

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

From: Jessica Sandifer, Senior Management Analyst 

Date: June 23, 2015 (City Council Meeting of 07/01/15)

Subject: Consider Renewal of Lease Agreement between the City of Moorpark and Boething Treeland Farms for City-owned Property on Tierra Rejada Road (a Portion of APN's 504-0-030-265 &-275)

BACKGROUND/DISCUSSION

Boething Treeland Farms ("Boething") nursery operations have occupied 9 acres on APN's 504-0-030-265 &-375 since before the City was incorporated. The property that Boething leases was deeded by the developer to the County of Ventura to satisfy parkland requirements for Tracts 2817 and 3032 (Buttercreek Homes). For various reasons, the park was never developed and Boething has continued to rent the property. In May 1984, the City inherited the lease from the County of Ventura upon the transfer of the property to the City. In addition, in consideration for a lower lease rate, Boething provides trees to the City. In 2011, in response to resident concerns regarding nursery operations adjacent to the houses, the City decreased the leased acreage to 6.45 acres to move the nursery operations away from the houses. The latest Lease Agreement expired in January 2015 and provided 200 trees to the City per year.

Boething desires to continue the lease of the property. Staff has negotiated a 4% increase in their current lease rate and a 5% increase in the number of trees they provide to the City. The annual rental rate will increase from \$13,158 to \$13,684 and trees will increase from 200 to 210. The lease agreement also contains an annual rent escalation tied to the Consumer's Price Index (CPI). The term of the proposed lease is one year with a one year extension, if approved by the City Manager.

FISCAL IMPACT

The lease will generate at least \$13,684 each year of the potential two year term and provide the City \$13,650 in trees each year. The City spends approximately \$2,100 per year to perform weed abatement on the portion of the property adjacent to the homes that is not rented by Boething. The rental revenue offsets this cost.

Honorable City Council
July 1, 2015
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STAFF RECOMMENDATION

Approve lease agreement between the City of Moorpark and Boething Treeland Farms and authorize the City Manager to sign the lease, subject to final language approval of the City Manager.

Attachment : Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT, (hereinafter "Lease") is made and entered into as of this _____ day of _____, 2015 by and between, the CITY OF MOORPARK, (hereinafter "City") and BOETHING TREELAND FARMS, INC., a California Corporation, (hereinafter "Tenant" or "Lessee").

THE PARTIES AGREE THAT:

Section 1. PROPERTY LEASE

City, in consideration of the rents herein agreed to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby leases to Tenant, and Tenant hereby leases from City, those certain parcels of real property described as Exhibit "B" attached hereto and by this reference incorporated herein, together with any and all improvements thereon (all of which are hereinafter referred to as the "Premises").

Section 2. TERM

The term of this Lease shall be for one (1) year, commencing on July 1, 2015, and ending on June 30, 2016 (the "Ending Date"); provided, however, that Tenant may extend the term of this, with approval of the City Manager, Lease for one (1) additional one (1) year period (the "Extended Term") upon the giving to the City of written notice of extension (the "Extension Notice"), which Extension Notice, must be accompanied by Tenant's payment of the Rent for the Extension Term as provided below. To be effective, Tenant's Extension Notice must be given to the City thirty (30) days prior to the Ending Date. Any such Extended Term shall be on the same terms and conditions as set forth in this Lease, including, without limitation, an annual rent in an amount equal to the Rent specified in Section 5. Notwithstanding the foregoing to the contrary, Tenant may not give an Extension Notice if Tenant is in default at the time the Extension Notice is given, and the term of this Lease shall not be extended (even if an Extension Notice has been properly given) if Tenant is in default on the date the Extended Term would commence. City's obligations hereunder shall be contingent upon Tenant's payment and performance in full of all rent, additional rent and other obligations as set forth in this Lease. As used in this Lease, the "term" of this Lease refers to the original term and any Extended Term, unless otherwise specified. At the end of the Term, Extended Term, or any holdover period (as described herein) or in the event of termination of this Lease, Tenant agrees to and hereby does waive any and all rights to and claims for relocation assistance, or compensation for relocation, loss of goodwill, increased rent, severance damages or additional compensation arising out of the termination or end of this lease or Tenant's vacation of the Premises.

