

BERTHUSEN PARK LAND LEASE AGREEMENT

This Lease Agreement ("Agreement" or "Lease"), made this 1st day of March, 2021 by and between the City of Lynden, (hereinafter called "Lessor" or "City"), and Cedar Park Dairy LLC, (Greg Smit and Jan Smit, husband and wife, and Scott Smit and Megan Smit, husband and wife, (hereinafter called "Lessee" or "Smit").

WHEREAS, the Lessor is the owner of that certain real property located in Whatcom County, Washington, consisting of approximately 58 acres, more or less, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is made up of three (3) parcels, denoted as parcels E, F and G, depicted on Exhibit B attached hereto (which is not to scale); and

WHEREAS, the Lessor has leased a portion of the Property to Lessee in the past which prior lease has expired; and

WHEREAS, the agricultural uses permitted on the Property are limited by the applicable Lynden Municipal Code ("LMC") provisions including but not limited to LMC 19.39; and

WHEREAS, per LMC 3.08.010 the Lessor must collect a leasehold excise tax upon the act or privilege of occupying or using publicly owned real or personal property within the city or owned by the city through a leasehold interest as defined by RCW 82.29A.020(1); and

WHEREAS, per LMC 3.08.020 the rate of leasehold excise tax shall be paid at the rate set per the State of Washington Department of Revenue (as defined by RCW 82.29A.020 (2)); and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW THEREFORE, in recognition of the foregoing recitals, and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Premises Leased and Consideration: The Lessor hereby leases to Lessees the Property. The Lessees are authorized to possess the Property pursuant to this Agreement, from **March 1, 2021** or the date of execution, whichever is later, until the **last day of February 2026** (five (5) years). Lessee shall pay Lessor for the rental sum of Two Hundred Twenty Five and 00/100ths Dollars (\$225.00), per acre per year plus state leasehold excise tax, for a total of Thirteen Thousand fifty and 0/100ths Dollars (\$13,050.00) each year, plus state leasehold excise tax. The first rental payment of Six Thousand Five hundred Fifty and 0/100ths Dollars (\$6,525.00), plus state leasehold excise tax being due on the 1st day of March, 2016. The balance of said rental payments in the sum of Six Thousand Nineteen and 65/100ths Dollars (\$6,525.00), plus state leasehold

excise tax for each payment, being due on the 1st day of each sixth month thereafter, until the expiration of this lease or any extension thereof.

2. **Insurance:** The Lessees shall maintain in full force and effect at their own cost and expense a property and liability insurance policy on the Property until expiration of the term of this Lease. Said policy shall include a general comprehensive liability and property insurance policy in protection of the City and protecting the City and all persons against liability for loss or damage or personal injury, death, and property damage, and errors or omissions, negligent acts or omissions, with minimum limits in the amount of One Million Dollars (\$1,000,000.00) per occurrence/Two Million Dollars (\$2,000,000.00) aggregate. The City shall be named as an additional insured on said policy and proof of such insurance shall be provided.

3. **Term:** The term of this Lease shall be begin on **March 1, 2021** or on such other date as execution of this Lease on the Property shall occur between the parties and shall terminate on the **last day of February 2026**, for a total term of five (5) years.

4. **Lease Binding on Heirs:** All of the terms and agreements of this lease shall be binding not only upon the Lessor and Lessee but also upon their heirs, executors, administrators, successors, and assigns.

5. **Default:** Material breaches of this Lease by the Lessees or Sublessees, shall constitute default and be grounds for early termination of the Lease. In the event of a default by Lessees or Sublessees, Lessor may terminate this Lease and seek removal of Lessees and/or Sublessees from the premises, upon providing written notice as required by law.

6. **Utilities and Fees:** The Lessee shall be solely responsible for all charges for light, heat, water and telephone which shall be charged against the Property during the full term of this lease.

7. **Repairs and Maintenance:** The Property has been inspected and is accepted by Lessees in its present condition. Lessees and Sublessees shall, at their own expense and at all times, keep the Property neat, clean and in a sanitary condition, and keep and use the Property in accordance with applicable laws, ordinances, rules, regulations and requirement of governmental authorities. Lessees shall permit no waste, damage or injury to the Property; all waste and junk shall be removed from the Property promptly; and no hazardous materials of any kind shall occupy the Property. Lessees shall not operate a commercial venture on the Property. Lessees shall make such repairs as necessary to maintain the Property in as good condition as they now are, reasonable use and wear, and damage by fire and other casualty excepted.

