

AIRPORT LEASE
(Agricultural Use)

THIS LEASE is made and entered into this 16TH day of SEPTEMBER, 2019, by and between the CITY OF MERCED, a California charter municipal corporation, hereinafter called "Lessor," and FAGUNDES DAIRY, a California General Partnership, hereinafter called "Lessee," subject to the following terms and conditions:

1. **LEASED PREMISES.** For and in consideration of the payments, terms, conditions and covenants as hereinafter set forth, Lessor leases to Lessee and Lessee takes and hires from Lessor approximately thirty-five (35) acres in and around the Merced Airport Industrial Park, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, hereinafter the "Premises."

2. **TERM.** The term of this Lease shall commence on the 1st day of August 2019, and shall continue for a period of three (3) years to and including July 31, 2022. Subject to the prior written consent and agreement by Lessor, which may be withheld at Lessor's sole and absolute discretion, Lessee may have one (1) option to renew/extend the term of this Lease for three (3) years. Lessee shall provide Lessor with Lessee's desire to renew no later than ninety (90) calendar days prior to the expiration of this Lease. If Lessee renews the Lease, then the rent shall be annually adjusted as specified in Section 3.

3. **RENT.** Lessee agrees to pay as rent to Lessor the sum of Five Thousand Two Hundred Fifty Dollars (\$5,250.00) per year for years one through three (the "base rental rate") of the three (3) year term for the privilege of leasing the Premises. The rent shall be due and payable on or before August 1st of each year.

In the event that the renewal option is exercised, the rent shall continue to be payable on or before August 1st of each year as follows:

August 1, 2022 – July 31, 2023	\$5,355.00
August 1, 2023 – July 31, 2024	\$5,462.10
August 1, 2024 – July 31, 2025	\$5,571.34

4. **PURPOSE.** Lessee may use said Premises for agricultural purposes only, including, but not limited to, permanent pasture. Such use shall not interfere in any way with any airport activities. Whenever any activities of Lessor conflict with the activities of Lessee, Lessor shall have the right to use said Premises, subject only to reasonable notice being given to Lessee. Lessor shall have the right to enter on said Premises at all reasonable times for the purpose of inspection.

5. **CARE AND MAINTENANCE.** Lessee agrees to conduct his agricultural operation in a good and farmerlike manner, and to care for and maintain said Premises in a neat and clean condition at all times and will not commit or permit any waste upon said Premises and shall return the same at the end of the term, or sooner termination thereof, in the same condition as originally received, reasonable wear and tear excepted. Lessee also agrees to cut and remove all weeds on said Premises each season and to take steps to control all pests and rodents as necessary. Lessee agrees to comply with the new water quality regulations as outlined in Exhibit "B" attached hereto and incorporated herein by reference.

6. **ASSIGNMENT AND SUBLETTING.** Lessee is prohibited from assigning or subletting his interest in said Premises.

7. **LIABILITY.** Lessee agrees that it will hold Lessor harmless from and indemnify and defend Lessor against any and all claims, causes of action, or any other liability whatsoever because of personal injury to any person or property damage because of the use or occupancy of the Premises by Lessee and, in this regard, Lessee, at his own cost and expense, shall provide and keep in full force and effect a policy or policies of public liability insurance in the amount of One Million Dollars (\$1,000,000.00) naming the "City of Merced and its officers, and employees" as additional insured parties. Lessee shall provide Lessor with a endorsement providing the above and which shall also include a thirty (30) day notice of cancellation to Lessor.

8. **CANCELLATION.** Lessor may terminate this Lease for any reason by giving Lessee thirty (30) days written notice of Lessor's intent to so terminate.

9. **DEFAULT.**

(a) In the event Lessee shall default in the payment of any sums when due hereunder, or shall default in the performance of any other covenant

required to be kept by Lessee hereunder, and such default shall continue for a period of thirty (30) days after notice thereof from Lessor to Lessee, or if Lessee shall make an assignment for the benefit of creditors or be adjudged bankrupt, Lessor shall have the right to immediately terminate this Lease, and in the event of such termination, Lessee shall have no further rights hereunder and shall have no further claims thereto.

