

AGRICULTURAL LEASE
(NO WATER)

WESTLANDS WATER DISTRICT, a Public Agency, hereinafter referred to as "Lessor", does hereby lease, let and demise unto _____, hereinafter referred to as "Lessee", that certain real property situated in the County of Fresno, State of California, described as follows and by this reference made a part hereof, excepting therefrom all oil, gas, minerals, and other hydrocarbons upon and/or underlying said property together with the right to prospect for and drill for, mine and remove the same if found, subject to exceptions, reservations, easements, rights of way, and servitudes of record and encumbrances now existing and hereafter created by the Lessor. The land included in this lease is described as:

This Lease is executed upon the following terms, covenants, conditions and provisions:

1. **Term.** The term of this Lease shall commence on January 1, 2004, and shall continue from year to year until either party shall give the other party written notice of the desire to terminate this Lease, but in no event shall said lease extend beyond December 31, 2005. Said written notice shall be given no later than 90 days prior to desired termination date. Upon the giving of said notice, this Lease shall terminate as to all (or any portion specified in said notice) of the property subject to this Lease. After said notice, Lessee shall surrender all of the portions specified in said notice as crops being grown at the time of the termination notice is given, are harvested therefrom, and after Lessee has performed the work required pursuant to other provisions hereinbelow.

2. **Use of Property.** The property herein leased is for the uses of planting, caring for and harvesting of crops and for uses incidental thereto. In its said uses, the Lessee will comply with all requirements of law and governmental regulations thereunder. Lessee shall not use, or permit to be used, any part of the premises for any purpose other than the purpose for which the premises are leased. Without limiting the generality of the foregoing, Lessee shall not apply to, use upon, possess or store upon the property subject to this Lease, any substance or chemical as designated from time to time by the United States or State of California or any office or agency thereof, as causing cancer or reproductive toxicity, as determined in accordance with the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65) or any other law or regulation. Lessee further agrees and acknowledges that all herbicides and pesticide storage and applications must meet the restrictions and permits required by the County Agricultural Commissioner in the State of California and all other governmental regulations. Only chemicals designated and approved for use on the land associated with this lease may be stored on the property herein leased. Lessee agrees to control and dispose of containers according to legal requirements, and hold Lessor harmless for the use, storage, or disposal of any agricultural chemicals.

3. **Water Supply.** The property herein leased shall not be eligible for an allocation, for the Lessee's benefit, of water made available to the District pursuant to the 1963 Contract between the United States and Westlands Water District Providing for Water Service or pursuant to paragraph 5 of the *Barcellos* Judgment, or long-term water supplies made available to and acquired by the District, and Lessee hereby expressly waives any right to receive such water. Lessee may not irrigate the property using water obtained from any sources.

4. **Rent.** The rental rate for the demised premises shall be the sum of \$3.00 per irrigable acre per year. As of the date of this lease, the total number of irrigable acres subject to this lease is _____. The total amount of the first year's annual rental payment shall be \$_____. Said sum shall be payable on the first day of January of each year of the term of this Lease.

5. **Taxes, Water Charges and Utilities.** Lessee shall pay all taxes and/or use fees levied by the County of Fresno or any subdivision thereof or other taxing authority levying or imposing taxes or assessments upon or with respect to the demised premises which are payable for any period during the term of this Lease. In this regard, it is understood and agreed between the parties hereto that the real property is located in the Westlands Water District, of which the Lessor is the governing board. It is further understood and agreed between the parties hereto that the real property subject to this Lease shall not be entitled to receive and apply any water from Westlands Water District; receive and apply any water by transfer from any existing sources of water; receive and/or apply any water by underground pumping, or receive and/or apply any surface or sub-surface drainage water. Lessee agrees that any application of water to the Leased premises shall only be accomplished through and by natural precipitation. Furthermore, groundwater extraction facilities located on the Property, if any, shall not be used to extract groundwater from the groundwater basin underlying the Property.

6. **Indemnity and Insurance.** Lessee agrees to release, indemnify and hold harmless Lessor and its officers, agents, and employees from and against all liability, claims, causes of action, cost and expense for any and all injuries, deaths, losses or damages and destruction from any cause whatsoever, arising out of the use or occupancy of or occurring on or about the leased premises by Lessee or the agents, employees and invitees of Lessee. Lessee shall maintain in force, for the term of the lease, policies of general liability insurance, providing limits of not less than \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 general aggregate. Lessee shall also maintain property insurance for no less than the replacement cost of the equipment and structures on the leased premises and designate Westlands Water District as loss payee. Said policies shall name Westlands Water District as additional insured (with ISO CG 2010 endorsement or equivalent) and shall provide that policy will not be cancelled or reduced in coverage without ten (10) days' written notice to Westlands Water District. Prior to execution of contract by Lessor, the Lessee shall cause to be delivered to the District a copy of the certificate of insurance reflecting all essential coverage.

