

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 21st day of August, 2012, by and between CITY OF MARICOPA, a municipal corporation, ("Landlord") and Bruce Neely, a married man ("Tenant").

The parties, in consideration of the matters hereinafter set forth, agree as follows:

1. **Lease of Premises.** Landlord leases to Tenant and Tenant leases from Landlord the real property more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference, together with all improvements and appurtenances thereto (the "Premises") for Tenant's exclusive use.

2. **Term.** The term of this Lease shall be for a period of five (5) years, commencing on May 1, 2012 and ending April 30, 2017, provided the Lease has not been earlier terminated as hereinafter provided.

3. **Rent.** In lieu of rental payment, Tenant agrees to maintain, at Tenant's sole cost and expense, the engineered flood control improvements including weed control, repairs due to farming operations, and repairs due to minor washouts.

4. **Use of Premises.**

A. The Premises are to be used by Tenant solely for agricultural purposes. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord.

B. Tenant agrees that all services provided by Tenant will meet all Federal requirements regarding nondiscrimination as required by Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and any regulations or rules promulgated with respect thereto.

C. Tenant shall not allow any waste or nuisance on the Premises, or use or allow the Premises to be used for unlawful purposes. Tenant agrees to comply with all applicable laws, ordinances and regulations regarding the use of the Premises.

D. Tenant shall promptly pay when due all charges for water, materials, and services which may be furnished to or be used by Tenant on the Premises, and shall keep the Premises free and clear of any liens or encumbrances of any kind whatsoever created by Tenant's acts or omissions.

E. Tenant agrees, at Tenant's sole cost and expense, to place a concrete spillway on any bank that the Tenant wishes to convey water from an existing irrigation channel to the area that will be farmed. The spillway will be sized and shaped so that the water will be

conveyed within the concrete surface. The spillway will be terminated with a splash pad to be constructed with some type of grouted rip-rap. The field approval of such improvements does not absolve the Tenant from repairs that are related to the irrigation of the farmed area.

5. **Early Termination.** Each party to this Lease, without prejudice to any other rights or remedies, may terminate this Lease, with or without cause, at any time upon providing the other party no less than one hundred eighty (180) days written notice of its intent to terminate. The Landlord, however, has the right to terminate this Lease immediately, without notice, if the Landlord determines that waste, nuisance or unlawful activity is occurring on the Premises.

6. **Utilities and Taxes.** Landlord shall pay all ad valorem taxes assessed against the Premises and any assessment levied by the Maricopa Stanfield Irrigation and Drainage District, excluding any charge that directly relates to Tenant's water usage on the Premises. Tenant will be solely responsible for securing and paying for all utilities servicing the Premises, including water, electric, and gas. In the event Tenant fails to promptly pay any utility service charges when billed, the Landlord may terminate this Lease upon providing Tenant with ten (10) days written notice and opportunity to cure. Tenant shall also pay any and all taxes, assessments or other public charges levied, assessed or imposed by reason of the operation of Tenant's business on the Premises, including, but not limited to, sales tax, income tax, or privilege tax accruing during the Lease Term. Tenant shall defend, indemnify and hold Landlord harmless for, from and against each and every claim associated with or arising out of Tenant's obligations in this Section.

7. **Repairs, Maintenance and Improvements.**

A. Tenant shall keep in good order, condition and repair the Premises and every part thereof.

B. Damage to the Premises resulting from age and/or natural deterioration shall be the responsibility of the Landlord to repair. Tenant shall notify Landlord in writing of any such necessary repairs within thirty (30) days of discovery. Landlord may elect, in its sole discretion, to declare the cost of the needed repairs to be too expensive and terminate this Lease as a result thereof.

C. Except as otherwise provided in this Lease, Tenant shall not, without first obtaining the written consent of the Landlord, make any alteration, additions or improvements in, to or about the Premises.

8. **Entry and Inspection.** Landlord reserves the right to enter on the Premises at reasonable times and upon reasonable notice to Tenant to inspect the Premises, conduct surveys, perform engineering work and development plans, and for any other lawful purpose, so long as such entry does not unreasonably interfere with the Tenant's farming operations or cause damage to existing crops.