8. **Good Farming Method:** Lessee will covenant and agree that Lessee's use of the land upon the Property shall be consistent with good farming practices and shall be accomplished in a good, farmer-like manner. Manure shall be spread upon the Property each year during the term of this lease and commercial fertilizer shall be applied in accordance with good

farming methods. No row crops, other than corn or peas, may be grown upon said premises, and row crops may be grown no more than two (2) out of every three (3) years. The land must be seeded to grass at the end of the term of this lease.

9. **Compliance with Laws:** Lessee shall not do or about the Property, anything that would or does violate or conflict with any law, ordinance, rule or regulation now in force or effect, or that may hereinafter be enacted, promulgated or adopted by Federal, State or local authority.

10. **Nuisance:** Lessee shall not maintain any nuisance on the Property, and shall not use the Property for any unlawful purposes. Lessor and Lessee acknowledge and agree that any and all deterioration of the Property due to salinity, drainage and related problems or the use of the Property by Lessee in accordance with normal and customary agricultural practices does not constitute waste or a nuisance or a breach of any of the terms of this Lease.

11. **Alterations:** Lessee shall not make excavations, fills, alterations, additions or improvements on the Property without written permission of Lessor. All alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee, and shall become the property of the Lessor, and shall remain in and be surrendered with the premises as part hereof at the termination of this lease, without disturbance, molestation or injury. If the Lessee shall perform work with the consent of the Lessor, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of the pertinent and authorized public authorities. The Lessee further agrees to save the Lessor free and harmless from damage, loss, or expense arising out of said work.

12. **Accidents and Non-Liability:** Lessee agrees that the Lessor shall not be liable for loss arising out of damage to or destruction of stored material goods and chattels or livestock resulting from any defect in the Property or from any other cause, while in the possession of Lessees or Sublessees. This Agreement shall be binding whether or not such damage or destruction be caused by the neglect of the Lessor or its, agents, servants, or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived, except as herein described.

13. **Subletting or Assignment:** Lessee shall not sublet, or through any other process, transfer to any other person rental of the Property, or any other right or privilege without written permission of the Lessor.

14. **Insolvency of Lessee:** Notwithstanding any other provision herein to the contrary, in the event the Lessee or Lessee's successors or assigns shall become insolvent, bankrupt, or make an assignment for the benefit of creditors, or if Lessee's interests herein shall be levied upon or sold under execution or other legal process, the Lessor may terminate this lease; provided that in the event this lease is terminated, the maximum claim of Lessor for damages or indemnity for injuries resulting from the termination of the expired lease shall in no event be an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the Lessor, or the date of re-entry of

the Lessor, whichever first occurs, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date.

15. **Right of Access:** Lessor shall have the right to enter the Property at all reasonable times for the purpose of inspection or of making excavations, surveys, design reviews, repairs, additions or alterations. Lessor further reserves and Lessee hereby grants to Lessor or Lessor's agents, the right to enter upon the herein-leased premises at any reasonable time, without notice, during the thirty (30) day period immediately preceding the expiration of this lease or any extension thereof, for the purpose of showing said premises to prospective tenants.

16. **Right of First Refusal:** Provided Lessee is not in default of the terms hereunder, Lessee shall have the right of first refusal to lease the Property. The Lessee shall have the right of first refusal to continue to lease the herein-described Property at the expiration of this Lease on such terms and conditions as the Lessee will grant to any other party. Lessee shall have ten (10) business days after mailing of notice of such terms and conditions to either accept or reject such offer.

If Lessee fails to notify Lessor in writing that it will lease the Property within the prescribed ten (10) business day period, Lessee's rights under this Section shall terminate, and Lessor shall have no further obligation under this Section with respect to the Property.

17. **Abandoned Property:** Upon termination of Lease and surrendering possession of the Property to the Lessor by the Lessees, or at the completion of the rental term or by any other means, any property remaining in or about the Property shall be assumed by the Lessor to be abandoned property and may be disposed of in accordance with the laws of the State of Washington.

18. **Holding Over:** If Lessee, with the implied or express consent of Lessor, shall hold over after the expiration of the term of this lease, Lessees shall remain bound by all of the covenants and agreements herein, except that the tenancy shall be from month to month.

19. **Relationship of the Parties:** The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this agreement.

