

DATE SUBMITTED October 19, 2022  
 SUBMITTED BY City Manager  
 DATE ACTION REQUIRED October 19, 2022

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS ( )

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT:                      DISSCUSION/ACTION: <p style="text-align: center;">Approval of lease extension with Imperial Ag LLC.</p>	
DEPARTMENT INVOLVED: BACKGROUND/SUMMARY: <p>The current lease expires in early November, 2022. The proposed extension, if approved, would run through June 30, 2024. Current rent is effectively \$265 per acre. Rent through June 30, 2023 would be \$300 per acre. From July 1, 2023 through June 30, 2024, rent would be \$350. There are also provisions in the lease that would address potential contingencies related to IID allocation.</p>	
FISCAL IMPACT: Rent in the stated amounts	FINANCE INITIALS <u>    DA    </u>
STAFF RECOMMENDATION: Approve lease extension	DEPT. INITIALS <u>    AB    </u>
MANAGER'S RECOMMENDATION: Approve	CITY MANAGER'S INITIALS <u>    JHM    </u>
MOTION:  SECONDED:                      APPROVED ( )                      REJECTED ( ) AYES:                              DISAPPROVED ( )                      DEFERRED ( ) NAYES: ABSENT:                              REFERRED TO:	

## **LEASE AGREEMENT**

This Lease Agreement (“Agreement”), dated as of October \_\_, 2022, between the Successor Agency of the Former Redevelopment Agency for the City of Imperial (“Landlord”), and C.B.M. Ginning Company, Inc. (“Tenant”), an active California corporation. (Landlord and Tenant shall also be collectively referred to as the “Parties,” and each individually as a “Party”.)

### **Background**

Landlord is the owner of property located in the City of Imperial, County of Imperial, California comprising approximately 145.6 acres, which is described in more detail in Exhibit “A”, (the “Property”). Landlord and Tenant desire that Tenant lease the Property for agricultural use on the terms and conditions set forth in this Agreement.

### **Landlord and Tenant agree as follows:**

#### **1. Lease, Term, and Rent**

- 1.1 Lease.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord, upon the terms and conditions set forth in this Agreement, the Property, together with all appurtenant rights and services incident thereto, including easements, licenses and rights of way, subject to the section below regarding water rights.
- A. **Reservations.** Landlord reserves for itself all oil, gas, and other hydrocarbon substances, hot water, steam, thermal and geothermal energy, and extractable minerals on, under, and/or that might be produced from the Property, together with a right to drill into, through and across and to produce, have and take oil, gas and other hydrocarbon substances, hot water, steam, thermal and geothermal energy, and extractable minerals from, through and across the Property, and/or from wells located in or on property outside the boundaries of the Property. Landlord further reserves the right to reasonable access to, from, and through the premises, for purposes of extracting and obtaining oil, gas, hydrocarbon substances, hot water, steam, thermal and geothermal energy, and extractable minerals from the Property, including the construction of any and all facilities, structures, and installation necessary to extract and transport the same for production, treatment, storage, or transportation of said products from the Property (“Reservations”).
- B. Notwithstanding the foregoing Reservations (as set forth in Section 1.1 A, above), in the event Tenant has crops growing on all or any portion of the Property affected by such reservations, that portion or, as appropriate, those portions so that any crop located thereon can be cultivated and harvested in accordance with applicable custom and practice, or, in the alternative, Landlord shall pay or cause to be paid to Tenant the market value of the crop or crops less expenses associated with any incomplete cultivation or harvesting activities so that Tenant is made whole for the loss occasioned by the exercise of such Reservations.

**1.2 Term.** Tenant has the right to use the Property for one year, starting on November 1, 2022, and ending June 30, 2023 (“Term”). This Agreement terminates without further notice at the expiration of the Term. Tenant acknowledges and agrees that Landlord may assume immediate and lawful possession of the Property at the expiration of the Term, including possession and ownership of any and all crops then growing at that time on the Property.

**1.3 Rent.** Tenant will pay Landlord rent in the amount of \$300 per acre (“Rent”) per year for use of the Property through June 30, 2022 and \$350 per acre per year for use of the Property for July 1, 2023 through June 30, 2023. Tenant will pay the following amounts on the following dates:

Payment #1: upon signing of this Agreement: \_\_\_\_\_

Payment #2: January 1, 2022 \_\_\_\_\_.

