

Agreement No. 2012- 119

**WASTEWATER MUNICIPAL FARM LEASE
CITY OF DELANO**

This Lease is made and entered into this 2 th day of November, 2012 between the City of Delano, a municipal corporation, hereinafter called "Lessor" and Billy Morris and Donnie Morris, dba B&D Farms, hereinafter collectively called "Lessee".

WHEREAS, Lessor owns improved farmland, among other properties, for the purpose of locating and maintaining thereon sewage disposal facilities for its City sewer services and the immediate need for the present use by Lessor of all said real property does not exist (but the Lessor desires to keep said property for future needs); and

WHEREAS, the Lessee desires to rent a portion of said property for agricultural use; and

WHEREAS, it is the understanding of the parties that an important consideration for the rental of this land is to provide for the Recycled Water upon said Premises, as it comes from the sewage disposal and treatment plant of the Lessor, as well as the continued development of the land for its improvement for irrigated agricultural purposes;

NOW THEREFORE, and in consideration of the mutual covenants herein contained, it is mutually agreed by and between the parties hereto as follows:

1. DESCRIPTION:

Lessor hereby Leases to Lessee and Lessee hires from Lessor, on the terms and conditions hereinafter set forth, that certain real property hereinafter referred to as the "Premises" situated in the County of Kern, State of California, and more particularly described in Exhibit "A" as if fully set forth herein, consisting of approximately 483 ± acres.

2. TERMS:

The term of this Lease shall be for a period of ten (10) years, commencing on January 1, 2013 and terminating on December 31, 2022.

3. RENT:

A portion of the Premises consists of approximately forty two (42) ± acres of almond trees ("Almond Acres"). The rent for the Almond Acres shall be three hundred dollars (\$300.00) per acre per year for 2013 and 2014 and twenty-five percent (25%) of the gross revenues of the Lessee for the succeeding years, 2015 through 2022. Rent for 2015 shall be based on the gross revenue from year 2014. Rent for 2016 shall be based on the gross revenue from year 2015, in that order, up to the termination of this lease in 2022. Lessee shall submit to Lessor an annual gross revenue report no later

than January 15th of each year following the expiration of the preceding year's Lease to the address in Item 45.(b) of this lease. See Exhibit "B" for sample rent computation.

As for the remaining four hundred forty one (441) ± acres that makes up the Premises, Lessee shall pay to Lessor, a yearly cash rental of one hundred twenty five dollars (\$125.00) per acre. All rents shall be payable on equal installments on a quarterly basis, on the designated day of the following months: March 1, June 1, September 1 and December 1, of each year of this Lease. In addition, a cost of living adjustment of two percent (2%) per year shall be applied after the first full year of the lease and every year thereafter.

Any holding over after the expiration of the term of this Lease, with the consent of Lessor will not be considered a renewal but shall be treated as a tenancy from month to month with a rent equivalent to the yearly prevailing rent at the time, divided by twelve (12), and shall otherwise be on the terms and conditions specified in this Lease as applicable.

4. ADDITIONAL RENT:

If Lessee fails to make a rental payment in a timely manner as provided in Section 3, Lessee shall be charged an additional ten percent (10%) of the original amount which is then due and said amount shall be considered as additional rent. In addition, for any rent, which includes additional rent which is more than twenty (20) days past due, the Lessor may at its option place a UCC-1 lien on any crop or crops on the Premises and take any other action it deems necessary.

5. USE.

The Premises shall be continually used for the growing of lawful agricultural crops as permitted by this Lease, and for activities directly related thereto. The Premises shall not be used for any other purpose without the prior written consent of the City Manager of the City of Delano.

6. PERMITTED CROPS.

Only the permitted crops per Compliance Order C.4, Water Recycling Specifications in Exhibit "C" shall be grown on the Premises.

7. SIGNS;

Except as expressly set forth herein, Lessee agrees not to allow the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of Lessor. In the event of a violation of this provision by Lessee or anyone claiming under Lessee, Lessee hereby authorizes Lessor, as Lessee's agent, to enter the Premises and to remove and dispose of any such sign, signboard or other advertising and to charge the cost and expense of any such removal and disposal to Lessee who agrees to pay the same on demand.

