

THIS LEASE, "Lease", is made and entered into to be effective the twenty-third day of December, 2022 by and between the CITY OF WATSONVILLE, a municipal corporation, hereafter called "City", and **PACIFIC AGRICULTURAL PACKING, d/b/a/ PACIFIC AG PAK, INC**, hereafter called "Tenant".

THE PARTIES AGREE AS FOLLOWS:

**1. Premises.**

City does hereby rent and Tenant does hereby hire and take from City that certain real property and improvements, commonly known and referred to as 50 Aviation Way, Watsonville, California, consisting of a **673** (six hundred seventy-three) square feet portion of building located at 50 Aviation Way, in the City of Watsonville, Santa Cruz County, California. The premises are outlined in black on Exhibit "A" and Exhibit "B". Tenant also has the right of ingress and egress to such Premises.

**2. Term**

The term of this Lease shall be four (4) years, commencing December 23, 2022, and expiring on December 22, 2026, hereafter "Lease Term", at an agreed monthly rent of approximately \$2.50 per square foot per month at the sum of **\$1,682.50** (one thousand six hundred eight-two dollars and fifty cents) per month for the term (December 23, 2022 to December 22, 2026). Tenant and City agree to this rent without regard to whether per square foot rent is more or less than the prescribed amounts above (i.e. a rounding error).

The rent shall be adjusted annually, every July 15<sup>th</sup> beginning during the second year of the lease and each July 15<sup>th</sup> thereafter using the rate of April to April change in the Consumer Price Index (CPI) for All Urban Consumers San Francisco-Oakland-San Jose, California. In no event will the annual rental increase be more than seven percent (7%) due to increases in the CPI.

If on any rental adjustment date there shall not exist a CPI in the same format as recited herein, the parties shall substitute the Consumer Price Index for all Urban Consumers provided such index has been so revised or changed in such a way as to affect the direct comparability of such revised or changed index published by the Bureau of Labor Statistics or similar or successor governmental agency as may then be in existence and most nearly equivalent thereto (i.e.: the Wholesale Price Index). If the parties are unable to agree on a successor index in the event the aforesaid index is no longer reporting, then the parties shall refer the choice of the successor index to arbitration in accordance with rules of the American Arbitration Association. Rent is due and shall be paid in advance on the 1st day of each and every month during the term of this Lease, commencing January 1, 2023. Rent not received by the fifteenth (15<sup>th</sup>) of the month shall be assessed a ten percent (10%) late payment penalty.

**3. Use.**

The Premises shall be used as office space to engage in providing full-service

agricultural packing and related services thereto, to growers, retailers and producers in accordance with industry standards and best practices.

**4. Prohibited Uses.**

The leased Premises shall not be used for any other use not expressly allowed in Section 3 of this Lease.

**5. Improvements to Premises.**

If any improvements are proposed by the Tenant, Tenant shall submit a written description of the proposal to the Airport Director together with two sketches drawn to scale. The Airport Director will review the proposal and provide written comments with a recommendation and forward the same to the City Manager for review.

**6. Conditions of Construction.**

Before construction is commenced on the Premises, and before any building materials have been delivered to the Premises by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Landlord's written waiver of the condition or conditions specified in the waiver: plans and specifications, and four (4) copies of site plan. City shall not unreasonably disapprove preliminary plans and specifications.

(a) Notify City of Tenant's intention to commence the work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. City shall have the right to post and maintain on the Premises any notices of non-responsibility provided for under applicable law.

(b) Furnish City with a true copy of Tenant's contract with the general contractor and with evidence of the general contractor's financial condition for City's approval. The contract shall give City the right but not the obligation to assume Tenant's obligations and rights under that contract if Tenant should default.

(c) Tenant shall comply with all applicable codes, ordinances, or regulations, and requirements for permits and approvals, including, but not limited to or restricted to a grading permit, building permit, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

(d) Tenant shall require from the contractor: (i) certificates of insurance evidencing coverage for "Builder's risk", (ii) evidence of Worker's Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord or the Premises, and (iii) evidence that contractor has paid or caused to be paid all premiums for the coverage described in this sub- paragraph and premiums sufficient to assure maintenance of all insurance during the anticipated course of the work.

**7. Protection of City against Cost or Claim.**

Tenant shall pay or cause to be paid the total cost and expense of all works of

improvements, as that phrase is defined in the mechanic's lien law in effect at the place of construction when the work begins. No such payment shall be construed as rent. Tenant shall not suffer or permit to be enforced against the Premises or any part of it any mechanic's, materiel man's, contractor's, or sub-contractor's lien arising from any work of improvement, however it may arise. However, Tenant may in good faith and at Tenant's own expense contest the validity of any such asserted lien, claim, or demand, provided Tenant has furnished the bond required in California Civil Code Section 3 143. Tenant shall defend and indemnify City against all liability and loss of any type arising out of work performed on the Premises by Tenant, together with reasonable attorney's fees and all costs and expenses incurred by City in negotiating, settling, defending, or otherwise protecting against such claims.

