FARM LEASE
Preamble

ANTELOPE VALLEY-EAST KERN WATER AGENCY ("AVEK" or "Landlord"), hereby leases to Maritorea Farms ("Tenant"), to occupy for the use of agricultural purposes only, the following real estate ("Farm" or "Premises"), located in the County of Kern, State of California, described as follows:

That portion of T9N, R13W San Bernardino Base and Meridian, according to the official plat of a survey of said land on file in the office of the Bureau of Land Management, more particularly described as follows:

SEE ATTACHMENT "A"

1. **Term of Lease.** The term of this lease ("Lease") shall be for a period of five (5) crop years ("years"), commencing on September 1, 2010 and ending on August 31, 2015, at a rental rate of Fifty Dollars ($50.00) per acre, per year, payable as set forth in Paragraph 15 below.

The Tenant will be granted early entry on to the Premises following the execution of the Lease, in order to carry out the duties in operating the Farm as outlined in the Lease. Prior to entry, the Tenant shall provide proof of the insurance coverage, as indicated in Paragraph 7 below, to the Landlord.

2. **Option to Renew Lease.**

   A. In the event that the Lease remains in force and effect for a period of two (2) years without an uncured default on behalf of the Tenant, the Landlord hereby grants to Tenant an option to renew this Lease for an additional two (2) years, upon terms and conditions acceptable to Landlord. In order to exercise this option to renew, Lessee must give written notice to Landlord of its intention to do so at least sixty (60) days prior to the expiration of the term hereof. If Landlord and Tenant are unable to agree on the terms for a renewal of the Lease by not later than thirty (30) days prior to the expiration of the term hereof, then the option to renew will be deemed to have lapsed and this Lease will expire at the end of the original term.

   B. Notwithstanding the provisions of Sections 1 and 2 above, Landlord shall have the right to terminate this Lease at any time upon not less than thirty (30) days prior written notice to Tenant; provided, however, that if, as a result of such notice, the Lease is terminated prior to the harvest of growing crops, Landlord shall pay to Tenant an amount sufficient to compensate Tenant for the loss of such growing crops.

3. **Tenants Duties in Operating Farm.** The Tenant agrees to perform and carry out the following:

   A. Activities Required:
1. To cultivate the Farm faithfully and in a timely, thorough, and businesslike manner.

2. To prevent noxious weeds from going to seed on the Premises and to destroy the same and to keep the weeds and grass cut on the Premises.

3. To haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements and any applicable federal, state, or local standards.

4. To preserve established watercourses, tile drains, tile outlets, grass waterways, and terraces, and to refrain from any operation that will injure them.

5. To purchase surface water from the AVEK when available for delivery to the Premises, as directed by AVEK, in-lieu of pumping groundwater. Subject to an executed In-Lieu Banking Agreement for cost-sharing with local Public/Private Entity (see cost-sharing example below), AVEK surface water will be available to the Tenant at a rate of One-Hundred Dollars ($100.00) per acre-foot for row crop farming, or ($50.00) per acre-foot for alfalfa or other hay and grain crop farming. No water shall leave the Premises for use outside of the Farm area.

**In-Lieu Banking Agreement Cost - Example Only (based on 2009 rates):**

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Cost of Surface Water (Banking Water):</td>
<td>$206/AF</td>
</tr>
<tr>
<td>Cost of pumping groundwater (As Verified):</td>
<td>$110/AF</td>
</tr>
<tr>
<td>Incentive discount to “Customer”:</td>
<td>($10/AF)</td>
</tr>
<tr>
<td>Final “Customer” cost of Surface Water:</td>
<td>$100/AF</td>
</tr>
<tr>
<td>Remaining cost to be paid by “Public/Private Entity”:</td>
<td>$106/AF</td>
</tr>
<tr>
<td>($206/AF - $100/AF = $106/AF)</td>
<td></td>
</tr>
</tbody>
</table>

If AVEK surface water is not offered to the Tenant through an executed In-Lieu Banking Agreement, as determined by Landlord, surface water will be made available at the current AVEK agricultural delivery rate.

If AVEK surface water is not available at any time during the term of the Lease, as determined by Landlord, Tenant may use groundwater from well(s) located on the Premises with prior consent of Landlord. The cost of groundwater to Tenant will be determined based on actual energy, operation, and maintenance costs incurred at the time of pumping. No water shall leave the Premises for use outside of the Farm area.

6. To operate and maintain, as the sole responsible party, all piping, valves, pumps, groundwater well pump facilities (when applicable), and electrical facilities servicing the Premises according to applicable best management practices. This excludes only the AVEK surface water turnout(s). Any willful neglect, failure, or refusal from the Tenant to operate these facilities properly, as determined by the Landlord, will leave the Tenant responsible for such neglect. Tenant shall own, install/uninstall, and control all mentioned piping, valves, and booster pumps, with main valve(s) from such facilities operated by the Tenant for proper flow and pressure.
7. To keep the Premises' buildings (and their facilities), fences, drains, and other improvements in as good repair and condition as they may be put by the Landlord during the Term of the Lease. Ordinary wear, loss by fire, or unavoidable destruction excepted.

8. To take proper care of all trees, vines, and shrubs, and to prevent injury to the same.

9. To keep the Premises neat and orderly by the use of general farming practices common to the area to minimize blowing dust and sand. Farm land shall be disked clean or mowed and left level at the completion of each crop year or as required per the Landlord's direction.

10. To prevent all unnecessary waste or loss, or damage to the property of the Landlord.

11. To comply with all pollution control and environmental protection requirements as required by local, state, and federal agencies, as well as to implement soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies.

12. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances on the Premises; to read and follow label instructions for the use of such materials in order to avoid injury or damages to persons or property or both on the Premises and adjoining areas; and to comply with California state pesticide training, licensing, permitting, storing, usage, and reporting.

13. Any chemicals for weed or insect control or other use, when used, should be applied at levels not to exceed the manufacturer's recommendation for the soil types involved.

14. When chemicals or petroleum products are stored on the Farm, they will be only those planned to be used on the Farm and they will be in closed, tight containers above ground and clearly marked. No chemicals or chemical containers will be disposed of on the Premises.

15. Any cultivation or other activities on acreage not farmed by Tenant and requested by Landlord shall be billed to Landlord at an agreed upon rate, under a separate agreement.

B. Activities Restricted.

1. The Tenant further agrees, without prior written consent of Landlord:
   a. Not to use any acreage of the Premises for livestock.
   b. Not to enter into any other business, occupation, or sideline on the Premises.
   c. Not to house automobiles, motor trucks, or tractors in buildings that would violate restrictions in any applicable insurance contract.