8. INSURANCE:

Lessee shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage
2. Worker's Compensation insurance as required by the State of California and Employer's Liability insurance.
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limits shall be twice the required occurrence limit.
2. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Full replacement cost with no co-insurance penalty provision.

Any deductibles or self-insured retentions must be declared to and approved by the Lessor. At the option of the Lessor, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Lessor, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Lessor guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The Lessor, its officers, officials, employees and volunteers are to be covered as insured with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the Lessor, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Lessor.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:V.

Lessee shall furnish Lessor with the original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Lessor or on other than the Lessor's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Lessor before work commences.

The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Lessee hereby agrees and acknowledges that the Premises have been accepted in an "as is" condition and without representation or warranty by Lessor as to fitness for any purpose or use.

9. CASUALTY INSURANCE:

The parties each specifically acknowledge that Lessor shall not be obligated to keep the Premises insured against fire, or any other insurable risk. Lessee hereby and forever waives all right to claim or recover damages from Lessor in any amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other casualty.

10. TAXES. ASSESSMENTS AND LIENS:

Lessee agrees to pay, when due, all taxes and assessments which may be levied against Lessee's possessory interest in the Premises and upon any crops or personal property which Lessee causes to be grown, placed or maintained upon the Premises, and agrees to keep Premises free from all liens and encumbrances by reason of the use of occupancy of the Premises by Lessee or any person claiming under Lessee except for any UCC-1 lien which is placed against the crop or crops growing on the Premises.

11. IMPROVEMENTS:

Lessee shall not make any alterations, addition, or improvements in excess of \$10,000 upon the Premises without the express prior written consent of Lessor. All alterations, additions and improvements shall be done in a good and workman like manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all laws and ordinances relating thereto. Unless otherwise expressly agreed to by Lessor, any and all alterations, additions and improvements shall remain on, and be surrendered with the Premises upon the expiration or termination of this

Lease. Lessee shall timely pay all costs associated with any and all improvements and shall keep the Premises free and clear of all mechanics's liens.

Lessee agrees that all structures and improvements, such as fences, gates, towers, derricks, tanks, pipes or other improvements, whether of like or different nature than the foregoing, and excepting therefrom any personal property of Lessee's, shall be and remain a part of the real property and shall not be removed or damaged by lessee after construction or installation and shall be surrendered to Lessor upon termination of this Lease.

Lessee agrees that any and all irrigation pipelines, well pumping equipment and other structures, buildings and fixtures appurtenant hereto, hereinafter collectively referred to as "irrigation equipment" located on the Premises are and shall remain the property of the Lessor and shall be surrendered with the Premises upon the expiration or termination of this Lease. In consideration of the privilege of using the same, Lessee agrees to maintain, operate, repair and replace if necessary at Lessee's sole cost and expense, said irrigation equipment during the continuance of this Lease. Any irrigation equipment placed on the Premises by Lessee, or installed by lessee to replace such equipment, shall become the property of Lessor and shall remain upon and be surrendered with the Premises upon the expiration or termination of this Lease.

Lessee agrees that any damage to constructions and improvements caused by Lessee or any person visiting or doing business with Lessee on the Premises, shall be repaired in good order at the sole expense of Lessee.

12. PESTICIDES AND HERBICIDES:

Lessee agrees that any and all pesticide or herbicide applications on the Premises shall be made in strict accordance with all Federal State, County and local laws. Lessee further agrees to dispose of any pesticides, herbicides or any other hazardous materials which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

13. UNDERGROUND TANKS:

Notwithstanding anything to the contrary set forth in this Lease, Lessee shall not have the right to install underground or aboveground storage tanks without the express prior written consent of the Lessor.