#### **8. Notice of Completion.**

On completion of the work of improvement, Tenant shall file or cause to be filed a notice of completion. Tenant hereby appoints City as Tenant's attorney in fact to file the notice of completion on Tenant's failure.

#### **9. Ownership of Improvements During Term.**

All buildings and improvements constructed on the Premises by Tenant as permitted or required by this Lease shall, during this Lease Term, be and remain the property of Tenant; provided, however, that Tenant shall have no right to waste, destroy, demolish or remove the improvements except as expressly provided in this Lease; and provided, further, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease. City and Tenant covenant for themselves, and all persons claiming under or through them, that the improvements are real property. All buildings and improvements existing on the Premises, as of the date of this Lease are City's property, free of all claims to or against them by Tenant or any third person.

#### **10. Ownership of Improvements at Termination.**

Except as specified in Section 13 of this Lease, all buildings and improvements placed or constructed on said Premises as part of said project, as well as any and all other alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on said Premises by Tenant or any other person, shall be considered part of the real property of said Premises and on expiration or sooner termination of this Lease, or the exercised option, shall remain on said Premises and become the property of City free and clear of any liens or encumbrances whatsoever and without the payment of any consideration therefore.

#### **11. Removal of Fixtures.**

At the normal expiration of the Lease Term, provided Tenant is not in default, Tenant shall have the right to remove any and all trade fixtures, provided all resultant injuries to the Premises and remaining improvements, except for ordinary wear and tear, are completely remedied and Tenant complies with City's reasonable requirements

respecting the resultant appearance. Any such items not so removed within thirty (30) days of termination shall become the property of City free and clear of any liens or encumbrances whatsoever and without payment of consideration therefore.

**12. No Subordination.**

City shall not subordinate the fee title to the Premises to any security transaction to enable Tenant to obtain financing for the new improvements. The Premises are now and shall remain free and clear of any liens, encumbrances or other Tenant obligations to third person.

**13. Utilities.**

Tenant shall pay quarterly, in arrears, for all gas, heat, light, power, telephone service, garbage disposal, storm and sanitary sewer services, and water, plus all other services supplied to the Premises, including installation and connection of such services from the main source thereof, including City meters, and hold harmless the City therefore.

**14. Possessory Interest Tax.**

Pursuant to Section 107.6 of the State Revenue and Taxation Code the City hereby gives notice that the property interest to Tenant under this Lease may be subject to property taxation as a possessory interest and the Tenant acknowledges that it shall be subject to payment of property tax if a possessory interest tax is levied on the property interest.

**15. Alterations and Additions.**

Except as otherwise provided by Section 6 of this Lease, Tenant shall not make any alterations or improvements to or erect any additional structures on the Premises without prior written consent of City. Any alterations or additions approved by City shall be constructed at the sole expense of Tenant.

**16. Compliance with rules, regulations and laws.**

In the use and occupancy of the Premises and in the conduct of all business, activities and transactions thereon, Tenant will comply with all applicable laws, ordinances, rules, regulations and orders of the City or any governmental subdivision, body or authority, including all federal, state and municipal laws and ordinances and all rules and regulations of the Federal Aviation Agency and the City of Watsonville rules and regulations concerning the operations of the Watsonville Municipal Airport and environs.

**17. Storage of Materials, Equipment.**

No materials, supplies, products, equipment or other personal property shall be stored or permitted to remain on any portion of the Leased Premises outside of City approved buildings or structures without City's prior written consent. Tenant shall store

personal property items, supplies, materials and combustibles inside the buildings in a safe, neat and sanitary manner. Tenant shall provide or cause to be provided adequate enclosures, screened areas and/or suitable covered metal receptacles within the Leased Premises for the short-term accumulation and storage of solid waste, such as rubbish, trash, garbage, sludge, discarded machinery or parts and any other solid industrial wastes. Such enclosures and/or screened areas shall be designed in such a way as to prevent, odors, fumes, attraction of pests, and dispersal of wastes due to wind or water runoff, and shall be serviced regularly by qualified waste removal and disposal services.

**Environmental Considerations.**

(a) Tenant shall not commit, or suffer to be committed, any waste upon the Leased Premises, or any nuisance or other act or thing, which may disturb the quiet enjoyment of the use of Watsonville Airport or surrounding property. Tenant shall ensure that no untreated liquid waste from any type of operation will enter the airport storm drainage system or sanitary system.

(b) Tenant shall at all times comply with all applicable laws, rules and regulations of federal, state or local governmental agencies, including, but not limited to, the City of Watsonville, Santa Cruz County, and responsible Regional Air and Water Quality Control Boards. Tenant shall not permit any activity which directly or indirectly produces objectionable or unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, or dust), water pollution, noise, glare, heat emissions, electronic or radio interference with navigational and communication facilities for the operation of the Airport and for its use by aircraft, trash or refuse accumulation, vibration, prop-wash, or jet blast, or which is hazardous or dangerous by reason or risk of explosion, fire or harmful emission. Any waste oil storage tanks shall be in approved containers and in accordance with environmental and fire protection regulations.

