

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT to Lease Agreement No. 14-675 ("SECOND AMENDMENT") is made and entered into this 21st day of June, 2022 ("Effective Date"), by and between LAJHBIR S. GILL FARMS, 12911 South Fruit, Caruthers, CA 93609 ("LESSOR") and the COUNTY OF FRESNO, a political subdivision of the State of California, 333 W. Pontiac Way, Clovis, CA 93612 ("LESSEE"). LESSOR and LESSEE may, hereinafter, be referred to collectively as "Parties" or individually as "Party".

R E C I T A L S

WHEREAS, the Parties entered into Lease Agreement No. 14-675 ("Lease") November 4, 2014 for lease of two hundred thirty-eight (238) acres of farmland located at the American Avenue Disposal Site; and

WHEREAS, the Parties entered into the First Amendment to the Agreement No. 14-675-1 ("First Amendment") on March 15, 2016, to change the rent payment terms from quarterly to monthly; and

WHEREAS, LESSEE has an overdue balance of past due rents dating back to June 1, 2018, in the total amount of \$1,081,209.16; and

WHEREAS, LESSOR provided written prior notice to LESSEE on April 6, 2022, of LESSEE's material breach of the Lease for failure to pay Rent ("Notice of Breach"); and

WHEREAS, LESSEE has failed to pay possessory interest taxes on LESSEE's possessory interest in the leased premises, as required by Section 10 of the Lease, in the total amount of \$303,513.44, if paid during the month of June 2022, with further penalties each month as provided by statute; and

WHEREAS, LESSOR and LESSEE now desire to amend the Lease to incorporate LESSEE's plan for payment of overdue rents, overdue possessory interest taxes, and incorporate additional terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Section 3.1 is added to the Lease, as follows:

1 **“3.1 PAYMENT OF CERTAIN PAST DUE RENTS**

2 For past-due rents from the period of June 1, 2018, through April 30, 2022 (the
3 “Past Due Rent”), LESSEE shall pay the total amount of \$1,081,209.16 in
4 immediately available funds, such as a cashier’s check, in three (3) payments as
5 follows:

- 6 • \$400,000 due by December 31, 2022
- 7 • \$400,000 due by December 31, 2023
- 8 • \$281,209.16 due by December 31, 2024

9 The Past Due Rent shall be paid to the County of Fresno and submitted to the
10 following address: County of Fresno, Attn: Resources AADS Principal Engineer
11 (FL-118) 2220 Tulare Street, 6th Floor, Fresno, CA 93712.”

12 **2. Section 4.1 is added to the Lease, as follows:**

13 **“4.1 FUTURE DEFAULT IS A MATERIAL BREACH**

14 Beginning on the Effective Date of the Second Amendment through the termination
15 or expiration of this Lease, LESSEE agrees that any breach of any provision of
16 Section 3, Section 3.1, Section 6.1, Section 10.1, or Section 10.2 of this Lease, as
17 amended by the Second Amendment, is a material breach of this Lease, and
18 results in all Past Due Rent and any then-current rent amounts being immediately
19 due, plus interest at the legal rate on all rents due and unpaid at that time.”

20 **3. Section 4.2 is added to the Lease, as follows:**

21 **“4.2 FUTURE DEFAULT REMEDIES**

- 22 A. Upon a material breach of the Lease, as provided in Section 4.1, the LESSOR
23 may, at its election, immediately terminate the Lease for cause if LESSEE has
24 not cured the breach within 15 days after receiving written notice of the breach.
25 Under such circumstances, no Rent shall be returned to LESSEE.
- 26 B. Upon the occurrence of a material breach of the Lease, as provided in Section
27 4.1, as determined by LESSOR’S Director of Internal Services, LESSOR’s
28 Director of Internal Services is authorized to issue a written notice of the breach

1 as provided in paragraph A of this section 4.2.”

2 4. Section 6.1 is added to the Lease, as follows:

3 “6.1 NO THIRD-PARTY LIENS

4 LESSEE agrees to not allow any third-party liens against the LESSEE’s crops.”

5 5. Section 10.1 is added to the Lease, as follows:

6 “10.1 CERTAIN DELINQUENT POSSESSORY INTEREST TAX

7 A. LESSEE acknowledges that it owes \$303,513.44 in delinquent possessory
8 interest taxes and penalties on the Premises (the “Delinquent Possessory
9 Interest Tax”) as of June 1, 2022, from the inception of the lease from
10 November 4, 2014. The Delinquent Possessory Interest Tax is due to the
11 Fresno County Auditor-Controller/Treasurer-Tax Collector (“ACTTC”). LESSEE
12 acknowledges that the statutory penalties on the Delinquent Possessory
13 Interest Tax increase by \$2,612.79 every month. Notwithstanding anything in
14 this Lease, the amount of the Delinquent Possessory Interest Tax is as
15 determined by the ACTTC according to statute. Nothing in this Lease is
16 intended or may be construed as modifying any provision of law relating to the
17 payment of property taxes, including possessory interest taxes on the
18 Premises.

19 B. LESSEE shall pay to the ACTTC all Delinquent Possessory Interest Tax in full,
20 in a single payment of immediately available funds, by the close of business on
21 June 30, 2022. LESSEE shall confirm with the ACTTC the exact amount of the
22 Delinquent Possessory Interest Tax before payment. No later than the close of
23 business on Friday, July 8, 2022, LESSEE shall provide verification to LESSOR
24 that the Delinquent Possessory Interest Tax has been paid by June 30, 2022.

25 Such verification shall be sent to:

26 County of Fresno, Attn: Resources AADS Principal Engineer (FL-118),
27 2220 Tulare Street, 6th floor, Fresno CA 93721.”

28 6. Section 10.2 is added to the Lease, as follows:

1 “10.2 VERIFICATION OF PAYMENT OF POSSESSORY INTEREST TAX

2 By April 10 of each year (the “PIT Reporting Deadline”), LESSEE shall provide to
3 LESSOR written verification of timely payment of possessory interest taxes on the
4 Premises. Such verification shall be sent to:

5 County of Fresno, Attn: Resources AADS Principal Engineer (FL-118), 2220
6 Tulare Street, 6th floor, Fresno CA 93721

7 LESSEE’s failure to timely pay any possessory interest taxes or failure to timely
8 submit written verification of payment is a material breach of the terms of this
9 Lease, and subject to the remedies described in Section 4. Nothing in this Lease
10 modifies any statutory deadline for the payment of property taxes, including
11 possessory interest taxes on the Premises.”

12 **7.** The Parties agree that this Second Amendment is sufficient to amend the Lease, and that,
13 upon execution of this Second Amendment, the Lease, the First Amendment and this Second
14 Amendment shall together be considered the “Lease.”

15 **8.** The execution of this Second Amendment by both parties operates to rescind the Notice of
16 Breach.

17 **9.** All provisions, terms, covenants, conditions, and promises set forth in the Lease and not
18 amended herein remain in full force and effect.

19 ///

20 ///

21 ///

22 ///

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXECUTED and EFFECTIVE as of the date first above set forth.

LESSEE:
LAJHBIR S. GILL FARMS

LESSOR:
COUNTY OF FRESNO

By _____
Amarinder S. Gill, Owner

By _____
Brian Pacheco,
Chairman of the Board of Supervisors of
the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By _____
Deputy

Fund No. 0700
Subclass 15000
Org. No. 9026
Acct. No. 3404