

## **COMMERCIAL FARM LEASE<sup>1</sup>**

This **COMMERCIAL FARM LEASE** (this “Lease”) is made and entered into on **[INSERT DATE]<sup>2</sup>** (“Effective Date”), by and between **[INSERT LEGAL NAME OF LANDLORD]**, a **[INSERT TYPE OF INDIVIDUAL OR ENTITY, SUCH AS A “HAWAII LIMITED LIABILITY COMPANY” OR “AN INDIVIDUAL”]** is **[INSERT MAILING ADDRESS]** (the “Landlord”), and **[INSERT LEGAL NAME OF TENANT]**, a **[INSERT TYPE OF INDIVIDUAL OR ENTITY, SUCH AS A “HAWAII LIMITED LIABILITY COMPANY” OR “AN INDIVIDUAL”]<sup>3</sup>** whose address is **[INSERT MAILING ADDRESS]** (the “Tenant”). In this Lease, Landlord and Tenant collectively referred to as the “Parties” and each individually as a “Party.”

### **BACKGROUND:**

A. Landlord is the owner of that certain real property located at **[INSERT PROPERTY ADDRESS]** identified by TMK No. **[INSERT TMK NUMBER]**, with a total area of approximately **[INSERT ACREAGE, OR SWITCH TO SQ. FT. IF APPROPRIATE]** acres together with all buildings and improvements on the land, and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Property”).<sup>4</sup>

B. Tenant desires to conduct certain farming or agricultural-related activities on the Property, and Landlord desires to lease the Property to Tenant for such activities.

C. Landlord and Tenant have reached agreement on the terms and conditions under which Landlord will agree to permit Tenant to use the Property for the purposes set forth herein, and the parties desire to document such agreement by way of this Lease.

### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the terms, covenants and conditions contained in this Lease, Landlord hereby leases the Property to Tenant **[\*OPTIONAL: USE THE FOLLOWING LANGUAGE IF THE LEASE PROPERTY DOES NOT CONTAIN DIRECT**

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<sup>1</sup> ***This is an annotated Lease, meaning that upon reviewing and negotiating the Lease, all the footnotes with annotations should be deleted so that the terms of the Lease control (and not optional or alternative provisions described in the footnotes). PLEASE ALSO READ IMPORTANT DISCLAIMERS AT THE END OF THIS LEASE.***

<sup>2</sup> *The “Effective Date” should usually be the date the parties sign the Lease and/or a date Landlord and Tenant both mutually agree to be bound by the terms of the Lease. It does not necessarily need to be the date that Tenant is first allowed access and use of the Property, which is defined as the “Commencement Date” later in the Lease.*

<sup>3</sup> *For both the Landlord and Tenant, it is important to use the parties’ legal names and identify their status (that is, a corporation, limited liability company, an individual, a husband and wife, a trust, etc.). The Landlord should be the legal owner of the property – best verified with a copy of a deed and/or recent title report. The Tenant should use their business’ name if it has been formed; if the Tenant uses its individual name instead of the business name, it could be subjecting itself to personal liability under the lease.*

<sup>4</sup> *It is important to be specific and precise about the Property that is being leased. If there is a legal description available (that is, a metes and bounds survey) the parties should attach it as an exhibit. Also, feel free to attach maps of the area as exhibits to the Lease to help orient all parties. Also, in Hawai’i, all county codes prohibit leasing a portion of a single subdivided parcel of land (that is, a portion of a property designated by a single tax map key (TMK) number). If the Tenant intends to use less than the entire parcel, it is a better practice to call the agreement a “license”, rather than a “lease” with a “licensor” and “licensee” rather than a “landlord” and “tenant”.*

**ACCESS TO A PUBLIC ROAD AND THE LANDLORD IS PROVIDING INDIRECT ACCESS THROUGH A ROADWAY\*]** together with a right to use the roadway as depicted in **Exhibit A** ("Roadway") for access to and from the Property.<sup>5</sup>

**SUBJECT, HOWEVER,** to any and all encumbrances set forth in **Exhibit B** attached hereto and incorporated herein by reference, and any and all other existing recorded uses, easements and other encumbrances affecting the Property.<sup>6</sup>

In consideration of the rights hereby granted, the acceptance thereof and the obligations hereby assumed, Landlord and Tenant hereby covenant and agree as follows:

**1. Lease Term.**

a. Commencement. The term of this Lease shall commence on **[INSERT DATE]** ("Commencement Date"). Rent shall not begin to accrue until the Commencement Date.

b. Expiration. Unless otherwise terminated in accordance with the terms of this Lease, this Lease shall continue in full force and effect until (check the box that applies).