(c) Hazardous Substances. The term "Hazardous Materials" shall mean any toxic substance, hazardous substance, hazardous material, or hazardous waste, pollutant or contaminant which is or during the term of this Lease becomes regulated by any local governmental authority, the State of California, or the United States government, including, but not limited to any, material or substance which is defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under local, State, or federal law and as determined by the Fire Department. Except in strict compliance with all government approvals, applicable laws and regulations pertaining to Hazardous Materials, and in accordance with the provisions of this Lease, Tenant shall not cause or permit the presence, use, handling, generation, emission, release, discharge, storage, or disposal of any Hazardous Materials on, under, in or about the Premises, excepting the presence of any Hazardous Materials on, under, in or about the Premises as of the date of this Lease or the migration to or seepage of Hazardous Materials from surrounding or adjacent property; and shall not cause or permit the transportation of any such materials.

**18. Hazardous Materials to or from the Premises.**

- (a) Tenant shall at all times notify City of any Hazardous Materials present, used, generated, handled, emitted, released, discharged, stored or disposed of on or from the Premises. Notwithstanding the foregoing, notice shall not be required for Hazardous Materials present on the Premises in reasonable quantities which are commonly used in machining facilities including, but not limited to, cleaning materials, motor oils, and hydraulic fluids provided such Hazardous Materials are used and disposed of in accordance with law, or for materials which are first designated as Hazardous Materials after expiration of the term of this Lease. Tenant shall also institute operating procedures designed to handle Hazardous Materials consistent with prudent industry practice, including evidence of a licensed agent removal service. City shall have the right to inspect the Premises on 24-hours prior notice for compliance with the provisions of this Section.
- (b) Indemnification by City. City shall indemnify, protect, defend, and hold harmless Tenant and Tenant's successors and assigns, officers, directors, employees, agents, subtenants and assignees, from and against all liability, and foreseeable consequential damages, penalties, expenses and costs of any required or necessary remediation, repair, removal, clean up or detoxification, of the Premises and surrounding properties, and from and against the preparation of any clean up, remediation, closure or other required plans, whether such action is required or necessary during or following the term of this Lease, to the full extent that the same is attributable to the use, handling, generation, emission, release, storage, discharge or disposal of hazardous material by City, its agents, employees, and contractors.

**21. Indemnification by Tenant.**

Tenant shall indemnify, protect, defend, and hold harmless City and City's successors and assigns, officers, directors, employees, agents, subtenants and assignees, from and against all liability, and foreseeable consequential damages, penalties, expenses and costs of any required or necessary remediation, repair, removal, clean up or detoxification, of the Premises and surrounding properties, and from and against the preparation of any clean up, remediation, closure or other required plans, whether such action is required or necessary during or following the term of this Lease, to the full extent that the same is attributable to the use, handling, generation, emission, release, storage, discharge or disposal of hazardous material by Tenant, its agents, employees, and contractors.

(a) Indemnification Survives Lease. The indemnification provisions of the foregoing shall survive the termination of this Lease.

No Warranty of Current Condition. City makes no representation or warranty, express or implied, as to the physical condition of the Premises, including, but not limited to the condition of the exterior or interior of the structure, ground, soil, surface water or groundwater. the geology, the presence of known and unknown faults, the presence of any Hazardous Materials or other kinds of contamination or pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of the Premises for the construction and use of the improvements thereon.

## **22. Repairs.**

City shall maintain the exterior of the Premises, including outside walls and roof, heating, electrical systems (excluding internal lights and fixtures) except in the event that repairs or replacements are necessary thereto because of negligence or misconduct of the Tenant or if Tenant fails to notify City in writing within three (3) days of the need to repair.

Tenant shall maintain Premises, including, but not limited to, exterior landscaping, interior plumbing (i.e., sanitary sewer obstructions), interior walls, doors, hardware, alarms, internal lights and fixtures, etc., in as good order, condition and repair as they shall be upon the commencement of the term of this Lease. Any addition to the electrical system installed by Tenant shall remain the responsibility of the Tenant. Tenant shall keep drainage ditches and gutters free of debris.

## **23. Freedom from Liens.**

Tenant shall not create or permit to be created or to remain, and covenants to remove and discharge promptly, at its cost and expense, all liens, claims, stop notices, encumbrances and charges upon the Premises, or Tenant's leasehold interest therein which arise out of the use or occupancy of the Premises by Tenant or anyone using or occupying the Premises with the consent or sufferance of Tenant, or by reason of labor or materials furnished or claimed to have been furnished to Tenant for any construction, alteration, addition or repair of any part of the Premises. Tenant shall give City a fifteen (15) day notice prior to commencing any work on the Premises, so that City shall have a reasonable time within which to post notices of non-responsibility.

## **24. Holding Over.**

If Tenant shall hold possession of the Premises after the term of this Lease, Tenant shall become a Tenant from month to month at the rental and upon the terms herein specified and shall continue to be such tenant until the tenancy shall be terminated by City on thirty (30) days' notice or until Tenant shall have given at least thirty (30) days' notice of Tenant's intention to terminate the tenancy. The provisions of this Lease, so far as applicable, shall govern such tenancy, except that the monthly rent for such tenancy shall be the same as the last full month's rental rate.