2. Any violation of the restrictions upon the Premises, or any failure to comply with the terms of this Lease, shall be considered a material breach of this Lease, and the Landlord may terminate the Lease immediately upon written notice.
d. Not to erect or permit to be erected any structure or building or to incur any expense to the Landlord for such purposes.

e. Not to add electrical wiring, plumbing, or heating to any buildings. (If consent is given, such additions must meet standards and requirements of utility and insurance companies.)

2. The Tenant further agrees, unless written consent of the Landlord is first obtained:

a. Not to plow permanent pasture or meadowland

b. Not to allow any stock on any tillable land except by annual agreement

c. Not to burn or remove crop residues grown upon the Farm

d. Not to pasture new seedlings of legumes or grasses the year they are seeded.

e. Not to cut live trees for sale purposes or other personal uses

f. Not to erect or permit to be erected any commercial advertising signs or banners

4. Review of Lease. For each succeeding year that this Lease remains in effect, Landlord and Tenant shall review this Lease, before the lease year begins, to decide upon, (1) any changes in the cropping system, (2) acreage to be planted, and (3) the location of crops after rotation. The Landlord shall counsel with the Tenant at appropriate intervals on the best time for locating, rotating, planting, and working crops. In the event that a mutual determination cannot be reached as to crop rotation and location, the Landlord’s decision shall control.

5. Operating Costs. The Tenant shall pay all costs in connection with Tenant’s operations on the Premises, including, but not limited to costs of preparing the Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities (including groundwater pumping), operation and maintenance of piping, valves, pumps, groundwater well pump facilities (when applicable), and any assessment imposed on the Premises for the provision of water required by Tenant, whether pumped groundwater or surface water purchased from Landlord in lieu of pumping groundwater.

6. Taxes and Assessments. Tenant shall pay, before delinquency, all personal property taxes or assessments levied on Tenant’s personal property situated on or about the Premises during the term of this Lease. On demand, Tenant shall provide to Landlord satisfactory evidence of payment of personal property taxes or assessments levied on the Premises. Landlord shall pay any real property taxes, if any. Landlord hereby notifies Tenant that although Landlord is exempt from payment of real property taxes, Tenant’s use and occupancy of the Premises pursuant to this Lease may subject Tenant to possessory interest taxes. Tenant shall be solely responsible for payment of any such taxes levied as a result of Tenant’s use and occupancy of the Premises.

7. Insurance. Tenant shall, at all times during the term of this Lease, maintain and keep in force insurance coverage with insurers which will adequately protect both Tenant and Landlord against public liability and property damage on the Premises, naming Landlord as an additional
insured. The minimum coverage required by this paragraph shall be one million dollars ($1,000,000) bodily injury per individual, two million dollars ($2,000,000) per occurrence, one million dollars ($1,000,000) property damage, and shall include a five million dollar ($5,000,000) umbrella policy. Proof of the insurance coverage obtained by Tenant shall be given to Landlord within thirty (30) days after the execution of this Lease. Any contract entered into by Tenant for insurance coverage on the Premises shall include a provision requiring timely notice to Landlord in the event of cancellation of coverage by the insurer.

8. **Maintenance.** Tenant shall, at Tenant's own expense, keep and maintain the Premises, all improvements on the Premises, and all facilities appurtenant to the Premises, in good order and repair and in safe and clean condition as they were when received by Landlord, reasonable wear and tear excepted. Tenant agrees at the expiration of this lease to vacate the land, leaving it in a clean condition, with Farm land disked clean or mowed and left level as required per the Landlord's direction. No soil shall be removed from the property.

9. **Waste or Nuisance.** Tenant shall not commit, or permit others to commit, any waste on the Premises. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code Section 3479 on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose.

10. **Alterations and Mechanics' Liens.**

   A. Tenant shall not make or permit any alterations or improvements to the Premises without the prior written consent of the Landlord. On termination or expiration of this Lease, all improvements and alterations other than trade fixtures shall be the property of the Landlord, and no reimbursement to Tenant shall be required, except as set forth in Paragraph 17 below. The Tenant gives the Landlord first right of refusal to purchase trade fixtures placed by the Tenant on the Premises. If refused by the Landlord, Tenant shall remove all such trade fixtures within thirty (30) days after the expiration of the Lease.

   B. Tenant shall keep the Premises free and clear of any and all liens arising out of any work performed or materials furnished at the request of Tenant, or obligations incurred by Tenant.

11. **Landlord's Right of Entry During Term of the Lease.** Tenant shall permit Landlord or Landlord's agents, representatives, employees, or assigns to enter the Premises at all reasonable times to determine whether Tenant is complying with terms of this lease and for the purposes of viewing the same, or working, or making repairs or improvements thereon, or developing mineral rights as provided in Section 19 below, or doing any other lawful act that may be necessary to protect the Landlord's interest in the Premises.

12. **Acceptance by Tenant.** Tenant accepts the leased Premises, as well as the improvements on the Premises and facilities appurtenant to the Premises, in their present condition. Tenant agrees with, and represents to Landlord, that the Premises have been inspected by Tenant and that Tenant has been assured by means independent of Landlord or Landlord's agents of the truth of all facts material to this Lease and that the Premises are being leased by Tenant as a result of its inspection and investigation and not as a result of any representation made by Landlord or Landlord's agents.

13. **Indemnification of Landlord.** Throughout the term of this Lease, Tenant shall indemnify and hold Landlord harmless from all damages, injuries, or claims arising in or about the Premises or arising from Tenant's operations of the Premises.
14. **Assignment and Subleasing.** Tenant shall obtain the prior written consent of the Landlord, prior to commencement of the crop year, for any sublease agreements with any persons other than Tenant’s agents, family, or employees, on all or any part of the Premises. Landlord’s consent to one assignment, sublease, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, sublease, occupation, or use by any other person.

15. **Rent Payment.** Tenant agrees to pay to Landlord, as an initial annual rent for the Premises, the sum of **Sixteen Thousand** Dollars ($16,000.00). Tenant shall pay this annual rent, in advance not later than five (5) business days prior to the commencement of the term of the Lease and each anniversary of such date. The annual rent shall be paid to Landlord at the address set forth in Paragraph 22 hereof or at such other place designated by Landlord. Annual rent that remains unpaid following the period described in Paragraph 16.A. shall be subject to a late payment charge in an amount equal to six percent (6%) of the delinquent payment amount. Any rent amounts remaining unpaid thirty (30) days after due will bear interest from the date of expiration of such thirty (30) day period until paid, at the highest legal rate.