Section 3. TERMINATION OF EXTENDED TERM

During the Extended Term, Tenant shall have the right to terminate this Lease upon the giving to City of written notice of termination (the "Termination Notice"). The Termination Notice shall specify a termination date, which date shall not be less than thirty (30) days following the date of the Termination Notice. Within ten (10) business days following any such termination date, City will reimburse to Tenant a pro rata portion of the Rent paid for the Extended Term in an amount equal to the amount of such Rent multiplied by a fraction the numerator of which is the number of days remaining in the Extended Term as of such termination date and the denominator of which is three hundred sixty-five (365).

Section 4. HOLDING OVER; SURRENDER OF PREMISES

It is further agreed that if Tenant shall retain possession of the Premises beyond the expiration of the original term of this Lease or the Extended Term, without the express written consent of the City, Tenant shall automatically become a Tenant from month-to-month during such holdover period, such tenancy being terminable by City at any time upon the giving of not less than thirty (30) days prior written notice. Tenant shall be subject to all of the terms, covenants and conditions of this Lease, including the obligation to pay Rent and Additional Rent on a pro rata basis during any such holdover period, at the prevailing rate specified in Section 5 and Section 6, hereof.

Upon the expiration or sooner termination of the term of this Lease, Tenant shall surrender the Premises to City with all of Tenant's personal property removed and in the condition in which Tenant is required to maintain the Premises under the terms of this Lease, ordinary wear and tear alone excepted. "Ordinary wear and tear" does not include any damage or deterioration that would have been prevented by good maintenance practice or by Tenant performing all of its obligations under this Lease.

Section 5. RENT

Tenant further agrees to pay the City prior to the execution of Lease Agreement an annual rent in the amount of Thirteen Thousand Six Hundred Eighty-four dollars and Sixty-four cents (\$13,684.64). Starting on July 1, 2016 the annual rental payment shall be indexed as described in Section 7.

Section 6. ADDITIONAL RENT

In consideration of City's rental of the Premises, and as additional rent therefor (the "Additional Rent"), Tenant will provide City with two hundred ten (210) fifteen (15) gallon container trees, or an equivalent number of trees and shrubs based on: 1) four (4) 15 gallon trees to one 24" box tree, 2) five (5) gallon shrubs to one 15 gallon tree, and 3) twenty (20) 1 gallon shrubs to one 15 gallon tree, in varieties to be determined by the mutual consent of the parties each calendar year through the term of the

Agreement. There shall be no administrative charge for consideration of the Additional Rent.

Section 7. ADJUSTMENTS OF RENTS

Beginning July 1, 2016, and as long as the Lease Agreement is in effect, or the Tenant is in Hold Over Status consistent with Section 4, the Rent shall be adjusted on each July 1 by any increase in the Consumer Price Index (CPI). The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month of March over the prior month of March. In the event there is a decrease in the CPI for any annual indexing, the Rent shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. Any such increase shall also be in effect for the year in which notice of termination is given pursuant to Section 3 herein.

Section 8. FLOODING

Tenant understands that Premises are subject to flooding, and that a portion of the Premises is encumbered by an easement for flowage purposes held by the Ventura County Watershed District. Nonetheless, Tenant accepts the Premises subject to the terms of this Agreement.

Section 9. USE

The Premises shall be used for the following specified purpose only and shall not be used for any other purpose without the prior written consent of the City Manager: the growing of trees and shrubs in containers for wholesale distribution only, storage thereof, and activities directly related thereto. Tenant shall use the Premises in compliance with all applicable laws, rules and regulations of all applicable governmental authorities, and shall not use nor permit the use of the Premises in any manner which creates a nuisance or which causes waste. Any and all retail activity of any nature on the Premises is hereby strictly prohibited.

Section 10. SIGNS

Tenant agrees not to allow the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of City. In the event of a violation of this provision by Tenant or anyone claiming under Tenant, and in addition to any other rights or remedies available to City, Tenant hereby authorizes City as Tenant's Agent, to enter the Premises and dispose of any such sign, signboard or other advertising, and to charge the cost and expense of any such removal and disposal to Tenant who agrees to pay the same on demand.

Section 11. LIABILITY INSURANCE

Tenant shall maintain prior to the beginning of and for the duration of this Agreement, insurance coverage as specified in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full.