## **25. Abandonment.**

Tenant shall not vacate or abandon the Premises at any time during the term thereof; if Tenant shall abandon, vacate or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned and at the option of City shall become City's property free from all claims of Tenant. In the event Tenant abandons the Premises City shall have the option to terminate this Lease by giving Tenant notice of belief of abandonment pursuant to California Civil Code Section 195 1.3 or City has the remedy described in California Civil Code Section 1951.4, i.e., City may continue the Lease after breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject to reasonable limitations as provided in paragraph 25.

## **26. Assignment or Subletting.**

Tenant shall not assign or encumber any interest in this Lease or in the Leased Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without City's written consent, and consent to one assignment or sublease shall not be construed as consent to any subsequent assignment or subleasing.

If Tenant is a corporation or partnership, any dissolution, merger, consolidation or other reorganization of Tenant or the sale or transfer of controlling percentage of the capital stock of Tenant or the sale of twenty five percent (25%) of the value of the assets of Tenant shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of and the right to vote stock possessing at least twenty five percent (25%) of the total combined voting power of all classes of Tenant's capital stock issued outstanding and entitled to vote for the election of directors. City shall not unreasonably withhold consent, but City may nevertheless condition consent upon such factors as the identity, reputation, financial worth and stability and operating ability of any proposed assignee or subtenant. Unless prior written consent of City shall have been obtained, any transfer, or attempted assignment or transfer, of this Lease or any interest therein, or any subletting, either by voluntary or involuntary act of Tenant or by operation of law or otherwise, shall at the option of the City terminate this Lease, and any such purported assignment, transfer or subletting without such consent shall be null and void.

### **Assignment.**

1. Tenant shall not have the right to assign this Lease, except by Leasehold mortgage, without the written consent of City, which shall not be unreasonably withheld. If Tenant desires to assign the Lease, Tenant shall comply with the following procedures:

- (a) Tenant shall give City at least sixty (60) days prior written notice of its desire to assign the Lease.
- (b) Tenant shall simultaneously provide City with the assignee's name, business organization, financial statement, and other documentation as may be requested by City.
- (c) Tenant shall provide City with a true copy of the proposed assignment and the proposed assignee shall, in recordable form, expressly assume all the covenants and conditions of this Lease.
- (d) Tenant shall provide City with copies of any financial agreements, schedule of payments, mortgage or encumbrance on the Leasehold estate.
- (e) Tenant shall pay City at the time the request to assign is submitted, a deposit of Five Thousand Dollars (\$5,000.00) to offset City's expenses, including attorney's fee, in evaluating and documenting the assignment. City shall charge said deposit at the then current hourly rate for staff time charged to the Airport. Any balance of said deposit shall be refunded to Tenant, and any excess amount charged, excluding said deposit, shall be paid by Tenant.

(2) City and Tenant hereby deem it reasonable for the City to refuse to consent to a proposed assignment in the following circumstances:



(a) City may object to any proposed assignment if, in the City's sole opinion, the proposed assignee is not a qualified assignee in terms of financial strength, business experience or reputation or the ability to operate the fixed base operation and provide the required services in a manner consistent with the purposes for which this Lease was granted.

(b) City may object on any other reasonable grounds.

The effective date of the assignment shall not occur until sixty (60) days after the Tenant's notice of the proposed assignment unless, within that time, City gives notice of a valid objection or refusal of consent as set forth in subsection A. (3) hereof. If City gives notice of a valid objection and withholds consent, the Lease will not be assigned.

### **Subletting.**

It is understood and agreed that, from time to time, Tenant may request City's permission to sublet portions of the Premises and City shall not unreasonably withhold consent, provided:

(1) Each sublease made shall be subject and subordinate to the right of the City and the provisions of each sublease shall conform to the provisions of this Lease as far as practicable.

(2) The sublease does not effect an assignment of the Lease as prohibited elsewhere.

(3) Tenant includes the following information with its request to sublease, the name, address, a true copy of the proposed sublease, and appropriate documentation as evidence the subtenant is qualified to conduct business on the Airport and such subtenant will provide the type of development and services required under the provisions of this Lease.

(4) Subtenant provides insurance coverage(s) as appropriate, in accordance with Lease provision(s), INSURANCE, the same as if the subtenant were a lessee.

If Tenant is in the default of monetary obligations to City pursuant to this Lease, Tenant immediately and irrevocably assigns to City, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Leased Premises as permitted by this Lease, and City, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on City's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent. It is understood and agreed by the parties hereto that the above assignment provisions do not apply to heirs by will.