(b) In the event of termination for default or unsatisfactory performance by the Lessee, the Lessor shall have the right (unless otherwise specified in the termination notice), at once and without further notice to the Lessee, or surety, to enter and take possession of the Premises without being liable for prosecution or to any claim for damages therefor. Upon such termination by the Lessor, all rights, powers and privileges of the Lessee shall cease, and the Lessee shall immediately vacate any and all space occupied by him under this Lease, and shall make no claims of any kind whatsoever against the Lessor, its agents or representatives, by reason of such termination, or any act evident thereto.

(c) In the event of abandonment by Lessee of the Premises, or any portion thereof, or discontinuance of the Lessee's business operations or required services, or any portion thereof, Lessor shall not be responsible for the custodial protection of merchandise, fixtures, or equipment abandoned, even though it is necessary for Lessor to remove same from the Premises for storage or disposal.

(d) In the event of breach of this Lease by Lessee, Lessor shall be entitled to all rights and remedies provided by law in addition to the specific remedies pertinent herein.

10. **IMPROVEMENTS OR ALTERATIONS.** Any improvements or alterations of any kind whatsoever which Lessee desires to make shall not be made without first obtaining written permission of Lessor. Any such improvement or alteration shall become the property of Lessor upon termination of this Lease.

11. **TAXES.** Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the Lessee may be subject to the payment of property taxes levied on such interest.

Lessee further agrees to pay, without the right to deduct from rental fees provided herein, any and all property taxes, if any, assessed during the term of this Lease against Lessee's possessory interest in the Premises.

Lessee further agrees to pay, without right to deduct from rental fees provided herein, any and all personal property taxes assessed against his property on said Premises, and such portion of any real property taxes as may be levied against improvements by Lessee and erected upon said Premises.

12. **UTILITIES.** Lessee agrees to provide at his sole cost and expense any utilities he uses on said Premises.

13. **NOTICES.** Any notice or communication to the Lessor or Lessee shall be deemed validly served upon deposit in the United States mail, registered and proper postage prepaid, addressed to the respective party at the address either party may designate to the other by notice in accordance with the provisions hereof.

14. **MODIFICATION.** This Lease shall not be modified except by a writing signed by all parties.

15. **WAIVERS.** Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

16. **ATTORNEY'S FEES.** In the event of any litigation between the parties to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees.

17. **FEDERALLY MANDATED PROVISIONS.**

a. The Lessee, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said Premises described in this Lease for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the

Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

b. The Lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, national origin, ancestry, disability, sex, or religion shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin, ancestry, disability, sex, or religion shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

c. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

d. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service; PROVIDED, THAT the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

e. Non-compliance with Provision d above shall constitute a material breach thereof and in the event of such non-compliance the Lessor shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of the Lessor or the United States either or both said Governments shall have the right to judicially enforce Provisions.

f. Reserved.

g. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, ancestry, disability, sex, or religion be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR, Subpart E, to the same effect.

h. The Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance.

i. The Lessor reserves the right, but shall not be obligated to the Lessee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.

j. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the development, operation, or maintenance of the airport.

k. There is hereby reserved to the Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein Leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Merced Regional Airport.

l. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any

planned modification or alteration of any present or future building or structure situated on the Premises.

m. The Lessee, by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder. In the event the aforesaid covenants are breached, the Lessor reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

n. The Lessee, by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Merced Regional Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of the Lessee.

o. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

p. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be duly executed on the day and year first above written.

LESSOR:
CITY OF MERCED
A California Charter Municipal
Corporation

By: 

City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

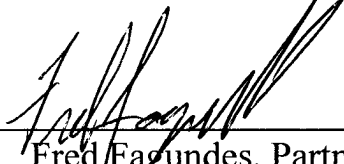
BY: [Signature] 7/12/19
City Attorney Date

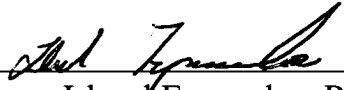
301053
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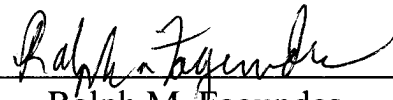
BY: [Signature]
Verified by Finance Officer

