

Recording Requested By and
When Recorded Mail To:
City of Lemoore
119 Fox Street
Lemoore, CA 93245
Attn: Nanci C.O. Lima, City Clerk

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PROPERTY LEASE

by and between

CITY OF LEMOORE

and

LEPRINO FOODS COMPANY

Dated as of October 1, 2007

PROPERTY LEASE

This Property Lease is made and entered into as of October 1, 2007, by and between the CITY OF LEMOORE, a municipal corporation, duly organized and existing under and by virtue of the laws of this State, as Lessor (the "City"), and LEPRINO FOODS COMPANY, as Lessee (the "Lessee").

WITNESSETH:

WHEREAS, the Lemoore Redevelopment Agency (the "Agency") has previously entered into an Owner Participation Agreement with Lessee, which has recently been amended by the 2nd Amendment (the "Owner Participation Agreement"); and

WHEREAS, to facilitate Lessee's obligations under the Owner Participation Agreement, the City and the Lessee have agreed to the terms of this Property Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration, it is hereby mutually agreed as follows:

Section 1. Definitions. Unless the context otherwise requires, the capitalized terms herein which are not defined herein shall have the meanings specified in the Owner Participation Agreement.

Section 2. Lease of the Property. The City hereby leases to Lessee, the Property described in Exhibit "A" attached hereto, (the "Property"), on the terms and conditions hereinafter set forth.

Section 3. Term. The term of this Property Lease shall commence as of the date of execution hereof and shall remain in effect until terminated as hereinafter provided.

Section 4. Annual Rental. The Lessee, or any assignee or successor in interest of the Lessee under this Property Lease, shall pay upon execution and delivery of this Property Lease to the City as and for annual rental hereunder, the sum of \$1.00 per year.

Section 5. Purpose. The Lessee shall use the Property of the City pursuant to the Lease Agreement for the purposes described in the Owner Participation Agreement and for such purposes as may be incidental thereto. Following the execution of this Property Lease, all improvements, facilities or structures built on the Property by or on behalf of the Lessee, upon completion and acceptance by the City, shall become the property of the City, subject to Lessee's right to use, operate and maintain said improvements and facilities for the duration of this Property Lease (at Lessee's sole cost and expense) as more fully described in the Owner Participation Agreement. The transfer of title to said improvements and facilities shall be accomplished by written instrument.

Section 6. Representations, Warranties and Covenants. The City represents and warrants that it is the owner in fee of the Property. The Lessee covenants that it shall not encumber the Property.

Section 7. Environmental Obligations. Lessee shall not permit or allow the use, manufacture, storage or disposal of, or spillage on, or under the Property or transportation to or from the Property, of any Hazardous Material, defined to mean and refer to any substance, chemical, waste or other material which is listed, defined or otherwise identified as “hazardous” or “toxic” under any federal, state, local or administrative agency ordinance or law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*; and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*; or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011, *et seq.* In the event Lessee shall breach its obligations under this paragraph, it shall defend, indemnify and hold harmless the City from any and all liability, cost, legal action, penalty, judgment or settlement arising therefrom.

Section 8. Actions on Termination. The Lessee agrees, upon the termination of this Property Lease, to quit and surrender the Property in the same good order and condition as it was at the time the real property then constituting the Property became subject to this Property Lease, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Property at the time of the termination of this Property Lease shall remain thereon and all interest therein shall vest in the City free and clear of any interest of the Lessee.

Section 9. Assignment. In the event that Lessee were to sell or lease the Plant and/or the Existing Facility to another dairy ingredient manufacturer, Leprino maintains the right to assign the lease rights set forth in paragraph III.H.4 of the Owner Participation Agreement to the buyer or lessee of the Plant and/or the Existing Facility. No other assignment of lease rights shall be permitted without the prior written consent of the City.

Section 10. Sale. So long as this Property Lease is in effect and Lessee is not in breach of its duties hereunder; In the event that the City were to desire to sell or lease the Property or the Wastewater Improvements, the City will have no right to sell or lease such Wastewater Improvements to any party other than Leprino unless Leprino has previously consented to such sale or lease in writing.

Section 11. Quiet Enjoyment. The Lessee at all times during the term of this Property Lease shall peaceably and quietly have, hold and enjoy all of the Property, provided, however, the City shall have unlimited access rights to the Property for any purpose related to the operation of City facilities located on or near the Property.

Section 12. Default. In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of this Property Lease, which default continues for 90 days following written notice to and demand for correction thereof by the City, the City may exercise any and all remedies granted by law.

Section 13. Taxes. The Lessee covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

Section 14. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the proceeds or payments from the condemning authority shall be allocated between the City and Lessee to reflect their respective ownership interests in the property or assets taken or damaged.

Section 15. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Property Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Property Lease shall be affected thereby, and each provision of this Property Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 16. Applicable Law. This Property Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 17. Representatives. Whenever under the provisions of this Property Lease the approval of the Lessee or the City is required, or the Lessee or the City is required to take some action at the request of the other, such approval or such request shall be given for the Lessee by an Authorized Representative of the Lessee and for the City by an Authorized Representative of the City and any party hereto shall be authorized to rely upon any such approval or request.

Section 18. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed to have been received five days after deposit in the United States mail in registered or certified form, postage prepaid, to the respective parties at the addresses shown in the Owner Participation Agreement.

The Lessee and the City, by notice hereunder, may designate different addresses to which subsequent notices or other communications will be sent.

Section 19. Captions. The captions or headings in this Property Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Property Lease.

Section 20. Execution in Counterparts. This Property Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

Section 21. Amendment. The terms of this Property Lease shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the Lessee and the City.

Section 22. Termination. This Property Lease shall terminate on the earlier of the (1) mutual agreement of the parties, (2) the cessation of operations of the Plant and the Existing Facility, or (3) the Lessee's breach of its obligations hereunder and failure to cure its breach following notice described in paragraph 12.

Section 23. Insurance. Within 10 days after the execution of this Lease, the Lessee shall, at its own expense, obtain and maintain during the entire term of this Lease a broad form comprehensive coverage policy of public liability insurance, issued by a corporation authorized to do insurance business in California, insuring the Lessee and the City against loss or liability caused by or connected with the Lessee's occupation or use of the Property, including but not limited to, all construction operation, maintenance or improvement activities in or on the Property by Lessee. The insurance must be in an amount not less than \$1,000,000.00 combined single limit per occurrence for bodily injury, death, personal injury and property damage. The insurance policy shall be in a form reasonably satisfactory to the City, shall name the City and its officials, officers and employees as additional insureds, and shall contain an endorsement to the effect that the policy will not be canceled or materially altered without at least 10 days' prior written notice to the City. Promptly upon obtaining such policy or any renewal or replacement thereof, the Lessee shall deliver to the City a certificate evidencing such policy, executed by the insurance company or its authorized agent.

IN WITNESS WHEREOF, the parties have caused this Property Lease to be executed by their duly authorized officers on the date and year first above written.

CITY OF LEMOORE, Lessor

By: _____
Mayor

Date

ATTEST:

City Clerk

LEPRINO FOODS COMPANY, Lessee

By: _____

Date

ATTEST:

Secretary