### **27. LANDLORD'S RECAPTURE RIGHT.**

#### **RIGHT OF RECAPTURE**

Despite any other provision of this Lease, Tenant shall notify Landlord in writing (Availability Notice) if Tenant wishes to transfer the Premises or any portion thereof

(Subject Space). If Tenant does not give Landlord the Availability Notice before delivering a Transfer Notice, the Transfer Notice shall also be the Availability Notice. Landlord has the option, by written notice to Tenant (Recapture Notice) within thirty (30) days after receiving any Availability Notice, to recapture the Subject Space as described in the next section. A timely Recapture Notice terminates this Lease as to the Subject Space and Tenant's obligations regarding the remaining term of this Lease (or, at Landlord's election, for a shorter period specified in the Availability Notice as the term of the Transfer) and as of the date specified in the Availability Notice. The Recapture Notice shall be void, however, if Tenant notifies Landlord, within thirty (30) days after receipt of the Recapture Notice, that Tenant withdraws the Availability Notice or Transfer Notice. If Landlord declines or fails timely to elect to recapture the Subject Space, Landlord shall have no further right under this section to the Subject Space unless it becomes available again after Transfer by Tenant.

#### CONSEQUENCES OF RECAPTURE.

To determine the new Base Rent under this Lease if Landlord recaptures the Subject Space, the original Base Rent under the Lease shall be multiplied by a fraction, the numerator of which is the Rentable Square Feet of the Premises retained by Tenant after Landlord's recapture and the denominator of which is the total Rentable Square Feet of the Premises before Landlord's recapture. The Additional Rent, to the extent that it is calculated on the basis of the Rentable Square Feet within the Premises, shall be reduced to reflect Tenant's proportionate share based on the Rentable Square Feet of the Premises retained by Tenant after Landlord's recapture. This Lease as so amended shall continue thereafter in full force and effect for the remaining Premises only. Either party may require written confirmation of the amendments to this Lease necessitated by Landlord's recapture of the Subject Space. If Landlord recaptures the Subject Space, Landlord shall, at Landlord's sole expense, construct any partitions required to segregate the Subject Space from the space retained by Tenant. Tenant shall, however, pay for painting, covering, or otherwise decorating the surfaces of the partitions facing the remaining Premises retained by Tenant.

If Landlord recaptures the Subject Space, Landlord shall pay Tenant ten percent (10%) of any Transfer Premium received by Landlord.

#### **28. Signs, Posters, Buildings and Towers.**

No advertising signs, posters or similar devices shall be erected, displayed or maintained in, on, about or above the Premises or the structures thereon without a sign permit and the written approval of the Airport Manager.

No structures erected on the Premises shall exceed the height limit fixed by any City zoning ordinance or regulations of the Airport or Federal Aviation Authority. Tenant in its operations shall not unreasonably interfere with the property, interests, operations or activities of the City or of other tenants of the City.

#### **29. Taxes.**

Tenant will pay all fees, taxes, assessments and licenses levied, imposed or required by any governmental subdivision, body or authority on or in respect to any

improvements or property placed on the Premises by Tenant or any person with its permission

The use, occupancy or possessory rights of Tenant in the Premises

- (a) Any business, activity or transaction conducted thereon by Tenant;
- (b) City license and permits; and
- (c) Commercial Operator Permit fee.

### **30. Waiver of Damages and Indemnification.**

City shall not be liable to Tenant for any injury or damage that may result to any person or property by or from any cause whatsoever, except as results from acts of the sole negligence on the part of City, its agents, servants, employees or invitees. Without limiting the generality of the foregoing waiver, it is expressly extended to injury or damage caused by water leakage of any character from the roof(s), wall(s), basement or any part of the property, or caused by gas, oil, electricity or any other cause in or about the Premises or the building(s). Tenant agrees to hold City harmless from, and to defend City against, any and all claims or liability for any death of for injury to any person or damage to any property, whatsoever, occurring in, on or about the Premises.

### **31. Payment of Rent and Services.**

Notwithstanding any other provision of this Lease, all rents shall be paid to City of Watsonville, c/o Finance Department, by delivering or mailing to the address provided in Section 40.

### **32. Security Deposit.**

On execution of this Lease, Tenant shall deposit the sum of Three Thousand Three Hundred Sixty-five dollars (**\$3,365.00**) representing two (2) month's rent in cash as security for the faithful performance of the terms, covenants and conditions of this Lease.

If Tenant is in default, City can use the security deposit or any portion of it, to cure the default or to compensate City for all damages or loss sustained by City resulting from Tenant's default if the notice requirements, if applicable, have been observed. Tenant shall immediately, on demand, pay to City a sum equal to the portion of the security deposit expended or applied by City as provided in this paragraph so as to maintain the security deposit in the sum initially deposited. Upon final accounting by City, any balance of said deposit shall be refunded to Tenant.

### **33. Hold Harmless.**

(a) Tenant shall save, protect, indemnify, and hold harmless City, its elective and appointive boards, commissions, officers, agents, and employees from any and all claims, cost or liability of any kind allegedly suffered, incurred or threatened, including personal injury, death, property damage, inverse condemnation, or any combination of these, foreseeable or unforeseeable, arising directly or indirectly from or connected with any acts performed pursuant to this Lease, or any omission to perform, including, but not

limited to, claims, costs or liability resulting from: (1) The conduct, negligent or otherwise, of Tenant, its subtenant(s), assignee(s), or any officer(s), agent(s) or employee(s) of one or more of them; (2) The joint conduct of the City and Tenant, regardless of whether the City is concurrently, active or passively negligent or not negligent at all; or (3) The sole concurrent conduct of any other person or entity.