7. **Farming Practices.** Lessee agrees to use the best known practices and measures to prevent the entry or growth of Johnson grass, morning glory, Bermuda grass, knapweed and other noxious weeds or grasses upon the leased premises, including necessary control measures on adjacent or adjoining public and private roads, ditches, banks, fence lines, lanes and ways. It shall be the responsibility of the Lessee to maintain clear vehicular access to and around all water distribution and drainage collection facilities under the control of Westlands Water District. It shall be the obligation of Lessee to bear the expense of compliance with all lawful requirements governing extermination and destruction of noxious growth, rodents and harmful insects and protection against orchard and plant infection on leased and adjacent property.

(a) Following the harvest of any annual crop, Lessee shall disc until all crop residue is thoroughly mixed with the soil.

(b) Any portion of the leased premises planted and not harvested, or left fallow, shall be maintained to minimize weed and pest infestations. Methods for minimizing infestations of weeds and pest shall include but not be limited to semiannual disking and/or mowing, and the application of herbicides and pesticides.

(c) Grazing of livestock, although permitted as a part of this lease, is not considered by the Lessor to be a means of vegetation control and therefore does not satisfy the requirements of this section.

(d) Lessor reserves the right to direct Lessee as to the timing and preferred method(s) for complying with this section.

(e) Lessee shall provide a performance bond for the full term of this lease, for the benefit of the Lessor, to insure weed and vegetation control are conducted in accordance with these provisions. Said performance bond shall be provided to the Lessor prior to the execution of this lease. In lieu of a performance bond, Lessee may provide a refundable deposit of \$25.00 per acre subject to this lease.

8. **Improvements and Mechanic's Liens.** Lessee shall not construct, alter or repair structures of any character upon said leased premises without first obtaining the written consent of Lessor. Lessee shall pay for all materials joined or affixed to said leased premises, and pay in full all persons that perform labor upon said premises at Lessee's instance and request. Lessee shall not permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against said leased premises for any work done, or materials furnished thereon, at Lessee's instance or request. Lessee agrees to indemnify and hold Lessor harmless against any and all such liens. Lessor shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein. Lessee shall be liable to Lessor for all costs, damages and reasonable attorney's fees and any amounts expended in defending any proceedings, or in the payment of any of said liens or any judgment obtained therefor. Lessor may post and maintain upon the leased premises notice of non-responsibility as provided by law.

9. **Compliance with Law.** Lessee shall comply with all laws and governmental orders and regulations pertaining to the leased premises or the occupancy and use of the leased premises by Lessee and the agents and employees of Lessee. Lessee shall not do or suffer to be done in or upon said leased premises any act or thing which is or may be a nuisance, and shall not use or permit others to use said leased premises, or any part thereof, for any unlawful or immoral purposes.

10. **Covenant Against Waste.** Lessee shall not do or permit any waste of or upon said property.

11. **Repairs and Upkeep.** Lessee shall keep in good condition and repair all buildings, fences, wells, pumping plants, and irrigation systems or other improvements now located upon the land, which are the property of the Lessor. Upon the termination of this Lease, Lessee shall leave the same in as good repair as they now are, damage by the elements, acts of God and ordinary wear and tear excepted. Lessor shall not be called upon or required to make any repairs or incur any expenses of any kind or nature, upon or in connection with the leased premises or improvements, for and during the term or this Lease.

12. **Default.** In the event of the failure of Lessee to pay rent as herein provided or upon the breach of any other condition, term or covenant herein contained on the part of Lessee to be kept and performed, each term, condition and covenant hereof being a material part of the consideration for Lessor's entry into this Lease, Lessor may, at Lessor's option, 15 days after written notice to Lessee to cure said breach (if the same be a breach of a condition other than the payment of rent, and in that event, without notice), and the failure of Lessee to cure such default within such time period if such default can be cured within said time period, and if not, then the failure of Lessee to commence within said 15-day period to remedy said default until said default is fully cured:

(a) terminate this Lease and all rights of Lessee by giving Lessee written notice that this Lease is terminated, in which case Lessor may recover from Lessee the sum of:

i. the worth at the time of award of the unpaid rent, which had been earned at 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 Lessee 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, or any shorter period of time specified in this Lease, exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided;

iv. any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

The "worth at the time of award" of the amounts referred to in paragraphs (i) and (ii) of subdivision (a) is computed by allowing interest at such lawful rate as specified in this Lease. The worth at the time of award of the amount referred to in paragraph (iii) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 per cent.

