

FARMLAND LEASE

STATE OF TEXAS §
 §
COUNTY OF MEDINA §

KNOW ALL MEN BY THESE PRESENTS

This Farmland Lease (“Lease”), made this ___day of October, 20__ by and between the CITY OF CASTROVILLE, TEXAS, a municipal corporation, 1209 Fiorella Street, Castroville, Medina County, TX 78009 (“Lessor”) and _____, address: _____ (“Lessee”), witnesseth:

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, approximately 236 acres of irrigated land with 236 acre feet of water, more or less, and the approximately 96+/- acres of dry land lying north and east of the runway at the Castroville Municipal Airport (“Airport”), situated in Medina County, Texas, as described in Exhibit “A,” Pages 1 and 2, attached hereto and incorporated herein for all purposes (“Land”).

I. Use of Land

The Land shall be used for land farming and for no other purpose. Lessee shall grow thereon low growing crops and no crops shall be grown within two hundred (200) feet adjacent to the runway, and twenty-five (25) feet adjacent to the taxiway and apron edges. These areas next to the taxiway and apron edges are to be mowed and maintained by the Airport staff.

The following areas shall not be used to grow any crops and are specifically excluded from the Land leased under this Lease.

- 1. County Road on the North end of the runway;
- 2. Road to the City metering stations; and
- 3. Shallow well at the Airport.

The space above the Land shall be held for free and unobstructed air passage of aircraft in, through and across air space above said Land. Lessee accepts this Lease subject to such retained interest in and to the Land.

Lessee’s activities shall not interfere with Airport activities. Driving across airport runways constitutes interference with Airport activities and is prohibited.

Anything to the contrary herein contained notwithstanding, this Lease and Lessee’s rights hereunder are subject to the provisions contained in the deed from the United States of America to the City of Castroville, recorded in Volume 147, Pages 264-

270, Medina County Deed Records, which deed and record thereof is attached hereto as Exhibit "B," and incorporated herein for all purposes ("Deed").

II. Term

This Lease is for a term of twenty-four (24) months, beginning _____ day of October, 2020. This Lease may be renewed on an annual basis, under the same terms and conditions, for up to three (3) additional one (1) year terms ending October _____, 2025.

III. Rent

The consideration for this Lease is the payment by Lessee of the following:

1. _____ (\$ _____) per irrigated acre payable as follows:
\$ _____, (50%) immediately upon execution of this Lease by Lessee;
\$ _____, (50%) on February 27, 2021.
\$ _____, (50%) on October 27, 2021.
\$ _____, (50%) on February 27, 2021.
2. _____ (_____) per acre for the dry land payable as follows:
\$ _____, (50%) immediately upon execution of this Lease by Lessee;
\$ _____, (50%) on February 27, 2021.
\$ _____, (50%) on October 27, 2021.
\$ _____, (50%) on February 27, 2021.

In the event the water for the irrigated acreage is reduced, the lease price per acre will be reduced by an equal percentage. In the event the Edwards Aquifer Authority prohibits any pumping of water for irrigation, the price per acre for the irrigated land will be reduced to _____ (_____) per acre (Dry Land amount). If the water is reduced or the pumping of water prohibited after the initial payment, the amount due on February 27, 2021 will be reduced accordingly and a refund issued if necessary.

If the Parties decide to convert this Lease to a multi-year Lease, the base rent will be as follows: _____ Dollars (\$ _____) per irrigated acre and _____ Dollars (\$ _____) for dry land for up to three (3) years. All other provisions pertaining to reduction or prohibition of water will remain applicable to the new base rent.

If Lessee fails to pay the amounts stated above, then Lessor may declare the Lease forfeited at its discretion.

IV. Recapture

The Deed gives the United States Government rights with respect to said Land. In the event the United States Government, or any of its agencies, exercises its rights to recapture or recover the Land, or any portion thereof, during the term of this Lease, and Lessee is not in default hereunder, Lessor agrees to refund to Lessee the pro-rata share of the unearned rent to cover that portion of the year in which the Land, or that portion of the Land, is recaptured.