16. **Default by Tenant.** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

A. Any failure by Tenant to pay the rent or make any other payment required to be made by Tenant under this Lease (when that failure continues for ten (10) days after a written notice of the failure is given by Landlord to Tenant);

B. The abandonment or vacation of the Premises by Tenant;

C. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when that failure continues for ten (10) days after written notice of the Tenant’s failure is given by Landlord to Tenant, provided, however, that if the nature of that default is such that it cannot reasonably be cured within a ten (10) day period, Tenant shall not be deemed to be in default if Tenant commences that cure within the ten (10) day period and thereafter diligently prosecutes it to completion; or

D. The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, when possession is not restored to Tenant within thirty (30) days; or the attachment, execution, or the judicial seizure of substantially all of Tenant’s assets located at the Premises or of the Tenant’s interest in this Lease, when that seizure is not discharged within thirty (30) days.

The notices provided for in subsections A through C of this paragraph are not intended to replace, but rather are in addition to, any required statutory notices for unlawful detainer proceedings under California Code of Civil Procedure Section 1160 et. seq.

17. **Recovery of Damages on Tenant’s Default.** In the event of any default by Tenant under this Lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease by
giving written notice of the termination. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the Lease. In the event Landlord elects to terminate this Lease, Landlord may recover from Tenant all of the following:

A. The worth at the time of award of any unpaid rent that had been earned at the time of the Lease’s termination;

B. The worth at the time of award of the amount by which the unpaid rent that would have been earned after the Lease’s termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

C. The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

D. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant’s failure to perform its obligations under this Lease.

18. Landlord’s Right to Continue Lease in Effect After Breach. If Tenant breaches this Lease and abandons the Premises before the natural expiration of this Lease’s term, Landlord may continue this Lease in effect by not terminating Tenant’s right to possession of the Premises, in which event Landlord shall be entitled to enforce all its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease. For as long as Landlord does not terminate this Lease, Tenant shall have the right to assign or sublease the Premises.


A. If all or any part of the Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease, either Landlord or Tenant may terminate this Lease by giving the other thirty (30) days written notice of termination; provided, however, that Tenant cannot terminate this Lease unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this Lease; and

B. If only a portion of the Premises is taken by eminent domain and neither Landlord nor Tenant terminates this Lease, the rent thereafter payable under this Lease shall be reduced by the same percentage that the total acres of the portion taken by eminent domain bears to the total acreage of the Premises.

C. Any and all damages and compensation awarded or paid because of a taking of the Premises shall belong to Landlord, and Tenant shall have no claim against Landlord or the entity exercising eminent domain power for the value of the unexpired term of this Lease or any other right arising from this Lease.

20. Water Rights. Nothing in this Lease shall confer upon the Tenant any right to groundwater pumping rights, associated with the Premises that may be finally determined adjudicated in the Coordination Proceeding known as the "Antelope Valley Groundwater Cases", Judicial Council Coordination Proceeding No. 4408, including any right to all overlying and
appropriative rights to divert, extract, use, and state percolating groundwater that may be produced from, or that is stored beneath the surface of the Premises or any property of the Landlord.

21. **Oil, Gas and Mineral Rights.** Nothing in this Lease shall confer upon the Tenant any right to minerals underlying said land, but same are hereby reserved by Landlord together with the full right to bore, search, and excavate for same, to work and remove same, and to deposit excavated rubbish, and with full liberty to pass over the Premises with vehicles and lay down and work any railroad tracks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Landlord agrees to reimburse the Tenant for any actual damage he may suffer for crops destroyed by these activities and to release Tenant from this Lease when development of mineral rights interferes materially with the Tenant’s opportunity to make a satisfactory return.

22. **Hunting Rights.** All of the hunting rights and privileges on the Premises are reserved to Landlord. Tenant agrees that it will not permit any hunting on the Premises without the prior written consent of Landlord.

23. **Attorneys’ Fees.** If any litigation is commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation to the Premises or to this Lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys’ fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

24. **Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed, or in lieu of personal service when deposited in the United States mail, first-class postage prepaid, as follows:

To Landlord:
Michael Flood, Assistant General Manager
Antelope Valley-East Kern Water Agency
6500 West Avenue N.
Palmdale, California 93551

To Tenant:
_ (John) Jean-Pierre Maritorea, Partner_
Tenant Name, Title
_ Maritorea Farms_
Company

_ 418 155th St. West_
_ Rosamond, CA 93560_
Address

Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.
25. **Binding on Heirs and Successors.** This Lease and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this Lease. Nothing contained in this paragraph shall be construed as consent by Landlord to any assignment of this Lease or any interest in this Lease by Tenant except as provided in Paragraph 14 of this Lease.

26. **Time of Essence.** Time is of the essence of this Lease and of each provision contained within, and each provision is made and declared to be a material, necessary, and essential part of this Lease.

27. **Sole and Only Agreement.** This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, or the Lease term created under this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void. This Lease may not be extended, amended, modified, altered, or changed, except in a writing signed by Landlord and Tenant.

28. **Effect of Partial Invalidity.** If any term or provision of this Lease or any application of this Lease shall be held invalid or unenforceable, the remainder of this Lease and any application of the terms and provisions shall remain valid and enforceable under this Lease or California law.

29. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

30. **Waiver.** The waiver by Landlord of any breach by Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or another provision of this Lease.

SIGNATURES FOLLOW ON NEXT PAGE
Executed on **APRIL 27TH** at **ROSA MEND** , County of **KERN** , State of California.

**LANDLORD**

[Signature]

**DAVID RIZZO, PRESIDENT**
Printed Name, Title

**TENANT**

*Maritorea Farms, A Partnership Consisting of:*

[Signature]

**JOSE MARITOREA**
Printed Name, Title

[Signature]

**MARTOREA, MARI**
Printed Name, Title

[Signature]

**MARIE MARITOREA**
Printed Name, Title

[Signature]

**JEAN PIERRE MARITOREA**
Printed Name, Title
ATTACHMENT “A”

Legal Description

Real property in the unincorporated area, County of Kern, State of California, described as follows:

The East half of Section 34, Township 9 North, Range 13 West, San Bernardino Meridian, in the unincorporated area of the County of Kern, State of California, according to the official plat of the survey of said land on file in the Bureau of Land Management.