Section 12. CASUALTY INSURANCE

The parties each specifically acknowledge that City shall not be obligated to keep the Premises insured against fire, or any other insurable risk. Tenant hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other cause.

Section 13. TAXES, ASSESSMENTS AND LIENS

Tenant shall pay when due all taxes and assessments of every kind levied or assessed against the Premises, City's ownership thereof, this Lease and all rentals payable hereunder as specified in Section 5 and Section 6, as well as any fees, charges or other amounts levied or assessed in substitution for any of the foregoing. Tenant shall also pay when due all taxes and assessments of every kind levied or assessed against Tenant's personal property located on the Premises. Concurrently with Tenant's payment of such taxes and assessments, Tenant shall deliver to City written evidence of such payment satisfactory to City. Tenant agrees to keep the Premises free from all liens, including but not limited to mechanics' liens, claims and other encumbrances arising by reason of the use or occupancy of the Premises by Tenant or any person claiming under or through Tenant. It is agreed that, in addition to any other rights or remedies available to City (a) if Tenant shall fail to pay and discharge the above-mentioned taxes and assessments when due, City shall have the right to pay the same and charge the amount thereof to Tenant, who agrees to pay the same on demand, together with interest thereon at the maximum rate allowed by law, and (b) if the Premises become the subject of any of the above-mentioned liens, claims or encumbrances, City shall have the right to pay and secure the release thereof and charge the amount thereof to Tenant, who agrees to pay the same on demand, together with interest thereon at the maximum rate allowed by law.

Section 14. TENANT'S IMPROVEMENTS

Tenant shall not make any alterations, additions, or improvements in excess of Five Thousand Dollars (\$5,000) upon the Premises without the prior written consent of City. All alterations, additions and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all Federal, State, County, and local laws, ordinances, codes and standards relating thereto. Unless otherwise expressly agreed to, in writing, by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Lease. Tenant shall timely pay all costs associated with any and all improvements, and shall

keep the Premises free and clear of all mechanics and other liens relating thereto. Without limiting Tenant's other obligations of indemnity under this Lease, Tenant agrees to and shall indemnify, defend and save City free and harmless from and against all claims, liabilities, losses, damages, actions, judgments, fines, penalties, costs and expenses (including, without limitation, legal counsels' fees and costs) of any nature arising out of or resulting from any Tenant alterations, additions or improvements to the Premises. The foregoing agreement of indemnity shall survive the expiration or sooner termination of this Lease.

Section 15. FLAMMABLE, WASTE AND NUISANCES

Tenant agrees that it shall not place or store any flammable materials on the Premises, that it shall not commit any waste or damage, nor suffer any to be done. Tenant also specifically agrees that it shall not allow others to take such actions on the Premises. Tenant further agrees that it shall keep the Premises clean, free from weeds, (including all slope areas) rubbish and debris and in a condition satisfactory to City.

Tenant shall also provide adequate controls for dust, odors and noise or other nuisance disturbances which may emanate from the Premises or from Tenant's activities on adjacent property and take appropriate steps necessary to prevent dust contamination of City's facilities located on, near or adjacent to the Premises. Tenant also agrees to take preventive action to eliminate such dust, odor, noise or any other nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances.

Section 16. PESTICIDES AND HERBICIDES

Tenant agrees that any pesticide or herbicide applications on the Premises, or the use of any Hazardous Materials on the Premises, shall be made or used in accordance with all Federal, State, County and local laws. Tenant further agrees to dispose of any pesticides, herbicides and Hazardous Materials in such a manner as prescribed by all applicable governmental laws, rules and regulations. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

Section 17. UNDERGROUND TANKS

Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not have the right to install underground or above-ground storage tanks (including, without limitation, as defined by any and all applicable laws or regulations) without the prior written consent of the City.

