

NORTH CAROLINA

ROWAN COUNTY

### FARM LEASE

THIS LEASE is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between Rowan County, a political subdivision of the State of North Carolina ("Landlord"), and Bobby Waller Farms, LLC, a North Carolina limited liability company ("Tenant").

Witnesseth:

Whereas, Rowan County, as Landlord, has determined that this Lease Agreement is in the best interest of the County and has provided the statutorily required notice and adopted a Resolution consistent therewith pursuant to NCGS 160A-272; and

Now, therefore, Landlord desired to lease to Tenant and Tenant desired to lease from Landlord that certain Leased Area described below on the terms and conditions set forth:

- 1. Demise and Property.** The Landlord leases to the Tenant, to occupy and use for agricultural and related purposes that certain real property (the "Premises"), including buildings and improvements, located in **Rowan County**, North Carolina, and more particularly described as: approximately 30 acres adjacent to the Rowan County Landfill more specifically outlined and shown on the attached Exhibit A.
- 2. Term.** The initial term of this Lease shall run for a period of One (1) year, to commence on the \_\_\_\_ day of \_\_\_\_\_, 2023. Tenant may record a Memorandum of Lease with the Rowan County Register of Deeds if desired.
  - 2.1 Renewal Term.** This lease shall automatically renew for successive one-year terms so long as Tenant continues to plant and harvest crops on the premises and unless terminated by written notice of Landlord or Tenant more than ninety (90) days prior to the end of a Term; provided, however, this Lease shall not extend beyond ten (10) years.
- 3. Rent.** Tenant agrees and covenants to pay to Landlord or to such other persons or entities as Landlord may from time to time designate in writing, the annual fixed rent of seventy and no/100 dollars (\$70.00) per acre for a total annual Rent Amount of two thousand one hundred and no/1000 dollars (\$2,100.00) for the entire premises.

3.1 Payment Date. The annual payment identified in Section 3 above is due **on the \_\_\_ day of \_\_\_\_\_ each year** and continuing on the same day of each year thereafter if renewed.

3.2 Late Charges. In the event Tenant fails to pay any rent within five days of when due, the Tenant shall pay to Landlord a late charge equal to 5% of the amount due to compensate Landlord for the extra costs incurred as a result of such late payment.

3.3 Rent Increases. Rent shall be reviewed on an annual basis and shall remain the same unless agreed in writing by Landlord and Tenant.

**4. Purpose.** The Property is to be used by Tenant for agriculture and related purposes.

4.1 Use of Land. Landlord permits, authorizes, and consents to Tenant's undertaking all activities incident to agricultural uses of the Premises, including:

All farming practices shall demonstrate respect for sustainability;  
Growing vegetables, herbs, berries and flowers;  
Field crops and cover crops;

4.2 Prohibited Uses. Tenant may not, without the prior written consent of Landlord, engage in any of the following activities on said parcels:

Add fencing or other structures. The specific location of any proposed structure must be approved by Landlord.

Because Landlord's property is heavily regulated by state and federal agencies for ground chemicals, Tenant shall provide a list of chemicals to be used or sprayed on the Premises, and Landlord shall approve such use including the schedule and amounts. Landlord understands Tenant's need for certain chemicals and will work with Tenant in good faith to accommodate Tenant's spray schedule.

Any prohibited use can be permitted with the written consent of the Landlord. Landlord may approve, disapprove, require more information, or require certain modifications to the proposed improvement.

**5. Covenants.**

5.1 Landlord Covenants. The Landlord covenants with the Tenant:

To allow the Tenant full use of the Lands that comprise the Leased Premises beginning on the Commencement Date and ending on the Termination Date;

To allow Tenant reasonable access to the Premises; provided, however, Landlord understands that Tenant may need access outside regular operating hours but prefers

Tenant access to be during regular business operating hours. Landlord and Tenant shall work together in good faith to provide such access.