Map of AVEK Property with Premises Highlighted
# Certificate of Liability Insurance

**Certificate Number:** 7880698995

**Issuer:** Allied Insurance Company

**Policy Period:** 06/22/09 to 06/22/10

**Address:** Bakersfield, CA

**Insurable Interest:** Antelope Valley-East Kern Water Agency

**Description of Operations:** Located on the East half of Section 36, Township 9, Range 13 west, Range 13, Section 36, Township 9, Range 13 west, Kern County, California

## Coverages

### General Liability

- **Policy:** FMP FMP 7880698995
- **Issued To:** FMP
- **Effective Date:** 06/22/09
- **Expiration Date:** 06/22/10
- **Covered Limits:** £1,000,000

### Automobile Liability

- **Limit:** £1,000,000

### Garage Liability

- **Limit:** £2,000,000

### Personal & Advertising

- **Limit:** £1,000,000

### Products - Completed.operations

- **Limit:** £1,000,000

### Employee Liability

- **Limit:** £1,000,000

### Workers Compensation

- **Limit:** £1,000,000

### Other Liability

- **Limit:** £1,000,000

## Certificate Holder

Antelope Valley-East Kern Water Agency

6500 West Ave H

Palmdale CA 93551

**Representative:** Bruce Greenway

**Telephne:** 661-835-8141

**Fax:** 661-835-0562

**City:** Bakersfield

**State:** CA

**Zip:** 93307

**In Force:** 04/22/10

**Cancel Date:** 04/22/10

**Insurers Affording Coverage:**

- **Name:** Allied Insurance Company
- **Address:** Bakersfield, CA 93307
- **Telephone:** 661-835-8141
- **Fax:** 661-835-0562

**Insurer A:**

- **Address:** Bakersfield, CA 93307
- **Telephone:** 661-835-8141
- **Fax:** 661-835-0562

**Insurer B:**

- **Address:** Bakersfield, CA 93307
- **Telephone:** 661-835-8141
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**Insurer C:**

- **Address:** Bakersfield, CA 93307
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**Insurer D:**

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**Insurer E:**

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**Insurer F:**

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**Insurer G:**

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**Insurer H:**

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**Insurer I:**

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**Insurer J:**

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**Insurer K:**

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**Insurer L:**

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**Insurer M:**

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**Insurer N:**

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**Insurer O:**

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**Insurer P:**

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**Insurer Q:**

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**Insurer R:**

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**Insurer S:**

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**Insurer T:**

- **Address:** Bakersfield, CA 93307
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**Insurer U:**

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**Insurer V:**

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**Insurer W:**

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**Insurer X:**

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**Insurer Y:**

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- **Fax:** 661-835-0562

**Insurer Z:**

- **Address:** Bakersfield, CA 93307
- **Telephone:** 661-835-8141
- **Fax:** 661-835-0562

**Representative:**

- **Name:** Bruce Greenway
- **Telephone:** 661-835-8141
- **Fax:** 661-835-0562

**Address:** Bakersfield, CA 93307

**Telephone:** 661-835-8141

**Fax:** 661-835-0562

**City:** Bakersfield

**State:** CA

**Zip:** 93307

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FARM LEASE
Preamble

ANTELOPE VALLEY-EAST KERN WATER AGENCY ("AVEK" or "Landlord"), hereby leases to Scott Harter ("Tenant"), to occupy for the use of agricultural purposes only, the following real estate ("Farm" or "Premises"), located in the County of Kern, State of California, described as follows:

That portion of T9N. R13W San Bernardino Base and Meridian, according to the official plat of a survey of said land on file in the office of the Bureau of Land Management, more particularly described as follows:

SEE ATTACHMENT "A"

1. Term of Lease. The term of this lease ("Lease") shall be for a period of five (5) crop years ("years"), commencing on September 1, 2010 and ending on August 31, 2015, at a rental rate of Seventy-Five Dollars ($75.00) per acre, per year, payable as set forth in Paragraph 15 below.

The Tenant will be granted early entry on to the Premises following the execution of the Lease, in order to carry out the duties in operating the Farm as outlined in the Lease. Prior to entry, the Tenant shall provide proof of the insurance coverage, as indicated in Paragraph 7 below, to the Landlord.

2. Option to Renew Lease.

A. In the event that the Lease remains in force and effect for a period of two (2) years without an uncured default on behalf of the Tenant, the Landlord hereby grants to Tenant an option to renew this Lease for an additional two (2) years, upon terms and conditions acceptable to Landlord. In order to exercise this option to renew, Lessee must give written notice to Landlord of its intention to do so at least sixty (60) days prior to the expiration of the term hereof. If Landlord and Tenant are unable to agree on the terms for a renewal of the Lease by not later than thirty (30) days prior to the expiration of the term hereof, then the option to renew will be deemed to have lapsed and this Lease will expire at the end of the original term.

B. Notwithstanding the provisions of Sections 1 and 2 above, Landlord shall have the right to terminate this Lease at any time upon not less than thirty (30) days prior written notice to Tenant; provided, however, that if, as a result of such notice, the Lease is terminated prior to the harvest of growing crops, Landlord shall pay to Tenant an amount sufficient to compensate Tenant for the loss of such growing crops.

3. Tenants Duties in Operating Farm. The Tenant agrees to perform and carry out the following:

A. Activities Required:
1. To cultivate the Farm faithfully and in a timely, thorough, and businesslike manner.

2. To prevent noxious weeds from going to seed on the Premises and to destroy the same and to keep the weeds and grass cut on the Premises.

3. To haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements and any applicable federal, state, or local standards.

4. To preserve established watercourses, tile drains, tile outlets, grass waterways, and terraces, and to refrain from any operation that will injure them.

5. To purchase surface water from the AVEK when available for delivery to the Premises, as directed by AVEK, in lieu of pumping groundwater. Subject to an executed In-Lieu Banking Agreement for cost-sharing with local Public/Private Entity (see cost-sharing example below), AVEK surface water will be available to the Tenant at a rate of One-Hundred Dollars ($100.00) per acre-foot for row crop farming, or ($50.00) per acre-foot for alfalfa or other hay and grain crop farming. No water shall leave the Premises for use outside of the Farm area.

   **In-Lieu Banking Agreement Cost - Example Only (based on 2009 rates):**
   
   Total Cost of Surface Water (Banking Water): $206/AF
   Cost of pumping groundwater (As Verified): $110/AF
   Incentive discount to "Customer": ($10/AF)
   Final "Customer" cost of Surface Water: $100/AF
   Remaining cost to be paid by "Public/Private Entity": $106/AF
   ($206/AF - $100/AF = $106/AF)

   If AVEK surface water is not offered to the Tenant through an executed In-Lieu Banking Agreement, as determined by Landlord, surface water will be made available at the current AVEK agricultural delivery rate.

   If AVEK surface water is not available at any time during the term of the Lease, as determined by Landlord, Tenant may use groundwater from well(s) located on the Premises with prior consent of Landlord. The cost of groundwater to Tenant will be determined based on actual energy, operation, and maintenance costs incurred at the time of pumping. No water shall leave the Premises for use outside of the Farm area.