(b) re-enter said premises or take possession of the same by process of law, with or without notice to Lessee, and with or without terminating this lease and upon any re-entry by Lessor by any means, re-let or re-lease said premises, without notice to Lessee, for such rent, for such time and upon such terms as Lessor in Lessor's sole discretion shall see fit, and if a sufficient sum shall not thus be realized during the term originally provided by this Lease, after paying all expenses of regaining possession of said premises, and re-letting or re-leasing and collecting, to satisfy the rent hereby reserved, Lessee agrees to satisfy and pay any deficiency month by month, or to satisfy and pay the entire deficiency at the end of the term hereof, all at the option of Lessor.

Any re-entry or taking possession by Lessor shall not be an election on Lessor's part to terminate this Lease, unless written notice of such intention is given Lessee. Should Lessor re-enter or take possession, without terminating this Lease, or re-let the same for account of Lessee, Lessor may, at any time thereafter, elect to terminate this Lease by reason of such previous breach.

Any property belonging to Lessee or any period holding by, through or under it, or otherwise found upon the demised premises, may be removed therefrom and stored in any public warehouse at the cost of and for the account of the Lessee. If Lessee abandons, vacates or surrenders said premises or be dispossessed by process of law, any personal property left upon said premises shall be deemed abandoned, at the option of the Lessor. The commencement of any action for any remedy herein reserved to Lessor, and the prosecution thereof to judgment, shall not be deemed an election on the part of Lessor, unless and until said judgment is fully satisfied and discharged.

13. **Subleasing and Assigning.** The Lessee shall have the right to assign or sublease the premises, or portions thereof, only with the prior written consent of Lessor. Lessee shall not have the right to assign or otherwise transfer this Lease or any interest in this Lease, or any right or interest in said premises or any of the improvements that may now or hereafter be constructed or installed upon said premises without the express written consent of Lessor first being obtained. A consent by the Lessor to one assignment, subletting, occupation or use by another person shall not exhaust any covenant against assigning or subletting but the same shall remain in full force and effect notwithstanding one or more consents or be deemed to be a consent to any subsequent assignment,

subletting, occupation or use by another person. Any encumbrance, assignment, transfer or subletting without the prior written consent of the Lessor, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the Lessor, terminate this Lease. The consent of the Lessor to any such assignment of the Lessee's interest in this Lease or the subletting by Lessee on said premises shall not unreasonably be withheld.

14. **Quiet Surrender.** Upon termination of this Lease, either wholly or in part, Lessee shall surrender and deliver unto Lessor the quiet and peaceable possession of said leased premises or that portion thereof to which the Lease shall be terminated.

15. **Lessee's Bankruptcy.** If Lessee is adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or file a voluntary petition under any law (having for its purpose the adjudication of Lessee a bankrupt, or the extension of time of payment, composition, adjustment, modification, settlement or satisfaction of the liabilities of Lessee), or receiver be appointed for the property of Lessee by reason of the insolvency of Lessee, notwithstanding anything to the contrary elsewhere in this Lease, Lessor shall have the immediate right to terminate this Lease and to take exclusive possession of the lease premises. The acceptance of rent or other payment for the use of the leased premises shall not constitute a waiver of Lessor's right to terminate this Lease as above set forth.

16. **Notices.** All notices, requests and other communications hereunder shall be in writing given by personal delivery, facsimile, overnight courier or by certified or registered mail, return receipt requested and shall be deemed to have been given four (4) days after deposit in the United States mail in a sealed envelope, postage prepaid, registered or certified mail, (or if by personal delivery, facsimile or overnight courier, at the time of delivery or receipt), and addressed as follows:

To Lessor: WESTLANDS WATER DISTRICT
P.O. Box 6056
Fresno, CA 93703-6056
Facsimile No.: (559) 241-6277
Telephone No.: (559) 224-1523

To Lessee: _____

Facsimile No.: (559) _____
Telephone No.: (559) _____

Any party hereto may, by written notice, change the address to which such demands, notices or statements to such party may be sent. All payments by Lessee under this Lease shall be made to the Lessor at the above address. Lessor may change the address at which such payment shall be made by written notice to Lessee.