**5.2 Tenant Covenants.** Tenant covenants with the Landlord:

To pay all amounts payable by the Tenant to the Landlord under this Lease (collectively the "Rent");

To use the Leased Premises only for the permitted purposes listed above or any permitted purpose that Landlord later gives written permission to do;

To comply with present and future laws, regulations and orders relating to the occupation and use of the Leased Premises;

To permit the Landlord to enter the Leased Premises at any time outside normal business hours in case of an emergency and otherwise during normal business hours where such will not unreasonably disturb or interfere with the Tenant's use of the Leased Premises or operation of its business, to examine or inspect the Leased Premises;

To hold Landlord harmless against any damages to Tenant's crops that is the result of governmental testing or compliance, including testing, remediation, and/or drilling for ground contamination or ground water testing. Landlord agrees to work with the Tenant to the extent possible to reduce the potential damage for such access and testing and remediation work; and

To be respectful of the Landlord's property and business that take place on the surrounding property.

**6. Best Management Practices.** Tenant agrees to employ standard best management practices.

Tenant agrees to comply with all federal, state, and local laws, regulations, ordinances, decrees, and rulings in connection with the use of the premises and any agricultural or other activities conducted thereon, including but not limited to any and all regulations, directives, and procedures necessary to ensure that Landlord continues to qualify for Current Use status under the State's tax code.

**7. Improvement of the Premises.**

7.1 Landlord Improvements. Landlord may build improvements related to its adjacent use as landfill operations, as the need arises, with the consent of the Tenant. To the extent such improvements reduce the total acreage, the Rent Amount shall be adjusted accordingly.

7.2 Tenant Improvements. The Tenant may at its expense make improvements, additions or alterations to the Property throughout the term of this Lease with the written consent of the Landlord.

7.3 Removal of Improvements by Tenant. Improvements made under this Lease that are capable of severance may be removed by Tenant at any time or within 30 days after termination of the lease even though they may be fixtures, provided that Tenant leaves in good condition that part of the farm from which such improvements are removed. Improvements not capable of severance shall become the property of Landlord at termination of the lease without compensation to the Tenant. For alterations requiring approval from Landlord, Landlord and Tenant may agree whether such alteration is removable by Tenant.

**8. Taxes.** Landlord shall be responsible for real estate taxes on the Property.

**9. Utilities.** Tenant understands that there are no utilities available.

**10. Care and surrender of the Premises.** Tenant shall commit no waste on the Premises. Upon any termination of this Lease, Tenant shall surrender possession of the Premises, without notice, in as good condition as at the commencement of the term, reasonable wear and tear and casualty beyond the Tenant's control being excepted. Tenant shall be responsible for any environmental clean-up required by the proper authorities, which contamination resulted from Tenant's activities.

**11. Entry by Landlord.** Landlord, Landlord's agents and representatives may, at any reasonable time and at least once each year, enter the Property for the purpose of inspecting, testing, remediating soil or water condition; provided, however, that, in so doing, Landlord, Landlord's agents or representatives will endeavor to avoid interfering with the use and occupancy of the Property by Tenant.

**12. Indemnity.** Tenant shall indemnify Landlord against, and hold Landlord harmless from, all claims, demands, and/or causes of action, including all reasonable expenses of Landlord incident to such proceedings, for injury to, or death of any person, or loss of, or damage to, any property, where such claims, demands, and/or causes of action are not caused by the negligence, omission, intentional act or breach of contractual duty of or by Landlord or anyone for whom Landlord is responsible. Tenant's agreement to indemnify Landlord must include, but not be limited to, all claims, demands, and/or causes of action, including all reasonable expenses of Landlord, arising from any hazardous waste generated by Tenant.

**13. Insurance.** Tenant shall obtain and keep in effect general liability insurance against any and all claims for personal injury or property damage occurring in or upon the Premises in amounts approved by Landlord during the term of the Lease and any extensions.

**14. Assignment or subletting.** Tenant does not have the right to assign or sublet this Lease without Landlord's written consent.

