landlord as provided in **Section 16** of this Lease.

**NOTICE TO TENANT REGARDING INSURANCE: FAILURE TO MAINTAIN THE REQUIRED INSURANCE AND/OR TO PROVIDE LANDLORD WITH ANY REQUIRED CERTIFICATE THEREOF SHALL BE A DEFAULT BY TENANT HEREUNDER AND MAY RESULT IN TERMINATION OF THIS LEASE.**

2. **Agreement to Lease the Property; Acreage.** Landlord hereby leases the Property to Tenant, and Tenant hereby hires the Property from Landlord, on the terms and conditions, and subject to the reservations and limitations, set forth in this Lease. For all purposes under this Lease, including but not limited to the calculation of the rent due hereunder, Landlord and Tenant agree that the Property shall be deemed to consist

of total number of acres shown as the Total Acreage in the Basic Lease Provisions at the beginning of this Lease. If any provision of this Lease is inconsistent with any provision of the Basic Lease Provisions, the terms of the Basic Lease Provisions shall control.

3. **Reservations of Easements, Facilities, Water and Minerals.** This Lease is subject and subordinate to, and the Landlord reserves for itself, its successors and assigns:

3.1. **Easements and Rights of Way.** All easements and rights of way of every kind or nature, including but not limited to the following, whether of record or not: express, prescriptive, merged or implied easements; easements and rights of way existing before or after Landlord acquired title to the Property; and all easements and rights of way used by Landlord, created by Landlord or reserved by Landlord.

3.2. **IID Facilities.** All Imperial Irrigation District facilities, including but not limited to all fixtures, equipment and structures of every kind and nature, including but not limited to irrigation gates (at point of delivery to the Land), tiles, tile lines, drainage facilities, poles, transmission and distribution lines, transformers, appurtenances thereto and anything incident to or related in any way to the conveyance water for all uses and purposes (whether for delivery, distribution, drainage, transfer, conservation or otherwise) or to the production, distribution or transmission of energy or communications (collectively, "IID Facilities").

3.3. **Water Rights.** All water rights of every kind and nature in connection with the Property (whether held by Landlord in its capacity as an irrigation district or as the fee title holder to the Property or otherwise), including rights to groundwater and the right to extract water from the Property. Tenant acknowledges that Tenant shall have no right to extract water from the Land or from any river or stream on or adjacent to, or otherwise accessible from the Land, and that any such use or taking of water by Tenant shall (among other things) be a breach of this Lease.

3.4. **Geothermal, Oil, Gas and Mineral Rights.** All hot water, steam, thermal and geothermal energy and all extractable minerals (collectively, "**Geothermal Substances**") and all oil, gas and other hydrocarbon substances (together with Geothermal Substances, collectively, "**Mineral(s)**") on, under, and/or that might be produced from the leased Property, together with a right to drill into, through and across, and to produce, have and take Minerals from, through and across the Property, and/or from wells located in or on property outside the boundaries of the Property. Landlord further reserves the right to reasonable access to, from, and through the Property, for purposes of extracting and obtaining Minerals therefrom, including the construction of any and all facilities, structures and installations necessary to extract and transport the same for production, treatment, storage, or transportation of said Minerals from the leased Property. As used herein, the term "Geothermal Substances" includes but is not limited to: (a) the natural heat of the earth, and the energy present in, resulting from, or created by, or which may be extracted from, the natural heat of the earth or the heat present below the surface of the earth, in whatever form such heat or energy naturally occurs; (b) all natural products of geothermal processes, including, without limitation, indigenous hot water, hot brine, steam and other fluids and gasses; (c) hot water, hot brine, steam and other fluids and gasses resulting from water or other substances being artificially introduced into the subsurface of the Property; and (d) all minerals, gasses, salts, chemicals, by-products and other substances in solution or mixed with geothermal effluent or otherwise produced from, through and across the Property, and/or from geothermal wells located in or on property outside the boundaries of the Property.

3.5. **Existing Mineral Leases.** All Mineral leases and all other Mineral-related agreements affecting the Property.

4. **Condition of Property; AS-IS.** Tenant acknowledges that the Property is leased on an AS-IS basis and accepts the Property in its present condition. Tenant acknowledges that Landlord makes no representation or

warranty of any kind or nature whatsoever regarding the Property. Without limiting the generality of the foregoing, Tenant acknowledges that Landlord makes no representation or warranty of any kind or nature regarding (i) the precise number of acres comprising the Land, (ii) the corners or boundaries of the Land, (iii) the suitability of the soils for growing the crops selected by Tenant, (iv) the quality or quantity of irrigation water available to Tenant; (v) the drainage of the Land, (vi) the condition or sufficiency of the Improvements for the growing of crops, (vii) the condition or zoning status of the Property, or any other fact or matter relating thereto, (viii) the merchantability of the Property or any portion thereof for any particular use, (ix) whether any of the Property is currently in violation of any applicable Law (as defined in **Section 11** of this Lease); or (x) whether the Property contains any Hazardous Materials which are or may be in violation of any Environmental Law (as defined in **Section 11**). Tenant acknowledges that Landlord acquired the Property for and Landlord has, to Landlord's knowledge, used the Property solely for (a) rights of way in connection with providing utility services and/or (b) leasing to farmers for uses limited to standard agricultural and farming practices. Tenant acknowledges and agrees that Landlord has little or no information regarding the Property and no material experience using the Property and that Tenant shall rely on Tenant's own investigations, inquiries and analyses regarding the Property.

## 5. **Additional Water Provisions.**

5.1. **Water Service.** Tenant acknowledges that entry into this Lease does not guaranty the availability of water or water service for Tenant's use on the Property. Tenant shall apply for water service from Landlord in the same manner as all other agricultural water users whether or not leasing land from Landlord and shall be subject to any water distribution plan implemented by Landlord and all other rules, policies, procedures, regulations, tariffs and programs in effect by Landlord at any time during the Term.

5.2. **Conservation, Fallowing and Related Programs.** From time to time, Landlord establishes various programs and/or requirements for or related to water conservation, water distribution, water transfer, water banking, water sale, land fallowing, habitat restoration, habitat creation and/or other actions, practices or requirements related to water or farming (individually, a "**Program**" and collectively, "**Programs**"). In addition, Landlord is required, from time to time, to participate in Programs established by federal, state or other governmental authorities. Tenant therefore acknowledges and agrees that Landlord may, from time to time in its sole and absolute discretion, require Tenant and/or the Property to participate in or be subject to any such Programs, whether now existing or hereafter initiated, and whether established by Landlord or by any other governmental agency or authority. Without limiting the generality of the foregoing, Tenant acknowledges and agrees: (a) that such Programs may affect the amounts of water available to the Property and/or the times such water is made available; (b) that Landlord shall retain the right to enroll the Property in any such Program during the Term, and to enter upon the Property in connection with such Program; (c) that Landlord shall retain all water rights pursuant to **Section 3.3** during the Term, and shall retain the right to sell, transfer, lease or otherwise dispose of, directly or indirectly, any water available to the Property from any source; and (d) that Landlord shall also retain the right to implement, install, operate, or maintain conservation facilities, technology, equipment, practices or measures ("**Conservation Measures**") on and affecting the Property as may be appropriate under a Program, or may require that Tenant implement, install, operate or maintain Conservation Measures on and affecting the Property.

