

AGRICULTURAL LEASE

THIS LEASE is entered between _____ (Lessor), and _____
(the "Tenant") this ____ day of _____, _____

RECITALS

- A. Lessor is a Lessee of certain real property in Maui County, Hawaii consisting of TMK X-X-X:XX more particularly described in attachment heron (See "Exhibit A - Field Map") and incorporated heron by reference (the "Lessor Property")
- B. Lessor desires to lease to Tenant and Tenant desires to lease from Lessor portions of the Lessor Property (the "Farming Parcels"), upon the terms and conditions hereinafter set forth (the "Lease").
- C. Tenant will utilize the Farming Parcels for specialty crop production (the "Specialty Crops") for its exclusive use.
- D. Lessor has in its possession the chemical use for the Lessor Property from XXXX to the present and is willing to share data with Tenant upon execution of a confidentiality agreement.

NOW, THEREFORE, in consideration father mutual covenants and promises contained herein, Lessor and Tenant hereby agree as follows:

- 1. LEASE. Lessor hereby leases to Tenant and Tenant hereby leases from Lessor the Farming Parcels upon all of the terms, covenants and conditions herein contained.
- 2. TERM. The term of the lease shall commence on the date hereof and shall terminate after five (5) years, unless the term is extended pursuant to paragraphs 29 and 30 below.
- 3. RENT & FARMING PARCELS. Tenant shall pay to Lessor monthly rent, due within 10 (ten) days of the first of each month, per the following schedule. The first month of rent commences on Month, Year.

FARMING PARCELS

Field Number	Acres	Rent per Acre	Total \$

4. USE OF FARMING PARCELS. nThe Farming Parcels shall be used solely for the cultivation of Specialty Crops, and for no other purpose, without the prior written consent of Lessor.
5. WATER FOR FARMING PARCELS USE. Water will be supplied by XXXXX. Tenant will also utilize the existing distribution system of filters, mainlines, and risers on the Lessor Property. Tenant will be responsible for the care and maintenance of the system and repairs due to its use. Tenant agrees to pay \$X.XX per thousand gallons of water used, based on reliable meter readings, and will make payments directly to XXXXXX, or the party that is invoiced by XXXXXX. If the cost of water invoiced by XXXXX increases, evidence will be provided to Tenant and Tenant will pay the increased rate. If, at come point Tenant determines that the cost of water from XXXX becomes unaffordable, Tenant has the right to haul in agricultural water at Tenants own expense. Should the cost of water become uneconomic for Tenant, Tenant shall be able to terminate lease without penalty and surrender and deliver up possession of the Farming Parcels in good condition, reasonable wear and tear excepted
6. MAINTENANCE OF PREMISES AND FARMING PRACTICES. Tenant, at its expense, shall diligently till, cultivate and farm the Farming Parcels for the purposes set forth in paragraph 6 hereof, in a proper and farmer-like manner and in accordance with good husbandry and the best practices of the farming community in which th Farming Parcels is located. Tenant shall keep and maintain all building, fences, corrals, ditches, irrigation systems, roadways and other improvements on the Farming Parcels in good condition and repair, and free from fire hazards. Tenant shall protect the Farming Parcels and the Specialty Crops there on from noxious grasses, weeds and plants, and from animal and insect pests. Tenant shall not commit or suffer to be committed any waste or nuisance upon the Farming Parcels, including the accumulation of black plastic drip tube and black plastic sheeting, or other man-made debris that is no longer used in the cultivation of Specialty Crops. Tenant accepts the Farming Parcels and the improvements and facilities located thereon in their present condition and is leasing the Farming Parcels as a result of its own investigation and inspection and not as a result of any representation made by lessor or any agent of Lessor
7. FERTILIZER AND CHEMICALS. Tenant shall be responsible for the cost of all fertilizers, herbicides, fungicides, insecticides and other required sprays and chemicals necessary for crop production on the Farming Parcels during the lease term. Such fertilizers, herbicides, fungicides, insecticides, sprays and chemicals and any diesel fuel, hydrocarbon or petroleum products shall be stored in accordance with applicable laws, statutes, ordinances and regulations of all federal, state, county and city authorities