The Lessor reserves the right to recapture all or a portion of the Land at any time during the term hereof. The Lessor also reserves the right to exempt up to thirteen (13) acres of property for City Capital Improvement Project(s). If either the terms of recapture or the need for the exemption is not known at the time of the term for this Lease or any subsequent option term, Lessor agrees to give Lessee a minimum of thirty (30) days advance written notice should recapture or exemption be desired by the Lessor. In the event of recapture or exemption, and provided Lessee is not in default hereunder, Lessor agrees to refund to Lessee the pro-rata share of the unearned rent for the remaining portion for the year for which the annual rent has been paid. If possible, Lessor agrees to permit Lessee's growing crops to mature and for Lessee to harvest said crops growing at the time of notice of recapture or exemption to the fullest extent feasible. Should recapture or exemption and termination of this Lease occur under conditions which prohibit the allowance of time necessary to mature and harvest crops, then in addition to a refund of unearned rent, Lessee shall be reimbursed for actual expenses incurred in the production of the crops on the recaptured Land. Said reimbursement shall cover costs incurred for ground preparation, including fuel, seed, fertilizer, equipment rental and/or depreciation and other expenses as reflected in Lessee's books and records. Reimbursement for expenses shall be limited to the recapture acreage only and shall be the only compensation or damages due Lessee by virtue of termination and recapture by Lessor.

V. Subordination

This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States Government or any federal or state agency relative to the operations or maintenance of the airport. The Lease is further subject to the Minimum Standards for Fixed Base Operators and Airport Lessees at the Castroville Municipal Airport ("Standards") now in effect and any modifications adopted by the City Council. In the event of a conflict between the terms and provisions of the Standards and these provisions, the Standards shall govern.

VI. Insurance

Lessee shall, at all times, have insurance in the amounts listed on Insurance Addendum to Lease, Exhibit "C," attached hereto and incorporated herein for all purposes.

VII. Clauses and Covenants

A. Lessee agrees to—

1. Lease the Land for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Land in its present condition "AS IS," the Land being currently suitable for the Permitted Use.
3. Obey all laws, ordinances, orders, and rules and regulations applicable to the use, condition, and occupancy of the Land, including the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner. Follow all best practice techniques with regard to crop rotation to include but not limited to the following:
 - a. Cotton shall not be planted without prior written consent of Lessor.
 - b. At the Lessor's discretion all crops shall be turned over (disked) within seven (7) days after harvest to reduce attracting wildlife.
4. Pay the Base Rent when it is due to Lessor at Lessor's Address.
5. Pay a late charge of five (5%) percent of any Rent not received by Lessor by the tenth day after it is due.
6. Pay for all labor, fuel, and utility services, including but not limited to the electric bill for the well pump, used by Lessee.
7. Pay all taxes on the crops raised on and Lessee's property located on the Land.
8. Allow Lessor to enter the Land to inspect the Land and show the Land to prospective purchasers or Lessees.
9. Repair, replace, and/or maintain any part of the Land used by Lessee.
10. Repair any damage to the Land or Excluded Improvements caused by Lessee.

11. Repair, replace and/or maintain the irrigation/water lines, water pumps, and any other portion of the irrigation/water system that Lessee uses to irrigate the Land.

12. Maintain the insurance coverages described in the attached Insurance Addendum.

13. INDEMNIFY, DEFEND, AND HOLD LESSOR HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING OUT OF LESSEE'S USE OF THE LAND. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF LESSEE'S INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LESSOR BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR.**

14. Deliver to Lessor a financing statement perfecting the security interest.

15. Vacate the Land on the last day of the Term.

16. Pay all costs of planting, raising, and harvesting the crops.

17. Cultivate the Land in a timely, thorough, and farmerlike manner, employing the best methods of farming customarily practiced on like crops in the area.

18. Pay all costs to return the Land to a cleared, fallow state.

19. Maintain adequate records on all matters related to farming the Land and provide Lessor with a copy.

20. Keep all gates on the Land closed and locked.

21. Enter and exit the Land only at those places designated by Lessor.

B. Water Right and Irrigation Water

A. Lessee hereby acknowledge that Lessor is the owner and has the exclusive right to use all property rights to and for the ground water which relate to the Premises, including but not limited to, the right to withdraw and /or beneficially use, sever, lease, sell or otherwise transfer the Edwards Aquifer water (or any other water) permitted; all real and personal property rights, appurtenances, permits, authorities, licenses, consents and contracts, if any, pertaining to all such property rights; rights under Permit No. (P101598) all interim authorization rights, withdrawal permits or other permits; and all modifications, amendments, renewals, extensions or successor or substitute permits

relating thereto including, without limitation and permit rights from the Edwards Aquifer Authority (“EAA”), or any water conservation or similar district or entity, now existing or hereafter created (“Water Conservation District”) (collectively, the “Water Rights”).