9. Insurance and Indemnity.

A. Tenant shall procure and maintain in force at its expense during the term of this Lease and any extension thereof, for the joint benefit of Tenant and Landlord, a broad form comprehensive coverage policy of public liability insurance by the terms of which Landlord and Tenant are named as insured and are indemnified against liability for damage or injury to the property or person (including death) of any Tenant or invitee of Tenant or any other person entering upon or using the Premises, or any structure thereon, or any part thereof, and arising from the use and occupancy hereof. Such insurance policy or policies shall be maintained on the minimum basis of \$50,000 for damage to property and \$1,000,000 for bodily injury or death to any one accident.

B. No less than thirty (30) days after execution of this Lease and preceding the annual renewal date for any policy, Tenant shall furnish to Landlord (i) certificates of insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect, and (ii) copies of the underlying insurance policies. Such certificates shall identify this Lease and shall provide that not less than thirty (30) days advance notice of cancellation, termination, or material alteration of the applicable insurance policy shall be sent directly to Landlord.

C. Tenant shall have its own insurance in force prior to moving any fixtures, equipment or other personal property of any kind on to or off the Premises. Landlord shall have no liability whatsoever with respect to any loss or damage to Tenant's or its employee's trade fixtures, equipment, crops and personal property upon the Premises unless caused solely by Landlord's gross negligence or willful misconduct. Tenant acknowledges and agrees that it is able to, and must, if desired, insure itself and its employees against any such loss or damage.

D. The Landlord shall not be liable for liability or damage claims for injury to persons or property from any cause relating to Tenant's use of the Premises or for those arising out of damages or losses occurring on other areas immediately adjacent to the Premises that may be used by Tenant during the term of this Lease or any extension thereof. Tenant shall defend, indemnify and hold Landlord harmless for and against all liabilities, causes of action, claims, damages, demands, costs, penalties and expenses (including reasonable attorney's fees and expenses incurred in the defense thereof) resulting from any injury to person or property or from loss of life sustained in or about the Premises, unless such damage or injury results solely from the willful misconduct or gross negligence of Landlord and Tenant agrees to hold Landlord harmless from, and indemnify Landlord against, any and all injury, loss or damage of whatever nature, to any person or property caused by, or resulting from any act, omission, or negligence of Tenant or any employee or agent of Tenant. In addition, Tenant hereby releases Landlord from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties, unless such fire or other casualty shall be brought about by the intentional misconduct or gross negligence of Landlord.

10. Environmental Requirements.

A. Notice of Pesticides. If requested to do so, before May 1st of each year during the term hereof, Tenant shall provide Landlord with a written list of all Environmental Protection Agency (EPA) approved and State of Arizona certified herbicides, pesticides, soil conditioners, fumigants, and other chemicals or fertilizers which Tenant then intends to use on the Premises, including, to the extent reasonably available to Tenant, the manufacturer=s name and address, Arizona registration number, active ingredients, trade names, expected dosage rates and mixtures, and a copy of all labels applicable to the use of the chemicals in Pinal County. If Tenant thereafter determines that the use of other EPA approved and State of Arizona certified herbicides, pesticides, soil conditioners, fumigant, chemicals or fertilizers on the Premises is necessary or appropriate, Tenant will, with reasonable promptness, furnish Landlord all of the foregoing information with respect to such other items(s) as is reasonably available to Tenant.

B. Use of Farm Chemicals and Petroleum Products.

(i) Tenant's use and storage of the fertilizers, pesticides, herbicides, fumigants and other chemical products on the Premises including, without limitation, the type of chemicals or other materials used and/or stored and the manner of their application, discharge, emission or storage shall be in full compliance with applicable governmental laws, rules, regulations and/or orders. Tenant shall file when due all reports, documents, forms or other information required under applicable law or regulation to be filed with any governmental agency (including, without limitation, the Arizona Department of Agriculture and the Arizona Department of Health Services) regarding Tenant's use and storage of fertilizers, pesticides, herbicides, fumigants and other chemicals on the Premises so as to avoid damage to, or discharge, leakage, spillage, emission or pollution on adjacent parcels of land owned or leased by third parties or by Landlord.

(ii) Tenant shall capture, control and dispose of waste oil from equipment and used containers for fertilizers, pesticides, herbicides, fumigants, and other chemical products in accordance with all applicable laws. Tenant's disposal of such items shall not be on properties of the Landlord.