Payment #2: July 1, 2022 \_\_\_\_\_.

Payment #2: January 1, 2023 \_\_\_\_\_.

Tenant may mail the Rent or deliver it in person to Landlord.

- A. Late Rent Payment. If any Rent payment is not received by the Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge of One Hundred Dollars (\$100.00) per day that said Rent payment remains late, as liquidated damages, in lieu of actual damages (other than interest, attorney’s fees and costs, which may also be recoverable). The Parties acknowledge that this late charge represents a reasonable estimate of the expenses that Landlord will incur because of any late Rent payment (other than attorney’s fees and costs). Landlord’s acceptance of any liquidated damages shall not constitute a waiver by Landlord for the default of Tenant with respect to the overdue Rent payment or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Agreement.
- B. Interest. In addition to the provisions of Section 1.3(a) above, Tenant further agrees to pay Landlord interest on all past due Rent and any other amounts at the maximum lawful rate from the date such amounts become due until the date Landlord receives payment of the same.

## **2. Use and Operations**

**2.1 Tenant Use.** The Property is being leased to Tenant solely for agricultural purposes, which may include planting, growing and harvesting crops. Tenant shall not use, nor permit to be used, any part of the Property for residential or any other non-agricultural purposes without Landlord’s prior written consent, which shall be given in the

Landlord's sole and absolute discretion. Tenant is solely responsible for the means, methods and techniques used on the Property by Tenant, its employees, agents, contractors and invitees. Tenant is solely responsible for instituting proper safety procedures and programs and for taking all steps necessary to prevent loss or injury of persons or property.

- A. No crops with harvest dates after the termination date set forth in Paragraph 1.2 will be planted without the prior written approval of Landlord.

**2.2 Farming Practices.** Tenant will cultivate the Property in a timely, diligent, thorough, and farmer-like manner in accordance with good farming practices. Tenant will take care to not cause waste or damage to the Property or create a nuisance. Tenant is responsible for weeding, managing pests, preventing soil degradation, and irrigating responsibly. Tenant shall not utilize the property for fallowing purposes. In the event that Tenant seeks to obtain money from IID for any fallowing or conservation, such agreement to do so shall only be permissible upon agreed upon terms and written permission from the City Manager.

**2.3 Maintenance.** Tenant will maintain the Property in a good and organized condition, including, without limitation, free of trash, debris, and unused equipment. Tenant shall make reasonable efforts to eradicate and prevent the spread of all noxious weeds and rodents and other vertebrate pests on the Property during the term of this Agreement, and to take reasonable measures to protect the Property from infestations of insects and other such pests. Tenant shall make reasonable efforts to prevent and/or correct infestations of organisms that may come onto or develop on the Property during the Term and produce disease in plants or damage crops or animals grown or maintained on the Property during the Term or create a condition or situation which would allow such development thereafter. Tenant shall take reasonable measures to keep all ditches, canals, roadsides, and other such areas in good operating condition, and free of weeds and debris either by cultivation or through the application of appropriate Chemicals consistent with the restrictions on use thereof as provided herein.

Subject to the foregoing, Tenant shall continuously farm, cultivate, maintain, and operate the Property with diligence, consistent with the agricultural practices generally employed in the farming industry in the area in which the Property is located for crops of the type and variety planted on the Property, in order to maintain normal production, to protect and preserve the soils and crops located on the Property, and to achieve and maintain maximum long-term economic production from the Property; provided, that, notwithstanding any provision of this Agreement to the contrary.

**2.4 Improvements.** Tenant may not place sheds, hoop houses, or otherwise install permanent or moveable structures on the Property without first obtaining Landlord's written approval. Landlord will not unreasonably withhold such approval.

**2.5 Management Responsibility.** Tenant is responsible for the planning, management, and carrying out of Tenant's operations on the Property. Tenant will pay all expenses, fees,

and charges Tenant incurs in the process of maintaining and using the Property. Tenant is responsible for procuring necessary tools and equipment, seeds, and fertilizers, and for hiring, monitoring, and paying for any labor Tenant uses on the Property.