(a) If Landlord elects to require Tenant and/or the Property to participate in a Program, which results in the amount of water delivered, to be delivered or available to the Property to be reduced to the extent that the water available to the Property, subtracting any reduction in Tenant's water needs attributable to the Conservation Measures (whether or not Tenant implements, installs, operates or maintains such Conservation Measures), is insufficient for Tenant to continue to economically farm a crop in a manner consistent with then accepted farming practices and cropping patterns in the County of Imperial, the parties agree to renegotiate this Lease in good faith to take into account this

reduction in available water supply. If the parties are unable to come to an agreement on a renegotiated lease to replace or amend this Lease, Tenant shall have the option to terminate this Lease upon sixty (60) days' written notice to Landlord. If Tenant elects to terminate this Lease under this paragraph, Tenant will be entitled to receive its Stand Establishment Costs as and to the extent provided in **Section 6.2**.

- (b) If Tenant applies for and is selected for participation in a Program, any payment provided to Tenant for participation in the Program shall be allocated between the parties at a rate to be negotiated prior to the commencement of participation in the Program. If the parties are unable to come to an agreement on the share allocated between the parties, Landlord shall have the absolute right to withhold or revoke any consent to Tenant for participation in the Program.
- (c) Tenant acknowledges and agrees that Tenant's participation in any Program shall require Landlord's prior written consent, which shall not unreasonably withheld.

**5.3. Equitable Distribution Plan.** Landlord, in its capacity as an irrigation district, may apportion its annual water supply to any and all users within its water service area in accordance with a water distribution plan. Tenant shall be subject to any water distribution plan in effect during the Term. Any movement of water to or from the Property by Tenant under a water distribution plan shall require Landlord's prior written consent, which shall not be unreasonably withheld.

**6. Lease Term.** The Term of the Lease shall be as identified in Section 1.5, which may be terminated early or extended in accordance with the following:

**6.1. Extension of Term.** If Tenant anticipates that crops on the Property will not be harvested by or on the Lease Termination Date, Tenant may request a harvest related extension of the Term by written request to Landlord no less than fifteen (15) days prior to the Lease Termination Date. Tenant shall not be eligible for a Harvest Extension if Tenant is then in default hereunder or under any other lease or agreement between Landlord and Tenant (or any affiliate of Tenant). If Landlord agrees to a Harvest Extension in writing, the Term shall be extended as to such portion of the Property for the period of time mutually agreed upon by the parties that is reasonably required to expeditiously complete the farming, harvest and removal of such crops ("**Harvest Extension**"). If Landlord and Tenant do not agree regarding the duration of the Harvest Extension, it shall be for a term of one month. Tenant shall pay the Harvest Extension Rental Rate on or before the first day of the Harvest Extension for the portion of the Property that will remain in Tenant's possession during the Harvest Extension. The Lease shall terminate upon expiration of the Harvest Extension. If Landlord does not agree in writing to a Harvest Extension or if Tenant does not pay the Harvest Extension Rental Rate before the first day of the Harvest Extension and if Tenant remains in possession of the Property and/or leaves crops on the Property (whether or not harvested), then: the Lease shall terminate on the Lease Termination Date, Tenant shall be in default of this Lease and the Holdover Rental Rate shall be due.

**6.2. Early Termination.** Landlord may terminate this Lease early by giving at least sixty (60) days prior written notice thereof to Tenant. In the event of such termination, Landlord shall have no obligation to compensate Tenant for any loss or damage incurred in connection with the early termination, except as provided in this **Section 6.2**. In the event of such early termination, Landlord's sole obligations to Tenant shall be: (a) to refund to Tenant any Annual Rent paid by Tenant which is allocable to the period after the effective date of the early termination, and (b) to reimburse Tenant for Stand Establishment Costs incurred by Tenant as specified in **Section 1.6(c)**; provided however that no sum shall be payable to Tenant until thirty (30) days after Tenant has vacated the Property and surrendered the Property to Landlord as provided in this Lease. Stand Establishment Costs are intended to compensate Tenant only for those costs reasonably and necessarily incurred by Tenant in establishing a crop with a useful life greater than one growing season, but not for the value of the crop or lost profits or any other sum.

**6.3. Holdover Rent.** Tenant shall never have any right to remain on the Property following the expiration or termination of the Term, except as specifically provided in **Section 6.1** or as approved in writing in advance by Landlord. Should Tenant remain on the Property following the expiration or termination of the Term in any but the circumstances described in the preceding sentence, Tenant shall pay to Landlord the Holdover Rental Rate. In addition, Landlord reserves the right to pursue all other legal and equitable remedies against Tenant as a result of Tenant's holding over, including, without limitation, reimbursement of attorneys' fees, court costs, costs of investigation, and lost opportunity costs resulting from lost leasing opportunities.

**7. Rent.** Tenant shall pay Annual Rent to Landlord as specified in **Section 1.6**. Annual Rent shall be in addition to all other sums due under this Lease. All sums due from time to time under this Lease (including but not limited to Annual Rent) shall be deemed rent hereunder and are referred to herein collectively as "rent." All rent payments shall be made and delivered to Landlord at the time and place and in the manner specified by Landlord from time to time. At Landlord's option, Annual Rent and other sums shall be payable only by electronic funds transfer. All rent shall be paid free from all claims, demands, set-offs or counterclaims against Landlord of any kind or character whatsoever.

**7.1. Late Rent Payment.** Tenant hereby acknowledges that late payment by Tenant of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by third parties. Accordingly, if any Annual Rent shall not be received by Landlord within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall immediately pay to Landlord a one-time Late Fee specified in Section 7.1. The parties hereby agree that such Late Fee represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such Late Fee by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount (or of any other default by Tenant hereunder), nor prevent the exercise of any of the other rights and remedies granted to Landlord under this Lease. In the event that a Late Fee is payable hereunder, whether or not collected, for three (3) consecutive installments of Annual Rent, then notwithstanding any provision of this Lease to the contrary, all Annual Rent for the remainder of the Term shall, at Landlord's option, become due and payable immediately.

**7.2. Interest.** Any monetary payment due Landlord hereunder, other than Late Fees, not received by Landlord, the date due for scheduled payments (such as Annual Rent) or within thirty (30) days following the date on which it was due for nonscheduled payments, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to nonscheduled payments at the Interest Rate specified in **Section 7.1**. Interest shall be payable in addition to the Late Fee specified in **Section 7.1**.