B. Provided that Lessee is not in default under the terms of this Lease, Lessor hereby grants to Lessee the exclusive right during the Term (as defined below), to the extent available time-to-time under the rules and regulations of the EAA, to beneficially use up to 236 acre feet per annum of Edwards Aquifer water out of Lessor’s EAA Permit No. (P101598) relating to that portion of the Premises which is to be irrigated (“Irrigated Acreage”), for the purpose of irrigating the crops to be grown on the Premises by Lessee (“Irrigation Water”) as the terms are defined by the EAA Act or Rules. Notwithstanding anything contained in this Lease to the contrary, the Irrigation Water shall only be used by Lessee’s and its agents on the Irrigated Acreage in connection with the production of crops grown on the Premises and Lessee shall not use or export such water to any other lands other than such Irrigated Acreage, or use such water for any purpose not authorized by this lease without Lessor’s prior written consent. Lessee shall be responsible for timely submitting complete and accurate reports required by the EAA, including consumption and allocation reports, and shall provide to Lessor a copy of all such reports submitted prior to submission, which obligation shall survive the expiration of the Term or the earlier termination of this Lease. Lessee shall also be responsible for timely paying all fees, penalties and fines by the EAA or any Water Conservation District that are associated with or due to Lessee’s withdrawal and use of the Irrigation Water, including all late fees and penalties for over-pumping or otherwise failing to comply with applicable laws governing the use or withdrawal of the water. If Lessee fails to timely pay any amount required by any governmental body, including the EAA or any Water Conservation District, by virtue of Lessee’s use or withdrawal of the irrigation water, Lessor may in its discretion pay such amount and Lessor shall repay Lessor upon demand the amount so expended together with interest at the maximum rate allowed by law and any and all costs and expenses, including attorneys’ fees, incurred by Lessor in connection therewith, which obligation shall survive the expiration of the Term or earlier termination. Lessor shall have the continuing right to measure the consumption of Irrigation Water by the measurements from flow meters for the purpose of monitoring compliance with Lessee’s obligations hereunder.

C. All other terms of this Lease notwithstanding, in the event the amount of the Water Lessor is permitted or otherwise authorized for withdrawal from the Edwards Aquifer is at any time reduced on a temporary or permanent basis by any law, statute, code, rule, ordinance, regulation nor action promulgated by Federal, State, County, City, or local authorities (collectively, “Laws”), including, without limitation, the EAA or any Water Conservation District, the right of Lessee to use the Irrigation Water shall be reduced by an amount designated by Lessor; provided, that if such reduction causes the Premises to be unusable by Lessee for the purposes permitted under this Lease, Lessee shall have the right, as its sole and exclusive remedy, to terminate this Lease by written notice to Lessor within 30 days following Lessor’s notice of the reduction in the Irrigation Water.

D. Lessee acknowledges that the Irrigation Water rights are subject to all current and future Laws and rules and regulations, inclusive of rules relating to “Critical Period Management” promulgated by Federal, State or local authorities, including, without limitation, the EAA or any Water Conservation District. Lessee agrees to cooperate with Lessor in connection with any proceedings or actions (i) relating to the Water Rights, including but not limited to, actions contesting the validity or amount of fees assessed to or levied upon the Water Rights, and/or (ii) protecting, defending, and/or preserving the rights to withdraw water from the Edwards Aquifer. Lessee hereby agrees to abide by any Laws and action of such Federal, State or local authorities and provide to Lessor or the EAA (or any Water Conservation District) any records in Lessee’s possession related thereto, and to modify this Lease in any manner which is consistent with the application of such actions.