6. To operate and maintain, as the sole responsible party, all piping, valves, pumps, groundwater well pump facilities (when applicable), and electrical facilities servicing the Premises according to applicable best management practices. This excludes only the AVEK surface water turnout(s). Any willful neglect, failure, or refusal from the Tenant to operate these facilities properly, as determined by the Landlord, will leave the Tenant responsible for such neglect. Tenant shall own, install/uninstall, and control all mentioned piping, valves, and booster pumps, with main valve(s) from such facilities operated by the Tenant for proper flow and pressure.
7. To keep the Premises' buildings (and their facilities), fences, drains, and other improvements in as good repair and condition as they may be put by the Landlord during the Term of the Lease. Ordinary wear, loss by fire, or unavoidable destruction excepted.

8. To take proper care of all trees, vines, and shrubs, and to prevent injury to the same.

9. To keep the Premises neat and orderly by the use of general farming practices common to the area to minimize blowing dust and sand. Farm land shall be disked clean or mowed and left level at the completion of each crop year or as required per the Landlord's direction.

10. To prevent all unnecessary waste or loss, or damage to the property of the Landlord.

11. To comply with all pollution control and environmental protection requirements as required by local, state, and federal agencies, as well as to implement soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies.

12. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances on the Premises; to read and follow label instructions for the use of such materials in order to avoid injury or damages to persons or property or both on the Premises and adjoining areas; and to comply with California state pesticide training, licensing, permitting, storing, usage, and reporting.

13. Any chemicals for weed or insect control or other use, when used, should be applied at levels not to exceed the manufacturer's recommendation for the soil types involved.

14. When chemicals or petroleum products are stored on the Farm, they will be only those planned to be used on the Farm and they will be in closed, tight containers above ground and clearly marked. No chemicals or chemical containers will be disposed of on the Premises.

15. Any cultivation or other activities on acreage not farmed by Tenant and requested by Landlord shall be billed to Landlord at an agreed upon rate, under a separate agreement.

B. Activities Restricted.

1. The Tenant further agrees, without prior written consent of Landlord:
   a. Not to use any acreage of the Premises for livestock.
   b. Not to enter into any other business, occupation, or sideline on the Premises.
   c. Not to house automobiles, motor trucks, or tractors in buildings that would violate restrictions in any applicable insurance contract.
d. Not to erect or permit to be erected any structure or building or to incur any expense to the Landlord for such purposes.

e. Not to add electrical wiring, plumbing, or heating to any buildings. (If consent is given, such additions must meet standards and requirements of utility and insurance companies.)

2. The Tenant further agrees, unless written consent of the Landlord is first obtained:

a. Not to plow permanent pasture or meadowland

b. Not to allow any stock on any tillable land except by annual agreement

c. Not to burn or remove crop residues grown upon the Farm

d. Not to pasture new seedlings of legumes or grasses the year they are seeded.

e. Not to cut live trees for sale purposes or other personal uses

f. Not to erect or permit to be erected any commercial advertising signs or banners

4. **Review of Lease.** For each succeeding year that this Lease remains in effect, Landlord and Tenant shall review this Lease, before the lease year begins, to decide upon, (1) any changes in the cropping system, (2) acreage to be planted, and (3) the location of crops after rotation. The Landlord shall counsel with the Tenant at appropriate intervals on the best time for locating, rotating, planting, and working crops. In the event that a mutual determination cannot be reached as to crop rotation and location, the Landlord’s decision shall control.

5. **Operating Costs.** The Tenant shall pay all costs in connection with Tenant’s operations on the Premises, including, but not limited to costs of preparing the Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities (including groundwater pumping), operation and maintenance of piping, valves, pumps, groundwater well pump facilities (when applicable), and any assessment imposed on the Premises for the provision of water required by Tenant, whether pumped groundwater or surface water purchased from Landlord in-lieu of pumping groundwater.

6. **Taxes and Assessments.** Tenant shall pay, before delinquency, all personal property taxes or assessments levied on Tenant’s personal property situated on or about the Premises during the term of this Lease. On demand, Tenant shall provide to Landlord satisfactory evidence of payment of personal property taxes or assessments levied on the Premises. Landlord shall pay any real property taxes, if any. Landlord hereby notifies Tenant that although Landlord is exempt from payment of real property taxes, Tenant’s use and occupancy of the Premises pursuant to this Lease may subject Tenant to possessory interest taxes. Tenant shall be solely responsible for payment of any such taxes levied as a result of Tenant’s use and occupancy of the Premises.

7. **Insurance.** Tenant shall, at all times during the term of this Lease, maintain and keep in force insurance coverage with insurers which will adequately protect both Tenant and Landlord against public liability and property damage on the Premises, naming Landlord as an additional
insured. The minimum coverage required by this paragraph shall be one million dollars ($1,000,000) bodily injury per individual, two million dollars ($2,000,000) per occurrence, one million dollars ($1,000,000) property damage, and shall include a five million dollar ($5,000,000) umbrella policy. Proof of the insurance coverage obtained by Tenant shall be given to Landlord within thirty (30) days after the execution of this Lease. Any contract entered into by Tenant for insurance coverage on the Premises shall include a provision requiring timely notice to Landlord in the event of cancellation of coverage by the insurer.

8. **Maintenance.** Tenant shall, at Tenant's own expense, keep and maintain the Premises, all improvements on the Premises, and all facilities appurtenant to the Premises, in good order and repair and in safe and clean condition as they were when received by Landlord, reasonable wear and tear excepted. Tenant agrees at the expiration of this lease to vacate the land, leaving it in a clean condition, with Farm land disked clean or mowed and left level as required per the Landlord's direction. No soil shall be removed from the property.

9. **Waste or Nuisance.** Tenant shall not commit, or permit others to commit, any waste on the Premises. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code Section 3479 on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose.

10. **Alterations and Mechanics' Liens.**

   A. Tenant shall not make or permit any alterations or improvements to the Premises without the prior written consent of the Landlord. On termination or expiration of this Lease, all improvements and alterations other than trade fixtures shall be property of the Landlord, and no reimbursement to Tenant shall be required, except as set forth in Paragraph 17 below. The Tenant gives the Landlord first right of refusal to purchase trade fixtures placed by the Tenant on the Premises. If refused by the Landlord, Tenant shall remove all such trade fixtures within thirty (30) days after the expiration of the Lease.

   B. Tenant shall keep the Premises free and clear of any and all liens arising out of any work performed or materials furnished at the request of Tenant, or obligations incurred by Tenant.

11. **Landlord's Right of Entry During Term of the Lease.** Tenant shall permit Landlord or Landlord's agents, representatives, employees, or assigns to enter the Premises at any reasonable times to determine whether Tenant is complying with terms of this lease and for the purposes of viewing the same, or working, or making repairs or improvements thereon, or developing mineral rights as provided in Section 19 below, or doing any other lawful act that may be necessary to protect the Landlord's interest in the Premises.