Section 18. HAZARDOUS MATERIALS INDEMNITY

Without limiting Tenant's other obligations of indemnity under this Lease, Tenant hereby agrees to indemnify and hold harmless City, and its respective officers, employees and agents, from and against any and all claims, actions, losses, liabilities, costs and expenses: (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Material on the Premises, or arising out of the presence or use of underground fuel tanks presently located on the Premises; and, (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, or use, generation, storage, release, threatened release, or disposal of Hazardous Materials on the Premises. As used in this Section, Hazardous Materials means any flammable explosives, radioactive materials, asbestos, PCBs, hazardous waste, toxic substances of related materials, including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substance" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC, Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC, Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC, Section 6901, et seq.; the Toxic Substances Control Act, 15 USC, Section 2601, et seq.; any other Federal, State or local law applicable to the Premises; and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

Section 19. IRRIGATION EQUIPMENT

Tenant agrees that any and all irrigation pipelines, well pumping equipment, and other structures, buildings and fixtures appurtenant thereto (hereinafter collectively referred to as "Irrigation Equipment") located on the Premises at the commencement of Tenant's occupancy thereof, shall remain upon and be surrendered with the Premises upon the termination of this Lease or any renewal or extension thereof. Without limiting the terms of Section 24 of this Lease, in consideration of the privilege of using the same, Tenant agrees to operate, and to maintain in good condition and repair (including the making of necessary replacements), at Tenant's sole cost and expense, the Irrigation Equipment during the continuance of this Lease. Any Irrigation Equipment placed on the Premises by Tenant, the installation of which is made with the consent of City, and all irrigation equipment installed by Tenant to replace such equipment located on said Premises, shall thereupon be and become the property of City and shall remain upon and be surrendered with the Premises upon the expiration or sooner termination of the term of this Lease. City makes no representation or warranty of any kind respecting any Irrigation Equipment located on the Premises.

Section 20. FENCING

Tenant may install fencing on the Premises provided Tenant obtains the prior written approval of City of the fencing type, height, and location before installation. All fencing shall be consistent with single-family residential fencing requirements of the City. No use of barbed wire, razor wire, concertina wire, or similar materials is allowed. Additionally, Tenant shall not install, operate, or maintain, or cause or permit to be installed, operated, or maintained any electrically charged fence on the Premises. All fencing on the Premises is required to be maintained in good condition so as to not create a public nuisance or dangerous condition of property. Any holes, cut fencing, protruding wires, or other potentially unsafe conditions are to be repaired as soon as they are discovered and only using proper fence repair techniques. When the City notifies the Tenant about a maintenance issue with the fencing, Tenant will be required to immediately secure the area with proper barricades to ensure worker and public safety until the repair can be completed. The required fence repair shall be completed within five (5) days from receipt of the written notice from the City ordering the fence repair.

Section 21. INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent permitted by law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Agency, defend, indemnify, and hold harmless Agency and Agency's officers, employees, and agents and the City of Moorpark (City) and City's officers, employees, and agents from and against all claims (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including consultant and expert fees, court costs, and attorneys' fees) from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including without limitation:

1. The use of occupancy, or manner of use or occupancy, of the Premises or Building by the Tenant;
2. Any act, error, omission, or negligence of Tenant or of any subtenant, invitee, guest, contractor, or licensee of Tenant or any subtenant in, on, or about the Real Property;
3. Tenant's conducting of its business;
4. Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Tenant in, at, or about the Premises or Building, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Lease Commencement Date or enacted, promulgated, or issued after the date of this Lease;
5. Any breach or default in performance of any obligation on Tenant's part to be performed under this Lease, whether before or during the Lease Term or after its expiration or earlier termination
6. This indemnification extends to and includes, without limitation, claims for:

- a. Injury to any persons (including death at any time resulting from that injury);
- b. Loss of, injury or damage to, or destruction of property (including loss of use at any time resulting from that loss, injury, damage, or destruction); and
- c. All economic losses and consequential or resulting damage or any kind.

Tenant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Lease until all claims against Agency involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitation. Agency does not and shall not waive any rights that it may have against Tenant by this Section, because of the acceptance by Agency, or deposit with Agency, of any insurance policy or certificate required pursuant to this Lease.

Section 22. UTILITIES

Tenant agrees to pay when due all charges and assessments for or in connection with electric current, gas, water, waste removal and all other utilities which may be furnished to or used upon the Premises by Tenant during this Lease. It is further agreed that, in addition to any other rights or remedies available to City, if Tenant shall fail to pay the above mentioned charges and assessments when due, City shall have the right to pay the same and charge the amount thereof to Tenant, who agrees to pay the same on demand, together with interest thereon at the maximum rate allowed by law.