**2.6 Storage.** Tenant may store on the Property farming equipment and other personal property used for normal farming operations on the Property. Tenant may not store any materials that may be hazardous or that may cause damage to the Property (other than fuel for equipment), or that are not used for such farming operations. Tenant is responsible for the security of equipment, supplies or any other personal property stored on the Property. Landlord will not be liable for any claims arising from theft, loss, or damage of personal property left or stored on the Property.

**2.7 Compliance with Law.** Tenant shall comply with all requirements of all governmental authorities, in force either now or in the future, affecting Tenant's use, operation or occupancy of the Property and shall faithfully observe in the use, maintenance or occupancy of the Property all laws, rules, and regulations of such governmental authorities, whether federal, state, county or local, in force either now or in the future relating to Tenant's use of the Property. Tenant shall fully comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, safety programs and other employer/employee related subjects. Tenant shall be solely responsible for assuring that all of its invitees, licensees, contractors, agents, employees and sublessees comply with all applicable laws, ordinances, rules and regulations.

**2.8 Prohibited Uses.** Tenant may not conduct any non-production activities on the Property, including, without limitation, selling produce from a farm stand, camping, cookouts, renting out for events, or engaging in or hosting other recreational or income-generating activities, or do any burning on the Property, without first obtaining Landlord's written approval. Landlord will not unreasonably withhold such approval. Tenant shall not utilize the property for following purposes. In the event that Tenant seeks to obtain money from IID for any following or conservation, such agreement to do so shall only be permissible upon agreed upon terms and written permission from the City Manager.

A. Waste. Tenant shall not commit or suffer to be committed any waste on the Property; provided that, the use or application of Chemicals, as defined below, on the Property or to any crops, in accordance with all federal, state, county or local laws and regulations, shall not constitute waste. Tenant shall not maintain any nuisance on the Property and shall not use the Property for any unlawful purposes.

B. Chemicals and Other Substances. No fertilizer, herbicide, pesticide, fungicide, poison, chemical, or other foreign substance (collectively, "Chemicals"), except those approved or authorized by such federal, state, county or local agency that has regulatory jurisdiction over such Chemicals, shall be applied to the Property or crops growing thereon or brought onto or stored on the Property by the Tenant, or any

employee or agent of Tenant, or person acting on Tenant's behalf. No experimental Chemicals shall be applied to the Property or to the crops growing thereon except with the Landlord's prior written consent.

- i. Tenant shall prepare and maintain complete and accurate records in accordance with all pertinent governmental regulations respecting the time, place, quality, quantity, kind, and method of application of all Chemicals that may be utilized by the Tenant on or about the Property, including without limitation, the pesticide use reports required pertinent statutes or regulations, and shall furnish to the Landlord, upon request, true and correct copies thereof.
- ii. All gasoline, diesel fuel, fuel oil, motor oil and lubricants (collectively, "Gas and Oil"), Chemicals and containers in which they are shipped, stored, used, mixed, transported, dispensed or applied, shall be used, stored, handled, maintained and disposed of in compliance with the manufacturer's label and instructions and all applicable statutes and governmental regulations including regulations concerning notice and posting.
- iii. Tenant hereby expressly indemnifies and holds Landlord harmless from and against all loss, cost, damage, claims, penalties, expense or liability, including investigations or remedial costs and attorneys' fees, arising from or related to (i) the handling, mixing, storing, transporting, applying or disposing of any Gas and Oil or Chemicals on or about the Property by Tenant or any of its employees or agents, (ii) any breach by Tenant of any covenant contained herein, (ii) any violation of any environmental or health and safety laws by Tenant or its agents, representatives, employees, consultants and contractors and (iii) if caused by Tenant or any of its employees or agents, any condition on the Property requiring investigation or remediation under any environmental or health and safety laws, even if arising from the lawful uses.

**2.9 Inspection.** Tenant hereby grants to landlord and its agents, representatives, employees, consultants and contractor the right to enter upon and inspect the Property, at any reasonable time, to ascertain the condition thereof.