12. **Acceptance by Tenant.** Tenant accepts the leased Premises, as well as the improvements on the Premises and facilities appurtenant to the Premises, in their present condition. Tenant agrees with, and represents to Landlord, that the Premises have been inspected by Tenant and that Tenant has been assured by means independent of Landlord or Landlord's agents of the truth of all facts material to this Lease and that the Premises are being leased by Tenant as a result of its inspection and investigation and not as a result of any representation made by Landlord or Landlord's agents.

13. **Indemnification of Landlord.** Throughout the term of this Lease, Tenant shall indemnify and hold Landlord harmless from all damages, injuries, or claims arising in or about the Premises or arising from Tenant's operations of the Premises.
14. Assignment and Subleasing. Tenant shall obtain the prior written consent of the Landlord, prior to commencement of the crop year, for any sublease agreements with any persons other than Tenant’s agents, family, or employees, on all or any part of the Premises. Landlord’s consent to one assignment, sublease, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, sublease, occupation, or use by any other person.

15. Rent Payment. Tenant agrees to pay to Landlord, as an initial annual rent for the Premises, the sum of Twenty-eight thousand, two hundred Dollars ($28,200.00). Tenant shall pay this annual rent, in advance not later than five (5) business days prior to the commencement of the term of the Lease and each anniversary of such date. The annual rent shall be paid to Landlord at the address set forth in Paragraph 22 hereof or at such other place designated by Landlord. Annual rent that remains unpaid following the period described in Paragraph 16.A. shall be subject to a late payment charge in an amount equal to six percent (6%) of the delinquent payment amount. Any rent amounts remaining unpaid thirty (30) days after due will bear interest from the date of expiration of such thirty (30) day period until paid, at the highest legal rate.

16. Default by Tenant. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

A. Any failure by Tenant to pay the rent or make any other payment required to be made by Tenant under this Lease (when that failure continues for ten (10) days after a written notice of the failure is given by Landlord to Tenant);

B. The abandonment or vacation of the Premises by Tenant;

C. A failure by tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when that failure continues for ten (10) days after written notice of the Tenant’s failure is given by Landlord to Tenant, provided, however, that if the nature of that default is such that it cannot reasonably be cured within a ten (10) day period, Tenant shall not be deemed to be in default if Tenant commences that cure within the ten (10) day period and thereafter diligently prosecutes it to completion; or

D. The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, when possession is not restored to Tenant within thirty (30) days; or the attachment, execution, or the judicial seizure of substantially all of Tenant’s assets located at the Premises or of the Tenant’s interest in this Lease, when that seizure is not discharged within thirty (30) days.

The notices provided for in subsections A through C of this paragraph are not intended to replace, but rather are in addition to, any required statutory notices for unlawful detainer proceedings under California Code of Civil Procedure Section 1160 et. seq.

17. Recovery of Damages on Tenant’s Default. In the event of any default by Tenant under this Lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease by
giving written notice of the termination. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the Lease. In the event Landlord elects to terminate this Lease, Landlord may recover from Tenant all of the following:

A. The worth at the time of award of any unpaid rent that had been earned at the time of the Lease’s termination;

B. The worth at the time of award of the amount by which the unpaid rent that would have been earned after the Lease’s termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

C. The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

D. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant’s failure to perform its obligations under this Lease.

18. Landlord’s Right to Continue Lease in Effect After Breach. If Tenant breaches this Lease and abandons the Premises before the natural expiration of this Lease’s term, Landlord may continue this Lease in effect by not terminating Tenant’s right to possession of the Premises, in which event Landlord shall be entitled to enforce all its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease. For as long as Landlord does not terminate this Lease, Tenant shall have the right to assign or sublease the Premises.


A. If all or any part of the Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease, either Landlord or Tenant may terminate this Lease by giving the other thirty (30) days written notice of termination; provided, however, that Tenant cannot terminate this Lease unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this Lease; and

B. If only a portion of the Premises is taken by eminent domain and neither Landlord nor Tenant terminates this Lease, the rent thereafter payable under this Lease shall be reduced by the same percentage that the total acres of the portion taken by eminent domain bears to the total acreage of the Premises.

C. Any and all damages and compensation awarded or paid because of a taking of the Premises shall belong to Landlord, and Tenant shall have no claim against Landlord or the entity exercising eminent domain power for the value of the unexpired term of this Lease or any other right arising from this Lease.

20. Water Rights. Nothing in this Lease shall confer upon the Tenant any right to groundwater pumping rights, associated with the Premises that may be finally determined adjudicated in the Coordination Proceeding known as the "Antelope Valley Groundwater Cases", Judicial Council Coordination Proceeding No. 4408, including any right to all overlying and appropriative rights to divert, extract, use, and state percolating groundwater that may be
produced from, or that is stored beneath the surface of the Premises or any property of the Landlord.

21. **Oil, Gas and Mineral Rights.** Nothing in this **Lease** shall confer upon the Tenant any right to minerals underlying said land, but same are hereby reserved by Landlord together with the full right to bore, search, and excavate for same, to work and remove same, and to deposit excavated rubbish, and with full liberty to pass over the Premises with vehicles and lay down and work any railroad tracks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Landlord agrees to reimburse the Tenant for any actual damage he may suffer for crops destroyed by these activities and to release Tenant from this Lease when development of mineral rights interferes materially with the Tenant’s opportunity to make a satisfactory return.

22. **Hunting Rights.** All of the hunting rights and privileges on the Premises are reserved to Landlord. Tenant agrees that it will not permit any hunting on the Premises without the prior written consent of Landlord.

23. **Attorneys’ Fees.** If any litigation is commenced between the parties to this **Lease** concerning the Premises, this **Lease**, or the rights and duties of either in relation to the Premises or to this **Lease**, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys’ fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

24. **Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this **Lease** or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed, or in lieu of personal service when deposited in the United States mail, first-class postage prepaid, as follows:

To Landlord:
Michael Flood, Assistant General Manager
Antelope Valley-East Kern Water Agency
6500 West Avenue N.
Palmdale, California 93551
To Tenant:
Scott Harter, Owner
Tenant Name, Title
Company

237 72nd St West
Rosamond, CA 93560
Address

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

25. **Binding on Heirs and Successors.** This **Lease** and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this **Lease**. Nothing contained in
this paragraph shall be construed as consent by Landlord to any assignment of this Lease or any interest in this Lease by Tenant except as provided in Paragraph 14 of this Lease.

26. **Time of Essence.** Time is of the essence of this Lease and of each provision contained within, and each provision is made and declared to be a material, necessary, and essential part of this Lease.

27. **Sole and Only Agreement.** This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, or the Lease term created under this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void. This Lease may not be extended, amended, modified, altered, or changed, except in a writing signed by Landlord and Tenant.

28. **Effect of Partial Invalidity.** If any term or provision of this Lease or any application of this Lease shall be held invalid or unenforceable, the remainder of this Lease and any application of the terms and provisions shall remain valid and enforceable under this Lease or California law.

29. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

30. **Waiver.** The waiver by Landlord of any breach by Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or another provision of this Lease.

**SIGNATURES FOLLOW ON NEXT PAGE**
Executed on **APRIL 14, 2010** at **PALMDALE**, County of **LOS ANGELES**, State of California.

**LANDLORD**

Antelope Valley-East Kern Water Agency

[Signature]

DAVE RIEBO, PRESIDENT
Printed Name, Title

**TENANT**

**Scott Harter**

[Signature]

Scott Harter
Printed Name, Title
ATTACHMENT "A"

Legal Descriptions

Real property in the unincorporated area, County of Kern, State of California, described as follows:

Parcel A “Icardo”:

PARCEL 2 OF LOT LINE ADJUSTMENT NO. 57-94, AS EVIDENCED BY CERTIFICATE OF COMPLIANCE,recorded August 7, 1995 as Document No. 0195093855 and being the South Half of the Northeast Quarter and the Northeast Quarter of the Northeast Quarter of Section 32, Township 9 North, Range 13 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat thereof.

Also that portion described as follows: beginning at the center of section 32, Township 9 North, Range 13 West, San Bernardino Meridian; thence South 307.13 feet along the westerly line of the Southeast Quarter of said section 32; thence East along a line parallel along to the North line of the South Easterly Quarter of said section 32, 2642.66 feet, more or less, to the easterly line of said section 32; thence North 307.12 feet to the Northeasterly corner of the Southeast Quarter of said section 32; thence West along the northerly line of the Southeast Quarter of section 32, 2643.02 feet, more or less, to the point of beginning.


Parcel B “Stoner 3”:

The North Half of the Northwest Quarter of Section 32, Township 9 North, Range 13 West, San Bernardino Base and Meridian, in the unincorporated area of the county of Kern, State of California, according to the official plat thereof.

A.T.N.: 374-250-01, 03, approximately 80 Acres.

Parcel C “Stoner 2” (South Portion):

The South Half of the West Half of section 29, Township 9 North, Range 13 West, San Bernardino Meridian, in the County of Kern, State of California, according to the official plat thereof.

 Excepting therefrom the Northerly 25 feet of the Southerly 55 feet of the West Half of said Section 29, as conveyed to the Antelope Valley-East Kern Water Agency in Deed recorded February 25, 1977 in Book 3010, Page 365 of official records.

ATTACHMENT "A"

Map of AVEK Property with Premises Highlighted
**Certiﬁcate of Liability Insurance**

**Producer:** (555)229-0068
Larry E. Shrema Insurance
Affiliate PIII
1318 E. Shinn Ave. Ste. 310
Fresno, CA 93710

**Insured:** Harter, Scott & Kay
237 72nd St. West
Rosemead, CA 90602-7218

**Coverages**

The Policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

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**Certificate Holder**

Antelope Valley - East Kern Water Agency
6500 West Avenue E
Paindale, CA 93551
email tbavee@knx.net.com

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail a 30-day written notice to the policyholder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

**ACORD 25 (2009/01)**

The ACORD name and logo are registered marks of ACORD.
IN-LIEU AGREEMENT

This In-Lieu Agreement is entered into on ______________, by and between the Antelope Valley State Water Contractors Association (AVSWCA), the Antelope Valley-East Kern Water Agency (AVEK), ______________ (Customer), and ______________ (Public/Private Entity) and shall apply to In-Lieu Banking Water stored in the Antelope Valley for ultimate use within the boundaries of the AVSWCA’s member agencies.

Antelope Valley State Water Contractors Association Mission Statement

The mission of the Antelope Valley State Water Contractors Association is to facilitate the maximum use of the water resources of the Antelope Valley for the public benefit in the Antelope Valley by:

- Developing groundwater storage programs
- Facilitating communication and public outreach on water issues
- Creating partnerships to enhance the reliability of long-term water supplies
- Seeking funding opportunities for infrastructure and water supply projects

RECITALS

WHEREAS, the Antelope Valley State Water Contractors Association is a California Joint Powers Authority, pursuant to Gov. Code §6500.

WHEREAS, the Antelope Valley State Water Contractors Association (AVSWCA) was formed as a separate and independent governmental entity, to provide a framework for the joint exercise of their common powers relating to the development and protection of water supplies in the Antelope Valley.

WHEREAS, the Parties desire to enter into this Agreement notwithstanding the Parties current and future participation in litigation in the matter of the ANTELOPE VALLEY GROUNDWATER CASES, Proceeding No. 4408.
WHEREAS, AVSWCA seeks to maintain and improve the economy of the Antelope Valley by promoting and supporting programs that provide In-Lieu Water Banking, provided that:

a. The program is economically beneficial to the Antelope Valley;

b. Third party impacts, if any, are appropriately addressed;

c. The amount and price of banked water is based upon the amounts agreed between the parties;

d. Environmental impacts, if any, are addressed.

WHEREAS, the intent of this In-Lieu Water Banking Program is to allow for the Public/Private Entity to receive treated water at a cost that is roughly equivalent to the current AVEK treated water delivery amount. For example, the treated water delivery costs (shown per acre-foot of water) to the Public/Private Entity based on 2012 estimated costs would be:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial balance of Banking Rate (see Paragraph 4 below):</td>
<td>$116/AF</td>
</tr>
<tr>
<td>Estimated Pumping costs for recovery of banked water (summer rate)</td>
<td>$150/AF</td>
</tr>
<tr>
<td>Estimated Treatment and Delivery costs</td>
<td>$110/AF</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$376/AF</strong></td>
</tr>
</tbody>
</table>

*Compared to AVEK’s 2012 summer treated water rate of: $400/AF*

WHEREAS, AVEK, as lead agency, has complied with the requirements of the California Environmental Quality Act with respect to the project described in this Agreement.

AGREEMENT

1. **Authorization.** This In-Lieu Agreement is authorized by Section 98-61, Paragraph 15, of the California Water Code. In order to limit Customer’s extraction of groundwater from the groundwater basin, AVEK wishes to temporarily reduce all, or a portion of, the Customer’s groundwater pumping, and Customer is willing to reduce such pumping pursuant to the terms of this Agreement.

2. **Water Purchase.** Customer agrees to purchase Banking Water from AVEK during the upcoming water year under the AVSWCA’s In-Lieu Water Banking Program at the board-approved Banking Rate, given that AVEK has such supplies available, for irrigation of the property described on Exhibit “A” attached hereto (Customer’s Property).
3. **Non-Pumping.** Customer agrees to cease pumping operations from wells operated by Customer on Customer's Property to the level of the amount of Banking Water purchased by Customer from AVEK under the In-Lieu Water Banking Program.