The above promise and agreement in this section is not conditioned or dependent on whether Tenant or City has prepared, supplied or approved any plan(s) or specification(s) in connection with this Lease, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of City.

(b) Non-Liability of City for Damages. This Lease is made upon the express condition that City is to be free from all liability and claim for damages by reason of any injury to any person or persons including, Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any extension hereof or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless City from all liability, loss, cost, attorney's fees, and obligations on account of or arising out of any such injuries or losses however occurring.

#### **34. Breach.**

After service of ten (10) days written notice thereof by City on Tenant any one of the following shall constitute a breach of this Lease by Tenant

- (a) The appointment a general assignment by Tenant for the benefit of creditors, or of a Receiver to take possession of all or substantially all of the assets of Tenant, or
- (b) Period of twenty (20) days, or
- (c) A default in the performance of any other covenant or condition of this Lease on the part of Tenant to be performed for a period of twenty (20) days

#### **35. Insurance.**

(a) During the rental term, Tenant, at Tenant's sole expense, shall secure and maintain in force such policies of insurance as will protect it from claims for damages or injury resulting from bodily injury, including death, and for the loss or damage to property of others which may arise from operations of this Lease. Such insurance shall contain statements that:

(b) these policies shall also apply to City, as an Additional Named Insured; (ii) the insurance afforded by these policies applies severally as to each insured, except that the inclusion of more than one insured shall not operate to increase the limit of the company's liability, and the inclusion hereunder of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included; (iii) the insurance shall be primary insurance over any other insurance carried by City, which other insurance shall be considered excess only; (iv) the above policies specifically include coverage indemnifying City as set forth in this Lease;

(v) the policies may not be canceled, nor the coverage reduced until thirty (30) days after a written notice of such cancellation or reduction in coverage is delivered to City at the address contained herein; (vi) the insurance companies named herein waive any all rights of subrogation against City. Such liability insurance shall be written with limits of at least Two Million Dollars (\$2,000,000.00), combined single limits, and shall be written by companies acceptable to City. The limit of liability insurance coverage shall be adjusted commensurate with inflation and other liability factors upon adoption of resolution of the City Council of City. Certificates of Insurance evidencing the above obligations shall be delivered to City on prior commencement of operations covered by this agreement.

(b) City, at Tenant's cost, shall cooperate fully with Tenant to maximize any recovery following an insured casualty. All policies of fire and extended coverage or other casualty insurance required by subparagraphs (e) and (g) below shall provide that proceeds there under shall be paid to City and Tenant as their interests may appear.

(c) All policies required to be maintained by Tenant pursuant to the terms of this Lease shall be issued by companies authorized to do business in the State of California with a financial rating of at least "A" in the most recent edition of Best Insurance Reports. Tenant shall pay premiums therefore and shall deliver annually to City Certificates of Insurance that such policies are in effect. If Tenant fails or refuses to procure or maintain the insurance coverage required hereunder, or fails or refuses to furnish City with proof that coverage has been procured and is in full force and paid for, City shall have the right, at City's election and without notice to Tenant, but without any obligation to do so, to procure and maintain such coverage. Tenant shall reimburse City on demand for any premiums City so pays in connection with such procurement.

(d) Fire Insurance: During the Lease Term, Tenant, at Tenant's sole expense, shall insure for fire and extended coverage risks all buildings, personal property, improvements, and alterations in, on, or about the Leased Premises. Such insurance shall be in an amount not less than eighty percent (80%) of insurable, full replacement cost of such buildings and improvements, and shall include vandalism and malicious mischief endorsements. Said fire insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder. The CITY OF WATSONVILLE shall be named as additional insured in such policy or policies.

(e) Fire or Casualty:

(1) Destruction of Tenant Owned Building. In the event of extensive damage (greater than fifty percent (50%)) to or destruction of buildings or other improvements on the Leased Premises owned by Tenant as provided in Section 11 of this Lease ("Tenant Improvements"), Tenant shall determine whether to repair or replace the Tenant Improvements. If it is determined to repair or replace the Tenant Improvements, the proceeds of any insurance policy paid on account of such damage or destruction shall be used to defer the cost of repairing or replacing the Tenant Improvements. Tenant shall complete all repairs within a reasonable time. If it is determined not to repair or replace the Tenant Improvements, Tenant may terminate this Lease upon written notice to City within thirty (30) days of such damage or destruction. If Tenant terminates this Lease pursuant

hereto, after deducting any proceeds payable to Tenant's lender pursuant to the following paragraph, the remaining proceeds of any insurance policy paid on account of such damage or destruction shall be distributed to City and Tenant pursuant to the following formula: City's share shall be the product of the amount of the remaining proceeds multiplied by a fraction, the numerator which is the number of months since the commencement date of this Lease until the date of the casualty causing such damage or destruction, and the denominator of which is four hundred and twenty (420). Tenant's share shall be the excess of the remaining proceeds after subtracting the City's share. In the event of termination of the Lease pursuant to this Section 33 (e) (1), Tenant shall remove the Tenant Improvements and, restore the City owned building to its prior condition at Tenant's sole cost and expense prior to the date of termination of the Lease.

