

REAL PROPERTY LEASE AGREEMENT

This Lease Agreement (this "Lease") is made effective as of January 1st, 2020, by and between City of Vancouver ("Lessor"), and Firestone Pacific Foods, LLC. ("Lessee"). It is the intent of the parties that this Lease Agreement supersedes any prior Lease Agreement, including the prior Lease Agreement with the effective date of May 1, 2007. The parties further agree as follows:

WITNESSETH:

For the rental and upon the terms, conditions and stipulations hereinafter set forth, the Lessor hereby leases to the Lessee the real property situated in the County of Clark, State of Washington.

The parties agree as follows:

PREMISES. Lessor, in consideration of the lease payments and maintenance services provided in this Lease, leases to Lessee farmland (the "Premises") located in the Vancouver Lake Lowland area of Clark County at 4900 NW Fruit Valley Rd., including the shed located at the entrance to the property from Fruit Valley Road. An aerial print of the Premises is attached as Exhibit A.

The Premises consists of three management areas, titled **Area A**, **Area B**, and **Area C**. Each area shall be managed and maintained at an acceptable level and in compliance with all local, state, and federal laws and ordinances.

Area A

Area A will be primarily managed for the production of berries, but is not limited to, row crops, grain crops, etc. Lessee may utilize the existing well. The cost, maintenance and proper operation of the well pump and utilities will be the responsibility of the Lessee. Any area not planted with approved crop shall be maintained in an appropriate manner for good appearance and to prevent the uncontrolled spread of noxious weeds. Existing weeds shall either be removed at Lessor expense and/or controlled by Lessee to current conditions.

Lessee shall utilize the existing pole barn for farm-related machinery and equipment pertaining to this lease. Lessor and Lessee shall make every available effort to prevent public access to the Premises to prevent illegal activity from taking place. Maintenance issues of the pole barn are the sole responsibility of the lessee. Lessee assumes use of the pole barn in an "as is" condition. Improvements and/or modifications must be approved by Lessor.

Area B

Area B will be primarily managed for the production of berries. However, if Lessee decides not to manage the area for berry production, the area shall be managed in a manner that is primarily beneficial for and supportive of wildlife habitat. Other than berries, any crops that may be planted shall be limited to crops that are beneficial to wildlife. These annual crops may include, but are not limited to, grain crops, grasses, corn, etc., with portions of them left in the area for the wildlife.

Area C

Area C will require varying degrees of maintenance and management. Primarily, the area will require weed management, periodic mowing, and annual disking. Lessee shall be allowed to utilize Area C for agricultural purposes that aid in maintenance of this area.

TERM. The lease term shall begin on January 1st, 2020 and terminate on December 31st, 2030.

TERMINATION: Either party may terminate this lease upon 30 days written notice to the other party, for any reason. If it becomes necessary for the Lessor to terminate the lease prior to the harvesting of crop, Lessee shall be reasonably compensated by Lessor. Lessor and Lessee have agreed to the following formula:

If Lessor terminates the lease without cause and Lessee is not permitted to harvest a first or second-year berry crop, Lessor shall compensate Lessee at the rate of \$3,000/acre. For example, a "second-year crop," could be defined as a crop planted in spring of 2020 and harvested in 2022.

If Lessor terminates the lease without cause and Lessee is not permitted to harvest a third-year berry crop, Lessor shall compensate Lessee at the rate of \$2,000/acre. For example, a "third-year crop," could be defined as a crop planted in spring of 2020 and harvested in 2023.

If Lessor terminates the lease without cause and Lessee is not permitted to harvest a fourth-year berry crop, Lessor shall compensate Lessee at the rate of \$1,000/acre. For example, a "fourth-year crop," could be defined as a crop planted in spring of 2020 and harvested in 2024.

If Lessor terminates the lease without cause and Lessee is not permitted to harvest a crop older than a fourth-year crop, Lessee shall receive no compensation.

RENEWAL TERMS. Lessee may extend the terms of this lease for an additional three (3) year period, by providing Lessor written notice of intent to do so, at least sixty (60) days prior to the expiration of the original lease term hereof, provided Lessee is not in default hereunder at the time of giving such notice or on the date of expiration of the original term hereof. Lease payments and conditions of this Real Property Lease are subject to revision during the renewal term.

HOLDOVER. If Lessee maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Lessee shall be considered a month-to-month tenant, and Lessee shall pay to Lessor a pro-rated lease payment for the Holdover Period based on the terms of the following Lease Payments paragraph.

LEASE PAYMENTS. The annual lease amount shall be \$17,950. This lease amount is comprised of varying management areas and shall be reassessed and adjusted for inflation based upon the Portland-Vancouver area CPI at year ten and year twenty of the lease.