having jurisdiction in such matters. Tenant shall use its best efforts to prevent the contamination of the soil when using any potentially hazardous materials and will clean up any contamination caused by such substances during the term of the lease. Tenant shall indemnify, protect and defend Lessor against and hold Lessor free and harmless from any and all claims, judgments, penalties, fines, costs, liabilities or losses (including without limitation, diminution in the value of the Farming Parcels, damages for the loss or restriction on use of the Farming Parcels or of any amenity of the Farming Parcels, settlement of claims, clean up costs, attorneys' fees, consultant fees and expert fees) arising directly or indirectly from Tenant's failure during the lease term to comply with any of the foregoing obligations.

8. **TAXES AND UTILITIES.** Tenant shall promptly pay any and all taxes and assessments levied against any personal property of Tenant located on the Farming Parcels. Tenant shall promptly pay all charges for electricity and other utility services furnished to the Farming Parcels.
9. **INDEMNITY.** Tenant shall indemnify, protect and defend Lessor against and hold Lessor free and harmless from any and all claims for injury to persons or damage to property on or about the Farming Parcels from whatsoever cause, by whomsoever asserted, or howsoever arising during the term of the lease as a result of Tenant's negligence, willful misconduct or breach of this lease. Tenant does also agree to indemnify, protect and defend Lessor against and hold Lessor free and harmless from all claims for damage arising out of the Tenant's use or occupation of the Farming Parcels, including any that might arise as the result of the drifting sprays or dust or seepage of overflow or irrigation water used in connection with the growing of Specialty Crops on the Farming Parcels during the term of the lease.
10. **INSURANCE.** Tenant shall, at its sole cost and expenses, procure and maintain throughout the lease term public liability and property damage insurance with a single combined limit of 1,000,000 (bodily injury and property damage), insuring against all liability of Tenant, its authorized representatives, and Lessor arising out of and in connection with Tenant's use or occupancy of the Farming Parcels. All such insurance shall insure performance by Tenant of the indemnity provisions of paragraph 9 above. Lessor shall be named as an additional insured under each such policy and the policy or policies shall contain cross liability endorsements. Each policy of insurance to be obtained by Tenant pursuant to this paragraph shall be provided from at least thirty (30) days written notice to Lessor in the event of cancellation.
11. **COMPLIANCE WITH APPLICABLE LAWS REGULATIONS AND AGREEMENTS.** Tenant shall use the Farming Parcels in strict compliance with all laws, statutes, ordinances,

rules, restrictions, and orders of federal, state, or county governments, or of any agency thereof which may be applicable to the Farming Parcels or the use of occupancy thereof.

12. RIGHT OF ENTRY. Lessor, its agents or representatives shall have the right, at all times, to enter upon the Farming Parcels, to inspect the same or any crops growing or harvested hereon, appurtenance thereto, crops produced or equipment located thereon. Tenant shall supply Lessor and its representatives or agents with key or other instruments necessary to allow entry on the Farming Parcels.
13. RIGHT TO CURE TENANT'S DEFAULTS. If Tenant should fail to pay any charges, tax or other amounts herein required to be paid by it when due, or in the event that Tenant fails to pay any sums required to be paid hereunder to protect Lessor's interest herein, the same may be paid by Lessor and all sums so expended by Lessor shall immediately become due and payable from Tenant to Lessor and shall bear interest until paid at the lesser of ten percent (10%) per annum or the highest rate allowed by law.
14. EMINENT DOMAIN. In the event that all or any portion of the Farming parcels is condemned for public or quasi-public use, Lessor shall have the right upon thirty (30) day's written notice to Tenant to terminate this lease as to all or such portion so condemned. If this lease is so terminated as to all or any portion of the Farming Parcels, Lessor shall be entitled to all damages or monies awarded for such condemnation. Tenant shall be entitled to any compensation attributable to its interest in any then-growing crop on the Farming Parcels. Lessor shall have the sole right to defend or settle any such condemnation action with respect to all interests in the Farming Parcels, excepting Tenant's interest in crops.
15. LEGAL EFFECT. Each and every convenient of lease herein contained is expressly made a condition hereof.
16. DEFAULT. The occurrence of any of the following shall constitute default by Tenant:
 - (a) Default in the performance of any convenient or agreement herein contained with reference to the payment of money and such default continues for ten (10) days after written notice thereof, or should Tenant default in the performance of any covenant or agreement therein other than the payment of money and such default continues, without diligent effort to cure it for thirty (30) days after written notice thereof:
 - (b) The appointment of a receiver to take possession of the Farming Parcels, or any portion thereof, or of all, or substantially all, of the assets of Tenant.
 - (c) A general assignment by Tenant for the benefit of creditors;

