

LEASE AGREEMENT
(Agricultural Use)

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, hereinafter called "Lessor", and Seth Rossow, whose address of record is 7745 Sandy Mush Road, Merced California 95341, 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 hereby leases to Lessee and Lessee leases from Lessor, subject to the terms and conditions in this Lease, all that certain real property generally located on the northwest corner of Mission Avenue and Tyler Road, commonly known as 887 South Tyler Road in the County of Merced, State of California, APN 259-130-017, consisting of approximately 24.5 acres, more fully described in Exhibit "A" and shown in Exhibit "B," both attached hereto and incorporated herein by reference (the "Premises").

2. **RENT.** Lessee agrees to pay to Lessor the following rent:

\$735.00 per year (\$30.00 per acre)

Said rent shall be due and payable on or before the twentieth (20th) day of November of each year, beginning on November 20, 2018.

3. **TERM.** The term of this Lease shall commence on November 20, 2018, and shall continue for a period of three (3) years to and including November 19, 2021.

4. **PURPOSE.** Use of the Premises is strictly limited to farming and agricultural activities only, and for no other purpose. Under no circumstances shall the Premises, or any portion thereof, be used for growing cotton, or cultivating cannabis or industrial hemp. Lessee agrees and acknowledges that non-compliance with this paragraph is a material breach of this Lease. Lessor shall have the right to enter on said premises at all reasonable times for the purpose of inspection.

5. **CARE AND MAINTENANCE.** Lessee shall care for, replace, maintain, and repair the Premises and all appurtenances thereto, including but not limited to all fences, wells, pumps, pipes, ditches, and roadways, in a good condition, and reasonably free from noxious weeds and grasses.

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

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, officials, agents and employees" as additional insured parties. Lessee shall provide Lessor with a certificate of insurance which shall include a thirty (30) day notice of cancellation to Lessor.

8. **CANCELLATION.** Lessor may terminate this Lease for any reason by giving Lessee ninety (90) days written notice. The Lessee has been informed and is aware that Lessor has plans to eventually turn the Leased Premises into a sports complex and that there is a possibility that the construction of this project could begin before the expiration of the Lease term. In the event Lessor terminates the Lease before the expiration of the Lease term for the purpose of constructing the sports complex, Lessor agrees to work with Lessee to provide him an additional reasonable amount of time, if necessary, to finish growing and harvesting any row, hay or grass crops planted on the Premises at the time the written termination notice was given.

9. **SURRENDER.** Lessee agrees that it will peacefully surrender possession of the Premises to Lessor at the expiration of this Lease, or earlier upon no less than ninety (90) calendar days of written notice from Lessor that Lessor requires the Premises for its exclusive use, whichever first occurs, free and clear of all liens and encumbrances made, done, or suffered by the Lessee, in as good condition as reasonable wear and tear will permit; provided that damage by fire, acts of God, the elements, the exploration and development of oil, gas, or other minerals, and other causes beyond the reasonable control of the Lessee are excepted. Lessee shall ensure that all crops and other vegetation are removed

when the Premises is surrendered. In the event Lessee surrenders possession of the Premises due to Lessor's need to use the Premises exclusively prior to the expiration of this Lease, Lessor shall refund any rent paid for the remainder of the year to Lessee on a *pro-rata* basis.

10. **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 agreement, 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 leased 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 agreement, 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 of the leased 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 agreement by Lessee, Lessor shall be entitled to all rights and remedies provided by law in addition to the specific remedies pertinent herein.

11. **OWNERSHIP OF IMPROVEMENTS.** All improvements, wells, pumps, and other facilities placed on the Premises by Lessee after the execution of this Lease shall be and remain the property of Lessee so long as this Lease is in

effect, but shall become the property of Lessor upon the termination of the Lease. All improvements and properties, personal and real, which existed on the Premises prior to the execution of this Lease shall remain property of the Lessor.

12. **ALTERATIONS OR IMPROVEMENTS.** Lessee shall not make, or permit to be made, alterations or improvements of any kind to the Premises without first obtaining Lessor's written consent, which shall not be unreasonably withheld when said alterations or improvements are necessary to carry out the purposes for which the Premises are leased. Ownership of and the right to remove additions or improvements to the Premises shall be governed by Paragraph 11 above.