4. **Recompense.** Customer agrees to demonstrate to AVEK the actual, current groundwater pumping costs from wells owned and operated by Customer. Banking Water will be provided to the Customer, in-lieu of groundwater pumping, at a cost of $10/AF less than this demonstrated Customer pumping cost. Public/Private Entity agrees to pay the balance between the current AVEK Banking Rate and the amount paid by the Customer. For example, the costs (shown per acre-foot of water) to the Public/Private Entity based on 2012 estimated amounts would be:

- **Total Cost of Banking Water:** $216/AF
- **Estimated Cost of pumping groundwater:** $110/AF
- **Incentive discount to Customer:** ($10/AF)
- **Final Customer cost of pumping groundwater:** $100/AF
- **Remaining cost to be paid by Public/Private Entity:** $216/AF - $100/AF = $116/AF

5. **Storage.** The parties hereto agree that Public/Private Entity shall be deemed to have received a credit of one (1) acre-foot of water in storage for every acre-foot of Banking Water that Public/Private Entity has agreed to recompense AVEK towards water sold to Customer under the In-Lieu Water Banking Program, unless contrary to the judgment ultimately rendered in the ANTELOPE VALLEY GROUNDWATER CASES (J CCP 4408). The Banking Water will be considered stored at the location where the Banking Water is used in-lieu of groundwater.

6. **Return Flows.** The right to any portion of Return Flows associated with this Program will be addressed and determined within any Judgment which may be entered in the ongoing Adjudication; the ANTELOPE VALLEY GROUNDWATER CASES, (J CCP 4408).

7. **Withdrawal of Water.** The parties hereto further agree that Public/Private Entity may withdraw water from storage by written request to AVSWCA, unless contrary to the judgment ultimately rendered with ANTELOPE VALLEY GROUNDWATER CASES. Water may be withdrawn at a rate subject to available capacity. Prior to becoming eligible to withdraw water from storage, Public/Private Entity must have received In-Lieu Water credit in the storage basin prior to the current AVEK fiscal year. The amount of water withdrawn shall not exceed the amount of water previously stored by Public/Private Entity.
8. **Verification.** At any time during the term of this Agreement, AVEK may determine that further data or investigation is needed to support the claim of Customer as to the level of non-pumping of Customer. AVEK may request that Customer provide such further data or allow such further investigation. AVEK shall have the right to withhold any additional Banking Water until any such additional data is provided or any necessary investigation is completed, and until AVEK is satisfied the Customer is entitled to such additional Banking Water.

9. **Accounting.** The parties will negotiate in good faith regarding accounting and notification of water deliveries. AVSWCA will separately record and account for the total amount of water in storage by Public/Private Entity during the term of this Agreement. AVSWCA shall calculate additions and extractions of water banked under this agreement, and maintain an account of all such water.

10. **Regulations.** AVEK’s rules and regulations for groundwater banking shall apply to this In-Lieu Agreement.

11. **Losses.** Water stored pursuant to this Agreement shall be stored in Public/Private Entity’s storage account and shall not be subject to losses.

12. **Water Quality.** The quality of water delivered and/or stored pursuant to this Agreement shall not be detrimental to the area in which storage will occur.

13. **Dispute Resolution.** In the event any Party commences legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as the result of the breach of any covenant or condition of this Agreement, the prevailing Party in any such proceeding shall be entitled to recover from the losing Party the reasonable costs and attorney’s fees, incurred in connection therewith. Except as otherwise expressly provided herein, all Parties shall bear their own costs and attorney’s fees.

14. **Indemnification.** Except for resolution of disputes pursuant to Paragraph 13 above, Customer and Public/Private Entity shall save and hold harmless AVSWCA, its officers, agents and employees from any and all costs, damages or liability resulting from this Agreement or its implementation.

15. **Non-Transferable.** This Agreement is not assignable or transferable, except to the lawful successor of either Party, and cannot in any way be hypothecated by Customer.

16. **Amendment.** This Agreement shall be amended only upon written agreement of the Parties.
17. **Entire Agreement.** This Agreement is the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the Parties with respect to the matters contained in this Agreement. Any waiver, modification, consent of acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by, or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

18. **Notices.** Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including courier service), by facsimile communication, by Federal Express, UPS or other overnight delivery, or by registered or certified mail, postage prepaid and return receipt requested. Any party may change its mailing address or facsimile number by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service; on the date of confirmed dispatch, if by facsimile communication; on the day after delivery if by "overnight courier," on the third (3rd) day after being placed in the U.S. mail, if mailed first class, whether or not registered or certified.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The only venue and forum for the resolution of any dispute regarding the interpretation or enforcement of this Agreement shall be in the Superior Court of the State of California in and for the County of Santa Clara, Central Judicial District, California, ANTELOPE VALLEY GROUNDWATER CASES, Case No. 1-05-CV-049053 (JCCP 4408), or such other forum as the Judgment may subsequently be assigned.

20. **Construction.** The language in all parts of this Agreement shall be in all cases construed simply, according to its fair meaning, and not strictly for or against any of the Parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Paragraphs" are to Paragraphs of this Agreement, unless otherwise specifically provided.

21. **Good Faith.** The Parties agree to perform their obligations herein in "good faith" and shall do all things reasonably necessary to carry out the intent and/or to implement the terms of this Agreement.
22. **Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to their respective representatives, agents and lawful successors.

23. **Continued Validity.** If any provision of this Agreement, or its application to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect.

24. **Adjudication.** This agreement and all terms and conditions set forth within are subject to any Judgment which may be entered in the ongoing Adjudication; the ANTELOPE VALLEY GROUNDWATER CASES, (JCCP 4408), resolving the groundwater rights within the Antelope Valley and future rules and regulations which may be developed by a Court appointed Watermaster or the Board of Directors of AVSWCA.

25. **Term and Amendments.** This In-Lieu Agreement will be reviewed and renewed at the end of one (1) year from date of execution by all parties. Amendments and/or revisions to this Agreement may be made and incorporated at that time by mutual consent of all parties in writing.

IN WITNESS WHEREOF, the Parties hereto have executed this In-Lieu Agreement as of the day and date first above written.

ATTEST:

ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATION (AVSWCA)

By: ____________________________

By: ____________________________

Title: ____________________________

Title: ____________________________
ATTEST:

By: __________________________

Title: __________________________

ANTELOPE VALLEY-EAST KERN WATER AGENCY (AVEK)

By: __________________________

Title: __________________________

ATTEST:

By: __________________________

Title: __________________________

(CUSTOMER)

By: __________________________

Title: __________________________

ATTEST:

By: __________________________

Title: __________________________

(PUBLIC/PRIVATE ENTITY)

By: __________________________

Title: __________________________