- (d) The levy of any lien, writ of attachment, garnishment, or execution on all or any portion of Tenant's rights or interest under this lease; or
- (e) Any action taken or suffered by Tenant under any insolvency or bankruptcy act which shall in any way hinder or prevent the prompt and continuous payment of rental due hereunder, or which shall in any way disable Tenant from so paying said rental applying his assets to such payment.

17. REMEDIES

- (a) (CONTINUATION OF LEASE). Upon default of this lease by Tenant, lessor may, without notice to Tenant, elect to allow this lease to continue in full force and effect and to enforce all of Lessor's rights and remedies hereunder, including without limitation, the right to collect rent as it becomes due, as long as Lessor does not terminate Tenant's right to possession of the Farming Parcels. The following acts by the Lessor shall not constitute a termination of Tenant's right to possession:
 - (1) Acts of maintenance or preservation of efforts to select the Farming Parcels; or
 - (2) The appointment of a receiver on initiative of Lessor to protect its interest under this lease.
- (b) (TERMINATION OF LEASE). Upon default of this lease by Tenant, or at some later date if a default has occurred and is continuing and Lessor has not elected to terminate Tenant's right to possession Lessor may terminate this lease and may take possession of all crops, harvested or un-harvested, and may remove all persons and property from the Farming Parcels. Lessor may store the property removed in a public warehouse or elsewhere at Tenant's expense and for his account. Lessor, can be compensated, for any lost revenue, from the sale of those crops.
 - (1) All amounts, including but not limited to unpaid rent, owing under this lease at the time of such termination, and the amount by which such rent and other sums due between such time of termination and the time paid or a court award, whichever is earlier, exceed the amount of such loss that Tenant proves could have been reasonably avoided by Lessor, plus interest on all such amounts at the lesser of ten percent (10%) per annum of the highest rate allowed by law from the date due.
 - (2) The present value of the amount by which the rent attributable to the next harvest and other sums payable under this lease exceed the amount of such loss that Tenant proves could be reasonable abounded

by Lessor. Such present value shall be computed by discounting such amount at the rate of one percent (1%) plus the discount rate of the Federal Reserve Bank of San Francisco at the time of payment or award, whichever is earlier;

- (3) Any and all cost or expenses which Lessor may incur as a result of tenant's breach including costs and expenses in attempting to relet, including, but not limited to, reasonable expenses in retaking possession of the Farming Parcels, reasonable legal expenses, attorneys' fees and brokerage fees and reasonable costs of alteration of the Farming Parcels in connection with re-letting; and
- (4) Any other amounts necessary to compensate Lessor fully for all detriment proximately caused by Tenant's failure to perform his obligations hereunder or which in the ordinary course of things would likely result therefore; provided, however that Tenant's liability, if any, under this subparagraph (4) shall not exceed the sum of \$XXXX (ex \$25,000)

Efforts by lessor to mitigate the damages caused by Tenant's default of this lease shall not waive lessor's right to recover damages hereunder

The foregoing rights and remedies shall be concurrent and cumulative, and in addition to and not in derogation of , all other rights and remedies available to Lessor.