Lease shall continue on a month-to-month basis until terminated by either Landlord or Tenant at any time upon thirty (30) days prior written notice delivered to the other party; or

**[ENTER LEASE TERM EXPIRATION DATE]**<sup>7</sup>

The duration of time beginning on the Commencement Date and continuing until the expiration of this Lease as set forth above shall be known as the "Term":

c. End of Lease Term. Upon expiration, termination or receipt of a notice of termination of this Lease, Tenant agrees to peaceably deliver to Landlord possession of the Property and Tenant shall restore the Property to reasonably the same condition as of the Effective Date and at the request of Landlord shall:

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<sup>5</sup> An entire parcel (that is, a separately designated TMK parcel) should have access to a public road, in which case this additional language is not necessary and should be deleted. However, if the agreement is only for a portion of real property (and this "lease" is turned into a "license"), then the portion of licensed property might not have access to a public road. If that is the case, the licensor should additionally grant the licensee the right to use certain roads between the licensed property and a public road abutting the Property.

<sup>6</sup> Encumbrances refer to the conditions and rights of third parties affecting the Property that would take priority over the Lease. It is important for the Tenant to understand how their use might be limited by encumbrances, such as utility easements, drainage rights, and other third-party leases that may affect the Property. The Landlord should provide a list of encumbrances, usually taken from a recent title report of the Landlord's deed or title policy. This is also a place where the parties can describe any portion of the property which is not included in the Lease.

<sup>7</sup> A month-to-month lease is typically referred to as an "at-will" lease and can be terminated at any time upon proper notice. Because farmers have crops in the ground and have typically planned significantly in advance, it would likely be more advantageous to negotiate a long-term 6-month, 1-year or longer lease with a specific expiration date. The lease could still be subject to termination if the farmer defaults in its obligations to pay rent or follow the rules under the lease, but all of that is within the farmers' control. However, keep in mind that a lease with a term of 5 years or more could be subject to Hawaii State conveyance tax.

i. remove from the Property all Improvements (defined below) and other personal property owned, located, installed or constructed by or on behalf of Tenant thereon;

ii. remove from the Property foundations and other fixtures made by or on behalf of Tenant;

iii. cover up all pit holes, ponds, drainages, trenches and other borings and excavations made by or on behalf of Tenant on the Property;

iv. level all walls, piles, hills, dams, retainers and other moved earth made by or on behalf of Tenant on the Property; and

v. leave the surface area of the Property free from debris arising from the operations and activities made by or on behalf of Tenant.

## 2. Rent.

a. Rent. During the Term, Tenant shall pay to Landlord a fixed **[MONTHLY/ANNUAL]** lease payment equal to \_\_\_\_ (\$\_\_\_\_.00) per **[MONTH/YEAR]** ("Rent").<sup>8</sup>

b. Payment Procedures; Penalties. Tenant shall pay rent to Landlord in lawful money of the United States at Landlord's post office address herein specified, or at such other place and to such other person or agent as Landlord shall designate by notice in writing to Tenant, at the times and in the manner herein provided, without deduction and without any notice or demand. The Rent shall be payable in advance of the first day of each month during the Term without notice or demand therefor and without any abatement, deduction, or setoff whatsoever. If the Commencement Date of the Lease is other than the first day of the month, the Rent for the month commencing with and including the Commencement Date and ending on and including the day prior to the first day of the following month, shall be prorated at the rate of one-thirtieth (1/30<sup>th</sup>) of the Rent per day and shall be due and payable on the Commencement Date.

c. Security Deposit. Upon commencement of the Term, Tenant shall pay a security deposit to Landlord equal to the Rent payable for one (1) month in an amount equal to \_\_\_\_ (\$\_\_\_\_.00) ("Security Deposit"). The Security Deposit will be held by Landlord, without liability for the payment of interest, as security for the performance by Tenant of all of the terms and conditions of the Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds. Upon mutual agreement by the Parties, all or part of the Security Deposit may be applied to Rent. Any balance of the Security Deposit remaining unused or unapplied upon the expiration or other termination of this Lease shall, if Tenant is not in default under this Lease at such time and after Tenant delivers possession of the Property to Landlord in the manner required by this Lease, be returned to Tenant, within fifteen (15) days from the expiration or termination of this Lease and delivery of the Property back to Landlord.