**7.3. Additional Sums.** In addition to all other sums due under this Lease, Tenant shall pay Landlord additional fees, charges and rent in the event of any of the following: (a) If Landlord has paid any sum or sums, or has incurred any obligation which Tenant has agreed to pay or reimburse Landlord, or for which Tenant is otherwise responsible; (b) If Landlord is required or elects to pay any sum or sums, or incur any obligation or expense, because of the failure, neglect or refusal of Tenant to perform or fulfill any of the promises, terms, conditions or covenants required of Tenant hereunder; and (c) If required pursuant to any separate agreement between the parties not contained herein, but made in reference hereto. Tenant's obligations pursuant to this **Section 7.3** shall include all interest, costs, damages, and penalties in conjunction with such sums so paid or expenses so incurred by Landlord, which may be added by Landlord to any installment of fees, charges and rent payable hereunder. Each and every part of such payment by Landlord shall be recoverable by Landlord in the same manner and with like remedies as if it were expressly set forth herein. For all purposes under this **Section 7.3**, and in any

suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by Landlord for or in connection with any work done or material furnished shall be prima facie evidence against Tenant that the amount of such payment was necessary and reasonable. Tenant shall pay Landlord pursuant to this **Section 7.3** within five (5) days following demand therefore.

8. **Use.** Tenant may use the Property solely and exclusively for Agricultural Purposes. As used herein: (a) “**Agricultural Purpose(s)**” means (i) farming operations of plowing, tilling, planting, cultivating, irrigating and harvesting on the Property, and activities incidental thereto, all in a manner consistent with Good Farming Practices, and (ii) the grazing of sheep and/or cattle; and (b) “**Good Farming Practices**” means those methods, actions, and activities generally performed by and consistent with sound agricultural practices commensurate with the custom and practice within the County of Imperial, subject however to all of the terms, conditions and limitations specified in this Lease. If Tenant’s use of the Property includes the presence of farm animals, all operations incident thereto shall be carried out according to the best course of animal husbandry practiced in the County of Imperial, subject however to all of the terms, conditions and limitations specified in this Lease. In no event shall Tenant use any part of the Property, or permit the use of any part of the Property, for any residential use or for any other non-Agricultural Purpose without Landlord's prior written consent, in the Landlord's sole and absolute discretion. Subject to all applicable laws and regulations (including but not limited to all water-related laws and regulations and all rules and requirements of Landlord in its capacity as an irrigation district, whether regarding water conservation, fallowing of land or otherwise), Tenant is solely responsible for the means, methods and techniques used on the Property by Tenant, its employees, agents, contractors and invitees. Tenant is solely responsible for instituting proper safety procedures and programs and for taking all steps necessary to prevent loss or injury of persons or property.

9. **Surrender of Property.** Immediately upon the expiration of the Term or earlier termination of the Lease, and except as otherwise provided in **Section 6.1**, Tenant shall surrender possession of the Property, including any and all crops, to Landlord and shall remove all of Tenant's personal property therefrom except to the extent such personal property shall have become the property of Landlord as provided herein. The Property shall be in at least as good a condition as when Tenant took possession thereof, reasonable wear and tear excepted. Landlord may determine, in its sole and absolute discretion, whether any Alterations (as defined in **Section 14**) shall remain on the Property or, upon Landlord's written instruction, shall be removed by Tenant, at Tenant's sole cost and expense, upon the expiration of the Term or earlier termination of the Lease.

## 10. **Mechanics' Liens.**

10.1. **Tenant’s Obligation to Discharge.** If, in connection with any work performed by or at the request of Tenant or in connection with any materials being furnished to Tenant, any mechanic's lien or other lien or charge shall be filed or made against the Property or any part thereof, or if any such lien or charge shall be filed or made against Landlord as owner, unless Landlord has agreed in writing to pay the cost of such work or materials, then Tenant, at Tenant's sole cost and expense, shall cause the same to be cancelled and discharged of record by payment thereof or by filing a bond or otherwise within thirty (30) days after such lien or charge shall have been filed or made, and shall also defend any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages, costs and expenses, including attorneys' fees, suffered or incurred therein by Landlord, and shall satisfy and discharge any judgment by payment thereof or filing of a bond or otherwise.

10.2. **Right to Contest.** Tenant shall have the right to contest the correctness or validity of any such lien, if immediately upon demand by Landlord, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1-1/2) times the amount of claim or lien. The bond shall provide for the payment of any sum that the claimant may recover on the claim (together with the costs of suit, if the claimant recovers in such

action) and shall satisfy the requirements of California Civil Code Section 8424 and other applicable provisions.

**10.3. Failure to Acquire Bond or Discharge Lien.** In the event of the failure of Tenant to acquire a surety bond or to discharge any lien, charge or judgment herein required to be paid or discharged by Tenant within thirty (30) days, Tenant shall be in default under this Lease. In such event, Landlord may, in additions to all of Landlord's other remedies hereunder, pay such items or discharge such liability by payment or bond or both, and Tenant shall repay to Landlord, upon demand, any and all amounts paid by Landlord therefor, or by reason of any liability on any such bond, and also any and all incidental expenses, including attorneys' fees, incurred by Landlord in connection therewith.

## **11. Compliance with Laws.**

**11.1. Definitions.** As used in this Lease, the following terms (not in alphabetical order) shall have meanings specified in this section.

- (a) "**Law(s)**" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements (including but not limited to common law) of any federal, state or local governmental authority (including but not limited to any court), now or hereafter in effect and as amended or supplanted from time to time. The term "**Law(s)**" includes but is not limited to all Environmental Laws.
- (b) "**Environmental Law(s)**" means any Law (now or hereafter in effect) relating to, regulating or imposing liability or standards of conduct concerning: (i) air quality (including but not limited to dust control and mitigation); (ii) water quality; (iii) storage tanks, whether located above or below grade; (iv) the drilling, operation, maintenance or abandonment of any oil, gas or geothermal well or of facilities related to any such well; (v) the protection of human health or of the environment or natural resources, or (vi) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Agricultural Chemical or any Hazardous Material or the actual or threatened release of any Hazardous Material into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to any Hazardous Material. The term "Environmental Laws" includes but is not limited to all of the Laws specifically mentioned in the definitions of Agricultural Chemicals and Hazardous Materials.
- (c) "**Agricultural Chemical(s)**" means any fertilizer, herbicide, pesticide, fungicide, poison or other chemical used (lawfully or otherwise) in connection with agricultural or animal husbandry.
- (d) "**Hazardous Material(s)**" means any toxic or hazardous waste, pollutants or substances, including without limitation, petroleum products or by products, asbestos (irrespective of whether or not encapsulated) and substances defined or listed as hazardous substances or toxic substances or similarly identified in or pursuant to any Laws including, but not limited to, the following: Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq.; Federal Hazardous Materials Transportation Control Act, 49 U.S.C. § 1801, et seq.; Federal Clean Air Act, 42 U.S.C. § 7401, et seq.; Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. § 1251, et seq.; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. § 136, et seq.; Federal Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; Federal Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; California Health & Safety Code, Divisions 26 and 27, § 39000, et seq. (Air Pollution); Carpenter Presley Tanner Hazardous Substance Account Act, California Health & Safety Code § 25300, et seq.; California Porter Cologne Water Quality Act, California Health & Safety Code § 13000, et seq.; California Environmental Quality Act, California Public Resources Code § 21000, et seq.;

California Radiation Control Law, California Health & Safety Code § 25801, et seq.; California Solid Waste Management and Resource Recovery Act, California Government Code § 66700, et seq.; California Hazardous Waste Control Act, California Health & Safety Code § 25100, et seq.; California Underground Storage of Hazardous Substances Act, California Health & Safety Code § 25280, et seq.; and Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.