18. SURRENDER AND HOLDING OVER. Upon expiration of the term hereof or the sooner termination of this lease, Tenant shall surrender and deliver up possession of the Farming Parcels in good condition, reasonable wear and tear excepted. Any holding over by Tenant after expiration of the farm hereof shall be deemed to be upon a month-to-month tenancy at the monthly rental of 1/12th of the amount equal to 150% of the highest amount paid by Tenant as annual rent hereunder during the last five full years prior to expiration of termination of this Lease. Tenant hereby waives any rights it may have by reason of Section 1161(2) of the Code of Civil Procedure.
19. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this lease or any part thereof, or sublet the Farming Parcels, without the prior written consent of Lessor; nor shall Tenant's interest be assignable by operation of law without such prior written consent; Any such assignment of subletting without lessor's consent shall be valid and, at the option of Lessor, shall forthwith terminate this lease.

20. ATTORNEY'S FEES; GOVERNING LAW. In any action to enforce this lease or any of the provisions hereof, the prevailing party shall be entitled to reasonable attorneys' fees and costs. This lease shall be governed by and construed in accordance with the laws of the State of Hawaii

21. WAIVER. No express or implied waiver by Lessor of any default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent default of Tenant or a waiver of any of the rights of Lessor under the terms hereof.

22. NOTICE. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given upon delivery if hand-delivered, one (1) day after delivery to any overnight carrier service (fee for next day delivery pre-paid), or three (3) days after deposit in the United States mail, first class postage prepaid, and addressed to the appropriate party as follows:

Lessor: (insert address)

Tenant: (insert address)

Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided herein.

23. TIME. Time is of the essence hereof.

24. COUNTERPARTS. This lease may be executed in counterparts.

25. BINDING ON SUCCESSOR. Subject to limitations set forth in paragraph 20 above, this lease and each of its provisions shall be binding on and shall inure to the benefit of the parties' respective heirs, personal representatives, trustees, successors and assigns.

26. FINANCING: SUBORDINATION> Tenant acknowledges and agrees that Lessor has the right to mortgage or otherwise encumber its interest in the Farming Parcels. Tenant further agrees that upon written notice from lessor, Tenant will subordinate its interest under this Lease to the lien of any mortgage or deed of trust, provided that at the same time the beneficiary of the deed of trust or mortgage, as the case may be, executed in writing in recordable form, an agreement to the effect that the rights of Tenant will not be terminated or in any way affected by a default under the mortgage or deed of trust, or on account of the foreclosure thereof, or in exercise of the power of sale under any such encumbrance, and notwithstanding the occurrence of any of the aforementioned events Tenant shall not be disturbed in its possession and use of the Farming Parcels as long as it complies with the terms and provisions of this Lease. Tenant agrees that in

the event this Lease is subordinated to a future encumbrance, Tenant will agree to attorn to the purchaser upon any foreclosure or other sale under the encumbrance.

27. NO RECORDING. Unless Lessor and Tenant mutually agree otherwise, neither this lease nor any memorandum thereof shall be recorded.
28. OPTION TO EXTEND. Tenant is given the option to extend the lease term on all the provisions contained in this lease for a five (5) year period (the Extended Term 1”) following the expiration of the initial term by giving written notice of the exercise of the option (“Option Notice”) to Lessor at least six (6) months prior to the expiration of the initial term; provide, however, that if Tenant is in default on the date of the giving of the Option Notice, the option Notice shall be totally ineffective, or if Tenant is in default on the date the Extended Term is to commence, the Extended Term shall not commence and this lease shall expire at the end of the initial term. Rent payable during the Extended Term shall be subject to mutual agreement by Lessor and Tenant prior to the expiration of the initial term, and notwithstanding any provisions herein to the contrary, this lease shall not be extended beyond the initial term in the event lessor and Tenant are unable to agree on the rent payable during the Extended Term.
29. OPTION TO EXTEND BEYOND 10 YEARS. Tenant is given the option to extend the lease term for additional terms of ten (10) years (the “Extended Term 2”) and ten (10) years (the Extended term 3”) per the terms of Section 29 above.
30. EXPIRATION OR DISSOLUTION OF AGREEMENT. The expiration or dissolution of this agreement can only happen with the expressed written consent of both parties. At the time of expiration, if both parties have interest, Tenant would have first option to extend Agreement per Section 28 above, or under new, agreed upon terms.

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

Lessor:

Tenant:

Name:

Name:

By: _____
Representative, title

By: _____
Representative, title