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<sup>8</sup> Rent can be negotiated to be paid monthly, quarterly or annually. This amount is known as the base rent. A Landlord may also require a Tenant to pay additional fees, such as utilities and taxes.

d. Additional Rent. During the Term, Tenant shall also pay to the Landlord, as additional rent, the following: **[INSERT NEGOTIATED TERMS]**.<sup>9</sup>

### 3. Use of Property.

a. Generally<sup>10</sup>. The Property shall be used only for the following permitted activities in accordance with the terms and conditions of this Lease and all applicable laws, rules or regulations, and subject, however, to the terms and conditions of this Lease (collectively, the boxes checked below, the "Permitted Activities"<sup>11</sup>).

- Cultivating agricultural crops, including:
  - Vegetables
  - Fruits
  - Herbs, microgreens, sprouts, etc.
  - Honey and/or honey bees
- Aquaponics and/or hydroponics;
- Aquaculture and/or aquafarming;
- Rotating and changing agricultural crops;
- Allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded;
- Allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions;
- Allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement
- Removing noxious weeds and/or invasive species;
- Conducting related agricultural operations;
- Maintaining, repairing, and replacing agricultural equipment;
- Maintaining, repairing, and replacing agricultural facilities;
- Breeding and cultivating livestock and the activities associated therewith;
- Value-added farm product processing;
- Conducting farm tours and agricultural tourism;
- Hosting paid events such as farm-to-table dinners, etc.;
- Other: \_\_\_\_\_

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<sup>9</sup> The parties may choose to negotiate additional rent (see following examples). Where additional rent is negotiated, the parties should carefully discuss and specify how the additional rent is determined so that there is no potential for dispute in the future.

- (i) Tenant shall pay \_\_\_% of Tenant's prior monthly/annual gross/net revenues to Landlord on the tenth (10<sup>th</sup>) day of the month/year;
- (ii) Tenant shall deliver to Landlord two (2) full Community-Supported Agriculture shares per season, valued at \$\_\_\_\_ per share.

<sup>10</sup> Generally, a grant of a lease implies a guarantee to the Tenant of "quiet enjoyment" which is a legal term that means the Landlord will refrain from acting in a way that substantially impairs the value of the leased Property or the ability of the Tenant to engage in permitted activities. The purpose of this section is to ensure that both parties are clear in advance about the rights to the Property.

<sup>11</sup> Going through a list of permitted activities is helpful for both the Landlord and Tenant so that the parties can set clear expectations of how the Tenant will be using the Property and what the Landlord is comfortable with allowing.

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b. Prohibitions. The Property shall not be used for any activities prohibited by local, state or federal laws, including any land use and zoning rules. In addition, Landlord and Tenant agree that the Property shall not be used for the following activities, each a "Prohibited Activity" (check all that apply):

- Aquaponics and/or hydroponics;
  - Aquaculture and/or aquafarming;
  - Commercial uses, other than those expressly permitted under Section 3(a) above;
  - Residential uses, including farm dwellings;
  - Tree removal;
  - Use of inorganic chemical fertilizers such as Round Up;
  - Planting of genetically-modified crops; ;
  - Storing vehicles or equipment not essential to the farm operation;
  - Installing permanent fencing or structure;
  - Other: \_\_\_\_\_
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c. Residential Use; Farm Dwellings. The Property shall not be used for any residential purposes, unless Tenant receives prior written approval by Landlord, which approval shall be not be unreasonably conditioned, withheld, or delayed; provided that if such residential use is approved, it shall be subject to all applicable laws. If residential use is permitted under the terms of this Lease, Landlord and Tenant agree that such residential use must be for farm dwelling purposes conducted strictly in accordance with Hawaii Revised Statutes Section 205-4.5(a)(4), as may be amended from time to time, and any such applicable state, county or other law, rule or regulation. Tenant shall be responsible for obtaining any and all permits, licenses and approvals necessary for any residential use on the Property; provided that Landlord shall cooperate in good faith to undertake any activities necessary to obtain such permits, licenses, and approvals.

d. **\*OPTIONAL\*** Access to Property<sup>12</sup>. During the Term, Tenant shall have the right to use the roadway as depicted on Exhibit A for vehicular and pedestrian access to and from the Property. Tenant's rights to use the Roadway shall be subject to the following terms and conditions:

- (i) Parking of vehicles on the Roadway is prohibited;
- (ii) Tenant agrees to use the Roadway in accordance with all applicable laws, rules and regulations and the terms and conditions of any applicable recorded and unrecorded easements which are described in Exhibit B attached hereto;
- (iii) Tenant shall at all times exercise reasonable precaution against damaging the Roadway; and,

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<sup>12</sup> Only use the following subsection (d) if the Property does not have direct access to a public road and the Landlord is providing indirect access over a roadway.