- 11.2. Compliance with Law; Waste; Nuisance.** Tenant shall comply with all Laws applicable to or affecting Tenant's use or occupancy of the Property or Tenant's operations thereon. Without limiting the generality of the foregoing, Tenant shall comply with all Environmental Laws and all Laws concerning or relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, safety programs and other employer/employee related subjects including without limitation immigration matters. Tenant shall not commit or suffer to be committed any waste or nuisance on the Property and shall not use the Property for any unlawful purpose.
- 11.3. Agricultural Chemicals.** Tenant shall prepare and maintain complete and accurate records in accordance with all Laws respecting the time, place, quality, quantity, kind, and method of application of all Agricultural Chemicals that may be utilized by the Tenant on or about the Property, including without limitation, the pesticide use reports required by Food and Agriculture Code Section 12979 or other relevant statutes or regulations, and shall furnish to the Landlord, upon request, true and correct copies thereof. No experimental Agricultural Chemicals or other experimental or non-standard materials shall be applied to the Property or to the crops growing thereon except with the Landlord's prior written consent.
- 11.4. Right to Inspect.** Tenant hereby grants to Landlord and its agents, representatives, employees, consultants and contractors the right to enter upon and inspect the Property from time to time for purposes of evaluating Tenant's compliance with Laws and this Lease.
- 11.5. Farm Bill Compliance.** Tenant acknowledges that some government programs provide significant economic benefits to Landlord, to Tenant and/or to future tenants of the Property, that Tenant's failure to arrange for the Property to participate in such programs may result in a loss of eligibility affecting the Property or otherwise cause Landlord to suffer a current or future loss. Tenant therefore agrees that it shall execute an agreement with Farm Service Agency and/or the Commodity Credit Corporation of the United States Department of Agriculture (the "**Agreement**"), as frequently as annually, to qualify to receive fixed, decoupled, loan deficiency or counter-cyclical payments under the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) and the regulations promulgated thereunder from time to time (collectively, the "**Farm Bill**") and shall otherwise comply with and obtain all benefits available under all farm related legislation in effect from time to time, including but not limited to The Food, Conservation, and Energy Act of 2008 and the Agricultural Act of 2014. Tenant shall comply with all the terms and conditions of the Agreement, including, without limitation, filing any and all reports of the acreage of fruits and vegetables planted on the Land that may be required under the Farm Bill; provided, that, nothing herein shall limit or restrict the types of crops that Tenant may grow on the Land. At all times, Tenant shall satisfy the requirements of Section 1105(a)(1) of the Farm Bill by, among other things, (i) complying with applicable conservation, wetlands, and planting flexibility requirements under the Farm Bill, (ii) using the Land, in an amount equal to the base acres, for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary of the United States Department of Agriculture, unless directed otherwise by Landlord in writing, and (iii) controlling noxious weeds and otherwise maintaining the Land in accordance with sound agricultural practices, as determined by the Secretary, if the agricultural or conserving use involves the noncultivation of any portion of the Land. Without limiting its other obligations to comply with all laws, Tenant agrees to comply, at its sole cost and expense, with all rules and regulations applicable to the highly erodible and wetlands conservation provisions of the Food Security Act of

1985 and, if not prohibited under such rules and regulations, to disc and maintain the Land, including any portion of the Land that is not cultivated to growing crops, in a clean manner.

- (a) **Limitations.** Tenant shall not, without the express prior written consent of Landlord, (i) update any yields or bases on the Land, (ii) enroll the Land in the Conservation Reserve Program, Wetlands Reserve Program, Grasslands Reserve Program, Farmland Protection Program, Wildlife Habitat Incentive Program, Environmental Quality Incentives Program, Water Conservation Program, or Conservation Security Program under Title II of the Farm Bill, or (iii) combine all or any portion of the Land with other property under the Farm Bill, provided, however, that if Landlord consents to such combination, the Land, or portion thereof, shall be decombined from such other property by Tenant at or prior to the termination of this Lease.
- (b) **Payments.** Any payments made or accrued during the Term for fixed, decoupled, loan deficiency, or counter-cyclical payments under the Agreement shall belong to Tenant, and Landlord shall have no interest therein. Landlord shall cooperate in full with Tenant in obtaining any such payments.

## **12. Utilities and Water Availability Charge.**

**12.1. Utilities.** Tenant shall pay all charges for water, gas, electricity, telephone and other utilities it uses on the Property during the Term.

### **12.2. Water Availability Charge.**

- (a) Landlord shall pay, prior to delinquency, Landlord's fixed annual charge, imposed by Landlord as an irrigation district in lieu of an assessment pursuant to the Water Code Section 22280, for making water available to the Property, irrespective of whether water is actually delivered to the Property, referred to as the "**Water Availability Charge.**"
- (b) Subject to Landlord's obligation to pay the Water Availability Charge, Tenant shall pay, prior to delinquency, all other water charges, including any water service charges or other charges imposed by Landlord as an irrigation district against Tenant or the Property incurred during or with respect to the Term.

**13. Maintenance of Property; Irrigation.** Subject to **Sections 5, 6, 9 and 11**, Tenant shall maintain the Property in substantially the same condition it is in as of the date of this Lease, reasonable wear, tear and damage due to normal farming operations excepted, in accordance with this **Section 13**. Except as expressly provided in this Lease, Tenant shall pay all costs of operation and maintenance of the Property, including but not limited to all Laws relating to dust mitigation.

### **13.1. Care.**

- (a) Tenant shall make reasonable efforts to eradicate and prevent the spread of all noxious weeds and rodents and other vertebrate pests on the Property during the Term, and to take reasonable measures to protect the Property from infestations of insects and other such pests on the Property during the Term. Tenant shall make reasonable efforts to prevent and/or correct infestations of organisms that may come onto or develop on the Property during the Term and produce disease in plants or damage crops or animals grown or maintained on the Property during the Term or create a condition or situation which would allow such development thereafter. Tenant shall take reasonable measures to keep all ditches, canals, roadsides, and other such areas in good operating condition, and free of weeds and debris either by cultivation or through the application of appropriate Agricultural Chemicals consistent with the restrictions on use thereof as provided herein.