All fire and extended coverage insurance policies insuring the Tenant Improvements may have a loss payable clause in favor of any lender of Tenant, including, but not limited to, any mortgagee of Tenant, as such lender's interest may appear.

- (2) Destruction of City Owned Premises. If during the term of this Lease the City owned Premises, as provided in Section 11 of this Lease, shall be damaged or destroyed to the extent of fifty percent (50%) of its valuation or at a repair cost estimated by the City Building Official to exceed the sum of Twenty Five Thousand Dollars (\$25,000.00) by fire, the elements, or any other cause, then this Lease shall, at City's option, cease and become null and void from the date of such damage, or destruction, and Tenant shall immediately surrender the entire Premises to City and shall pay rent only to the time of such surrender.

If the City owned Premises shall be damaged by fire, or other cause, so as to be capable of being repaired within a reasonable time, City shall have the option to repair the same and during the time that the repairs are being made, City shall remit to Tenant a just and fair portion of the rent according to the nature of the damage sustained and according to the extent that Tenant is deprived of the use of the City owned Premises. Should the estimated time to repair damage exceed one hundred twenty (120) days, the Tenant may, at his option, terminate, this Lease. In such event both parties shall be released from further obligations under the terms of this Lease.

(f) Workers' Compensation: Tenant, at Tenant's sole expense, must obtain and maintain workers' compensation insurance covering all its employees, and said insurance must be kept in force during the entire term of this Lease.

(g) Notice: Each party hereto shall give to the other prompt and timely notice of any claim made or suit instituted coming to its knowledge which in any way directly, contingently or otherwise, affects or might affect either, and both shall have the right to participate in the defense of the same to the extent of its own interest.

**36. Litigation Expenses.**

If either party shall bring an action against the other by reason of the breach of any covenant, warranty or condition hereof, or otherwise arising out of this Lease, whether for declaratory or other relief, the prevailing party in such suit shall be entitled to its costs of suit and reasonable attorney fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this paragraph shall include without limitation a party who brings an action against the other after the other's breach or default, if such action is dismissed upon the other's breach or default, if such action is dismissed upon the other's payment of the sums allegedly due or performance of the covenant's allegedly breached, or if the plaintiff obtains substantially the relief sought by it in the action.

**37. Surrender of Premises.**

Tenant agrees to surrender the Premises and any addition thereto at the termination of the tenancy herein created in the same condition as the Premises were in at the beginning of the tenancy or at the time of completion of the improvements as the case may be, reasonable use and wear thereof and damage by act of God or the elements excepted. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or sub tenancies, or may, at the option of City, operate an assignment to City of any or all such sublease or sub tenancies.

**38. Waiver.**

Any waiver, expressed or implied, by either party of any breach by the other party of any agreement, term or condition of this Lease shall not be, or be construed to be, a waiver of any subsequent breach of a like or other agreement, term of condition hereof; and the acceptance of rent hereunder shall not be, or be construed to be, a waiver of any breach of any agreement, term or condition of this Lease, except as to the payment of rent so accepted. The rights and remedies of either party under this Lease shall be cumulative and in addition to any and all other rights and remedies which either party has or may have.

**39. Quiet Enjoyment.**

City covenants and warrants that upon Tenant's paying the rent and observing and performing all of the terms, covenants, and conditions on Tenant's part to be observed and performed hereunder, Tenant shall and may peaceably and quietly enjoy the Premises hereby demised, subject nevertheless to the terms and conditions of this Lease.

**40. Notices.**

All notices, consents, waivers or other communications which this Lease requires or permits either party to give to the other shall be in writing and shall be served personally or delivered by registered or certified mail, return receipt requested, made

upon or addressed to the respective parties as follows:

To Landlord:  
City Clerk  
City of Watsonville  
275 Main Street, Suite 400  
Watsonville, CA 95076

To Tenant:  
Pacific Ag Pak  
Watsonville Municipal Airport  
50 Aviation Way  
Watsonville, California 95076

or such other address as may be contained in a notice from either party to the other given pursuant to this section. Notice of registered or certified mail shall be deemed to be given forty- eight (48) hours from the time of postmarking if mailed within the United States (excluding Alaska).

**41. Recordation.**

Neither party, without the consent of the other, shall cause or permit the original nor any copy of this Lease to be recorded, filed or published in any public place.

**42. Tenant to Assume All Unknown Expenses.**

Notwithstanding the existence of a provision therefore in this Lease, Tenant shall assume, pay and be obligated for any and all costs and expenses toward the operation, protection, maintenance of the Premises, known or unknown, expressed or unexpressed, it being the intention of the parties for this to be a triple net lease to City.

**43. Right of City to Enter for Inspection.**

City shall have the right to enter upon the Premises at all reasonable times during the term of this Lease for the purpose of making any inspection it may deem expedient to the proper enforcement of this Lease.