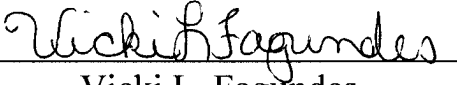
NO funds to encumber. mg 9/11/19
MR # 26016 FL 9/12/19

LESSEE:
FAGUNDES DAIRY,
A California General Partnership

BY: 
Fred Fagundes, Partner

BY: 
Lloyd Fagundes, Partner

BY: 
Ralph M. Fagundes
Trustee of the Family Trust
Agreement dated May 9, 2000,
Partner

BY: 
Vicki L. Fagundes
Trustee of the Family Trust
Agreement dated May 9, 2000,
Partner

Taxpayer I.D. No. 77-0303810

ADDRESS: P.O. Box 2717
Merced, CA 95344

1978 Business Parkway
Merced, CA 95348

TELEPHONE: 209-383-6046

FAX: 209-383-6042

E-MAIL: mfagundes@fagundesdairy.com

NOTE -
or Assessment purposes only.
hip or divisions of land for
toning or subdivision law.

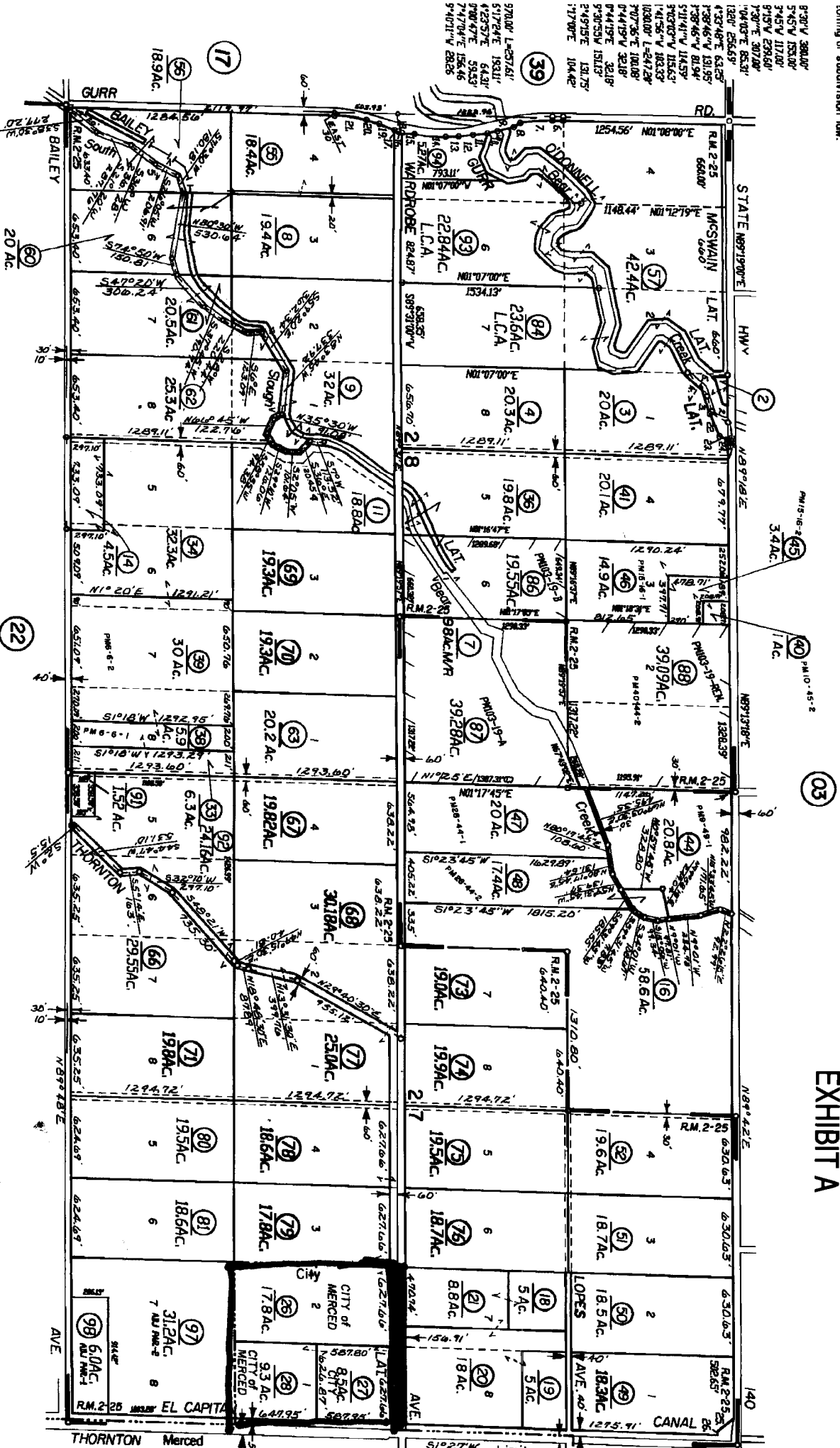
T.7S., R.13E., M.D.B. & M.