- (b) Subject to the foregoing, Tenant shall continuously farm, cultivate, maintain, and operate the Property with diligence, consistent with the agricultural practices generally employed in the farming industry in the area in which the Property is located for crops of the type and variety planted on the Property, in order to maintain normal production, to protect and preserve the soils and crops located on the Property, and to achieve and maintain maximum long-term economic production from the Property; provided, that, notwithstanding any provision of this Lease to the contrary, Tenant shall not leave more than fifteen percent (15%) of the Land fallow for a continuous period in excess of sixty (60) days at any time during the Term.

**13.2. Irrigation and Cultivation.** Tenant shall perform sufficient maintenance of the surface of the Property to properly maintain the Property for the present methods of irrigation. Tenant shall irrigate and cultivate the Property in a good and farmerlike manner.

**13.3. Repairs to Irrigation System.**

- (a) Except for damage or deterioration caused or resulting from the intentional acts or neglect of Tenant or its agents, Landlord shall bear the cost of maintenance of and repairs to those components of any irrigation water drainage system that are beneath the surface of the ground. So long as Landlord acts with reasonable diligence in effecting such repairs, it shall have no liability to Tenant for any lost revenues, increased cost, inconvenience, lost opportunity or otherwise arising from repairs or maintenance that are Landlord's responsibility under this **Section 13.3.**

- (b) Subject to the foregoing, Tenant shall pay all costs of maintenance and repair to any irrigation water delivery or above-ground drainage system; provided, however, that with respect to such systems in existence as of the Lease Commencement Date, Tenant must first obtain Landlord's approval of any single replacement or capital expenditure costing in excess of Five Thousand Dollars (\$5,000.00). If Landlord grants such approval, Tenant shall pay the first Five Thousand Dollars (\$5,000.00) of the approved cost, and Landlord shall pay the remainder of the approved cost of such replacement or expenditure.

**13.4. Emergency Repairs.** To the extent that Tenant is responsible for maintenance or repair under this Lease and an emergency situation arises such that repair or other work is required to prevent or protect against injury or damage to persons or property, or otherwise to preserve the Property, and if Tenant fails to take any such action, then Landlord shall have the right (but not the obligation) to take such action or to perform such work, provided that Landlord shall notify Tenant of such action within a reasonable time before or after taking such action. Tenant shall reimburse Landlord for its costs incurred in performing such work within five (5) days of receipt of an invoice for such costs. The timing of Landlord's notice to Tenant shall be deemed reasonable if notice is given prior to Landlord's action, provided that if notice within such time was not practical in the circumstances, then Landlord shall notify Tenant within three (3) business days after taking such action.

**14. Alterations and Improvements by Tenant.** Tenant at its cost may make any alteration, improvement, addition or installation, including but not limited to planting trees, in, on or about the Land or to the Improvements (collectively, "**Alteration(s)**") which Tenant deems to be reasonably necessary or desirable; provided that Landlord (i) consents to such Alteration in writing within ten (10) days of written notice from Tenant (which consent may be conditional and shall not be unreasonably denied and, in the event Landlord does not respond within ten (10) days, shall be deemed given) and (ii) is permitted to post notices of non-responsibility upon the Property and to take other reasonable steps to ensure that Landlord shall not be liable for any costs relating to any such Alteration; provided however that Landlord's failure to post notices of non-responsibility shall not diminish or affect any of Landlord's rights or remedies under this Lease or applicable Law. All Alterations shall be completed in compliance with applicable Laws (including but not limited to all building and safety Laws), shall become at once a part of the Property and shall belong to the Landlord at the

end of the Term, unless Landlord instructs Tenant to remove the Alterations in accordance with **Section 9**. As provided in **Section 10** of this Lease, Tenant shall pay when due (or bond against liens), all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in connection with Alterations or other work on the Property, and shall at all times keep the Property free from any and all liens or claims of lien arising out of any work performed or materials furnished by or on behalf of Tenant. Tenant may install equipment and trade fixtures at its expense, and if Tenant is not in default hereof upon the termination of this Lease, then Tenant may remove such equipment and trade fixtures conditioned upon the repair of any damage to the Property caused by such removal in accordance with **Sections 9 and 19.6**.

**15. Indemnity.** Tenant hereby expressly agrees to and shall indemnify, defend and hold Landlord harmless from and against all claims, losses, damages, liabilities, penalties and expenses, (including but not limited to investigation costs, remediation costs and fees and costs of attorneys, consultants and experts selected and directed by Landlord) arising from, related to or in connection with this Lease including, but not limited to (i) personal injury or physical damage to any person or property occasioned or alleged to be occasioned in whole or in part by any act or omission on the part of Tenant or any invitee, licensee, employee, director, officer, servant, contractor, subcontractor, assignee or sublessee of Tenant, or by any breach, violation, or nonperformance of any covenant of Tenant under this Lease, even if such claims, losses, damages, liabilities and expenses arise from or are attributed to the concurrent negligence of the Landlord, (ii) Tenant's or any of its invitees', licensees', employees', directors', officers', servants', contractors', subcontractors', assignees' or sublessees' use, handling, mixing, storing, transporting, applying or disposing of any Hazardous Materials, Minerals or Agricultural Chemicals on or about the Property, (iii) any non-compliance, breach or violation of any Law (including but not limited to any Environmental Laws) by Tenant or its invitees, licensees, employees, directors, officers, servants, contractors, subcontractors, assignees or sublessees of Tenant, (iv) any condition on the Property requiring investigation or remediation under Law (including but not limited to any Environmental Laws), even if arising from the lawful use, handling, mixing, storing, transporting, applying, disposing or any other use of any Hazardous Materials, Minerals or Agricultural Chemicals, (v) any injury from any cause to any person, including Tenant, or to property of any kind belonging to anyone, including Tenant, while in, upon, or in any way connected with the Property, including, but not limited to, the flooding of roads or neighboring lands because of improper or inadequate drainage of water, excess irrigation or similar causes or damages caused by straying livestock, and (vi) any lien for work or materials on or affecting the Property; provided, however, that Tenant's obligation to indemnify, defend and hold Landlord harmless shall not apply to, and Tenant shall not be liable for, claims, losses, damages, liabilities and expenses arising from the sole negligence or willful misconduct of Landlord or Landlord's authorized representatives. The indemnity provided in this **Section 15** shall apply to all activities of Tenant with respect to the Property, whether occurring before or after the Lease Commencement Date and before or after the expiration of the Term or termination of this Lease. This **Section 15** shall not be construed to limit or diminish either (a) any other liability or obligation of Tenant under this Lease or (b) any other right or remedy of Landlord under this Lease. Tenant's agreement to this **Section 15** is a material part of the consideration to Landlord for entering this Lease.