14. HAZARDOUS MATERIALS INDEMNITY:

Lessee hereby agrees to indemnify and hold harmless Lessor and its officers, employees, servants and agents from and against any and all claims, actions, losses, liabilities, damages, costs, attorney's fees and other expenses (A) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or

indirectly arising out of the use, generation, storage or disposal of Hazardous Materials on the Premises, or arising out of the Premises, and (B) including, without limitation, the cost of any required or necessary plans. to the full extent that such action is attributable, directly or indirectly, to the presence, or disposal of Hazardous Materials on the Premises. As used in this Section, Hazardous materials means any flammable explosives, radioactive materials, asbestos, Polychlorinated Biphenyls (PCBs) hazardous waste, toxic substances of related materials, including, without limitation, substances defined as "hazardous substances" , "hazardous materials" or "toxic substances" in the Comprehensive Environmental response, Compensation and Liability action of 1980 as amended, 42 USC, Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC, Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC, Section 6901, et seq.; the Toxic Substances Control Act 15 USC, Section 2601, et seq.; any other Federal, State County or local law applicable to the Premises, and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of this Section shall survive the expiration or termination of this Lease and shall relate back to all periods of Lessee's previous ownership or possession of the Premises.

15. WATER:

Lessee shall not extract water from the Premises without written permission of the Lessor. Should water be extracted, Lessee shall provide Lessor with a monthly written statement of water extracted. In addition Lessee shall be solely responsible for all costs and expenses of extraction and metering, and for all reporting required to the Lessor and any other entities.

16. UTILITIES:

Lessee agrees to pay all charges and assessments for or in connection with electric current and all other utilities which may be furnished to or used on the Premises by Lessee.

17. WORKER'S COMPENSATION:

Lessee is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing farming under this contract.

18. MAINTENANCE:

Throughout the term of this Lease, Lessee shall, at Lessee's sole cost and expense, repair, replace keep and maintain the Premises in good order, condition and repair. Lessee shall at Lessee's own expense, take all actions and precautions necessary for the care of the Premises including, but not limited to, irrigation, insect control, disease

control, weed control, weed abatement in accordance with the Kern County Fire Department's annual Weed Abatement Program, rodent control, soil erosion control and any other items necessary for the use of the Premises in accordance with approved standards of farming and agricultural practices. Lessee shall, at its sole cost and expense, keep any buildings, fences, irrigation systems, pumps, motors, wellheads, gearing and other appurtenances, or other improvements on or placed on the Premises in good repair and condition. Lessor shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Lease. Neither shall Lessor be obligated to perform any precautionary nor prevention measures with respect to the Premises, including, but not limited to, drainage and flood control measures. Should Lessor perform any of the foregoing, such services shall be at the sole discretion of Lessor, and the performance of such services shall not be construed as an obligation or warranty by Lessor of the future of ongoing performance of such services. Notwithstanding the foregoing, Lessee is not required to repair or replace any underground well, pumps, columns or casings.

19. DISCRIMINATION:

Lessee agrees not to discriminate against any person, or class of person, by reason of race, color, creed, national origin, religion, age or sex in the use of the Premises.

20. ASSIGNMENTS AND SUBLETTING:

Lessee shall not assign the Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee except) to occupy or use the Premises, or any portion thereof, without the prior written consent of Lessor. Said consent is at the sole discretion of Lessor. A consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. In addition, any consideration that Lessor receives for any sublease which is greater than that paid by Lessee to Lessor shall be divided fifty/fifty (50/50) between Lessor and Lessee. This Lease shall not, nor shall any interest herein, be assignable, as to the interest of Lessee by operation of law, without the written consent of Lessor. Any assignment or subletting without such consent shall be void and shall, at the option of Lessor, terminate this Lease.

21. INSOLVENCY OR BANKRUPTCY:

If Lessee shall be adjudged, bankrupt or insolvent this Lease shall thereupon immediately terminate and the same shall not be treated as an asset of the Lessee under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Lease shall immediately become null and void and of no effect, and the Lessor may immediately retake possession of the Premises.

22. GOVERNMENT PROGRAMS.

Lessee shall retain and preserve any agricultural cotton or other allotment on said land and shall not transfer or combine said allotment or any part of the same, in any manner which will jeopardize its retention or value to the Lessor. Lessee further agrees to inform Public Works Director of any intention to put Lessee's cotton base in combination with that of Lessor in order that proper certification of such action may be made at the Agricultural Stabilization and Conservation Service (ASCS) Office in Bakersfield, California. Any perennial crop other than alfalfa, planted by Lessee shall first be approved by Lessor.