(iv) Should future development in a parcel adjacent and abutting the Property necessitate a relocation or realignment of the Roadway, Landlord shall have the right to relocate or realign the Roadway in its reasonable direction at Landlord's own cost and expense; provided, however, that (i) Landlord provides Tenant with an alternate means of access to and from the Property, and (ii) that any relocation or realignment of the Roadway does not unreasonably interfere with or adversely affect Tenant's use and quiet enjoyment of the Property.

#### **4. Acceptance and Maintenance of the Property**

a. Acceptance of the Property. Tenant accepts the Property and any improvements, fixtures, equipment or property thereon in their present, **AS-IS, WHERE IS** condition and **WITH ALL FAULTS**.

b. Maintenance of Property.<sup>13</sup> Tenant shall reasonably maintain the Property and any improvements, fixtures, and equipment existing thereon and which may be added by or on behalf of Tenant in the future in a safe, clean, orderly and sanitary condition, reasonable wear and tear excepted. Tenant shall be responsible for all repairs in and on the Property and any improvements, fixtures, equipment and property existing thereon and which may be added by or on behalf of Tenant in the future, and shall be responsible for the cost of all repairs. Tenant shall maintain and properly use and operate any electrical, gas, plumbing, sewage and septic tank maintenance and other fixtures or appliances which may be currently or in the future located in or on the Property. Tenant is responsible for the repair of any stoppage in plumbing fixtures or lines, and any damage caused by Tenant, its guests, invitees, agents, licensees, visitors and others.

c. Observance of Laws. Tenant and Landlord shall, at all times during the time of this Lease, comply with all applicable laws, ordinances, rules and regulations relating to Tenant's use and operation of the Property. Tenant shall give prompt notice to Landlord of any notice it receives of a violation of any law, ordinance, rule or requirement of any governmental authority with respect to the Property, or the use and operation thereof.

d. Waste. Tenant shall not commit or suffer to be committed any waste upon the Property.

e. Property Security. Landlord is not responsible for the security of the Property. Tenant will be responsible for its own acts on the Property well as the acts of Tenant's agents, employees, contractors, or invitees. Tenant shall take reasonable steps to protect the Property, and all persons on the Property, against trespass, theft, malicious damage, vandalism, and assault.

#### **5. Additional Agreements and Covenants.**

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<sup>13</sup> *Maintenance typically refers to basic, routine upkeep to prevent the deterioration of the facilities, such as annual servicing or repainting. Generally, this is the Tenant's responsibility. Repairs generally keep the property in its ordinary, efficient, operating condition or restore the property to its original operating condition. Routine repairs such as a leaky faucet or broken fence rail are typically the responsibility of the Tenant. Major repairs (including replacements) such as new siding or roofing, heating systems, or foundation repair are typically the responsibility of the Landlord, unless otherwise expressly assigned in the lease. Landlords of agricultural properties have fewer legal responsibilities than do Landlords of residential properties. A Tenant under a long-term lease may be held to greater maintenance, repair, and restoration responsibilities than a residential or shorter-term residential Tenant (which is how this section is drafted).*

a. Landlord Access. Upon mutual agreement by the Parties, Tenant shall permit Landlord and its agents to enter into and upon the Property at all reasonable times for the purpose of inspecting the general condition and state of repair of same or for showing the Property to any prospective lessee, mortgagee or purchase of the Property, or for the purpose of maintaining the Property.

b. Improvements. Tenant shall not construct, erect, or place any structure or other Improvements on the Property and shall not demolish, remove, remodel, replace, alter or make any addition to any Improvements now or hereafter located on the Property, unless Landlord provides prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Under this Lease, Tenant is not required to construct Improvements or improve the Property. All buildings, structures, fences and improvements erected and placed on the Property (the "Improvements") shall be the property of Tenant and may be removed by Tenant at the expiration or termination of this Lease. Notwithstanding anything to the contrary herein, Landlord expressly permits Tenant to install the following temporary Improvements; provided, however, all such temporary Improvements are installed in a safe manner, properly permitted as may be required by applicable laws, operated in compliance with all applicable laws, including health and safety rules, and removed by Tenant upon the expiration or earlier termination of this Lease (check all that apply)<sup>14</sup>:

- Wash station;
  - Vegetable packing/processing station and/or facility;
  - Aquaponics/aquaculture improvements;
  - Storage facilities, including refrigerators and coolers;
  - Greenhouses and/or high tunnels;
  - Fencing;
  - Farm stand;
  - Aquaponics/aquaculture improvements;
  - Other: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

c. Abandonment/Abandoned Possessions. If Tenant is absent from the Property for thirty (30) continuous days or more, without written notice to Landlord, and Tenant has not paid the Rent to Landlord for any period of time during which Tenant was absent from the Property, Landlord shall consider the Property abandoned. If Tenant abandons the Property and leaves Improvements or personal property, which Landlord determines to be of value, Landlord may store, sell or donate the items. If Landlord, in its reasonable discretion, determines the abandoned personal property is valued at less than \$700.00, Landlord may dispose of it without further notice or liability.

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<sup>14</sup> Most commercial leases do not permit Tenants to make improvements to real property, because by law, they become the property of the Landlord. However, farmers often need to install temporary structures such as greenhouses, wash stations, etc. The parties should be specific about what types of temporary structures the Tenant can install and require the Tenant to follow all laws and remove the structures at the end of the term of the Lease.

d. **\*[OPTIONAL]\*<sup>15</sup>** Landlord Cooperation. Landlord agrees that Tenant may apply for and obtain various subsidies, grants, certifications, allocations, reimbursements, and financial and practical support from governmental and private agencies, including from the Hawaii State Department of Agriculture, the U.S. Department of Agriculture Farm Service Agency, U.S. Department of Agricultural National Resource Conservation Service and various organic certification programs. Landlord agrees to reasonably cooperate with any such applications made by Tenant, which cooperation may include, without limitation, completing and executing landowner affidavits and certifications; provided, however, Landlord shall not be required to pay any out-of-pocket expense or encumber the Property with long-term conditions or restrictions.

e. **\*[OPTIONAL]\*<sup>16</sup>** Land Management Plan. Landlord and Tenant shall develop a Land Management Plan, attached hereto as **Exhibit C** ("Land Management Plan"). The purpose of the Land Management Plan is address the natural characteristics of the Property, outline pertinent ecological principles, and set our environmentally friendly practices that the Tenant shall implement throughout the Property. The Landlord and Tenant shall cooperate to implement the plan and amend it from time to time as needed, with the help of mutually agreeable land use consultants where appropriate. Both the Landlord and Tenant must agree in writing to any changes in the Land Management Plan before such changes take effect.

f. **\*[OPTIONAL]\*<sup>17</sup>** Good Husbandry. Tenant shall prepare, plant, cultivate, maintain, harvest and replant the Property using methods and practices of good husbandry generally recognized as appropriate for the crop selected and planted, the climatic, soil and other environmental conditions of the Property as compared to lands similarly situated or subject to similar conditions.

**6. Insurance<sup>18</sup>**. Tenant shall procure at its own cost and expense and keep in force during the entire Term of this Lease, a policy of general comprehensive liability insurance, in form and with such insurance company or companies as shall be approved by Landlord, with such reasonable minimum limits as shall be prescribed by Landlord, in its reasonable discretion, from time to time but initially with combined single limits for bodily injury and property damage of not less than \$1,000,000 in any one occurrence. Such policy or policies shall: (i) cover occurrences arising out of the use, occupancy, misuse or condition of the leased Property, improvements thereon, Landlord's adjacent property (if any) and other adjoining and nearby areas; (ii) name Landlord as an additional insured; (iii) be deposited with Landlord; (iv) require the insurer to give Landlord at least thirty (30) days written notice of its intention to cancel, terminate or amend the policy or policies in any material respect; and (v) contain a waiver by the insurer of any right of subrogation to any right of Landlord or Tenant against them or any person acting under them.

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<sup>15</sup> This optional provision may benefit the Tenant if they are anticipating applying for various farmer programs that require landlord consent/approval.

<sup>16</sup> This optional provision may be used where the Landlord and Tenant want to detail specific farming practices and plans.

<sup>17</sup> This optional provision may be used where the Landlord and Tenant want to detail specific farming practices.

<sup>18</sup> Liability means legal responsibility for one's acts or omissions, typically due to negligence, failure to perform a promised act, or the commission of a crime, for example. Typically, the Landlord wants assurance that s/he will not be held liable for any tenant transgression. Likewise, the Tenant wants to limit his or her exposure and keep the Landlord responsible for losses under certain circumstances. Appropriate insurance coverage will prevent a significant economic loss for either the Landlord or the Tenant.



