

FARM LEASE
Bromley Hishinuma Farm 1594 E. Bromley Lane, Brighton, Colorado 80601

THIS **AGREEMENT** ("Agreement") is entered into this ____ day of _____, 201____, by and between the **CITY OF BRIGHTON**, a Colorado home rule municipal corporation, located at 500 S. 4th Avenue, Brighton, Colorado 80601 (hereinafter referred to as "City" or "Lessor") and Boots & Shorty, a registered 501(c)3 (hereinafter referred to "Lessee"); collectively, the "Parties".

WHEREAS, the City is the owner of the historic Bromley/Hishinuma Farm, consisting of nine (9) acres, as described in Exhibit "A" (the "Premises"); and

WHEREAS, the City has agreed that the Premises shall be operated and managed by the Lessee under the terms and conditions of this Agreement; and

WHEREAS, the Parties hereto have agreed to formalize their understandings and agreements regarding the use of the Premises as a Living Farms in accordance with the terms and conditions hereof.

NOW, THEREFORE, for the consideration hereinafter set forth, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Premises. The Lessee agrees to operate and manage a Living Farm on the Premises located at 1594 E. Bromley Lane, Brighton, Colorado 80601 as more specifically described in the attached Exhibit "A", attached hereto and by this reference made a part hereof. Included in the definition of "Premises" are the Main House, Barn, Silo, Wash house, landscaping, and farm grounds.

The City agrees to provide the Premises to the Lessee for the agreed upon use for the term of the Agreement and any extensions hereof.

2. Term. The term of this Agreement is for six (6) months, starting on September 1, 2021 and ending at midnight on February 28, 2022 unless otherwise terminated as provided in Paragraph 11 below.

3. Rent. Lessee shall pay rent to the City in the amount of \$1,000 per month ("rent") for the Term, payable starting on September 1, 2021, and payable on the first day of each month thereafter.

3.1 Maintenance Service. As used in this Lease, "Maintenance Service" shall mean repairs, replacements, alterations, trash service, snow removal, irrigation, debris removal, upkeep of lighting, upkeep of concrete and other hard surfaces, living and non-living landscape areas, and custodial services. Lessee shall be responsible for providing Maintenance Service to the Property and Leased Premises.

3.2 Additional Obligations. The rental amount set forth above shall be in addition to Lessee's obligations with respect to the payment of personal property taxes, if any, insurance premiums, and repairs of the Premises, as well as telephone and internet services. The Lessee shall be responsible for payment of taxes, if any are assessed by reason of Lessee's use of the Premises on the real property and Lessee's permanent improvements during the Term. Lessee shall pay directly all charges for telephone, internet

systems and services, and other communication services used or rendered upon the Premises during the Term.

3.3 Late Fee. Any amount payable by Lessee under this Section 3.0 not paid within ten (10) days after it is due shall be subject to a late charge of ten percent (10%) of the amount unpaid

4. **Security Deposit.** No security deposit is being required for this Agreement.

5. **Use of the Premises/Indemnification.** The Parties agree that the Premises shall be used solely as a Living Farm and for related and compatible uses, and none other without the prior written consent of the City. The City recognizes and agrees that the Lessee may sublet portions or all of individual improvements within the Premises to third parties in accordance with the rules and regulations of the City, after prior consultation with and written consent from the City, which shall not be unreasonably delayed or withheld. Lessee shall inform the subtenants of the provisions of this Agreement and ensure that the subtenants agree to be bound by and abide with the terms of this Agreement. To the extent allowed by law, Lessee shall indemnify the City for any claims brought by subtenants, its employees, invitees, and guests against the City arising from the authorized occupation of the Premises by it and its subtenant(s). Lessee agrees to provide the City the contact information for any subtenant upon the request of the City. No subletting permitted hereunder shall relieve Lessee from its obligations for the performance of this Agreement.