20. **Indemnification and Hold Harmless:** Lessees shall indemnify, defend and hold harmless the City from any and all claims, suits, actions, damage awards, fee awards, fines, or penalties, whether to person or property, or expense of any type or nature which may occur to the City including reasonable attorneys' fees, experts fees and other costs, based upon the intentional or negligent acts or omissions of Lessees, its Sublessees, agents and/or employees in the performance of this Agreement. In any case in which suit or action is instituted against

the City by reason of damages or injury caused in whole or in part by an act or omission of Lessee, its Sublessees, agents and/or employees, the City shall cause written notice thereof to be given to Lessee and Lessee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. For purposes of carrying out this indemnification and hold harmless provision, Lessees expressly waives any immunity it may otherwise have pursuant to Title 51, Industrial Insurance provisions of the Revised Code of Washington.

21. **Costs and Attorneys Fees:** In the event any unlawful detainer action, lawsuit, or other legal proceeding is commenced pertaining to this Lease, the prevailing party shall be entitled to recover all of its reasonable legal costs and attorney's fees incurred from the other party.

22. **Notice.** Any notice, declaration, demand or communication to be given by a party to this Agreement to the other shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To Lessor:
City of Lynden

Attention: Mike Martin
300 4th St.
Lynden, WA 98264

To Lessees:
Greg and Jan Smit
Scott and Megan Smit
9041 Axling Rd
Lynden, Wa. 98264

The mailing and certifying of any such notice as herein provided shall be sufficient service thereof. All notices given in compliance with this section shall be deemed effective three (3) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Either party may, by notice, change its address for notice.

23. **Entire Agreement:** This Lease Agreement contains the entire agreement of the parties hereto and supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither Lessor nor Lessees shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

24. **Governing Law and Venue Stipulation:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of the Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

25. **Waiver and Modification:** This Lease may be amended or supplemented only by a written instrument signed by the parties hereto.

26. Severability: In the event any provision of this Lease shall be held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remaining provisions of this Lease shall nonetheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the date first above written.

LESSOR:

LESSEE:

THE CITY OF LYNDEN

By _____
Scott Korthuis, Mayor

Greg Smit

Jan Smit

Scott Smit

Megan Smit

STATE OF WASHINGTON)
)
 § COUNTY OF WHATCOM)
)

I certify that I know or have satisfactory evidence that SCOTT KORTHUIS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____, NOTARY PUBLIC
in and for the State of WA. My
commission expires _____.

STATE OF WASHINGTON)
)
 § COUNTY OF WHATCOM)
)

I certify that I know or have satisfactory evidence that GREG SMIT and JAN SMIT signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument and acknowledged that they had the authorization to sign said instrument.

Dated: _____

_____, NOTARY PUBLIC
in and for the State of WA. My
commission expires _____.

PARCEL E: 28.11 ACRES

LEGAL DESCRIPTION: THE WEST 73.23 ACRES OF THE NORTH HALF OF THE NORTH HALF OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE WEST 42.96 ACRES THEREOF. EXCEPT THE WEST 150 FEET OF THE SOUTH 627 FEET THEREOF. LESS ROADS. SITUATE IN WHATCOM COUNTY, WASHINGTON, CONSISTING OF 28.11 ACRES MORE OR **LESS**.

• **PARCEL F: 12.37 ACRES**

LEGAL DESCRIPTION; THE WEST 42.96 ACRES OF THE NORTH HALF (N1/2) OF THE NORTH HALF (N1/2) OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE WEST 19.78 ACRES, AND EXCEPT THE SOUTH 627 FEET THEREOF, LESS ROADS. SITUATE IN WHATCOM COUNTY, WASHINGTON, CONSISTING OF 12.37 ACRES, MORE OR **LESS**,

PARCEL G.: 16.85 ACRES

LEGAL DESCRIPTION: THE WEST 16.85 ACRES OF THE NORTH HALF (N1/2) OF THE NORTH HALF (N1/2) OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2.EAST OF W.M. EXCEPT THE SOUTH 50 FEET THEREOF AND, **LESS** ROADS. EXCEPT THE SOUTH 62.7 FEET OF THE EAST 275 FEET THEREOF LESS ROADS. SITUATE IN WHATCOM COUNTY WASHINGTON. CONSISTING OF 16.85 ACRES, MORE OR **LESS**.

