

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into this 6th day of August, 2019 (“Effective Date”), by and between City of Maricopa, an Arizona municipal corporation (the “Lessor”) and Duncan Family Farms, LLC, an Arizona limited liability company (the “Lessee”).

In consideration of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

1) Leased Premises. Lessor hereby leases and permits the use to Lessee, and Lessee hereby leases from Lessor, upon the covenants and conditions hereinafter set forth, that certain 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 “Leased Premises”).

2) Term. The term of this Lease shall be for a period of five (5) years, commencing on the date set forth above and ending June 30, 2024, unless terminated earlier as hereafter provided (the “Term”).

3) Rent. In lieu of rental payment, Lessee agrees to maintain, at Lessee’s sole cost and expense the Leased Premises including, but not limited to, weed control, repairs due to farming operations and repairs due to minor washouts. In addition, Lessee will provide twenty thousand (20,000) pounds of fresh produce to food banks located within the City of Maricopa every year. Lessee will leverage St. Mary’s Food Bank refrigerated facility and distribution capabilities to deliver the fresh produce to food banks within the City of Maricopa designated by Lessor just in time.

4) Lessee's and Lessor's Obligations. Lessee and Lessor each agree that the following items relating to the Leased Premises and to the farming activities contemplated by this Lease shall become or remain the sole responsibility of the designated party or parties, and that these obligations shall be satisfied in the manner and according to the procedures set forth below:

a) Lessee's Obligations:

- i) Lessee shall use the Leased Premises for the purpose of farming crops and for no other purpose without the prior written consent of Lessor.
- ii) Lessee shall farm the Leased Premises and care for and cultivate any crops grown thereon in a good and farmer like manner, and in accordance with the best standards of Pinal County, Arizona and keep the Leased Premises and the whole thereof, free and clear of weeds and noxious plants.
- iii) Lessee shall comply with and abide by all applicable laws, regulations and/or ordinances enacted or promulgated by the United States Government or by the State of Arizona or any municipality, or their agents, respecting or affecting the Leased Premises, including, without limitation, any such laws that are commonly known as environmental laws.
- iv) Lessee’s use of fertilizers, pesticides, herbicides and other chemical products on the

Leased Premises shall be in full compliance with all applicable governmental laws, rules, regulations and/or orders. Lessee 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) regarding Lessee's use of chemicals, fertilizers, pesticides, herbicides and other chemicals on the Leased 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 Lessor. Lessee agrees that the Leased Premises shall not be used for storage of fertilizers, pesticides, herbicides, or other such chemicals. Lessee shall capture, control and dispose of waste oil from equipment and used containers for fertilizers, pesticides, herbicides, fumigants and other chemical produces in accordance with applicable laws and, in no event, shall such items be disposed of on properties owned by Lessor.

- v) Lessee shall comply with and abide by all the provisions and regulations of any crop support program enacted by the United States government and shall take all steps necessary to preserve the crop bases allotted to the Leased Premises by the Farm Service Agency; provided, however, Lessee shall not be required to plant any "program crops" for the purpose of preserving the crop bases.
- vi) Lessee shall furnish at its own costs and expense, all capital, labor, tools, power, fuel, material, supplies, seeds, seedlings, fertilizer, pesticides, machinery and equipment necessary or convenient in farming of the Leased Premises.
- vii) Lessee shall at all times during the Term, and at Lessee's own cost and expense, maintain the Leased Premises and all improvements thereon in as good condition as at the beginning of Lessee's tenancy, or as later improved, normal wear and tear and depreciation from causes beyond lessee's control excepted. Lessee shall not allow any waste or nuisance on the Leased Premises, or use or allow the Leased Premises to be used for unlawful purposes.
- viii) Lessor shall not be liable for any liability or damage claims for injury to persons or property from any cause relating to Lessee's use of the Leased Premises or for those arising out of damages or losses occurring on other areas immediately adjacent to the Leased Premises that may be used by Lessee during the term of this Lease. Lessee, as a material part of the consideration for this Lease, shall indemnify, defend and hold Lessor and the Leased Premises entirely free and harmless from and against all liabilities, causes of action, claims, damages, demands, costs, penalties, expenses (including reasonable attorneys' fees and expenses incurred in the defense thereof) resulting from any injury to person or property, associated with Lessee's use of fertilizers, pesticides, herbicides, or other such chemicals, or from loss of life sustained in or about the Leased Premises, unless such damage or injury results solely from the willful misconduct or gross negligence of Lessor. In addition, Lessee hereby releases Lessor 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 solely by the willful misconduct or gross negligence of Lessor.
- ix) Lessee shall procure and maintain in force at its expense during the Term of this Lease, for the joint benefit of Lessee and Lessor, a broad form comprehensive coverage policy of public liability insurance of not less than Five Million Dollars (\$5,000,000.00), insuring against injury to persons or damages as the result of the