7. **Assignment.**<sup>19</sup> Except upon the prior written consent of Landlord, which consent may be granted or withheld in Landlord's reasonable discretion, Tenant will not voluntarily or involuntarily transfer, convey, assign, mortgage or pledge this Lease or any right or interest of Tenant hereunder, nor sublet any part of the Property, nor permit the use or occupancy of any portion of the Property by anyone other than Tenant or such parties as first approved by Landlord in writing; provided, however, that Agricultural Activities constitute a permitted use not requiring Landlord's approval. If this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect Rent from the assignee. If the Property or any part thereof are subleased or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord may collect monthly from the sublessee or occupant.

8. **Hazardous Materials.**

a. **Compliance with Environmental Law.** Tenant shall, with respect to Tenant's use of the Property, at all times, at its own cost and expense, comply with the provision of all federal, state and local Environmental Laws. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Property in any manner prohibited by law.

b. **Indemnification**<sup>20</sup>. Tenant shall indemnify, defend and hold harmless Landlord and its directors, officers, shareholders, employees, agents, successors and assigns (collectively, the "Landlord-Indemnitees") from and against any and all loss, cost, penalty, fine, damage, liability or expense (including, without limitation, attorney's fees and costs) arising or resulting from or in any way connected with:

(i) The presence of Hazardous Materials in, on, at, under, about or beneath the Property, to the extent (i) caused at any time by Tenant or any person claiming under Tenant (including contractors, employees, licensees, agents, invitees or visitors of Tenant) or, (ii) caused by anyone else during the Term with respect to the Property;

(ii) The presence of any underground storage tank in, on, under, about or beneath the Property and the discharge or release of any Hazardous Materials from any such tank;

(iii) Any Environmental Activity conducted on the Property by Tenant or by any other party during the Term;

(iv) The violation of any Environmental Law pertaining to the physical condition of the Property or any Environmental Activities thereon, to the extent such violation: (i) was caused at any time by Tenant or any person claiming under Tenant (including contractors, employees, licensees, agents, invitees or visitors of Tenant) or (ii) originated in the Property and was caused by anyone else during the Term; and,

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<sup>19</sup> *Assignment and sublease are terms for transferring the Tenant's leasehold interests to a third party. In assignment, the entire leasehold interest is transferred from the current Tenant to a new one. In a sublease, only a partial interest is transferred. Most leases do not permit assignment or sublease.*

<sup>20</sup> *"To indemnify" another party is to compensate that party for loss or damage that has already occurred or to guarantee through a contractual agreement to repay another party for loss or damage that occurs in the future. Sometimes a Landlord will require being indemnified by the Tenant. A "hold harmless" provision means that the identified Party (again, generally the Landlord) is not liable for certain damages. Some courts distinguish "indemnification" and "hold harmless," while others do not.*

(v) Any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Landlord-Indemnitees which directly or indirectly relates to, arises from or is based upon any of the matters described in this Section 8.

c. Definitions. The capitalized terms used in this Section 8 shall have the following meanings:

Environmental Activity means any storage, presence, existence, release, threatened release, use, generation, abatement, removal, disposal, handling or transportation of any hazardous substances in, to, on, under, from, or about the Property.

Environmental Law or Environmental Laws means all federal, state or local laws, statutes, ordinances, rules, regulations and other requirements of any governmental authority or agency, now or hereafter in effect, relating to environmental conditions, industrial hygiene or hazardous substances.

Hazardous Materials means any and all radioactive materials, radon and asbestos, organic compounds known as polychlorinated biphenyls, chemical known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, toxic pollutants, mold, petroleum substances or petroleum products, pesticides, and any and all other substances or materials defined as, or included in the definition, of hazardous substances, hazardous wastes, hazardous materials, toxic substances or toxic pollutants under, or for the purposes of, Environmental Laws.

**9. Taxes.**

a. From and after Commencement Date, Tenant shall pay or cause to be paid, the following taxes during the Term of the Lease applicable to (a) the Property and any Improvements located on the Property; (b) personal property located on or in the Property (check all that apply):

- Real property taxes;
- General excise taxes;
- Conveyance taxes;
- Income taxes; and,
- Other:

\_\_\_\_\_  
\_\_\_\_\_.