**15. Minerals.** Nothing in this Lease confers upon the Tenant the right to minerals underlying the Property.

**16. Default.**

- 16.1 Tenant Default. In the event Tenant fails to pay when due any of the rentals provided for in Section 4 or fails to promptly keep and perform any other covenant in this Lease, Landlord, prior to taking any other action, shall give Tenant written notice specifying the default(s). Tenant shall have thirty (30) days after receipt of said notice to correct any rental default and thirty (30) days to correct any other default(s). If Tenant fails to correct the default(s) within the specified time periods, the Landlord may: (a) terminate this Lease and re-enter the Property, with or without process of law, and take possession by reasonable force; or (b) relet the Property at the best rental obtainable, Tenant to remain liable for the deficiency, if any, between the rental received by Landlord on any reletting and the rental provided for in this Lease.
- 16.2 Landlord Default. Should there be any default or breach of this Lease on the part of Landlord, Tenant shall give Landlord notice, and should Landlord fail to correct such breach or default within thirty (30) days after such notice, the Tenant may remedy such breach or default and deduct the reasonable cost, including interest on same, from rentals due or to become due Landlord, or pursue any other legal or equitable remedy to which it is entitled. If Tenant has not been reimbursed for its reasonable cost in remedying Landlord's breach or default at the expiration of the last term of this Lease, or if Landlord is indebted to Tenant because of a breach or default of this Lease at the expiration of the last term, Tenant may, at its option, extend this Lease on the same terms and conditions as provided until such costs and indebtedness are fully paid by application to rent.
- 16.3 Diligence to Cure. If any default occurs, other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days, and if the defaulting party commences to eliminate the causes of such default within said thirty (30) day period and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does cure the default(s), then the non-defaulting party does not have the right to declare the Lease terminated by reason of such default.
- 17. Waiver.** The failure of Landlord or Tenant to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Lease, or to exercise any option conferred, in any one or more instances, except as to the option to extend or renew the term, shall not be construed as a waiver of the same or any other term, condition, undertaking or option.
- 18. Parties Bound.** The terms, covenants, agreements, conditions and undertakings contained in this Lease shall be binding upon and shall inure to the benefit of the heirs, successors in interest and assigns of the parties. Where more than one party shall be the landlord in this Lease, the word "Landlord", whenever used in the Lease, includes all Landlords jointly and severally.
- 19. Entire Agreement, Modification, Severability.** This Lease, its Exhibits and any Addenda contain the entire agreement between the parties, and no representations, inducements, promises or agreements, oral or otherwise, entered into prior to the execution of this Lease will alter the covenants, agreements and undertakings set forth. This Lease shall not be

modified in any manner, except by an instrument in writing executed by the parties. If any term or provision of this Lease or its application to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not affected and each term and provision of this Lease is valid and be enforceable to the fullest extent permitted by law.

- 20. Liens.** Tenant must keep the Property free from any liens arising from any labor performed by or on behalf of, or materials furnished to Tenant, or other obligations incident to its use or occupancy. If any lien attaches, and the same is not released by payment, bond or otherwise, within twenty (20) days after Landlord notifies Tenant, Landlord has the option to discharge the same and Tenant shall reimburse Landlord promptly. Nothing contained in this Lease is deemed to deny Tenant the right to contest the validity of any such lien. Nothing in this Lease shall be construed as consent by Landlord to Tenant to make any alteration, improvement or installation or addition so as to give rise to any right to any laborer or material-person to file any mechanic's lien or any notice, or any other lien purporting to affect Landlord's property.
- 21. No Partnership Intended.** It is particularly understood and agreed that this Lease is not deemed to be nor intended to give rise to a partnership relationship.
- 22. Transfer of Property.** All transfers of the Property are subject to the provisions of this Lease.
- 23. Binding on Heirs.** The provisions of this Lease shall be binding upon the heirs, executors, administrators, and successors of both Landlord and Tenant in like manner as upon the original parties, except as provided by mutual written agreement.
- 24. Mediation.** Any differences between the parties as to their several rights or obligations under this Agreement not settled by mutual agreement after thorough discussion must be submitted for mediation. The mediator must be knowledgeable of the subject matter of the dispute and shall be agreed upon by the parties. The disputing parties shall share equally the cost of the mediator. If the parties cannot agree upon a mediator or if the dispute cannot be resolved by mediation, the parties may then pursue their claims in a court of law in the State of North Carolina.
- 25. Governing law.** This Lease shall be governed by the laws of the State of North Carolina.

{Signature Page Follows}

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

Signed and acknowledged in our presence:

LANDLORD: ROWAN COUNTY

BY:

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Gregory C. Edds, Chairman

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TENANT: BOBBY WALLER FARMS, LLC

BY:

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Bobby Waller, Member/Manager

EXHIBIT A  
LEGAL DESCRIPTION  
LEASED PREMISES