**16. Insurance.**

**16.1. Tenant Insurance Obligations.** At all times during the Term, Tenant shall, at its sole cost and expense, maintain all insurance required by this Lease or by applicable Law. All such insurance shall be with companies and shall include such terms and coverages as Landlord shall reasonably require in its sole discretion. All insurance policies required by this Lease shall be issued by insurance companies authorized to do business in the State of California, with an A.M. Best rating of at least A- VIII or better, and shall otherwise be acceptable to Landlord in Landlord's sole discretion. All such policies shall name Landlord as an additional insured. Each such policy shall be in a form that is reasonably acceptable to Landlord, shall be written on an "occurrence" (not "claims made") basis, shall be nonassessable and shall contain language to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in the forfeiture of the insurance, (b) the

insurer waives the right of subrogation against Landlord and against Landlord's agents and representatives, (c) the policy is primary and noncontributing with any insurance that may be carried by Landlord, and (d) the policy cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to Landlord. Landlord shall retain the right (from time to time) to review the coverage, form, and amount of the insurance required hereby. If in Landlord's reasonable opinion the insurance requirements specified herein do not provide adequate protection for Landlord and the public or do not comply with applicable Laws, Landlord may require Tenant to obtain other or additional coverage which is reasonably satisfactory to Landlord as to carrier, coverage, form and amount.

**16.2. Specific Coverages.** Without limiting the generality of the foregoing, Tenant shall maintain at least the following coverages:

- (a) Comprehensive broad form general liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy or condition of the Property, the improvements thereon or any adjoining areas or ways. The foregoing liability insurance shall have a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000.00).
- (b) Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.
- (c) Auto liability insurance including coverage for owned, non-owned and hired autos with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

Tenant shall give Landlord copies of all such policies and Certificates of Insurance evidencing the foregoing matters within ten (10) days after the execution of this Lease, but in no event later than the Lease Commencement Date; provided however that if this Lease is executed on or after the Lease Commencement Date, Tenant shall deliver such Certificate to Landlord within three (3) days thereafter. At least five (5) business days prior to the expiration of each policy required hereunder, Tenant shall deliver to Landlord a copy of or certificate for the renewal or replacement of such policy.

**17. Condemnation.** In case of a taking of all or any part of the Property as the result of the exercise of the right of eminent domain, or a sale in lieu or in anticipation of such exercise (a "**Taking**"), this Lease shall terminate as to the portion of the Property subject to the Taking on the date title vests in the condemnor, and shall continue as to the remaining portion of the Property. If all or such a substantial portion of the Property is taken so that, in Landlord's reasonable opinion, there does not remain a portion susceptible of economic use by Tenant, this Lease shall terminate on the date title vests in the condemnor. Any compensation awarded for a Taking shall be for the account of Landlord; provided, however, that Tenant shall receive the portion thereof, if any, allocable to the then current year's crops and the amount allocable to any Alterations taken that Tenant would, absent such Taking, be entitled to remove upon termination of this Lease. Notwithstanding the prior provisions of this **Section 17**, Landlord may, in its sole and absolute discretion, exercised on or after any notice of a Taking, terminate this Lease as provided herein and pay Tenant only such sums as are owed in connection with such termination. In such event, any sum allocable to Tenant (whether for crops, Alterations or otherwise) shall be payable exclusively to Landlord.

**18. Default by Tenant.** The occurrence of any one or more of the following events at any time during the Term of this Lease shall constitute a default under this Lease by Tenant:

- (a) Tenant fails to pay any installment of rent, including the Annual Rent, as and when due, without notice or demand from Landlord;

- (b) Tenant fails to pay any other sum due hereunder, whether owed to Landlord or a third party, within five (5) days after such sum is due or, if no payment date is specified hereunder, within five (5) days after written notice from Landlord or the third party that such sum is due;
- (c) Tenant assigns, sublets, mortgages or otherwise encumbers all or any portion of this Lease or the Property, all of which are expressly prohibited under this Lease without exception;
- (d) Tenant fails to provide Landlord with copies or certificates of any insurance required in connection with the commencement of this Lease by the deadline specified in **Section 16**, without notice or demand;
- (e) Tenant fails to renew or replace any expired or cancelled insurance policy required under this Lease, or to provide Landlord with copies of such renewal or replacement policies or certificates thereof, within the time specified in **Section 16**, without notice or demand;
- (f) The occurrence of any of the following events: (i) Tenant makes any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a “debtor” as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable Law, such provision shall be severable, shall be without force or effect, and shall not affect the validity of any other provision of this subparagraph;
- (g) Tenant fallows, vacates or abandons the Property, or otherwise fails to farm the Property, except as otherwise permitted hereunder;
- (h) Tenant fails to provide any of the following to Landlord, where such failure shall continue for a period of ten (10) days following written notice to Tenant: (i) reasonable written evidence of compliance with Laws, (ii) any Estoppel Certificate or (iii) any other documentation or information which Landlord may reasonably require of Tenant under the terms of this Lease, including but not limited to information under **Section 11**;
- (i) Tenant uses all or any portion of the Property for any purpose other than Agricultural Purposes;
- (j) Tenant takes or uses any water in violation of **Section 3.3** of this Lease;
- (k) Tenant fails to participate in or comply with any Program or Conservation Measure(s), and such failure shall continue for a period of thirty (30) days after written notice from Landlord, provided that Tenant shall be entitled to only one such notice during the Term;
- (l) Any of the following, if it continues uncured for a period of three (3) days after written notice from Landlord: (i) Tenant fails to fulfill any obligation under this Lease or to remedy any condition which endangers or threatens life or property; (ii) Tenant commits, allows or fails to stop any act of waste, or any act constituting public or private nuisance, and/or an illegal activity on the Property; or (iii) Tenant fails to allow Landlord and/or its agents access to the Property as provided under this Lease;

- (m) Tenant fails to vacate the Property and to surrender it to Landlord upon the expiration of the Term or earlier termination of this Lease; or
- (n) Tenant fails to observe or perform any other covenant, condition or provision of this Lease to be observed or performed by Tenant, where such failure continues for a period of ten (10) days after written notice from Landlord to Tenant, provided that Tenant shall not be in default hereunder if Tenant commences the required performance within such period and diligently prosecutes it to completion within a reasonable time, but in no event more than sixty (60) days.

**19. Remedies of Landlord.** In the event of any breach or default by Tenant under this Lease, Landlord shall have the following remedies, all of which shall be cumulative and none of which shall be exclusive of any other right or remedy hereunder, or of any other right or remedy of Landlord at law or in equity; and the exercise of one or more rights, powers, elections or remedies shall not impair the Landlord's right to exercise any other right or remedy available at law or in equity. THE ACCEPTANCE BY LANDLORD OF A PARTIAL PAYMENT OF RENT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LANDLORD'S RIGHTS, INCLUDING LANDLORD'S RIGHT TO RECOVER POSSESSION OF THE PROPERTY.