6. **Improvements.** Lessee agrees to maintain the current irrigation system and fences on the Premises at its own cost and expense; and to keep, repair, replace and maintain the same in good condition, ordinary wear and tear excepted, during the term of the Agreement. Lessee shall obtain the prior written consent of the City to further alter or improve the Premises, which consent shall not be unreasonably delayed or withheld. At the end of the Agreement term, as the same may be extended, Lessee shall remove all permanent improvements made by Lessee to the Premises, or the same shall become the property of the City. If the City and Local Food Campus jointly construct or share the cost of a facility on the Premises, like the commercial kitchen, such facility(ies) shall remain the property of the City unless otherwise agreed, in writing, by both Parties).

7. **Utilities.** Lessee is solely responsible for the payment of all utilities used by Lessee, its users, guests, subtenants or subcontractors on the Premises during the Term of the Agreement. Lessee shall open accounts with United Power and Public Service for gas and electric metered usage at the Main House, Migrant House, Barn, Silo, Wash House, landscaping and farm grounds. Lessee will reimburse the City for all water usage through the following three meters: the Main House (3/4"), Migrant House (3/4") and Irrigation (1 1/2 "). Lessee shall submit payment for water usage within thirty (30) days of receipt of the statement from the City.

8. **Care of Premises.** Lessee is familiar with the Premises and is satisfied with its present physical condition, taking possession thereof in its "as is" condition. Any Items noted prior to lease execution, shall be addressed independently of this "Care of Premises" section and remediated by the party which agreed thereto in writing as a result of the Final Walk Through. The City makes no warranties or representations about the suitability of the Premises or its fitness for a particular purpose. Lessee agrees to maintain the Premises in as good a condition as it is at the start of this Agreement, except for ordinary wear and tear. Lessee shall, during the entire term of this Agreement and any extension and holdovers, use all reasonable

precautions to prevent waste, damage or injury to the Premises. All repairs and maintenance required by the City hereunder shall be performed as expeditiously as possible, weather conditions and other events of force majeure permitting. Lessee, at its sole expense, shall at all times keep the Premises, and any improvements thereon in a clean, safe, aesthetically pleasing manner and sanitary condition, free of any nuisance, hazard or unreasonable accumulation of trash, garbage, debris, ice and snow. Further, Lessee agrees not to cause or permit any wastes, trash, garbage, noxious odors, debris, ice, snow, hazardous material, or other nuisance emanating from the Premises onto the City property adjacent to the Premises, excepting those typically associated with agricultural activity.

9. Compliance with Laws and Hazardous Use. Use of the Premises by Lessee or any subtenant shall comply with all federal, state, county, and City laws, rules and regulations, provided further, that nothing herein shall be deemed to permit the growing of plants of the genus Cannabis for any purpose, including medical uses. Neither Lessee nor its users, subtenants subcontractors shall leave, keep or store anything on the Premises which is dangerous, flammable, explosive, or otherwise hazardous including, without limitation, herbicides and/or pesticides, except as specified in the attached Exhibit C for those herbicides, fungicides, and fertilizers used in organic farming practices in ordinary growing of crops and animal care and fuels and fluids used operation of farming implements and machinery.

10. Entry by the City. Upon reasonable notice, representatives of the City may enter the Premises to inspect it or to protect the City's rights pursuant to this Agreement.

11. Termination. Either party may terminate this Agreement, with cause, by giving written notice of termination for breach to the other party. The termination and notice may include all or a part of the Premises. The Party in Breach shall be given 60 days from the date of Notice to remediate or cure any breach.

12. Injury or Damage. Lessee shall be solely responsible for any injury or damage caused by the act or neglect of Lessee, its employees, visitors, users or guests and any act or neglect of any subtenant or subcontractor.

13. Indemnify. To the extent provided by law, Lessee agrees to indemnify and to hold the City and its agents harmless from and against any and all claims, suits, expenses, damages or other liabilities, including reasonable attorney fees and court costs, arising out of damages or injury to persons or property caused or sustained by any person, persons, or entities as a result of the use and occupancy of the Premises pursuant to the terms of this Agreement. Provided, nothing herein shall be deemed to be a waiver by the City of the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees, to the extent provided by law.

14. Insurance. During the term of this Agreement and any extension or holdover hereunder, the City shall maintain insurance for the Premises.