Lessee shall retain and preserve the agricultural (wheat, corn, milo, and barley) and all allotments now or hereafter placed on said land, and shall not transfer or combine said allotments, or any part of the same, in any manner which will jeopardize its retention or value to the Lessor without first obtaining the written consent of the Lessor.

Lessee shall not enter into any soil, conservation or cropping agreement affecting the Premises, irrespective of whether such soil conservation or cropping agreement shall be proposed or submitted under, or in compliance with any Federal, State or local law, or by private agreement, without the prior written consent of the Lessor, and upon such terms and conditions as Lessor may specify. Lessee and upon the written request of the Lessor, therefore, shall enter into and execute any and all such soil conservation or cropping agreement affecting said Premises. Lessee agrees to abide by and comply with all soil conservation or cropping agreements affecting said Premises which have been theretofore or shall be hereafter executed by or with the written consent of the Lessor.

23. STATUTORY COMPLIANCE:

Lessee shall forthwith enter into possession of the Premises and will assume the duty and responsibility of disposal of all Recycled Water transferred from the treatment plant of the Lessor to Lessee, and in that regard Lessee shall, among other operations, maintain checks and contours and perform such other improvements as are necessary for the adequate disposition of such Recycled Water and Lessee shall, at Lessee's own expense, abate and keep the Premises free from any nuisance whatsoever in Lessee's operation and handling of the disposal of said Recycled Water, Lessee shall observe all applicable provisions of Federal, State and local laws now in force, or which may hereafter be in force, including but not limited to, the State of California Department of Health Services Guidelines for Use of Recycled Water, attached hereto, as Exhibit "D".

Lessee shall take all Recycled Water transferred to Lessee's by Lessor at all times, and if necessary, provide a sump for short term storage whenever a fluctuation in agriculture operation does not permit continual usage.

24. USAGE REQUIREMENTS

Lessee shall comply with all rules, regulations and requirements of the California Regional Quality Control Board, the Lessor's waste discharge permit attached as Exhibit "C", the California Department of Health Services and Title 22 of the California Code of Regulations regarding its use of the Recycled Water, attached as Exhibit "D" or as otherwise modified by the particular regulatory agency. Lessee acknowledges that there is certain crop restrictions related to the use of Recycled Water and in addition, there are also requirements as to storage, non-ponding of Recycled Water beyond forty eight hours (48), set back to domestic and irrigation wells and public roads. Lessee shall comply with all rules, regulations and requirements as hereinabove mentioned.

25. FARMING ACTIVITIES:

Lessee shall continuously farm the Premises in a good and husband like manner in accordance with the accepted agricultural practices in the area, keep the Premises in a clean and efficient condition for the purpose of irrigated agriculture, not to allow the same to become infested with noxious weeds or rodents and, in addition, Lessee shall carry on a crop rotation program so that all acreage will receive cover crops that will tend to prevent soil depletion.

Lessee shall not conduct farming operations in an area closer than twenty-five (25) feet on each side of the existing and proposed future water lines.

Lessee is required to report:

1. To the Lessor quarterly and on an annual basis cropping patterns, Recycled Water application rates per crop and fertilizer application.
2. To the Lessor a written annual report of the crops grown, the number of acres per crop, and the yield per acre for each crop grown, including gross revenues upon the Premises, said report to be submitted to the Lessor no later than January 15th of each year following the expiration of the preceding year's Lease.
3. To the California Regional Water Quality Control Board - Central Valley Region any written reports that the Board may require.

26. INDEMNIFICATION AND HOLD HARMLESS:

Lessee hereby agrees to indemnify and hold harmless the Lessor and its officers, employers, servants, and agents from and against all claims, actions, liabilities, losses, damages, costs, attorney's fees and other expenses arising out of any loss or damage to property, or injury to or death of persons, resulting in any manner whatsoever, directly or indirectly, by reason of this Lease with use or occupancy of the Premises or the use of Recycled Water by Lessee, or any person claiming under or through Lessee, except such loss, damage injury or death caused by the sole negligence of the Lessor or any of its officers or employees. The provision of this section shall survive the expiration or termination of this Lease.