**19.1. Perform Obligations of Tenant.** If Tenant fails to perform any of its affirmative duties or obligations, within the time specified herein (or within ten (10) days after written notice from Landlord if no time is specified herein; or, in cases of an emergency, without notice), Landlord may, at its option (but without obligation), perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies or governmental licenses, permits or approvals, and enrollment or registration with any Program or under any Law described under **Section 11** hereof. Tenant shall pay to Landlord an amount equal to one hundred fifteen percent (115%) of the costs and expenses incurred by Landlord in such performance upon receipt of an invoice therefor, which costs and expenses shall include the value of any time of Landlord's employees.

**19.2. Terminate Tenant's Right to Possession.** Landlord may terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Property, expenses of re-letting, including necessary renovation and alteration of the Property, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of Landlord within which the Property is located at the time of award plus one percent (1%). Efforts by Landlord to mitigate damages caused by Tenant's breach of this Lease shall not waive Landlord's right to recover damages to which Landlord is otherwise entitled. If termination of this Lease is obtained through the remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under **Section 18** of this Lease was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also constitute the notice required by **Section 18**. In such case, the applicable grace period required by **Section 18** and the unlawful detainer statute shall run concurrently,

and the failure of Tenant to cure the default within the greater of the two such grace periods shall constitute both an unlawful detainer and a default under this Lease entitling Landlord to the remedies provided for in this Lease and/or by Law.

- 19.3. Maintain Lease in Effect.** Landlord may (but shall not be obligated to) continue the Lease and Tenant's right to possession and recover the Annual Rent and all other rent as they become due, in which event, subject to Landlord's prior written consent, Tenant may, notwithstanding the absolute prohibition set forth in **Section 21.15** assign or sublet subject only to reasonable limitations. Acts of maintenance, efforts to re-let, and/or the appointment of a receiver to protect Landlord's interests, shall not constitute a termination of Tenant's right to possession.
- 19.4. Other Remedies.** Landlord may pursue any other remedy now or hereafter available under the Laws or judicial decisions of the state wherein the Property is located. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of Tenant's occupancy of the Property.
- 19.5. Interest and Late Fees.** In addition to all other sums due hereunder, Landlord shall be entitled to receive interest and Late Fees as provided in **Sections 7.1 and 7.2.**
- 19.6. Personal Property of Tenant.** In the event that any personal property, trade fixtures, inventory or equipment of Tenant remains on the Property after Landlord has regained possession, then except as otherwise permitted by applicable Law, they shall be dealt with in accordance with California Code of Civil Procedure Section 1174 and California Civil Code Sections 1980 and 1981 et seq., or any subsequent procedures established by Law regarding the disposition of Tenant's personal property remaining on the Property. The parties agree that Landlord has no obligation to protect or preserve any such personal property, trade fixtures, inventory or equipment and that Landlord shall have maximum flexibility and discretion in in dealing with all such matters.
- 20. Growing Crops.** Landlord owns all of the growing crops on the Property. Provided that Tenant is not in default under this Lease, and subject to the provisions of this **Section 20**, Landlord hereby transfers to Tenant, for the duration of the Term, all of Landlord's right, title and interest in and to such crops; provided, however that during the Term, Tenant shall not undertake any activity that may result in shortening the useful life of such growing crops without Landlord's prior written consent.
- 20.1. Collateral.** In consideration of Landlord's transfer of the growing crops to Tenant, Tenant hereby grants and transfers to Landlord a security interest in (i) all crops and other farm products, whether now growing or hereafter to be grown on, and whether or not severed and removed from, the Land, (ii) all replacements and additions thereto wherever the same may be located, and (iii) any and all accounts, money or funds of any kind receivable, received or relating to any of such crops, farm products, replacements or additions that are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and all proceeds of all of the foregoing (collectively, the "**Collateral**").
- 20.2. Landlord's Powers.** Tenant appoints Landlord its true attorney in fact to perform any of the following powers, which are coupled with an interest and are irrevocable until expiration or termination of this Lease and may be exercised from time to time by Landlord whether or not Tenant is in default under the terms of this Lease: (i) to prepare, execute, file, record or deliver, with respect to all or any part of the Collateral, notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, statements of assignment, applications for registration or like papers to perfect, preserve or release Landlord's interest in the Collateral or to secure direct payment of all or any part of the Collateral to Landlord; (ii) to give notice of Landlord's rights in the

Collateral, to enforce the same and make extension agreements with respect thereto; (iii) to resort to security in any order; and (iv) to exercise all rights, powers and remedies which Tenant would have, but for this Lease, with respect to all Collateral subject hereto.

- 20.3. Tenant Contracts.** Upon written request by Landlord, Tenant shall provide to Landlord, in writing, the names and addresses for all of its processors, marketers, merchants, brokers, cooperatives, or other parties with whom Tenant has contracted or, during the current year of the Term, does contract for the delivery, marketing, processing or sale of all or any portion of the Collateral (the "**Contracts**"), within ten (10) days that such information is available to Tenant. Tenant shall execute any documents requested by Landlord to assign to Landlord all rights to payments, as they become due, of any monies and other proceeds of every kind that are receivable by Tenant under the Contracts.
- 20.4. Release of Liens.** Upon expiration or termination of this Lease for any reason as to all or a portion of the Property, Tenant will obtain, at Tenant's sole cost and expense, a full release of any and all liens on crops growing or thereafter to be grown on the Property (or portion to which the Lease is terminated if less than all), provided that, such liens may continue on any proceeds from the sale of Tenant's crops that have been harvested from the Property but are uncollected as of the end of the Term.
- 20.5. Subordination.** Notwithstanding anything in this Lease to the contrary, the security interest in the Collateral granted to Landlord is subordinate to the lien(s) against the Collateral securing any loan(s) made to Tenant for the purpose of planting and cultivation of crops on the Property, so long as Tenant is not more than thirty (30) days past due in making any payment due hereunder.