### **3. Water Use and Utilities**

#### **3.1 Irrigation System.**

- A. Tenant shall irrigate and cultivate the Property in a good and farmer-like manner.
- B. Tenant shall have the right to use all water available to the Property for the irrigation of crops to be grown on the Property during the Term. Tenant may only use such water on the Property and only in connection with the production of crops. Tenant shall not export water from the Property to lands not part of the Property. Tenant is aware that the Imperial Irrigation District ("IID") is the government entity managing the water for the property and IID is implementing an Equitable Distribution Plan. Landlord shall not be responsible for coordination of, negotiation of or decisions

related to water service to the Property. In the event that the IID reduces or changes the water allocation, Landlord shall not be liable for damages, or any liability related to water allocation. Landlord requires that the Property be farmed and continue to utilize water on the Property for farming purposes.

- 3.2 Utilities.** Tenant is responsible for arranging for utilities and paying all utility costs relating to Tenant's use and possession of the Property, including, without limitation, water, electricity, gas, propane, water, sewer, waste removal, recycling, and garbage pickup.
- A. Water Related Assessments. Landlord shall pay, prior to delinquency, any assessment levied against the Property by the water district in which the Property or any portion is located to the extent such assessment is for payment of (i) capital improvements constructed by or on behalf of such water district within such water district's boundaries (the "Capital Assessment Amount") and (ii) fixed annual charges for making irrigation water available to the Property, regardless of whether irrigation water is actually delivered to the Property (the "Water Availability Charge").

#### **4. Other Property Matters**

- 4.1 No Representations.** Landlord is not making any representations or warranties to Tenant about the Property including the suitability of the Property for Tenant's farming activities. Tenant is responsible for making Tenant's own inspection of farming conditions on the Property before entering into this Agreement. Tenant accepts the Property on an "as-is", with all faults, in its present condition, subject to any representations and warranties of Landlord set forth herein. Tenant has farmed the Property over a number of years and had the opportunity to perform due diligence and evaluate the physical condition of the Property. Landlord makes no representations or warranties, whatsoever, as to (i) the precise number of acres comprising the Property; (ii) the Property corners or boundaries of the Property; (iii) the suitability of the soils or the quality or quantity of the irrigation water for growing crops on the Property; (iv) the surface and subsurface drainage of the Property; (v) the condition or sufficiency of improvements on the Property; (vi) the fitness or merchantability of the Property or the crops, or any portion thereof or any particular use, or; (vii) whether any of the Property contains any substance or material which is or may be in violation of any environmental, health or safety law.
- 4.2 Assignment, Subleasing, and Licensing.** Tenant may not assign, sublease, or license all or any part of the Property without first obtaining Landlord's written approval. Landlord will not unreasonably withhold such approval.
- 4.3 Liens and Encumbrances.** Tenant shall not allow or agree to the placement by any third party of any lien on the Property; provided, that Tenant may grant a lien on the crops to any lender providing financing to Tenant.

If, in connection with any activity by Tenant, or any work performed by or at the request of Tenant, or in connection with any materials being furnished to Tenant, any lien shall be filed or made against the Property, or any part thereof, or if any such lien or charge shall be filed or made against Landlord as owner, unless Landlord has agreed in writing to pay the cost of such work or materials, then Tenant, at Tenant's sole cost and expense, shall cause the same to be cancelled and discharged of record by payment thereof or by filing a bond or otherwise within thirty (30) days after such lien or charge shall have been filed or made, and shall also defend any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages, costs, and expenses, including attorneys' fees, suffered or incurred therein by Landlord, and shall satisfy and discharge any judgment by payment thereof or filing of a bond or otherwise.

Tenant shall have the right to consent the correctness or validity of any such lien, if immediately upon demand by Landlord, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1.5) times the amount of claim of lien. The bond shall provide for the payment of any sum that the claimant may recover on the claim (together with the costs of suit, if the claimant recovers in such action) and shall satisfy the requirements of California Civil Code Section 3143.

In the event of the failure of Tenant to discharge any lien, charge or judgment herein required to be paid or discharged by Tenant within such thirty (30) day period, Landlord may pay such items or discharge such liability by payment or bond or both, and Tenant will repay to Landlord, upon demand, any and all amounts paid by Landlord therefor, or by reason of any liability on any such bond, and also any and all incidental expenses, including attorneys' fees, incurred by Landlord in connection therewith.