27. QUALITY OF WASTEWATER:

The Recycled Water is not disinfected or chlorinated and is secondary effluent wastewater and is non-potable. The Lessor will treat the Recycled Water in accordance with the California Regional Water Quality Control Board, Waste Discharge Permit provided to the Lessor, the California Department of Health Services and Title 22, California Code of Regulations (see Exhibit "D" for said provisions). The Recycled Water will be treated to a secondary level that includes preliminary treatment (pumping, screening and metering), primary treatment (primary clarification) and secondary treatment (hi-filtration and secondary clarification).

28. QUANTITY OF RECYCLED WATER, REQUIRED TO BE PURCHASED:

Lessor and Lessee acknowledge that the Lessor is entering into long-term agreements with numerous individuals or entities to dispose of excess Recycled Water and that there may not be any Recycled Water to satisfy the crop demands of Lessee or any other individuals.

Notwithstanding the foregoing, Lessee is required to utilize to the maximum extent possible all Recycled Water allocated to Lessee by Lessor.

29. INSPECTION BY LESSEE:

By entry under this Lease, Lessee accepts the Premises in its present condition and agrees, on the last day of the term, or sooner termination thereof, to surrender the Premises and appurtenances to Lessor in the same condition as when received, reasonable use, wear, damage by fire, act of God, or the elements excepted, and to remove all Lessee's property from the Premises at the end of the term.

30. INSPECTION BY LESSOR:

Lessee shall permit Lessor and Lessor's agents and/or employees at all reasonable times, to enter the Premises and to use the roads established in the Premises now, and in the future, for the purpose of inspection compliant with the terms of this Lease, exercise of all rights under this Lease, posting notices, and all other lawful purposes. Lessee shall make and keep pertinent records of all operations in connection with this Lease and shall make them available to Lessor and Lessor's agents and/or employees at all reasonable time for inspection.

Lessor and its officers or employee's shall also have the right, at all reasonable times, to enter upon the Premises for any purpose in connection with the operation of its sewage treatment facilities.

31. MINERAL RESERVATION:

There is expressly excepted from the Premises and reserved by Lessor, its successor and assigns, all oil, gas, hydrocarbon, and other minerals whatsoever in, on or under the Premises, and there is hereby expressly reserved to Lessor the right any time, and from time to time, to explore for, dig for, drill for, mine, produce, and take any and all such gas, oil, hydrocarbon, and other materials, or to permit others to do so, and for such purposes Lessor reserves the right to enter in and upon and occupy such portions of the Premises as may be reasonably required therefore, provided however, that in the event Lessor exercises or permits others to exercise such rights, or shall pay to Lessee reasonable damages to the crops caused thereby, but otherwise Lessee shall not be entitled to any payment on account of the exercise of any such rights.

32. LESSOR REDUCTION:

Lessor reserves the right to remove land from this Lease at the sole discretion of Lessor for any purpose. In the event that land is removed from this Lease, Lessee shall receive a pro rata reduction in rent.

33. AUTHORIZED USE AREA:

The Premises is the only authorized real property which the Recycled Water may be stored or used by Lessee under this Agreement. The Recycled Water shall be confined to Premises and Lessee shall take every action to properly store and utilize the Recycled Water on the Premises.

34. RECYCLED WATER TRANSPORTATION/HOLDING SYSTEM.

It shall be the sole responsibility of Lessee to build, construct and maintain a Recycled Water transport and distribution system to pick up available Recycled Water from the Lessor's pipeline and deliver it to Lessee's Premises for Lessee's own use. It shall further be the sole responsibility of Lessee to obtain all proper permits required for both the construction and maintenance of any such transport system and/or any holding basin. Said Recycled Water transport distribution and holding system shall comply with the design requirements contained in the California-Nevada Section AWWA publication "Guidelines for Distribution of Non-Potable Water" and the "Guidelines for Use of Recycled Water" as are currently in place or hereinafter modified.

Lessee is required to have a minimum of two (2) days storage to manage the Recycled Water on the Premises.