Section 23. AS-IS LEASE; NO WARRANTIES BY CITY

Tenant has inspected the Premises and is completely satisfied with them, and Tenant agrees that it has accepted the Premises in their "AS-IS" and "WITH ALL FAULTS" condition. Tenant agrees that City has made no representation or warranty whatever respecting (a) the physical or environmental condition of the Premises or any equipment or property located thereon (including, without limitation, the presence or absence of Hazardous Materials thereon or therein), (b) the suitability or fitness of the Premises or any equipment or property located thereon for Tenant's intended use, (c) the zoning of the Premises or the compliance of the Premises or any equipment or property located thereon with any applicable laws, rules or regulations of any governmental authority, and (d) any other matter whatever respecting the Premises or any equipment or property located thereon whether or not of public record.

Section 24. MAINTENANCE

Throughout the term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and every part thereof in good order, condition and repair. Tenant's obligation shall include, without limitation, the making of all necessary repairs and replacements (including, without limitation, repairs and

replacements required by any applicable governmental law, rule or regulation), and whether ordinary or extraordinary or structural or nonstructural. City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Lease and shall have no obligation to comply with any governmental law, rule or regulation applicable to the Premises. Neither shall City be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to, drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

Section 25. ENTRY BY CITY

City may enter upon the Premises at all reasonable times to examine the condition thereof, and for the purpose of providing maintenance and making such repairs as City desires to make.

Section 26. GOVERNING LAW

The existence, validity, construction, operation and effect of this Lease and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

Section 27. DISCRIMINATION

Tenant shall not discriminate in employment of persons because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Tenant shall have responsibility for compliance with this Section [Labor Code Sec. 1735].

Section 28. ASSIGNMENT AND SUBLETTING

Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Tenant excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. A consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. This Lease shall not, or shall any interest therein, be assignable, as to the interest of Tenant, by operation of law, without the written consent of City. Any assignment or subletting without City's written consent shall be void, and shall, at the option of the City, terminate this Lease. No assignment or subletting shall release Tenant from its obligations under this Lease, as to all of which Tenant shall remain primarily liable.

Section 29. INSOLVENCY OR BANKRUPTCY

If Tenant shall be adjudged bankrupt or insolvent, this Lease shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Tenant under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Lease shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the Tenant thereupon shall cease and terminate.

Section 30. TENANT'S DEFAULT

The following shall constitute a default by Tenant: (a) the failure to pay Rent or any other monetary sum when due under this Lease where such failure continues for five (5) days following the giving by City to Tenant of written notice of such failure; (b) the failure to maintain any of the insurance required to be maintained by Tenant under this Lease; and (c) the failure to perform any obligation under this Lease (other than as provided in clauses (a) and (b) above) where such failure continues for a period of thirty (30) days following the giving by City to Tenant of written notice of such failure, provided, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its cure, Tenant shall not be in default if Tenant commences to cure such failure within such thirty (30) day period and thereafter fully cures such failure within sixty (60) days following the giving by City to Tenant of written notice of such failure. If Tenant is in default under this Lease, in addition to any remedies set forth in this Lease, City shall have all rights and remedies available to it at law and in equity, including, without limitation, the right forthwith to remove Tenant's personal property from the Premises at the sole cost, expense and risk of Tenant, which cost and expense Tenant agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City. Any such termination shall not be considered a waiver of damages or other remedies available to City because of such default. Each term and condition of this Lease to be observed and performed by Tenant shall be deemed to be both a covenant and a condition.

Section 31. INTERPRETATION OF LEASE

Should interpretation of this Lease, or any portion thereof, be necessary, it is deemed that this Lease was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Lease or caused it to be prepared.

Section 32. WAIVER

A waiver by either party of any default or breach by the other party in the performance of any of the covenants, terms or conditions of this Lease shall not constitute or be deemed a waiver of any subsequent or other default or breach.

Section 33. ACQUIESCENCE

No acquiescence, failure or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

Section 34. PARTIES BOUND AND BENEFITTED

Subject to the terms of Section 28, the covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto. If Tenant consists of more than one person or entity the liabilities of Tenant shall be joint and several.