farming of the Leased Premises, and shall name the Lessor as additional insured. Lessee shall furnish Lessor with a copy of said policy and endorsement. The policy shall contain provisions that such insurance coverage may be cancelled by the insurance company only upon thirty (30) days' prior written notice to Lessor.

- x) Lessee shall keep the improvements, equipment and personal property of any kind on the Leased Premises insured in amounts reasonably requested by the Lessor against physical loss by fire and such other coverages as are covered by the extended coverage endorsement, and name the Lessor as an additional insured, and furnish Lessor with a copy of said endorsement. Lessor shall have no liability whatsoever with respect to any loss or damage to Lessee's or its employee's trade fixtures, equipment, crops and personal property upon the Leased Premises unless caused solely by Lessor's gross negligence or willful misconduct.
- xi) Lessee shall carry workmen's compensation on all employees of Lessee who are involved in the Lessee's farming or operation of the Leased Premises.
- xii) Lessee shall promptly pay when due all charges for water and all other utilities, materials, and services which may be furnished to or be used by Lessee on the Leased Premises. In the event Lessee fails to promptly pay any such charges when billed, Lessor may terminate this Lease upon providing Lessee with ten (10) days written notice and opportunity to cure. Lessee shall not allow any liens to attach to or be filed against the Leased Premises as a result of the Lessee's farming, use or operation thereof, except for liens resulting from Lessee's crop financing. Any crop financing liens shall be limited to liens upon the crops and not upon the underlying real property or any beneficial interest therein.
- xiii) Lessee shall pay prior to delinquency any and all taxes, assessments or other public charges levied, assessed or imposed by reason of Lessee's use of the Leased Premises including, but not limited to, sales tax, income tax, or privilege tax accruing during the Term hereof. Lessee shall also pay any and all taxes, assessments or other charges levied, assessed or imposed upon Lessee's equipment or personal property located or used on the Leased Premises. Lessee shall defend, indemnify and hold Lessor harmless for, from and against each and every claim associated with or arising out of Lessee's obligations in this Section.

b) Lessor's Obligations:

- i) Lessor shall warrant and defend the Lessee's possession against any and all persons so long as this Lease remains in effect.
- ii) Lessor shall subordinate its Lessor's lien for the purpose of financing the production of the Leased Premises, in the amount of such production and harvesting costs.
- iii) Lessor shall pay all real property taxes assessed on the Leased Premises.
- iv) Except as expressly set forth in Section 4(b), Lessor makes not representation or warranty regarding the condition of the Leased Premises or its suitability for farming or other activity and Lessee agrees to accept the Leased Premises in "AS IS" "WHERE IS" condition, subject to all existing faults and conditions.

5) Irrigation and Delivery of Water.

- a) Lessee, at Lessee's sole cost and expense, shall have the right to use any water available or allocated to the Leased Premises for the term of this Lease for use on the Leased

Premises, whether by well, irrigation district, gravity or flood water. Lessor makes no agreements, promises, representations or warranties, express or implied, regarding the present, continued or future availability, quantity or quality of surface or ground water at the Leased Premises for irrigation or any other purpose. Lessor shall have sole and absolute discretion regarding maintaining the water rights on the Leased Premises.

- b) Lessee shall pay all costs associated with the purchase and delivery of water to the Leased Premises, including, but not limited to, all power and utility charges. Lessee shall also be solely responsible for any security deposits required by irrigation districts, electrical districts or utility companies. Lessee shall receive all interest earned by said deposits, and any refunds distributed by any electrical district, irrigation district, or utility company for usage during the Term of this Lease, even if the distribution of the refund occurs after the termination of the Lease. Lessee shall be entitled to the return of the security deposit and all accrued interest upon termination or expiration of the Lease. Lessee shall maintain and repair ditches, pipes, discharge ports, head gates, drip irrigation facilities and culverts in the condition received, ordinary wear and tear excepted.