35. SIGNAGE:

It shall be the sole responsibility of Lessee to provide signage to inform the public that Recycled Water is being used on the Premises. The warning signs should be posted at

least every 500 feet with a minimum of one sign at each corner and one at each access route unless additional signage is required by law.

36. NON-PUBLIC ACCESS:

Lessee shall, at Lessee's own cost and expense, install fencing or other barriers to restrict public access to the Premises. Lessee further agrees to grade the perimeter of the Premises to prevent ponding along any public road or other public area. Setbacks shall also be put into effect to limit and restrict the Recycled Water from coming in contact with the public and any other water sources.

37. DEFAULT:

If Lessee breaches this Lease, Lessor shall have, in addition to all other rights given by law, and at Lessor's option, right of reentry after having given thirty (30) days' notice, and the right to take possession of all crops, harvested or un-harvested, and the right to any and all proceeds therefrom, and to remove all persons and property from the Premises. Lessor may store the property removed from the Premises in a public warehouse or elsewhere at Lessee's expense and for Lessee's account. Lessor, at its election, shall become the owner of all crops of which it has so taken possession and, except when it elects to proceed under option (c) below shall not be obligated to compensate Lessee for them.

If Lessor elects to reenter as provided above, or to take possession under legal proceedings or under any notice provided by law:

(a) Lessor may terminate this Lease; or

(b) Lessor may, from time to time, without terminating this Lease, re-let the entire or any part, of the Premises for such terms (which may extend beyond the term of this Lease) and at such rentals and other conditions as Lessor in its sole discretion, deems advisable. Lessor also has the right to make alterations and repairs to the Premises. On each re-letting, Lessee shall be immediately liable to pay to Lessor the expense of re-letting and making alterations and repairs incurred by Lessor and all other indebtedness, except rent, due under this Lease; or

(c) Lessor, or its agents or assigns, or a receiver appointed at his instance, may (1) perform Lessee's duties under this Lease in such things as maintaining the Premises and growing, harvesting and marketing the crops contemplated by the Lease; (2) charge the proceeds of the crops with reasonable costs of maintenance and husbandry; and (3) divide the remainder of the proceeds with Lessee in the same proportions as the crop would have been divided between Lessor and Lessee, if Lessee had faithfully performed under this Lease, if the costs exceed the proceeds received for the crop, the deficiency shall be borne by Lessor and Lessee in the same proportion as the crop would have been divided

between Lessor and Lessee if Lessee had faithfully performed under this Lease;
or

(d) Lessor may exercise all other rights that become available to it if Lessee breaches or defaults in its obligations under this Lease.

No re-entry or taking possession of the Premises by Lessor shall be construed as an election by it to terminate this Lease unless a written notice of such an intention is given to Lessee or the Lease is declared to be terminated by a court of competent jurisdiction. Nothing contained in this Lease, and no security or guarantee that Lessor now holds, or in the future may hold, under the Lease, shall in any way constitute a bar or defense to an action by Lessor in unlawful detainer or for recovery of the Premises.

38. WAIVER:

A waiver by either party of any default or breach in the performance of any or the covenants, terms or conditions of this Lease shall not constitute or be deemed to be a waiver of any subsequent or other default or breach. No waiver shall be binding unless executed in writing by the party make the waiver.

39. PARTIES BOUND AND BENEFITTED:

The covenants and conditions herein contained shall apply to and bind all successors and assigns of the parties hereto.

40. TIME:

Time is of the essence of this Lease.

41. CONDEMNATION:

If a public authority under the power of eminent domain shall take the whole of the Premises, then the term of this Lease shall cease on the day of the possession by the public authority. If only a part of the Premises shall be taken under eminent domain, either party shall have the right to terminate this Lease upon written notice given within thirty (30) days of such taking. If this Lease remains in effect, all of the terms hereof shall continue in full force and effect, excepting that the Annual Rent shall be adjusted proportionately for the balance of the Lease term. If a taking under the power of eminent domain occurs, those payments attributable to the Leasehold interest of the Lessee shall belong to the Lessee, and those payments attributable to the reversionary interest of the Lessor shall belong to the Lessor.

42. MERGER AND MODIFICATION:

This Lease sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Lease may be modified only in writing approved by the Delano City Council and signed by all parties.