Section 35. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Lease shall cease on the day of possession by the public authority. If a part only of the Premises should be taken under eminent domain, Tenant shall have the right to either terminate this Lease or to continue in possession of the remainder of the Premises. If Tenant remains in possession, all of the terms hereof shall continue in effect, the rental payable being reduced proportionately for the balance of the Lease term. If a taking under the power of eminent domain occurs, City shall be entitled to the entire award with respect thereto, except that Tenant shall be entitled to seek a separate award on account of its personal property and relocation expenses.

Section 36. REMEDIES

All remedies available to City under this Lease and at law and in equity are cumulative.

Section 37. ATTORNEYS' FEES

If any action is brought for the interpretation or enforcement of this Lease, the prevailing party in such action shall be entitled to recover its attorneys' fees and costs of suit from the losing party, all as determined by the court.

Section 38. RECORDING

City shall record this Lease through the County Recorders Office in accordance with Government Code 37393.

Section 39. NOTICES AND PAYMENTS

All notices required or permitted under this Lease, including change of address, must be in writing and addressed to the parties at their respective notice addresses set forth below; provided, that notices to Tenant may also be effectively given in writing and addressed to Tenant at the Premises address. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) business days following deposit into the custody of the United States Postal Service. The notice addresses for the parties are as follows:

A. All payments and notices to Tenant shall be given or mailed to:

Boething Treeland Farms, Inc.
B.E. Pherson, Jr.
23475 Long Valley Road
Woodland Hills, California 91367
Emergency:
Contact Person: R. A. Ogilvie, Controller
Phone Number: (818) 883-1222

B. All payments and notices to City shall be given or mailed to:

City of Moorpark
City Manager
799 Moorpark Avenue
Moorpark, California 93021

Section 40. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Lease is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 41. GENDER AND NUMBER

For the purpose of this Lease, wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

Section 42. PARAGRAPH HEADINGS

Paragraph headings in this Lease are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Lease.

Section 43. MODIFICATION

No term or provision of this Lease may be amended, modified or waived orally or by a course of conduct, but only by a writing signed by City and Tenant. Any such amendment, modification or waiver may be executed by the City Manager on behalf of City.

Section 44. ENTIRE AGREEMENT

This Lease constitutes the entire agreement between the parties, and supersedes all previous negotiations and understandings between the parties. There are no representations, warranties or commitments, oral or written, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representative as of the date first written above.

CITY OF MOORPARK

BOETHING TREELAND FARMS, INC.

By: _____
Steven Kueny, City Manager

By: _____
B.E. Pherson, Jr.
President and General Counsel

ATTEST:

By: _____
Maureen Benson, City Clerk

EXHIBIT A

Insurance Requirements

Tenant will maintain insurance in conformance with the requirements set forth below. Tenant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Tenant agrees to amend, supplement or endorse the existing coverage to do so. Tenant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Tenant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident and \$2,000,000 in aggregate. If Tenant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way on this project, Tenant shall provide evidence of personal auto liability coverage for each such person.

Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Tenant. Tenant and CITY agree to the following with respect to insurance provided by Tenant:

1. Tenant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds CITY, its officials, employees, servants, agents, and independent consultants ("CITY indemnities"), using standard ISO endorsement No. CG 2011 with an edition prior to 1996. Tenant also agrees to require all contractors and subcontractors working on the Premise to do likewise.