A. The Lessee agrees to procure and maintain in full force and effect during the term of the Agreement, at its own cost, the following coverages:

1. Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance, when applicable.

2. Commercial General or Business Liability Insurance with minimum combined single limits of One Million (\$1,000,000) each occurrence and One Million (\$1,000,000) general aggregate.

3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Lessee's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the Lessee's insurance does not cover non-owned automobiles, then the Lessee guarantees to the City that the requirements of this paragraph shall be met by each employee, subcontractor or other agent of the Lessee who utilizes an automobile in providing services to the City of Brighton under this Agreement.

B. Lessee shall procure and maintain, and shall cause any subcontractor of the Lessee to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City of Brighton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Lessee in connection with providing any work or services under this Agreement. In the case of any claims made, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

C. Certificate of Insurance shall be completed by the Lessee's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City of Brighton prior to commencement of any work or use of the Premises under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated, diminished or materially changed until at least thirty (30) days prior written notice has been given to the City of Brighton. The completed Certificate of Insurance shall be sent to:

City of Brighton
500 South 4th Avenue
Brighton, CO 80601
Attention: Division of Procurement & Contracts

D. The City of Brighton reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Lessee agrees to execute any and all documents necessary to allow the City of Brighton access to any and all insurance policies and endorsements pertaining to this particular Project.

E. The parties hereto understand and agree that the City of Brighton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City of Brighton, its officers or its employees.

F. In addition to procuring and delivering to the City such written Certificates of Insurance, demonstrating that the Lessee has obtained and will maintain all policies of insurance coverage in

the amounts required herein, the Lessee shall also cause the City to be named as an Additional Insured party entitled to coverage under such policy or policies of insurance, and for that purpose the Lessee shall obtain and maintain, or cause to be obtained and maintained, any and all necessary policy endorsements, additional coverage documents, or other instruments or Certificates, such as will provide such insurance coverage to the City at all times during the Lessee's performance of the Project.

15. A Worker without Authorization:

A. At all times during the performance of this public Agreement, Lessee shall strictly adhere to all applicable Federal, State and City laws prohibiting the employment of or contracting with a worker without authorization.

B. Lessee shall not knowingly employ or contract with a worker without authorization to perform work under this public Agreement or knowingly contract with a subcontractor who knowingly employs or contracts with a worker without authorization to perform work under this Agreement.

C. Lessee shall require all subtenants and subcontractors to agree in writing that the subtenant or subcontractor does not knowingly employ or contract with a worker without authorization and further to agree in writing not to knowingly employ or contract with a worker without authorization to perform work under this public Agreement.

D. Lessee shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking for the purpose of determining the immigration status of all newly hired employees or subcontractors working on this contract.

E. If Lessee violates a provision of this Section 15, **A Worker without Authorization**, the City may terminate the Agreement for a breach of the Agreement.

17. Notice. Any notices given under this Agreement are deemed to have been received and to be effective: 1) three (3) days after the same shall have been mailed by regular mail, postage prepaid; 2) immediately upon hand delivery; or 3) immediately upon receipt of confirmation that a facsimile or email was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below.

Lessee: Boots & Shorty
Attention: Anna Frye
1594 E Bromley Lane
Brighton, CO 80601

Lessor: City of Brighton
Attention: Finance Department
500 S 4th Avenue
Brighton, CO 80601

18 Jurisdiction and Venue. The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The Parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with the 17th Judicial District, Colorado.

19. Integration of Understanding. This Agreement contains the entire understanding of the Parties hereto and the rights and obligations contained therein may be changed, modified, or waived only by an instrument in writing signed by the Parties hereto.

20. Paragraph Headings. Paragraph headings are inserted for the convenience of reference only.

21. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person other than the Parties any right, remedy, or claim under or by reason of this Agreement. All covenants, terms, conditions, and provisions in this Agreement shall be for the sole and exclusive benefit of the City and Lessee.