(iii) Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord, or Landlord's authorized agents or representatives, for from and against all losses, claims, and liabilities associated with or arising out of (1) Tenant's application, use or storage of any fertilizer, pesticide, herbicide or other chemical product to the Premises which damages, pollutes or contaminates adjacent parcels of land, (2) Tenant's failure to comply with the requirements of this Section 10(B), or (3) any discharge, spillage, emission or pollution of any type occurring on the Premises due to the use and occupancy thereof by Tenant or its subtenants, or their respective agents, employees, contractors, licensees or invitees. Tenant's indemnity obligations contained in this Section 10(B)(iii) shall include any loss, claim, or liability in connection with matters occurring any time on or subsequent to the date Tenant occupies the Premises.

(iv) Nothing set forth in this Section 10(B) shall limit the generality of the provisions of Section 10(D) below.

C. Annual Application Reports. If requested to do so, Tenant shall furnish Landlord, on or before the tenth (10th) day of each January copies of all reports, documents, forms or other information filed with or provided during the preceding year to governmental agencies (including, without limitation, the Arizona Department of Agriculture and the Arizona Department of Health Services) regarding Tenant's use and storage of fertilizers, pesticides, herbicides, fumigants or other chemical products on the Premises. The accounting shall include, without limitation, a description of each chemical applied, the date each chemical was applied, the amount of each chemical applied, the manner in which each chemical was applied. Tenant shall maintain records regarding the use, storage, application, spillage, emission and/or discharge of any fertilizers, pesticides, herbicides, fumigants, other chemicals, or fuels on or to the Premises.

D. Release of Hazardous Materials.

(i) Notice of Release or Investigation. If, during the Lease Term (including any extensions), either Landlord or Tenant becomes aware of: (1) any actual or threatened release of any Hazardous Material on, under, or about the Premises, or (2) any inquiry, investigation, proceeding, or claim by any government, agency, or other person regarding the presence of Hazardous Material on, under, or about the Premises, that party shall immediately, not to exceed two (2) business days after learning of it, notify the other party, and shall provide written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to the other party copies of any claims, notices of violation, reports, or other writings received by the party providing notice that concern the release or investigation.

(ii) Indemnification. Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord, or Landlord's authorized agents or representatives, with respect to all losses arising out of or resulting from the release of any hazardous material in or about the Premises, or the violation of any environmental law, by Tenant or Tenant's agents, contractors, or invitees. This indemnification includes without limitation: (1) Losses attributable to diminution in the value of the Premises; and (2) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation.

(iii) Remediation Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination of the Premises, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises to the condition that existed before the introduction of such hazardous material. Tenant shall first obtain Landlord's written approval of

the proposed remedial action. This provision does not limit the indemnification obligation set forth in Section 10(D)(ii) hereof.

(iv) Definition of Hazardous Material. As used in this Section 10(D), the term “Hazardous Material” shall mean the following:

(1) Any “hazardous substance” as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601-9675);

(2) “Hazardous waste” as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992K);

(3) Petroleum products;

(4) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-2297G-4;

(5) Asbestos in any form or condition; and

(6) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

E. Removal of Soil. If Tenant excavates or removes any soil on the Premises, whether or not such soil is contaminated, Tenant shall be responsible for all costs and expenses related to such excavation or removal (including, without limitation any cost of disposal of such soil.) If, as a result of Tenant’s excavation or removal, Landlord incurs increased remediation costs or expenses, Tenant will reimburse Landlord for the amount of such increase within thirty (30) days after written demand. This indemnification is not intended to include or extend to acts committed prior to Tenant’s occupancy of the property in question, and is only intended to extend to those acts committed by Tenant, and not those committed by other previous parties or previous Tenants. The indemnification set forth in this Section 10(E) shall survive the expiration or termination of this Lease.

11. **Assignment.** Tenant shall not assign or sublease the Premises, or any right or privilege connected therewith, or allow any other person except agents and employees of Tenant to occupy the Premises or any part thereof without first obtaining written consent from the Landlord. Consent by the Landlord shall not be consent to a subsequent assignment, sublease, or occupation by other persons. An unauthorized assignment, sublease, or license to occupy by Tenant shall be void. The interest of Tenant in this Lease is not assignable by operation of law without the written consent of the Landlord.