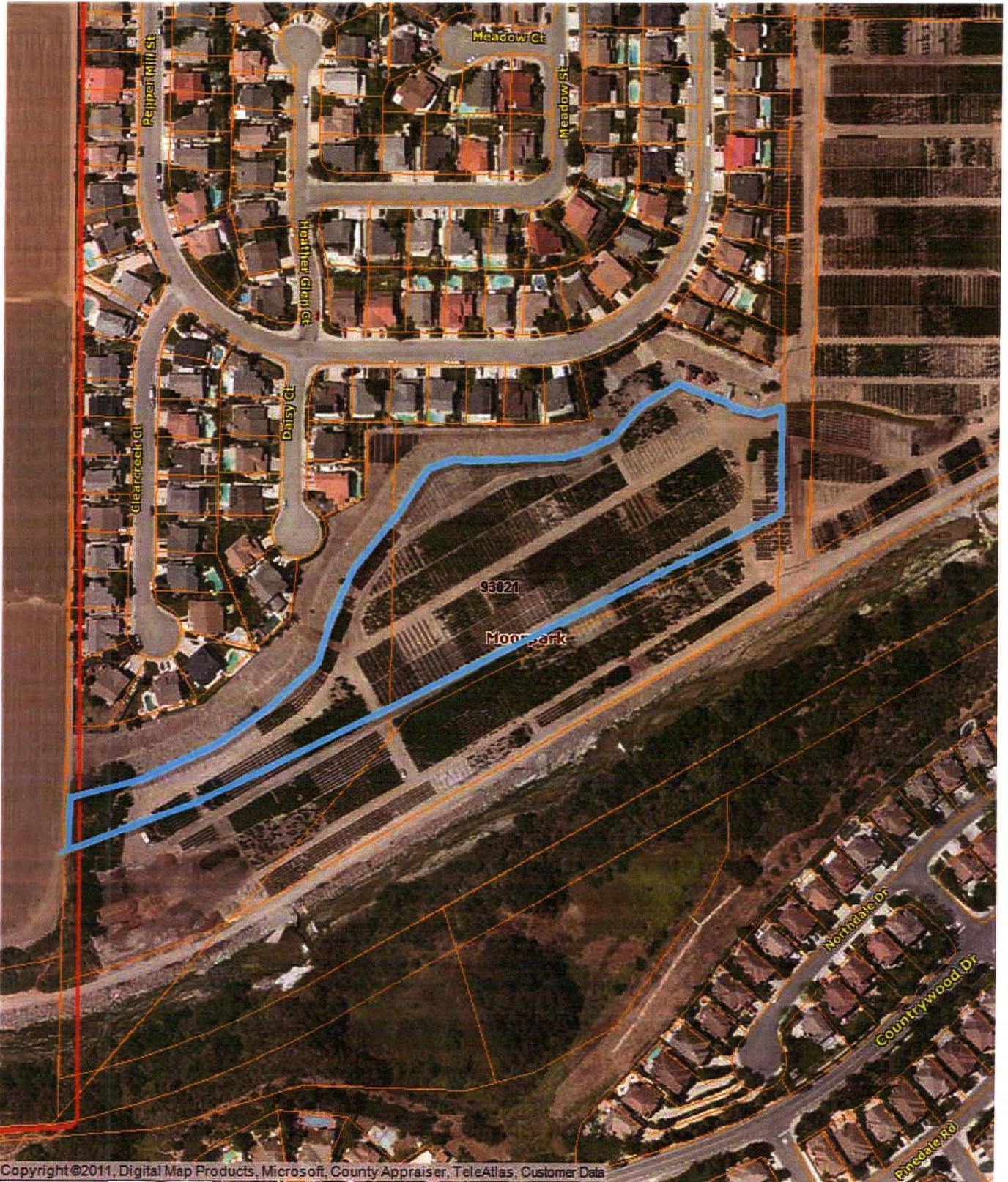
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Tenant, or Tenant's agents, from waiving the right of subrogation prior to a loss. Tenant agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Tenant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the CITY, as the need arises. Tenant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY'S protection without CITY'S prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability policy, shall be delivered to CITY at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by Tenant or deducted from sums due Tenant, at CITY's option.
8. Certificates are to reflect that the insurer will provide 30 day notice to CITY of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Tenant, is intended to apply first and on a primary,

non-contributing basis in relation to any other insurance or self-insurance available to CITY.

10. Tenant agrees to ensure that subcontractors, and any other party entering onto the Premises, provide the same minimum insurance coverage required of Tenant. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Tenant agrees that upon request, all agreements with subcontractors and other parties entering onto the Premises will be submitted to CITY for review.
11. Tenant agrees not to self-insure or to use any self-insured retention or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person entering onto the Premises to self-insure its obligations to CITY. If Tenant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the Tenant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. For purposes of applying insurance coverage, only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Tenant acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform Tenant of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
14. Tenant will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until CITY executes a written statement to that effect.
15. Tenant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Tenant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement is required in these specifications applicable to the renewing or new coverage must be provided to CITY within five days of the expiration of the coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Tenant under this agreement. Tenant expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials, and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party of insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Tenant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or Tenant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.
21. Tenant agrees to provide immediate notice to CITY of any claim or loss against Tenant arising out of the lease of the Premises. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

EXHIBIT B



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