**4.4 Taxes.** Tenant is responsible for all tax returns and payments arising from Tenant's occupation and use of the Property, including without limitation, income, sales, and personal property taxes.

**4.5 Possessory Interest.** Under this Agreement a possessory interest subject to property taxation and special taxation may be created. Pursuant to California Revenue and Taxation Code Section 107.6, and Chapter 2.5 (commencing with Section 53311), Part 1, Division 2, Title 5, of the Government Code, notice is hereby given that such property interest may be subject to property taxation and special taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property or special taxes levied on such interest.

## **5. Indemnification, Release and Insurance**

**5.1** To the fullest extent permitted by law, Tenant shall defend, indemnify and hold harmless Landlord, its employees, agents and officials, from any liability, claims, suits or actions; alternative dispute resolution, losses, expenses, fees, or costs of any kind, whether actual or alleged or threatened; administrative, and regulatory proceedings; and



any other costs or expenses of any kind whatsoever without restriction or limitation; so long as such things are in relation to, as a consequence of, arising out of, or in any way attributable actually, allegedly or implied, in whole or in part, to the performance of this Agreement. This indemnification applies to water distribution by the IID. All obligations under this provision are to be paid by Tenant as they are incurred by Landlord.

- 5.2 Waiver and Release of Claims by Tenant.** To the fullest extent permitted by law, Tenant waives any and all claims against Landlord, its employees, agents and officials, resulting from death of or injury to Tenant or any other person arising directly or indirectly from Tenant's use and occupancy of the Property, regardless of the cause and even if caused by negligence, whether passive or active. Tenant agrees not to sue any Landlord Party on the basis of these waived and released claims. Tenant understands that the releases and waivers in this Agreement extend to claims that Tenant does not know of or does not expect to exist at the time Tenant signs this Agreement. Tenant waives the protections of Section 1542 of the California Civil Code.

TENANT SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Tenant's Initials: \_\_\_\_\_

- 5.3** To the fullest extent permitted by law, Landlord shall defend, indemnify and hold harmless Tenant, its employees, agents and officials, from any liability, claims, suits or actions; alternative dispute resolution, losses, expenses, fees, or costs of any kind, whether actual or alleged or threatened; administrative, and regulatory proceedings; and any other costs or expenses of any kind whatsoever without restriction or limitation; so long as such things are in relation to, as a consequence of, arising out of, or in any way attributable actually, allegedly or implied, in whole or in part, to the performance of this Agreement. All obligations under this provision are to be paid by Landlord as they are incurred by Tenant.

**5.4 Insurance.** Throughout the Term, Tenant shall maintain a general liability insurance policy (covering both bodily injury and property damage) in an amount of at least \$2,000,000 combined single limit. This insurance shall be with a company and include coverage reasonably satisfactory to Landlord, shall name Landlord as an additional insured, shall be the primary coverage for Landlord with respect to this Agreement, and shall provide that the insurance cannot be cancelled or the coverage reduced or amended without at least thirty (30) days' prior notice to Landlord.

**5.5 Worker's Compensation.** Tenant shall also carry worker's compensation insurance as required by law. Tenant acknowledges that it is not covered by Landlord's worker's compensation insurance policy, the doctrine of respondent superior shall not apply between the Landlord and Tenant. Nothing herein shall be construed as creating a partnership or joint enterprise between Landlord and Tenant.

## **6. Termination**

**6.1 Termination by Landlord.** Landlord may terminate this Agreement if: (a) Tenant fails to make a Rent payment within three (3) days of when payment is due; (b) Tenant abandons or vacates the Property for fifteen (15) consecutive days; or (c) Tenant breaches any other provision of this Agreement, including those defaults as set forth in section 6.2 below, and the breach continues for more than ten (10) days after Tenant receives written notice of the breach from Landlord, it being understood that if the breach cannot by its nature be cured within such ten-day period, then Tenant will have an additional reasonable period (which will not in any case exceed twenty (20) days) to attempt to cure the breach.