6) Improvements/Alterations. Lessee shall not make, or permit to be made, any alterations or improvements to the Leased Premises during the Term of this Lease, including but not limited to, erecting any non-removable structure or building or adding electrical wiring, plumbing, or heating to any existing building, without prior written consent of Lessor. Upon termination or expiration of this Lease pursuant to the terms hereof, all improvements and/or alterations made by Lessee, other than those constituting trade fixtures, shall revert to Lessor, without any right in Lessee for reimbursement. In the event some of or all of the improvements or fixtures are classified as trade fixtures and are not removed prior to the expiration of this Lease, all such trade fixtures not so removed shall revert to the Lessor thirty (30) days after Lessee vacates the Leased Premises, without any right to Lessee for any reimbursement.

7) Notices and Demands. Any and all notices, requests, or demands given to or made upon the parties hereto, pursuant or in connection with this Lease, shall be deemed to have been given when delivered in person, by electronic mail (e-mail) on the date sent, or two (2) days after deposit thereof in the United States Mail in a sealed envelope, postage prepaid, registered or certified mail, and addressed as follows:

LESSOR: City of Maricopa
 Attn: City Manager
 39700 W. Civic Center Plaza
 Maricopa, AZ 85138
 Rick.Horst@maricopa-az.gov

With a copy to: Denis M. Fitzgibbons, City Attorney
 Fitzgibbons Law Offices, P.L.C.
 1115 E. Cottonwood Lane, Suite 150
 P.O. Box 11208
 Casa Grande, Arizona 85130-0148
 Email: denis@fitzgibbonslaw.com

LESSEE: Duncan Family Farms, LLC
Attn: Arnott Duncan
172063 W Indian School Road
Goodyear, AZ 85393
arnott@duncanfamilyfarms.net

It is agreed that either party may hereinafter designate other addresses to which notice may be sent, upon written notice sent to the other at the address above designated, or subsequently designated in accordance herewith.

8) Assignment and Subletting. Lessee may not assign this Lease or sublet any portion of the Leased Premises without the prior written consent of the Lessor, which may be given or withheld at Lessor's sole discretion. Any assignment or subletting shall not relieve the Lessee or its obligations hereunder unless Lessor expressly releases Lessee in writing. Lessor may freely assign Lessor's rights and obligations under this Lease without Lessee's consent.

9) Legal Expenses. In the event Lessor or Lessee files 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.

10) No Partnership Intended. Nothing in this agreement is intended to, or shall be construed to create a partnership, joint venture, or other agency between the parties.

11) Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

- a) Any failure by Lessee to pay, on or before the due date, any rent or other monetary sums required to be paid hereunder.
- b) The abandonment or vacation of the Leased Premises by Lessee.
- c) A failure by Lessee to observe and perform any other provision of this Lease where such failure continues for ten (10) days after written notice thereof by Lessor to Lessee; provided however, that if the nature of such default is such that the same cannot reasonably be cured within such ten (10) day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion.
- d) The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within thirty (30) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

12) Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice and demand and without limiting Lessor in the exercise of any right or remedy at law or in equity which Lessor may have by reason of such default or breach:

- a) Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Lessee's right to possession, irrespective of whether Lessee shall have abandoned the Leased Premises. In the event Lessor elects to not terminate the Lease, Lessor shall have the right to attempt to re-let the Leased Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Leased Premises as Lessor deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Leased Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. In the event any such reletting occurs, this Lease shall terminate automatically upon the new Lessee taking possession of the Leased Premises. Notwithstanding that Lessor fails to terminate the Lease initially, Lessor at any time during the Term of this Lease may elect to terminate this Lease by virtue of such previous default of Lessee.
- b) Terminate Lessee's right to possession by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default and seek all other remedies available at law or in equity.

13) Lessor's Right of Entry. Lessor shall have the right to enter upon the Leased Premises at all reasonable times to inspect the Leased 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 Lessee's farming operations or cause damage to existing crops. Lessor agrees to comply with Lessee's Food Safety Protocol and Standard Operating Procedures (SOPs) when visiting and/or inspecting the Leased Premises.