13. **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 leased 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 leased premises, and such portion of any real property taxes as may be levied against improvements by Lessee and erected upon said leased premises.

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

15. **CONDITION OF THE PREMISES.** Lessor makes no covenant or representation regarding the condition of the Premises. Lessee is aware of the quality of the water and soil available to the Premises including any limitations on the quantity of water. Lessee accepts the Premises in its AS IS CONDITION, and acknowledges that no promises have been made by Lessor about the Premises regarding its profitability for farming, the availability of water or other items necessary to conduct a farming operation on the Premises or the suitability of the Premises for a farming operation. Lessee has made its independent determination regarding these issues to the extent that it feels necessary to do so.

16. **ENVIRONMENTAL.** Lessee shall be responsible for fuel, oil, chemical or other spills and shall not dispose or discharge hazardous or other waste on the leased Premises, and shall be responsible for any of its negligent acts, and within the confines of the leased Premises shall monitor such as is required by law and regulations of the state or federal government. Lessee agrees that Lessee will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any applicable law or regulation. Lessee shall indemnify, protect, defend, and hold Lessor and the officers, employees, agents, successors, and assigns harmless from and against any and all claims, demands, proceedings, causes of action, damages, liabilities, losses, costs, and expenses, including, without limitation, attorneys' and consultants' fees, costs, and expenses arising out of or resulting from any and all of the above, whether or not labeled environmental pollution and/or contamination of soil or water. The foregoing indemnity is intended to operate as an indemnity agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, defend, hold harmless, and indemnify Lessor from liability.

Lessee agrees not to store or apply any fertilizer, pesticide, chemical or other foreign substance, except those substances (and quantities) approved by the United States Department of Agriculture, by the California Department of Food and Agriculture and by any other applicable governmental agency ("Approved Substances") on the Premises or any crops growing thereon. The use of Approved Substances by Lessee shall be in strict conformity with all applicable laws, rules and regulations and with the manufacturer's instructions respecting the manner and timing of application and with all legal requirements. Approved Substances used by Lessee shall not be used in such a fashion as to impact any property other than the Leased Premises. Lessee shall maintain records in accordance with sound business practices and all pertinent governmental regulations concerning the date, time, place, quantity, kind and method of application of all such Approved Substances utilized by Lessee on the Leased Premises and shall furnish to Lessor true and correct copies thereof upon request and upon termination of the Lease.

17. **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. A copy of the notice shall also be provided to the following:

City Attorney
City of Merced
678 West 18th Street
Merced, California 95340

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

19. **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.

20. **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. Judicial arbitration is an action or proceeding for the purpose of this provision.

21. **OTHER TERMS.** The Lessor reserves the right to stockpile organic materials (leaves and wood shavings) on a portion of the land that is not rentable to Lessee. Lessee is responsible for the proper use or disposal of all organic matter generated by Lessor and remaining on site at the time of this Lease. Cost of said use or disposal shall be solely the responsibility of the Lessee.

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: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly C. Turner 11/9/18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

LESSEE:

BY: Seth Rossow
Seth Rossow

Taxpayer I.D. No. [REDACTED]

ADDRESS: 7745 East Sandy Mush
Merced, CA 95341

TELEPHONE: [REDACTED]

FAX: _____

E-MAIL: s [REDACTED]

EXHIBIT A

That certain real property situated in a portion of Section 31, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, being more particularly described as follows:

Lots 208 and 209 as shown on Map entitled "MAP OF MERCED COLONY", recorded in Book 4 of Official Maps, Pages(s) 24 Merced County Records.

EXCEPTING THEREFROM and undivided one-half interest is all oil, gas and /or mineral in and under said lands, which are expressly reserved, together with the right to enter on the above described lands and take all the usual, necessary or convenient means to bore wells, make excavation and remove all the oil, gas, and/or minerals herein reserved, and found thereon, as reserved by recorded Deed Recorded February 3, 1937 in Volume 526, Page 431, Merced County.