## **21. General Provisions.**

- 21.1. Transactional Expenses.** Whether or not the transactions contemplated by this Lease are consummated, each party shall (except as otherwise provided herein) pay its own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Lease, including without limitation the fees and expenses of its counsel, accountants and other experts.
- 21.2. Amendment; Waiver.** This Lease may not be amended except in a writing signed by all parties. No waiver of any provision of this Lease will be valid or binding on a party unless agreed upon by such party in writing. All written waivers shall be narrowly construed. No waiver of any provision of this Lease shall be deemed or shall constitute a waiver of any other provision (whether or not similar), nor shall any such waiver constitute or be deemed a continuing waiver unless expressly agreed by the waiving party in writing.
- 21.3. Severability.** If any provision of this Lease is for any reason held to be invalid, illegal or unenforceable in any respect, that provision shall not affect the validity, legality or enforceability of any other provision of this Lease.
- 21.4. Construction of Lease.** The section headings in this Lease have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. The parties acknowledge that this Lease is the product of negotiations between them and that each has had the opportunity to be represented by counsel. The parties therefore agree that, in determining the meaning of, or resolving any ambiguity with respect to, any provision of this Lease, such provision shall be interpreted without construing such provision in favor of or against the party responsible for drafting this document. The preamble to this Lease, the Basic Lease Provisions and any factual recitals and Exhibits mentioned in this Lease are incorporated herein and constitute a part of this Lease.
- 21.5. Governing Law and Jurisdiction; Waiver of Jury Trial.** This Lease shall be interpreted in accordance with the substantive and procedural laws of the State of California. All actions or

proceedings arising from or in connection with this Lease shall be tried and litigated exclusively in State court located in the County of Imperial, State of California. The aforementioned choice of venue is mandatory, thereby precluding the parties from litigating any matter arising from or related to this Lease in any jurisdiction other than that specified herein. The parties hereby waive any right to assert the doctrine of forum non conveniens or a similar doctrine, or any conflict of law or jurisdictional issue, or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulate that the State court located in the County of Imperial, California, or the federal court located in the United States District Court for the Southern District of California shall have in personam jurisdiction and venue over the parties for the purpose of litigating any dispute or proceeding arising out of or related to this Lease. In the event of any dispute involving the parties and relating to this Lease, Tenant hereby waives, fully and forever, any right it might have to cause such dispute to be tried before a jury, and agrees to have any and all such disputes tried before and resolved by a judge only.

**21.6. Further Assurances.** Each party shall, at its own expense, do all acts and sign, acknowledge and deliver all instruments and documents as may from time to time be reasonably required to carry out the terms and provisions and to achieve the purposes of this Lease.

**21.7. Quiet Enjoyment.** Landlord covenants and agrees that upon Tenant paying rent and performing under the terms and conditions of this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Property for the Term.

**21.8. Attorney Fees.** If either party to this Lease shall bring any action, claim, appeal, or alternative dispute resolution proceedings, for any relief against the other, declaratory or otherwise, to enforce the terms of or to declare rights under this Agreement (collectively, an "**Action**"), the losing party shall pay to the prevailing party's legal fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a "**Decision**") granted in any such Action. Any Decision entered in such Action shall provide for the recovery of attorney fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorney fees and costs on the request of either party. For the purposes of this paragraph, attorney fees shall include, without limitation, fees incurred in the following: (1) post-judgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. "**Prevailing party**" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief it seeks.

**21.9. Notices.** All notices and other communications required or permitted under this Agreement shall be written and shall be sent to the address(es) set forth in the Basic Lease Provisions, by any one of the means listed in this paragraph. Notices shall be deemed given and effective as follows: (a) if personally delivered, upon delivery; (b) if sent by Federal Express or similar means, upon delivery or refusal, as indicated in the records of the delivery company; and (c) if sent by certified or registered mail, return receipt requested, as of the date shown on the return receipt as the date of delivery or refusal, but in no event later than three (3) days after being deposited in the mail, postage-paid. Notices may also be given by email or fax and shall be deemed delivered as of the date the recipient acknowledges receipt thereof (e.g., by responding), provided that the Notice shall also be sent in one of the three ways listed above or by first class mail. Any party may from time to time change its address or add additional addresses (up to a total of 3) by giving notice in the manner prescribed in this paragraph.

**21.10. Time of Essence.** Time is of the essence with respect to Landlord's and Tenant's obligations under this Lease.

- 21.11. Binding Agreement.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective officers, directors, shareholders, partners, members, managers, trustees, beneficiaries, heirs, executors, administrators, legal representatives, successors and permitted assigns.
- 21.12. Counterparts.** This Lease may be executed in counterpart originals and, when executed, all such counterparts shall constitute one document.
- 21.13. Authority.** Each party represents and warrants to the other that (a) it has the requisite legal capacity and authority to enter into and fully perform each and all of its obligations under this Lease and (b) this Lease does not in any way violate any covenant, contract, agreement, instrument or understanding by which such party is bound.
- 21.14. No Partnership.** Nothing contained in this Lease shall be deemed to create a partnership, joint venture, contract of employment or other relationship between Landlord and Tenant other than that of a landlord and a tenant.
- 21.15. Assignment, Sublease, License.** Tenant shall not assign or sublease all or any portion of the Property or this Lease, or any right or privilege connected therewith, nor allow any person or entity (other than Tenant and Tenant's agents, contractors and employees) to use or occupy the Property or any part thereof, for any purpose whatsoever. Tenant acknowledges and agrees that this is an absolute prohibition on assignment, subletting and licensing of all or any portion of the Property, whether voluntarily or (unless under 11 USC §365) by operation of law, and that any such assignment, sublease or license shall violate this prohibition, shall be voidable by Landlord in Landlord's sole and absolute discretion and shall be grounds for termination of this Lease, at Landlord's option, in Landlord's sole and absolute discretion. If Tenant is a corporation, partnership, limited liability corporation or other entity (other than one natural person), then any change in the ownership or control of Tenant shall be deemed an assignment hereunder. For purposes of the immediately preceding sentence, any change of ten percent (10%) or more of the ownership, voting rights or profits interest in Tenant during the Term (as extended or renewed from time to time), whether in a single transaction or a series of transactions, shall be deemed a change in the ownership or control of Tenant. Consent to one assignment, sublease or license by Landlord shall not be deemed to be consent to any other or subsequent assignment, sublease or license. Notwithstanding any such consent, the party named herein as Tenant shall remain fully liable for all obligation of the Tenant hereunder.
- 21.16. Entire Agreement.** This Lease instrument constitutes the sole and only agreement between the parties respecting the Property and the leasing thereof. Any and all prior or contemporaneous oral or written promises for the leasing of the Property shall be merged into this Lease, and this Lease shall constitute a fully integrated agreement as to all such matters.
- 21.17. Estoppel Certificates.** Tenant shall, at any time and from time to time within ten (10) business days after written request by Landlord, provide Landlord with a certificate ("**Estoppel Certificate**") certifying that the Lease is in full force and effect without modification; that there are no uncured defaults by Landlord under the Lease; that, to the best of Tenant's knowledge, there are no facts or circumstances which, with the giving of notice or the passage of time or both, would constitute a breach or default by Landlord under the Lease; and such other matters as Landlord may reasonably request.

IN WITNESS WHEREOF, Landlord and Tenant have made and executed this Lease as of the dates specified below.

**LANDLORD**

IMPERIAL IRRIGATION DISTRICT,  
a California irrigation district

By: \_\_\_\_\_  
\_\_\_\_\_, General Manager

Date: \_\_\_\_\_

**TENANT**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A

Assessor Parcel Numbers:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
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24. \_\_\_\_\_