The following annual rates shall be charged per area and are based on the current market rate, comparable leases within the area and taking into consideration the risk of flooding with the adjacent body of water (Vancouver Lake). Area B is even more at risk of flooding and therefore has been discounted even more so than Area A.

Area A-20 Acres	\$250/acre
Area B-74 Acres	\$175/acre
Area C-155 Acres	\$0/acre

Lease payments shall be due annually, on or before December 31, for the term of the lease, beginning in the year 2020. Lessee shall pay Lessor a late fee in the amount of ten percent (10%) of the lease payment due for any and each lease payment during the term of the lease that is not paid within 60 days of the due date.

TAX: In accordance with RCW Chapter 82.29A, the Lessor agrees to pay the required Leasehold Excise Tax (presently assessed at 12.84% of contract rent), which is included in the payment schedule as listed.

USE OF PREMISES/ABSENCES. Lessee shall utilize the Premises solely for the purposes stated in the lease. The Lessee will plant berries or other agreed upon crop on all or nearly all of Area A and shall either plant berries on or manage all, or nearly all, of Area B for wildlife habitat. The Lessee shall, during the entire term of this lease, maintain the crops and other necessary equipment in good condition and repair in accordance with the practices of good husbandry as related to the planting, raising and harvesting of the respective crop.

Lessee shall not allow any accumulation of any garbage, refuse, debris, scrap, vehicles, cans and the like, that may create an unsightly condition on the property. Lessee shall not commit or suffer to be committed, any waste upon the Premises.

Lessee shall notify Lessor of any anticipated extended absence from the Premises not later than the first day of the extended absence. Lessee shall be responsible to observe the adjoining City/County property and notify the City/County of any damage, illegal use, or potentially dangerous conditions which is or may impact the terms and conditions of this lease.

MAINTENANCE. Lessee shall have the responsibility to maintain the Premises in an appropriate manner at all times, including a usable access road/path, mowed fence lines, and weed control. Such weed control shall include the mowing of grasses and weeds at least annually and mowing at such additional times as Lessor reasonably directs. Chemical application may be required on Area A and/or Area B at Lessee's expense. Lessee shall maintain secure fence lines and access control. Access shall be shared among Lessor, Lessee, and any Lessor-approved Sub-Lessee. Failure to comply with this responsibility may result in the termination of this lease.

Lessee shall inform Lessor of any damage to the gate(s), fence and posts surrounding the property. If Lessee causes damage to gate(s), fence and posts, Lessee shall immediately repair/replace damaged portion of fence to the pre-damaged condition

at Lessee's expense. If damage results from natural causes, wildlife, general public, or as a result of faulty installation by Lessor, the Lessor shall repair/replace damaged portion of gate(s), fence and posts.

REMODELING OR STRUCTURAL IMPROVEMENTS. Lessee may construct such fixtures, including appropriate fencing or gates or other improvements to the pole barn, on the Premises at Lessee's expense that facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Lessor which shall not be unreasonably withheld.

RETURN OF PROPERTY: The Lessee will, at the expiration of the term of this lease or any extension thereof, or any sooner termination thereof, quit and deliver up the leased Premises in as good a state of repair as the same are now, damages resulting from flood, fire and the elements alone excepted. Lessor shall have the option to require Lessee to remove all raspberry plants and other equipment so that the land is in a condition to be used for planting of other crops. Lessor shall have 30 days from the expiration or termination of the lease to exercise Lessor option to require Lessee to clear the property. All of the costs and expenses of clearing of the land shall be the obligation of the Lessee. Lessee shall have a reasonable time to clear the property not exceeding 30 days from the date Lessor provides Lessee notice to do so.

Any buildings or improvements placed upon the property by Lessee shall become a part of such real property and will belong to Lessor, provided that Lessor may, within 30 days from the expiration or termination of the lease, direct Lessee to remove the same. In the event Lessor directs the removal of any such buildings or improvements, Lessee shall do the same at their sole expense within 30 days from the date Lessor provides Lessee notice to do so, and Lessee shall restore the property to the condition that existed at the inception of the lease.

POSSESSION. Lessee shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Lessor on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

ASSIGNABILITY/SUBLETTING. Lessee may assign or sublease interest in the Premises with the prior written consent of Lessor, which shall not be unreasonably withheld. In the event of any assignment or sublease approved by the Lessor, any assignee or Sub-Lessee shall be subject to the same conditions, obligations and terms as set forth herein, and the Lessee shall be responsible for the observance by its assignees and Sub-Lessee of the terms and covenants of this lease. In case of default by any assignee or Sub-Lessee, the Lessee, as well as the assignee or Sub-Lessee shall remain responsible for the performance by such assignee or Sub-Lessee of this lease.

If in the event, the Lessee sells its interests to another company(ies), this Lease Agreement will become null and void. The new company(ies) may however enter into a similar Lease Agreement with the Lessor so long as both parties agree to all terms and conditions.