Unless required otherwise by Landlord, Tenant shall make all such payments directly to the appropriate charging or taxing authority at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment with any interest at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. All payments of taxes or

assessments or both, including permitted installment payments, shall be prorated for the initial Lease year and for the year in which the Lease terminates.

b. **Exemptions.** With respect to any taxes chargeable to Tenant under this Lease, if Tenant is eligible for exemption, waivers or abatements from any such taxes from taxing authorities (e.g., a real property tax exemption for agricultural use), Tenant shall be permitted to apply for any such exemptions, waivers or abatements, at Tenant's sole cost and expense; provided, however, the requested exemption does not (i) obligate or condition the Landlord or the Property past the term of the Lease; or (ii) materially and adversely affect the Landlord.

c. **Liens.** With respect to any taxes for which Tenant is responsible that may constitute a lien on the Property, Tenant shall promptly pay such taxes unless the proceeding in which it contests such tax shall operate to prevent or stay the collection of the taxes so contested or unless Tenant removes any such lien by bonding or otherwise, to the satisfaction of Landlord.

**10. Condemnation.** In case at any time or times during the Term the Property or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Tenant in the Property so taken or condemned shall at once cease and terminate, and Tenant shall not by reason thereof be entitled to any claims against Landlord or others for compensation or indemnity for its interest, and Landlord shall be entitled to all compensation and damages payable for or on account of the Property, the land underlying the Property, the right to access the Property and any improvements, fixtures, equipment or property thereon.

**11. Utilities.** Tenant acknowledges and agrees that it shall be responsible for paying the appropriate suppliers for all water, gas, electricity, light, heat, telephone, power, cesspool/septic pumping, sewer, cable, and other utilities and communications services used by Tenant on the Property during the Term, whether or not such services are billed directly to Tenant. Tenant further acknowledges and agrees that Landlord shall not be liable for any interruption or loss of the above-referenced utilities and communication services. If the charges described in the preceding sentence are not assessed directly to Tenant, Tenant shall pay to Landlord such charges within fifteen (15) days after receipt from Landlord of copies of the notices of or relating to such charges.

**12. Default and Remedies.**<sup>21</sup>

a. **Tenant Event of Default.** The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") by Tenant under this Lease:

(i) The failure of Tenant to pay any installment of Rent or other charge or money obligation required by this Lease within twenty (20) days after such Rent or other charge is due;

(ii) The failure of Tenant to perform, comply with or observe any agreement, covenant or obligation of Tenant under this Lease (excluding those set forth in subsections (i) above or subsections (ii) through (v) below), and if such failure continues for a

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<sup>21</sup> *Default is an omission or failure by either Party to meet a provision of the lease. If the default is not "cured" ("remedied") by the defaulting Party, actions may be taken by the other Party, including (but not limited to) terminating the lease. Defaults and remedies should be specified in reasonable detail. An agricultural lease should spell out what happens to crops remaining at the time of termination, whether at the end of the term or earlier.*

period of fifteen (15) days after written notice to Tenant, or, if such failure cannot be corrected within such fifteen (15) day period, if Tenant does not commence to correct such failure within said thirty (30) day period and thereafter diligently prosecute the correction of same to completion within a reasonable time, not to exceed one hundred and eighty (180) days;

(iii) The levying on or against the property of Tenant of a writ of execution or attachment that is not released, discharged or bonded against within thirty (30) days after receiving notice of the filing;

(iv) The institution in a court of competent jurisdiction of bankruptcy proceedings against Tenant or any of Tenant's shareholders, or for the appointment of a receiver of the property of Tenant, provided that such proceedings are not dismissed, and a receiver, trustee, or liquidator appointed therein is not discharged, within thirty (30) days after the institution of said proceedings; or

(v) Tenant's failure to discharge, remove or bond against any mechanic's lien claim affecting the Property resulting from Tenant's activities within thirty (30) days after receiving notice of the filing of any attachment order for the lien.

b. Landlord Remedies. Upon the occurrence of an Event of Default by Tenant, Landlord, in addition to any and all other rights and remedies available to Landlord at law or in equity and in addition to all other rights or remedies reserved herein, shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever and without releasing Tenant from any obligation under this Lease. Accordingly, Landlord may enter the Property without terminating this Lease and may perform any covenant or agreement or cure any condition creating or giving rise to an Event of Default, and Tenant agrees to pay to Landlord on demand, the amount expended by Landlord in performing such covenants or agreements or satisfying or observing such condition. Landlord, and Landlord's agents and employees, shall have the right to enter the Property in the exercise of such rights and such entry and such performance shall not terminate this Lease or constitute an eviction of Tenant; or at Landlord's option, Landlord may terminate this Lease by written notice thereof to Tenant. In such event, Tenant shall surrender possession to the Property without terminating this Lease, as provided herein, Landlord shall in either such event be entitled to recovery from Tenant of all damages to which Landlord may be entitled at law by virtue thereof, including (without limitation) all costs and losses incurred by Landlord as a result of the Event of Default by Tenant hereunder and any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, all of which sums Tenant agrees to reimburse to Landlord on demand. Landlord shall, in the exercise of any of its remedies hereunder, be obligated to mitigate its damages.