17. **Time and Specific Performance.** Time and specific performance are of the essence of this Lease.

18. **Compliance with Applicable Laws, Regulations and Agreements.** Lessee shall use the leased premises in strict compliance with all laws, statutes, ordinances, rules, regulations and orders of federal, state or county governments, or of any agency thereof which may be applicable to the leased premises or the use or occupancy thereof. Lessee shall conform with and abide by all plans, restrictions and regulatory provisions under any existing crop production, marketing or control measures, and shall execute all necessary documents in connection therewith. Lessee shall not store, use or sell any article in or about the leased premises nor permit any act that would cause the premiums for insurance to increase or cause a cancellation of any policy insuring the leased premises or the real property. Lessee shall not occupy or use the leased premises (or any part thereof) and shall not suffer or permit the leased premises (or any part thereof) to be used, for any illegal or dangerous purpose, or in any other way contrary to the rules, regulations, or laws of any public authority. Lessee shall not store any toxic or hazardous material or other substance that could damage or adversely affect the value of the real property (or any portion thereof) or subject Lessor to any civil or criminal liability to any governmental authority or private entity. Lessee shall not commit, or suffer to be committed, any waste upon the leased premises, or any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any neighbors of the leased premises. Lessee shall not conduct or permit any sale by auction of the leased premises.

20. **Lessor's Right of Entry.** Lessor and its agents or representative shall have the right, during reasonable business hours, to enter upon the leased premises, to inspect the same or any crops growing or harvested thereon or being removed therefrom, the improvements therein, appurtenances thereto, and all equipment located thereon. Lessor shall also have the right to enter the leased premises to exercise, protect or defend any of the rights reserved to the Lessor hereunder. Lessee shall supply Lessor and its agents or representatives with keys or other instruments necessary to affect entry only to the leased premises.

21. **No Warranty.** Lessee expressly acknowledges that Lessor have made no warranty and no warranty shall be implied by reason of any term or provision of this Lease concerning the availability or sufficiency of water or any other utility for use upon the leased premises; nor had Lessor made any warranty concerning the sufficiency of wells, pumping plants, canals, pipelines or any other irrigation equipment for provision of water to the crops, any dwellings or machinery upon the leased premises; nor have Lessor made any warranty concerning the sufficiency of any provisions for the control of flooding of the leased premises, nor have Lessor made any warranty concerning the sufficiency of adequacy of the land for the use or uses intended by Lessee.

22. **Crop Waiver.** It is understood and agreed that Lessee may finance the growing of crops on the premises by a crop loan, and in this connection, if the lender to the Lessee shall require a waiver by the Lessor with respect to any crops growing on said demised premises to be mortgaged as security for such crop loan, the Lessor agrees that

the Lessor will execute such waiver for one crop year at a time and only for the production of crops upon the demised premises for such crop year, provided that the advance cash rent for the subject crop year has been paid.

23. **Holding Over.** Any holding over after the expiration of the term of this Lease with the consent of the Lessor expressed or implied shall not extend the term of this Lease or renew the same, regardless of the period of holding over. Any such holding over shall constitute a tenancy from month to month upon each and every term, condition and covenant of this Lease insofar as the same may be applicable, excepting that the rental reserved shall be at the rate of one-half the yearly rental rate per acre per month.

24. **Attorney's Fees.** Should any litigation be commenced between the parties hereto concerning the property, this Lease, the rights and duties of either in relation thereto, the party prevailing in such litigation shall be entitled to such other relief as may be granted, to reasonable attorney's fees.

25. **Condemnation.** In the event the demised premises or any part thereof are taken or sold under threat of condemnation, the rental shall be reduced pro rata to the land and improvements for the taking thereof, and shall be payable to Lessor, and the Lessee does hereby sell, assign, transfer and set over any interest the Lessee might otherwise have in and to such compensation to the Lessor. The Lessee shall, nevertheless, be entitled to any compensation for damages paid with respect to unharvested growing crops resulting from such condemnation.

26. **Interest.** Should any payment due under this Lease not be made when due, then said payment shall bear interest at the rate of ten percent per annum, until the same is paid.

IN WITNESS WHEREOF, the parties have executed this Lease on this _____ day of _____, 20__.

LESSOR:

WESTLANDS WATER DISTRICT,
a Public Agency

by: _____
Dave Ciapponi,
Assistant General Manager

LESSEE:

(NAME OF LESSEE)

by: _____