ACCESS BY LESSOR TO PREMISES. Lessor shall have the right to enter the Premises to make inspections, provide necessary services, or show the premises to prospective buyers, mortgagees, public employees, or private citizens without prior notice.

UTILITIES AND SERVICES. Lessee shall be responsible for all utilities and services in connection with the Premises.

PROPERTY INSURANCE. Lessor and Lessee shall each be responsible to maintain appropriate insurance for their respective interest in the Premises and property located on the Premises. Lessee shall obtain, at Lessee's expense, general liability insurance covering bodily injury and property damage against any and all claims for injuries to persons or damage to property occurring upon the Premise in the amount of not less than \$500,000 for injuries to persons in one accident and \$200,000 for injury to any one person and not less than \$20,000 with respect to damage to property. The Lessor shall be added as an additional insured with respect to this insurance policy. All liability insurance policies will be endorsed to show this additional coverage.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice to City of Vancouver, Attn: Jeremy Kanooth, P.O. Box 1995, Vancouver, Washington 98668-1995. The 30 days notice of cancellation shall be physically endorsed on to the policy.

As evidence of the insurance coverage required by this lease, the Lessee shall furnish a Certificate of Insurance to City of Vancouver, P.O. Box 1995, Vancouver, Washington 98668-1995 within ten (10) days of the execution of this lease.

HOLD HARMLESS: Lessee shall hold harmless the Lessor from all damages of every kind and nature whatsoever that may be claimed or accrued by reason of any accident on or about the Premises where such damages are caused by Lessee,

employees of the Lessee, or its agents. It is agreed that neither the Lessor or the Lessor's agents shall be liable for the death or injury to any person in or about the Premises or for the loss of or damage to any property of the Lessee. Provided, that this paragraph shall not apply to injuries, damages or death caused by sole negligence of the Lessor.

STATUTORY PROVISIONS. This lease is subject to the applicable statutory provisions of Title 59, RCW Landlord-Tenant, which by this reference, are incorporated herein as fully though as set forth verbatim.

DEFAULT. If Lessee shall default in performance of any of Lessee's obligations under this lease or shall violate any term or provisions of this lease, Lessor may, upon giving Lessee any notice required by law, terminate this lease and upon such termination, Lessee shall quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided.

If this Lease is terminated as herein provided, Lessor may immediately or at any time thereafter, re-enter the Premises and remove any and all persons and property therefrom, by any suitable proceedings at law or otherwise, without liability therefor, and re-enter the Premises, without such re-entry diminishing Lessee's obligation to pay rental for the full term hereof.

DANGEROUS MATERIALS. Lessee shall only use approved practice chemicals, otherwise Lessee will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the property or the property's groundwater, or transport to or from the property, any Hazardous Substance and will not permit any other person to do so. Hazardous Substance means any substance prohibited or regulated under any federal, state, or local law, statute or ordinance, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 USC Sections 9601-9675; and the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 USC Sections 6901-6992.

LIENS: Lessee shall keep premises and every part thereof free and clear of any and all mechanic, materialman's, sewer and other liens.

HABITABILITY. Lessee has inspected the Premises (or has had the Premises inspected on behalf of Lessee), and acknowledges that the Premises are in a reasonable and acceptable condition for their intended use, and the agreed lease payments are fair and reasonable. If the condition changes so that, in Lessee's opinion, the usability and rental value of the Premises are adversely affected, Lessee shall promptly provide reasonable notice to Lessor.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

Lessor:
City of Vancouver
ATTN: Jeremy Kanooth
PO Box 1995
Vancouver, Washington 98668-1995

Lessee:
Firestone Pacific Foods, LLC.
Attn: Stan Firestone
4211 NW Fruit Valley Rd.
Vancouver, WA 98660
#360-695-9584

Such addresses may be changed from time to time by either party by providing notice as set forth above.

STATUS OF PARTIES: It is agreed that for any maintenance work called for in this lease, Lessee is an independent contractor and not an employee of Lessor. Lessor is only interested in the result of the maintenance and will not supervise the manner performing the maintenance. Lessee shall be liable for any and all taxes relating to any maintenance performed.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the state of Washington, and if any legal action is filed in connection with this Lease, it shall be filed in Clark County Superior Court.

DATED this _____ day of _____, 2020

LESSOR, City of Vancouver
Washington municipal corporation

LESSEE, Stan Firestone

By: _____
Eric J. Holmes, City Manager

By: Stan Firestone
Stan Firestone, Firestone Pacific Foods, LLC, Lessee

Date: _____

Date: 1-28-2020

Attest:

Natasha Ramras, City Clerk

APPROVED AS TO FORM:

Jonathan Young, City Attorney