22. Severability. If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of the Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

23. Authorization. Each Party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed the day and year above written.

LESSOR: THE CITY OF BRIGHTON, a Colorado
municipal corporation

By: _____
Jane Bais DiSessa, City Manager

Date: _____

APPROVED AS TO FORM:

ALICIA CALDERÓN, City Attorney

ATTEST:

Natalie Hoel, City Clerk

LESSEE: Boots & Shorty

By: _____

Date: _____

EXHIBIT "B"
PARTIES' RESPONSIBILITIES CITY'S RESPONSIBILITIES:

LESSOR RESPONSIBILITIES:

- 1) The City shall be responsible for major maintenance on the improvements, including by illustration, repairs, painting, parking lot repair and other maintenance not related to normal wear and tear.
- 2) The City may provide Lessee historical information and displays for use and display related to the education of the public as necessary for the Living Farm.
- 3) Subject to reimbursement from Lessee, as more specifically provided herein, the City shall provide water service, including **three** required meters, for the farming activities and irrigation of the landscaping water for the other uses and activities on the Premises, to wit: a $\frac{3}{4}$ " meter for the Main House, a $\frac{3}{4}$ " meter for the Migrant Workers House, and a $1\frac{1}{2}$ " meter for irrigation of landscape and farm crops.

LESSEE RESPONSIBILITIES:

- 1) Using the water service installed and maintained by the City, Lessee shall provide for irrigation of the farming and landscaping on the Premises. (Irrigation distribution systems shall be installed and maintained by Lessee using mulching techniques and drip lines to maximize efficient water use.)
- 2) Lessee shall be responsible for trash service for the Premises and pay the costs thereof as the same are due.
- 3) Lessee will reimburse the City for all water usage through the following three meters: the Main House ($\frac{3}{4}$ "), Migrant House ($\frac{3}{4}$ ") and Irrigation ($1\frac{1}{2}$ "). Lessee shall submit payment for water usage within thirty (30) days of receipt of the statement from the City.
- 4) Lessee shall obtain, maintain and comply with during the term of this Agreement, City of Brighton Business and Sales & Lodging Tax Licenses and the City Code.
- 5) Prior to the preparation, sale and/or service of any food or food stuffs on the Premises Lessee shall obtain a license therefor from the Tri-County Health Department.
- 6) No alcoholic beverages shall be sold or dispensed on the Premises whether by Lessee or third parties without the appropriate and necessary alcohol beverage license.
- 7) Lessee's maintenance responsibilities shall include by illustration mowing, weeding, routine maintenance of the irrigation system, trash removal, janitorial services, fencing, landscaping, and routine maintenance of the structures and improvements.
- 8) Lessee may keep poultry, bees, and other animals on the Premises in accordance with the ordinances of the City and the terms and conditions of the PUD approval or amendments thereof.

- 9) Lessee may contract with third parties for use of the Premises or any portions thereof for private parties, meetings, events, classes, dinners, etc., provided that prior written notice thereof shall be given to the City for its review and approval.
- 10) Lessee may host public events such as the fall festival, school events and classes for use of the Premises or any portions thereof provided that prior written notice thereof shall be given to the City for its review and approval.
- 11) Lessee shall cooperate with the City in holding public events on the Premises or any portions thereof, provided that the City shall provide Lessee prior written notice thereof for its review and recommendations.
- 12) Lessee is responsible for the security of the premises, including obtaining and maintaining casualty insurance in the sum of \$1,000,000.00
- 13) Lessee shall provide for security and protection of the historical information and displays provided by the City for use and display related to the education of the public as necessary for the Living Farm.
- 14) Lessee shall be responsible for all equipment, tools and implements required for the approved farming operations and other uses of the Premises. Such equipment, tools and implements may be stored on the Premises provided that such storage, repairs and operations shall not create any hazardous condition or contamination and shall be limited to no more than twenty-five (25) gallons of fuel/gasoline in approved containers between one (1) and five (5) gallon capacities. No other fuel, oil, or other hazardous materials may be stored on the site without prior approval and the City and Greater Brighton Fire Protection District.
- 15) The farming and agricultural uses of the Premises by Local Food Campus and its subtenants and subcontractors shall comply with organic practices as specified in the USDA Organic Farming Practices rules and regulations including no restricted herbicides, fertilizers, or fungicides that would require a permit to apply.