**44. Nondiscrimination**

Tenant hereby covenants that Tenant in its use of the Premises and any and all structures, buildings and improvements located here on shall conduct the fixed base operation or any other activity hereafter authorized by the City on the Premises on a non-exclusive and non-discriminatory basis in all respects with regard to any person, firm or group of persons. Tenant shall not act in any manner prohibited by Part 15 of the Federal Aviation Regulations and further agrees to be nondiscriminatory also with respect to price or cost of services or goods and in every other fashion.

**45. Enforcement of Nondiscrimination Clause.**

City shall have the right to take such action against the Tenant as the United States Government may direct or request to enforce the terms of the preceding paragraph on behalf of the United States Government or on behalf of any of its citizens or the City itself.



**46. Other Operations.**

It is understood that the use authorized at the Watsonville Municipal Airport by this Lease is not given to Tenant exclusively but may be given to any other Tenant at the Airport at the sole discretion of the City.

**47. Condemnation.**

If the whole or any substantial part of the Premises shall be taken by any paramount public authority under the power of eminent domain then the term of this Lease shall cease as to the part so taken from the date the possession of that part shall be taken for any public purpose, and from that day Tenant shall have the right either to cancel this Lease or to continue in the possession of the remainder of the Premises under the term herein provided, except that the square foot rental shall be reduced in proportion to the amount of the Premises taken. Damages awarded for such taking shall be apportioned between the City and Tenant in a ratio relating to the number of years expired and remaining in the Lease Term between City and Tenant respectively; provided, however, that City shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to Tenant.

**48. Nondiscrimination- (FAA, MBE, DB Requirements).**

The Tenant, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally- Assisted Programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby further covenant and agree as a covenant running with the land that: (a) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of facilities; (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; (c) that the Tenant shall use the with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 2 1, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and

not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

Tenant shall insert the provisions of this section in any lease agreement or contract by which Tenant grants a right of privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

**49. Remedy for Discrimination.**

In the event of breach of any of the nondiscrimination covenants identified in Paragraph 48, City shall have the right to terminate this Lease and to reenter and repossess the Premises and the facilities thereon, and hold the same as if this Lease had never been made or issued. The provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

Non-compliance with paragraph 51 shall constitute a material breach thereof and in the event of such non-compliance City shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of the City or the United States either or both Governments shall have the right to judicially enforce paragraph 48.

**50. Affirmative Action.**

Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall be on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by such subpart. Tenant assures that it will require that its covered by such subpart. Tenant assures that it will require that its covered suborganizations provide assurances to the Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as provided by 14 CFR Part 152, subpart 2, to the same effect.

**51. Subordination to Future FAA Agreements.**

This Lease shall subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.

**52. Notice to Federal Aviation Administration.**

Tenant shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event of future construction of a building planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

**53. Proprietary and Governmental Roles; Actions by City.**

Except where clearly and expressly provided otherwise in this Lease, the capacity of the City of Watsonville ("City") in this Lease shall be as owner and lessor of property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("Governmental Capacity"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Lease. In addition, nothing in this Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable law, nor guarantee that the City, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that the City may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable law.

**54. Non-Exclusive Right.**

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act.

**55. Terms.**

All the provisions of this Lease shall be deemed and construed to be "covenants" as though the words imported such covenants were used in each separate paragraph hereof, except when expressed as conditions.

**56. Governing Law.**

This Lease shall be construed and enforced in accordance with the laws of the State of California.

**57. Binding Effect.**

This Lease and the covenants and agreements herein contained shall bind and inure to the benefit of the parties hereof, their heirs, successors, executors, administrators, and when permitted assigns.

**58. Time is of the Essence.**

Time is of the essence regarding this Lease.

**59. Consent.**

Whenever consent or approval of either party is required, that part shall not unreasonably withhold such consent or approval.

**60. Corporate Status.**

If either party is a corporation, that party shall deliver to the other party on execution of this Lease, a certified copy of a resolution of its governing body authorizing the execution of this Lease and naming the officers that are authorized to execute this Lease on behalf of the corporation.

**61. Brokers.**

Each party represents that it has not had dealings with any real estate broker, finder, or other party, with respect to this Lease in any manner. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person, with whom the other party has or purportedly has dealt.

**62. Exhibits.**

All exhibits referred to are attached to this Lease and incorporated by reference.

**63. Entire Agreement.**

This Lease contains the entire agreement of the parties, and by signing this Lease they agree that there is no other written or oral agreement, promise, or representation between them respecting the Premises. This Lease shall bind and inure to the benefit and advantage of the assigns of City, and of the heirs, executors, administrators, and when permitted hereunder the assigns of Tenant.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease the day and year first above written.

**"City"**

**"Tenant"**

**CITY OF WATSONVILLE,**

**PACIFIC AG PAK**

a municipal corporation

a corporation

By: \_\_\_\_\_  
Rene Mendez  
City Manager

By:  \_\_\_\_\_  
Dave Baum  
President

ATTEST:

By: \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Exhibit "A"