E. All fees, assessments, fines, penalties, charges, taxes, tariffs, and other costs imposed by the EAA, any Water Conservation District, or any other governmental authority exercising jurisdiction over water used by Lessee on the Premises, shall be paid timely by Lessee, which obligation shall survive the expiration of the Term or earlier termination of this Lease. Lessee shall maintain adequate records of water and/or fuel use related to the Premises for such payment purposes, shall provide Lessor with a copy of any reports to, notices from or correspondence with the EAA or any Water Conservation District, and make any such records available to the Lessor upon request.

F. Lessor shall not be in default under any provision of this Lease or liable to Lessee in any way if Lessee is denied the use of all or part of the Irrigation Water by reason of:

- (i) Any Laws, restrictions, regulations, governmental action or other acts, including, without limitation, acts of the EAA, or any Water Conservation District;
- (ii) The acts of others in using water that reduces the amount of water available to Lessee, whether by overproduction, regulation or otherwise; or
- (iii) Any water well ceases production for any reason whatsoever, and in every such event, Lessee hereby waives any claims against Lessor therefore:

Lessee acknowledges that Landlord has no duty or obligation to provide water to meet Tenant’s needs and uses. Lessee further acknowledges that Lessor makes no representation or guarantee as to the suitability of the Irrigation Water for Lessee’s purposes, either in terms of quantity or quality.

C. Lessee agrees not to—

1. Use the Land for any purpose other than the Permitted Use.
2. Create or allow a nuisance or permit any waste of the Land.
3. Change Lessor's lock system.
4. Alter the Land, including clearing new roads, moving or erecting any fences, or locating on the Land any type of manufactured housing or mobile home.
5. Assign this Lease or sublease any portion of the Land without Lessor's written consent.
6. Make any new or change any existing agreement with any governmental entity.
7. Hunt or fish on the Land or allow anyone else to do so.
8. Litter or leave trash or debris on the Land.
9. Allow a lien to be placed on the Land.
10. Allow a lien to be placed on the crops raised on or harvested from the Land.
11. Interfere with Airport operations, including driving any vehicle or farm equipment or implement across runways.

D. Lessor agrees to—

1. Lease to Lessee the Land for the entire Term beginning on the Commencement Date and ending on the Termination Date.

E. Lessor agrees not to—

1. Allow any use of the Land inconsistent with the Permitted Use as long as Lessee is not in default.
2. Unreasonably withhold consent to a proposed assignment or sublease.

F. Lessor and Lessee agree to the following:

1. *Alterations.* Any physical additions or improvements to the Land made by Lessee will become the property of Lessor. Lessor may require that Lessee, at termination of this Lease and at Lessee's expense, remove any physical additions and improvements, repair any alterations, and restore the Land to the condition existing at the Commencement Date, normal wear excepted.

2. *Sublease or Assignment.* Lessee shall have the right to sub-let the Land only with the prior written consent of the City Administrator of the Lessor. Should Lessee sublease the Land, Sub-Lessee shall agree to abide by the same rules.

3. *Right to Enter.* Lessor retains the right to enter on and use and/or permit third parties to enter on and use the Land for any lawful purpose that does not materially interfere with Lessee's farming rights, or to ensure that Lessee is occupying the Land in accordance with the terms and provisions hereof, and without limiting the generality of the foregoing, for the purpose of keeping fence lines clean, should it become necessary.

4. *Abatement.* Lessee's covenant to pay Rent and Lessor's covenants are independent. Except as otherwise provided, Lessee will not be entitled to abate Rent for any reason.

5. *Release of Claims/Subrogation.* **LESSEE RELEASES LESSOR FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO LESSEE OR TO LESSEE'S PROPERTY LOCATED ON THE LAND. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LESSOR BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR.**

6. *Condemnation/Substantial or Partial Taking*

- a. If the Land cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this Lease will terminate.
- b. If there is a condemnation or purchase in lieu of condemnation and this Lease is not terminated, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.
- c. Lessee will have no claim to the condemnation award or proceeds in lieu of condemnation.

7. *Lessor's Lien.* Lessee grants to Lessor a security interest in the collateral to secure payment and performance by Lessee of all obligations and payments due from Lessee under this Lease. The collateral will include all of Lessee's crops and personal property located or to be located on the Land, and all products, proceeds, increase, governmental payments, insurance proceeds, documents of title, and warehouse receipts relating to such property.