Tax Rate Area 5-01

59-

89-05
89-13

EXHIBIT A



-84
-2-18
-22-17

British Colony, R. M. Vol. 2, Pg. 25

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

Assessor's Map Bk. 59 - Pg. 15
County of Merced, Calif.
1984



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 19-485

Meeting Date: 9/16/2019

Report Prepared by: Karen Baker, Development Associate, Merced Visitor Services

SUBJECT: Approval of an Agricultural Ground Lease Between the City of Merced and Fagundes Dairy for Use of Approximately Thirty-Five (35) Acres in and Around the Merced Airport Industrial Park with Rent Starting at \$ 5,250.00 per Year for a Term of Three (3) Years, with Annual Extensions by Mutual Agreement of Both Parties

REPORT IN BRIEF

Considers a lease agreement (3-year term with annual extensions by mutual agreement of the parties) with Fagundes Dairy for use of approximately thirty-five (35) acres located in and around the Merced Airport Industrial Park.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement between Fagundes Dairy and the City of Merced and authorizing the City Manager or the Assistant City Manager to execute all necessary documents.

ALTERNATIVES

1. Approve as recommended; or,
2. Approve, subject to modifications as conditioned by Council; or,
3. Deny the request completely; or
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue item to a future Council meeting (date to be specified in City Council motion).

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

City of Merced adopted Budget Fiscal Year 2019-2020.

DISCUSSION

The City of Merced owns property north and south of the runway located at Merced Regional Airport. The property was acquired to protect the takeoff and landing flight lines at the Merced Regional Airport from dense or incompatible land uses, and is zoned as Restricted Agriculture, A-1-20. Other than agriculture, land uses such as residential, commercial, and industrial are restricted, which is consistent with the Merced Airport Master Plan.

The Merced Regional Airport has had an agricultural ground lease with Fagundes Dairy, a local ranching Family, for approximately 35 acres, currently farming alfalfa. Fagundes Dairy has indicated that they would like continue leasing the land from the City at the Airport they currently use, as described in Exhibit A of the proposed Lease (see Attachment 1).

Key Lease Terms: Notable term of the Lease Agreement include:

Parties: Lessor: City of Merced
 Lessee: Fagundes Dairy

Premises: The subject site is Thirty-Five (35) Acres of City-owned property located north of the Merced Regional Airport on Thornton Road. (See Exhibit A).

Term: Three (3) year lease with annual extension by agreement with both parties.

Tenant

Improvements: No tenant improvement allowance is included.

Utilities and Maintenance: Fagundes Dairy will be responsible for all utilities and maintenance for the premises. Lessee agrees to cut and remove all weeds each season and will take steps to control all pests and rodents as necessary.

ASSIGNMENT and SUBLETTING: Lessee is prohibited from assigning or subletting his interest in said premises.

IMPACT ON CITY RESOURCES

The rent revenue generated are deposited into the Airport Revenue Account 561-1303-352.03-05 and this rent revenue is included in the annual budget process.

ATTACHMENTS

1. Fagundes Dairy Lease Agreement