Such a termination will be effective ten (10) days after delivery by Landlord to Tenant of a notice of termination. Tenant must then immediately leave, quit, and surrender the Property to Landlord, but Tenant will remain liable for damages to the extent permitted by law. Landlord retains all rights to recover damages to the extent permitted by law and permissible under Section 1951.2 of the California Civil Code including, without limitation, unpaid Rent for use of the Property until termination, Rent to be paid for the remainder of the Term, and any amount necessary to compensate Landlord for charges incurred by reason of Tenant's failure to perform its obligations under this Agreement. All of Landlord's rights and remedies under this Agreement are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to Landlord at law or in equity.

A. In the event Landlord exercises its Paragraph 6.1 termination rights, Tenant acknowledges and agrees that Landlord may assume without further notice the immediate and lawful possession of the Property. Landlord and Tenant will meet and confer in good faith to discuss the disposition of the crops currently growing at that time on the Property.

**6.2 Default by Tenant.** The occurrence of any one or more of the following events at any time during the Term of this Agreement shall constitute a default under this Agreement by Tenant:

A. Tenant shall assign, mortgage, or encumber this Agreement, or sublet the whole or any part of the Property, other than as expressly permitted hereunder, or if this Agreement or the estate of Tenant hereunder shall be transferred, or passed to, or devolve upon, any person or entity other than the Tenant herein named by operation of law or otherwise, except in the manner permitted hereunder;

- B. Tenant shall fail to obtain or renew insurance required under this Agreement within fifteen (15) days after written notice and demand;
- C. Tenant shall have filed by or against it in any court or other tribunal pursuant to any statute or other rule of law, either of the United States or of any State or of any other authority now or hereafter exercising jurisdiction, a petition in bankruptcy or insolvency proceedings ("Proceedings") or for the reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, or for any other form of debtor relief, unless such petition be filed against Tenant and if in good faith Tenant shall promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition and shall secure such dismissal within ninety (90) days after the date of filing or the commencement of such Proceedings;
- D. Tenant shall make an assignment of this Agreement for the benefit of creditors;
- E. Tenant shall fail to observe or perform any other covenant, condition or provision of this Agreement to be observed or performed by Tenant, where such failure continues for a period of thirty (30) days after written notice from Landlord to Tenant.

**6.3 Termination by Tenant.** Tenant may terminate this Agreement at any time. Such termination will be effective sixty (60) days after delivery by Tenant to Landlord of a notice of termination. Tenant may also terminate this Agreement upon (a) a failure of the water supply, whether in terms of quantity, reliability or quality, or occurrence of fire, flood or other similar physical event, that materially interferes with Tenant's ability to farm the Property, or (b) a material breach of this Agreement by Landlord.

**6.4 No Holdover.** This Agreement terminates without further notice at the expiration of the Term. Tenant's continued occupation of the Property after the expiration of the Term is unlawful. Tenant expressly agrees such occupation after the expiration of the Term shall not constitute a renewal or extension of the Term.

- A. If Tenant continues to occupy the Property after the effective date of termination described in Paragraph 1.2, then Tenant shall immediately owe Landlord an amount equal to two hundred percent (200%) of the otherwise normally applicable Rent as liquidated damages, in lieu of actual damages (other than interest, attorney's fees and costs, which may also be recoverable). This amount shall be calculated on a per day basis. The Parties acknowledge that this charge represents a reasonable estimate of the expenses that Landlord will incur because of any occupation of the Property after the effective date of termination (other than attorney's fees and costs). Landlord's acceptance of any liquidated damages shall not constitute a waiver by Landlord prevent Landlord from exercising any of the rights and remedies available to Landlord under this Agreement.