This Lease is a security agreement under both article 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. Lessee agrees to furnish to Lessor a list of the names and addresses of any buyer, commission merchant, or selling agent to or through whom Lessee may sell the collateral. Lessee agrees to notify Lessor of the identity of any buyer, commission merchant, selling agent, or warehouse to or with whom Lessee intends to sell or store the collateral within seven (7) days before any sale or storage of the collateral.

8. *Default by Lessor/Events.* A default by Lessor is the failure to comply with any provision of this Lease that is not cured within thirty (30) days after written notice.

9. *Default by Lessor/Lessee's Remedies.* Lessee's remedies for Lessor's default are to sue for damages and terminate this Lease.

10. *Default by Lessee/Events.* Defaults by Lessee are (a) failing to pay timely Rent; (b) abandoning or vacating a substantial portion of the Land; and (c) failing to comply within ten (10) days after written notice with any provision of this Lease other than the defaults set forth in (a) and (b) above.

11. *Default by Lessee/Lessor's Remedies.* Lessor's remedies for Lessee's default are to (a) enter and take possession of the Land, after which Lessor may relet the Land on behalf of Lessee and receive the Rent directly by reason of the reletting, and Lessee agrees to reimburse Lessor for any expenditures made in order to relet; (b) enter the Land and perform Lessee's obligations; and (c) terminate this Lease by written notice and sue for damages. Lessor may enter and take possession of the Land by self-help, by picking or changing locks if necessary, and may lock out Lessee or any other person who may be farming the Land, until the default is cured, without being liable for damages.

12. *Default/Waiver/Mitigation.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by law. Lessor and Lessee have a duty to mitigate damages.

13. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

14. *Notices.* Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Holdover.* If Lessee does not vacate the Land following termination of this Lease, Lessee will become a Lessee at will and must vacate the Land on receipt of notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term.

16. *Alternative Dispute Resolution.* Lessor and Lessee agree to mediate in good faith before filing a suit for damages.

17. *Force Majeure.* Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant of this Lease so long as performance is delayed or prevented by *force majeure*, which shall mean acts of God, drought, floods, material, and labor restrictions by any governmental authority, and any other cause not reasonably within the control of either party, and which by the exercise of due diligence, Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

18. *Attorney's Fees.* If either party retains an attorney to enforce this Lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

19. *Venue.* Exclusive venue is in Medina County, Texas.

20. *Entire Agreement.* This Lease, together with the attached exhibits and riders, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to any expressly mentioned exhibits and riders not incorporated in writing in this Lease.

21. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Lessor and Lessee.

LESSOR:

CITY OF CASTROVILLE, TEXAS

By:

Interim City Administrator

ATTEST:

City Secretary

LESSEE:

By: _____

Exhibit "A" – Legal Description
Exhibit "B" – Deed
Exhibit "C" – Insurance

COPY

EXHIBIT “A”

**Legal Description
(Two Pages)**

COPY

EXHIBIT “B”

Deed from the United States of America to the City of Castroville

COPY

EXHIBIT “C”

Insurance Addendum to Lease

Lease
Lease

Date:

Lessor: City of Castroville, Medina County, Texas, a municipal corporation

Lessee: Carpe Diem Farms, LLC

This insurance addendum is part of the Lease.

Lessee agrees to—

1. Maintain the liability insurance policies required below (mark applicable boxes) during the Term and any period before or after the Term when Lessor is present on the Land:

Type of Insurance

Minimum Policy Limit

Commercial general liability
(occurrence basis) endorsed to
cover farm operations

Per occurrence: \$ 500,000.00
Aggregate: \$ 1,000,000.00

Or

Farm owner’s on a renter’s form
such as AAIS Form No. FO-4

Or

Farm liability policy

Workers’ compensation \$500,000

Employer’s liability \$_____

Business automobile liability \$_____

Umbrella/excess liability \$_____
(occurrence basis)

2. Comply with the following additional insurance requirements:
 - a. All liability policies must be endorsed to name Lessor as an “additional insured” on a form that does not exclude coverage for the sole or contributory ordinary negligence of Lessor and must not be endorsed to exclude the sole negligence of Lessor from the definition of “insured contract.”
 - b. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by Lessee to Lessor before entering the Land and thereafter at least ten days before the expiration of the policies.

COPY