12. **Breach by Tenant.** The appointment of a receiver to take possession of the assets of Tenant, a general assignment for the benefit of the creditors of Tenant, action taken or

allowed to be taken by Tenant for protection under any bankruptcy act, or the failure of Tenant to comply with each and every term and condition of this Lease shall constitute a breach of the Lease. Except as otherwise set forth herein, Tenant shall have ten (10) days after receipt of written notice from the Landlord of any breach to correct the conditions specified in the notice, or if the corrections cannot reasonably be made within the ten (10) day period, Tenant shall have a reasonable time to correct the default if action is commenced and thereafter diligently pursued by Tenant within ten (10) days after receipt of the notice. In the event Tenant does not timely correct the default as set forth above, Landlord may, at its option and without demand or notice, re-enter and take possession of the Premises.

13. **Attorney Fees.** If the Landlord or Tenant file an action to enforce any covenant, promise or provision contained in this Lease, or for breach of any covenant or condition hereof, the prevailing party shall be awarded its reasonable attorneys' fees for the services of the prevailing party's attorney in the action, in an amount to be fixed by the court or agreed upon by the parties.

14. **Time of Performance.** Time is of the essence of this Lease and each and every covenant, term, condition and provision hereof.

15. **Quiet Enjoyment.** Landlord covenants that Tenant upon the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be kept and performed, shall have, hold and enjoy the Premises free from eviction or disturbance by Landlord, or by any other person or persons lawfully claiming the same, and that Landlord has good right to make this Lease for the full term granted, including renewal periods.

16. **Surrender and Holding Over.** Tenant shall surrender the Premises and remove all of Tenant's personal property from the Premises on termination of this Lease. Any holding over by Tenant without the express authorization of Landlord shall be treated as a tenancy from month-to-month, at a rental rate equal to Thirty Thousand and 00/100 Dollars (\$30,000.00) payable on the first day of each month, and Landlord shall retain all remedies under this Lease and rights under the law for removal of Tenant from the Premises.

17. **Eminent Domain or Condemnation Sale.** In the event that all or any portion of the Premises is appropriated or taken by way of eminent domain or condemnation proceedings, this Lease, as to the part appropriated, taken or sole, may at the option of Landlord, be canceled or terminated upon written notice sixty (60) days in advance of termination. Landlord shall notify Tenant at once of any pending or proposed eminent domain or condemnation sale proceedings of which it has knowledge and keep Tenant informed during negotiation of such action. It is understood and agreed that Landlord shall be entitled to all of the proceeds paid as a result of said appropriation, taking or sale and that Tenant shall have no right whatsoever to any portion of said proceeds, excepting any portion thereof specifically designated as compensation for Tenant's leasehold interest in the Premises and/or any award for growing crops.

18. **No Warranties.** Tenant acknowledges that Landlord has not made any representations or warranties regarding the Premises, and Tenant accepts the Premises “as is”.

19. **Waiver.** The failure of Landlord or Tenant to insist in any one or more instances on performance of any of the terms or conditions of this Lease or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

20. **Arbitration.** In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Landlord and Tenant. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the Landlord and Tenant shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the Landlord and Tenant. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

21. **Governing Law; Venue.** The terms and conditions of this Lease shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Lease shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

22. **Entire Agreement.** This Lease, including any Exhibits, represents the entire agreement between Landlord and Tenant and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Lease shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Lease, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

23. **Illegality.** If any part, term or provision of this Lease shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

24. **Conflict.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Lease.

25. **Notice.** Whenever either party needs to deal with the other or give written

notice to the other, said notices shall be delivered to the parties as follows:

To Landlord:

To Tenant:

City of Maricopa
Attn: City Manager
P.O. Box 610
Maricopa, AZ 85139

Bruce Neely
Attn: Bruce Neely
40674 W Smith Enke Rd.
Maricopa, AZ 85139

26. **Heirs, Assigns, Successors.** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

27. **Tenant's Farming Operations.** It is mutually understood that Tenant intends to combine the farming operation of the Premises with other farming operations of Tenant. Landlord hereby gives full consent and authorization for Tenant to make this combination with all appropriate governmental offices, including, but not limited to, the Farm Service Agency, provided, however, that it does not affect any of the rights or obligations set forth hereunder, Tenant agrees to maintain all crop records with the Farm Service Agency. Tenant shall be the sole beneficiary of any payments from the Farm Service Agency received in connection with Tenant's farming operations on the Premises.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first written above.

LANDLORD:

TENANT:

CITY OF MARICOPA

By: _____
Mayor

Bruce Neely

ATTEST:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT "A"