43. REMEDIES:

In case of the failure or refusal of lessee to comply with or perform the terms and covenants of this Lease after due notice by Lessor, this Lease, and all rights hereby given shall, at the option of Lessor, cease and terminate, and Lessor shall have the right in addition to its other legal remedies, to remove lessee's property from the Premises at the sole costs, expense and risk of Lessee, which cost and expense Lessee agrees to pay the Lessor upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by Lessor.

44. ATTORNEY'S FEES:

Should any party bring suit to compel performance of, or to recover damages for any breach of, any covenant, agreement, or condition of this Lease, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys fees.

45. NOTICES AND PAYMENTS:

All notices required under this Lease, including change address, shall be in writing, and all notices and payments shall be made as follows:

(a) All notices to Lessee shall be given or mailed to:

B&D Farms
P.O. Box 463
McFarland, CA 93250

(b) All payments and notices to Lessor shall be given or mailed to:

City of Delano - Finance Department
P.O. Box 3010
Delano, CA 93216

Notices shall be deemed given upon receipt by personal delivery or upon the third (3rd) day after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid or upon any other reasonable means of providing notice.

46. PARTIAL INVALIDITY:

If any term, covenant, condition or provision of this Lease is found by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall nonetheless remain in full force and effect to the full extent allowed by law.

47. PARAGRAPH HEADINGS;

Paragraph headings in this Lease are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Lease.

48. COMPLIANCE WITH ALL LAWS:

Lessee shall, at Lessee's sole cost, comply with all requirements of municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to this Agreement, or to the discharge, application or use of the Recycled Water by Lessee or any other person or entity on behalf of Lessee, including, but not limited to, the obtaining of any necessary permits and shall faithfully observe in all activities relating to or arising out of this Agreement or to the discharge, application or use of the Recycled Water by lessee or any other person or entity on behalf of Lessee, all municipal ordinances and state and federal statues, rules or regulations now in force or which may hereafter be in force including, but not limited to, California Regional Quality Control Board, the Lessor's waste discharge permit attached as Exhibit "C", and the California Department of Health Services and Title 22 of the California Code of Regulations regarding its use of the Recycled Water, attached as Exhibit "D"

49. INTERPRETATION:

Should interpretation of this Lease, or any portion thereof, be necessary, it is deemed that this Lease was prepared by the parties jointly and equally, and shall not be interpreted against either party in the ground that the party prepared the Lease or caused it to be prepared.

50. RIGHT TO TERMINATE LEASE IN WHOLE OR IN PART:

Lessee hereby grants to Lessor and Lessor hereby accepts and reserves the right to terminate this Lease and retake possession of the entire Premises or any portion thereof, at anytime. Lessor shall exercise these rights by providing Lessee with written notice of such termination at least six months prior to the date of any such retaking. In the event Lessor shall retake only a portion of the Premises, rentals, shall be abated on a per acre basis, any fractional component rounded upward to the next acre.

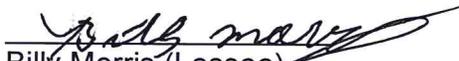
Lessee may terminate this Lease in its entirety by providing Lessor with written notice of such termination at least three (3) months prior to the date of any such termination.

51. CORPORATE AUTHORITY:

Each individual executing this Agreement represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of the corporation, partnership or entity, if any named herein and this. Agreement is binding upon said corporation, partnership or entity in accordance with its terms and as to Lessee, if no corporation, partnership or entity is named herein.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives and of the date first written above.

B & D MORRIS FARMS


Billy Morris (Lessee)


Donnie Morris (Lessee)

11-7-12
Date

CITY OF DELANO


Grace Vallejo, Mayor


Phyllis Kraft, City Clerk

11-20-12
Date

APPROVED AS TO FORM


Allan J. Reake, City Attorney

EXHIBITS:

1. "A" Property Description (By APN)
2. "B" Rent Computation Table (Sample Only)
3. "C" Order No. 5-01-247 Waste Discharge Requirements for City Of Delano Wastewater Treatment Facility (October 2001)
4. "D" California Department of Health Services and Title 22 of the California Code of Regulations (January 2009)