14) Subordination. Lessee agrees that this Lease shall be subordinate to any mortgages or deeds of trust that are now, or may hereafter be, placed upon the Leased Premises, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof, provided that the mortgages or beneficiaries named in said mortgages or trust deeds shall agree to recognize the interest of Lessee under this Lease in the event of foreclosure, if Lessee is not then in default. Lessee also agrees that any mortgage or beneficiary may elect to this Lease constitute a prior lien to its mortgage or deed of trust, and in the event of such election and upon notification by such underlying Lessor or such mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said mortgage or deed of trust. Lessee agrees that upon the request of Lessor, or any mortgages or beneficiary, Lessee shall execute whatever instruments may be required by Lessor or by any mortgagee or beneficiary to carry out the intent of this Section.

15) Estoppel Certificates. Lessee shall, within ten (10) days after written request of Lessor, execute, acknowledge and deliver to Lessor or to Lessor's mortgagee, or proposed purchaser of

the Leased Premises or any part thereof, any estoppel certificates requested by Lessor, from time to time, which estoppel certificates shall state whether the Term of this Lease has commenced and full rental is accruing; whether there are any defaults by Lessor and, if so, the nature of such defaults; and whether Rent has been paid more than thirty (30) days in advance and there are no liens, charges or offsets against rental due or to become due and that the address shown on such estoppel certificate is accurate.

16) Brokers. Lessor and Lessee represent to each other that they have not engaged a broker or agent to assist or represent them regarding this Lease. Lessor shall indemnify Lessee from any leasing commission or finders' fees claimed by brokers or agents assisting or representing Lessor regarding this Lease. Lessee shall indemnify Lessor from any leasing commissions or finders' fees claimed by brokers or agents assisting or representing Lessee regarding this Lease.

17) Limitation of Lessors Liability. The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owners at the time in question and only to the extent of the fee simple title to the Leased Premises, and in the event of transfer of said fee simple estate, then the party that conveyed said fee simple estate shall be automatically relieved, after the date of such transfer, of all personal liability as respects the performance of any obligations on the part of Lessor contained in this Lease arising out of acts thereafter occurring or covenants thereafter to be performed, it being intended hereby that all obligations contained in this Lease on the part of the Lessor shall be binding upon Lessor, its successors and assigns, only during and in respect of their respective periods of ownership and only to the extent of said fee simple estate in the leased Premises.

18) Waiver. The failure of Lessor or Lessee 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.

19) 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 Contractor and the City. 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 City and Contractor 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 City and Contractor. 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.

20) Governing Law; Venue. This Lease is to be construed, interpreted and enforced pursuant to 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.

21) Right to Early Termination of Lease. Notwithstanding anything to be contrary herein, Lessor or Lessee shall have the right to terminate this Lease, with or without cause and without prejudice to any other rights or remedies, by giving written notice, as provided herein, not later than March 15th of any year, to terminate this Lease and possession transferred as of the date of notice.

22) Surrender and Holding Over. Lessee shall surrender the Leased Premises and remove all Lessee's personal property from the Leased Premises on termination of this Lease. Any holding over by Lessee without the express written authorized of Lessor shall be treated as a tenancy from month-to-month, at a rental rate equal to Ten Thousand and 00/100 Dollars (\$10,000.00) payable on the first day of each month, and Lessor shall retain all remedies under this Lease and rights under the law for removal of Lessee from the Leased Premises.

23) Entire Agreement. This Lease represents the entire agreement between Lessor and Lessee 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.

24) Severability. The provisions of this Lease shall be deemed severable and should any provision of this Lease be declared or be determined by a Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Lease, notwithstanding any other provision of this Lease Agreement.

25) Conflict of Interest. This Lease is subject to the provisions of A.R.S. § 38-511.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

LESSOR:

CITY OF MARICOPA, a municipal corporation

By: _____
Its Christian Price, Mayor

Attest:

Approved as to form:

By: _____
Vanessa Bueras, CMC
City Clerk

By: _____
City Attorney

LESSEE:

DUNCAN FAMILY FARMS, LLC, an
Arizona limited liability company

By: _____
Arnott Duncan, Manager

EXHIBIT A

[Legal Description of leased Premises]