- B. Nothing in this Paragraph shall preclude the Landlord from any of its remedies including ejecting Tenant for holding over or terminating the Agreement for failure by the Tenant to timely Rent.
- C. To the extent allowed by law, Landlord agrees that after the expiration of the Term of the Agreement as provided for in Section 1.2, if Landlord should decide to sell or lease the Property, it shall provide Tenant a right of first refusal (“ROFR”) to either purchase or lease the Property. This ROFR is expressly conditioned on all of the following:
  - i) The ROFR only applies if Landlord decides to sell or lease the Property. The decision to sell or lease the Property is in the sole discretion of Landlord. If Landlord decides to not sell or lease the Property, then Tenant shall have no ROFR.
  - ii) If Landlord opts to sell or lease the Property, the terms under which the Property is offered for sell or lease shall be in Landlord’s sole discretion.
  - iii) The ROFR shall not apply to the portion of the Property identified by Landlord for future use by the Imperial Unified School District and Landlord may transfer or otherwise encumber a portion of the Property to the Imperial Unified School District.
  - iv) Notwithstanding this ROFR, Tenant remains obligated to comply with all provisions of the Agreement, including the provisions related No Holdovers (Section 6.4) and Surrender of the Property (Section 6.5). Tenant may not occupy the Property during the ROFR Period and if Tenant fails to comply with the terms of this Agreement, including Sections 6.4 and 6.5, Tenant shall forfeit its ROFR.

**6.5 Surrender of the Property.** Immediately upon the expiration or early termination of the Term, Tenant shall surrender possession of the Property, including any and all growing crops, to Landlord and the Property shall then be in the same condition as when received, reasonable use, wear, and damage by fire, act of God or the elements, excepted, and shall remove all of Tenant’s personal property therefrom, except to the extent such personal property shall have become the property of Landlord as provided herein. Landlord, in its sole and absolute discretion, shall determine whether any alterations shall remain on the Property or, upon Landlord’s written instruction, said alterations shall be removed by Tenant, at Tenant’s sole cost and expense, at the end of the Term.

**6.6 Personal Property Tenant.** In the event that any personal property, trade fixtures, inventory, equipment or alterations of Tenant remain at the Property after Landlord has regained possession they shall be dealt with in accordance with California Code of Civil Procedure Section 1174 and California Civil Code Sections 1980 and 1981 et seq. or any subsequent procedures established by law regarding the disposition of Tenant’s

personal property remaining on the Property. Landlord has no obligation to protect or preserve any such personal property, trade fixtures, inventory, equipment or alterations.

## **7. General Provisions**

- 7.1 Entire Agreement.** This Agreement, together with its exhibits, is the entire agreement between Tenant and Landlord and supersedes all prior or contemporaneous written and oral agreements. This Agreement may be amended only by a document signed by both Tenant and Landlord and reciting that it is an amendment to this Agreement. If there are any inconsistencies between this Agreement and its exhibits, this Agreement will control.
- 7.2 Severability; Waiver.** If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.
- 7.3 Relationship.** Tenant and Landlord are independent contracting parties. Nothing contained in this Agreement will create a partnership, joint venture, fiduciary, or employment relationship between Tenant and Landlord. Neither Tenant nor Landlord have the power or authority to act on behalf of the other or in the other's name directly or indirectly in any manner. Landlord will not be responsible for any debts, liabilities, or obligations Tenant contracts or incurs in carrying out Tenant's farming operations on the Property or otherwise.
- 7.4 No Third-Party Beneficiaries.** This Agreement is for the exclusive benefit of Tenant and Landlord and not for the benefit of any third party.
- 7.5 Binding on Heirs.** This Agreement will be binding upon the heirs, executors, administrators, and permitted assignees or successors in interest of Landlord and Tenant.
- 7.6 Notices.** Notices and consents under this Agreement must be in writing and delivered by mail, hand, fax, or e-mail to the addresses set out on the signature page of this Agreement or other addresses given by one party to the other in writing. Notices given in the manner will be considered given two business days after deposit in the mail, or the first business day after delivery to a courier, delivery by fax or transmission by e-mail.
- 7.7 Governing Law; Jurisdiction.** This Agreement will be governed by California law. Tenant and Landlord consent to the exclusive jurisdiction of the state and federal courts for Imperial County, California

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

**LANDLORD**

**SUCCESSOR AGENCY OF THE  
FORMER REDEVELOPMENT AGENCY  
FOR THE CITY OF IMPERIAL**

**TENANT**

**C.B.M. GINNING COMPANY, INC.**

BY: \_\_\_\_\_

Dennis Morita

City Manager

BY: \_\_\_\_\_

Donald V. Barioni, CEO

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

APNs: 06-010-083; 06-010-084; 06-010-085; 06-010-086; 06-010-087; 06-010-088