c. Right to Harvest Crops. Check the box that applies to this Lease:

Notwithstanding the termination of this Lease pursuant to Section 12(b) above or upon the expiration of the Term of this Lease, Tenant shall continue to have such use of the Property as is necessary to harvest any crops that have been planted as of the date Landlord notifies Tenant that this Lease is terminated, or the Lease expires by its terms.

If Landlord terminates this Lease pursuant to Section 12(b) above, or upon the expiration of the Lease, Tenant shall continue to have reasonable use of the Property, for no more than three months from the date of termination or expiration, to harvest the crops that Tenant planted or the fruits of any tree, bush, or grass that was growing in the Property before the date

of termination or expiration. Tenant shall notify Landlord within two weeks of the date this Lease is terminated or expires that Tenant intends to exercise the right granted under this section. If Tenant fails to timely notify Landlord of their intent to exercise the right granted under this section, any crops growing in the Property shall be deemed abandoned.

Upon the termination of this Lease pursuant to Section 12(b) above, or upon the expiration of the Lease, Tenant shall have no right to harvest any crops that have been planted and remain on the Property as of the date of termination or expiration.

**13. Miscellaneous Provisions.**

a. Entire Agreement. Landlord and Tenant agree that this Lease contains all of the agreements, promises and understandings between Landlord and Tenant. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and shall be null and void. No oral agreements, promises, or understandings shall be binding upon either Landlord or Tenant in any dispute, controversy or proceeding at law. Any addition, variation or modification of this Lease shall be void and ineffective unless made in writing and signed by the parties hereto.

b. Governing Law; Jurisdiction. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Lease without regard for choice of laws rules. Each of the parties hereto expressly and irrevocably subjects itself to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii and agrees that suit may be brought only in such courts with respect to any matters arising out of this Lease.

c. Notices. Any notice or communication required or permitted under this Lease shall be given in writing, sent by: (a) personal delivery delivered by a representative of the party giving such notice; or (b) first-class mail delivery by recognized overnight courier:

If to Tenant:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attn: \_\_\_\_\_

If to Landlord:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attn: \_\_\_\_\_

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance with this Section 15(e). Any such notice or communication shall be deemed to have been delivered: if by personal delivery, when actually received by the addressee or a representative of the addressee at the address provided above; if by overnight delivery, the business day after the notice is sent; or, if by fax, upon electronic conformation of receipt by the receiving fax machine.

d. No Franchise or Joint Venture. Landlord and Tenant hereby acknowledge and agree that this Lease shall not be construed or deemed to create a partnership, joint venture, employment or agent relationship between the parties hereto.

e. Counterparts and Fax or Email/Pdf. This Lease may be executed in counterpart or by fax, or by emailing .pdf or other compressed digital files, or any combination of the foregoing. All counterparts together shall constitute one and the same Lease.

f. Exhibits. All exhibits referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

g. Severability. If any clause, provision or section of this Lease is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions herein.

h. Successors and Assigns. Except as otherwise provided herein, this Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

i. Amendments. No amendment or modification of this Lease shall be binding unless in writing and duly executed by both parties.

j. Attorney's Fees. In the event of litigation or arbitration for the interpretation, enforcement, termination or cancellation hereof, or for damages resulting from a default hereunder, or which in any manner relates to this Lease, the prevailing party shall be entitled to recover attorney's fees incurred in connection therewith.

k. No Recordation. Neither this Lease nor any short form or other memorandum thereof shall be filed in the Land Court or recorded in the Bureau of Conveyances of the State of Hawaii.

*[signature page follows.]*

**IN WITNESS WHEREOF**, Landlord and Tenant have read the foregoing and intending to be legally bound hereby, have executed this Lease as of the Effective Date.

**“Landlord”**

\_\_\_\_\_  
Name:

Title:

**“Tenant”**

\_\_\_\_\_  
Name:

Title:

**IMPORTANT DISCLAIMERS**  
**PLEASE READ AND THEN DELETE BEFORE EXECUTING THIS LEASE**

**No Legal or Business Advice**

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**Exhibit A**

**Map of Property and Roadway**





**Exhibit B**

**Encumbrances on Property**