

**REVOCABLE LICENSE BETWEEN  
THE CITY OF MORGAN HILL AND GEORGE  
CHIALA FARMS, INC.**

This REVOCABLE LICENSE ("License") is made and entered into on \_\_\_\_\_, 2015, by and between the City of Morgan Hill, a California municipal corporation ("Licensor") and George Chiala Farms, Inc., a California corporation ("Licensee") for the use of the real property owned by Licensor located in Morgan Hill, California, 95037, in the County of Santa Clara, State of California, described as approximately twenty six (26) acres, east of 101, south of Tennant Avenue, APN # 817-14-004, 005, and 009 (the "Premises"), as shown in **Exhibit A**, which is attached hereto and hereby incorporated by this reference.

This License is subject to the following terms and conditions:

**1. Term of License**

The term of this License shall be for one (1) year, commencing on January 1, 2016. The one (1) year period shall automatically renew each year on January 1 unless Licensor gives Licensee written notice on or before July 1st that Licensor will not be renewing the License.

Notwithstanding the foregoing, the permission and license granted under this License may be revoked and this License terminated, without cause, upon one (1) year prior written notice by Licensor, by and through Licensor's City Manager, to Licensee or by ninety (90) days written notice by Licensee to Licensor, through Licensor's City Manager.

**2. Permission Granted**

A. For and in consideration of a yearly payment of five thousand two hundred dollars (\$5,200.00), and subject to all of the terms, conditions, and covenants of this License, Licensor hereby grants Licensee the revocable license and permission to use the Premises as designated in Section 3 below. The five thousand two hundred dollars (\$5,200.00) shall be paid semiannually in cash or by certified check, money order, or any other form of payment acceptable to Licensor. Partial payment shall be made on January 1st and July 1st of each year, commencing on January 1, 2016 at the City of Morgan Hill, located at 17575 Peak Avenue, Morgan Hill, California 95037.

B. Licensee, by accepting this License, agrees for itself, and its successors and assignees, that it will not make use of the Premises in any manner which might interfere with Licensor's planning and development of the Premises for future development or municipal uses, including the possible development of the Premises and surrounding areas for baseball fields. Furthermore, Licensor may require the surrender of reasonable portions of the Premises for the purpose of surveying, testing, staking, or other works for the inspection or preparation of the Premises for future development or municipal uses.

**3. Use of Premises**

Licensee acknowledges that the Premises are licensed to Licensee on an "as is" basis. The Premises are demised to Licensee for the following purposes and for no other purpose except

with the prior written consent of Licensor: The planting, growing, harvesting and selling of agricultural crops.

#### **4. Operation on Premises**

A. Licensee shall carry on all of the activities specified under Paragraph 4 in accordance with good husbandry and the best practices of the farming community in which the Premises are situated.

B. Licensee shall, at Licensee's cost and expense, comply with any and all laws, ordinances, rules, regulations, requirements, and orders present or future, of any federal, state, county, or municipal governments which may in any way apply to the use, maintenance, operations, or production of crops on the Premises, or the sale or disposition of those crops.

C. Licensee shall conduct only organic farming of the Premises and thereby, only apply pesticides, insecticides, fungicides, and herbicides or other treatments approved by the Organic Material Review Institute.

D. Licensee shall have the right to level the top-soil, provided that the leveling of top-soil does not cause drainage problems on the Premises.

#### **5. Operating Costs**

Licensee shall pay all costs in connection with Licensee's operations on the Premises, including, but not limited to, costs of preparing the Premises for planting of crops, production costs, costs of tools and labor, electricity and other utilities. Licensee shall also pay water taxes and fees imposed by the Santa Clara Valley Water District as well as any and all approvals, permits, or licenses that may be required in connection with the operation of the Premises including, but not limited to, tax permits, business licenses, health permits, building permits, police, and fire permits.

#### **6. Water**

Licensor shall, at Licensor's own cost and expense provide adequate water for the proper irrigation of any and all crops that may be planted, cultivated, grown, and harvested on the Premises under this License. If Licensor uses pumps and/or wells to provide adequate water, Licensee shall keep the pumps and/or wells in good order and repair. In the event of an emergency breakdown with any pump, well, or pipeline, Licensor, at Licensor's expense, will restore the pump, well, or pipeline to good order and repair in a timely and diligent manner, provided that the emergency breakdown was not due to the negligence of Licensee. If the emergency breakdown was due to the negligence of Licensee, Licensee shall pay the cost to repair the pump, well, or pipeline. The determination of whether an emergency breakdown was due to Licensee's negligence shall be made by a mutually acceptable third party with knowledge of the type of pump, well, or pipeline requiring repair. If a water shortage or drought occurs, Licensee has the option to terminate this License.

## **7. Utilities**

Licensee shall pay for all gas, electricity, and telephone services used by Licensee's operations on the Premises. If any other entity is utilizing such services on the Premises and Licensors is unable to maintain separate meters for gas and electricity provided for use in Licensee's operations, Licensee shall pay a reasonable share of utilities as determined by Licensee.

## **8. Taxes and Assessments**

Licensors shall be responsible for the payment of real property taxes or assessments levied on the Premises. Licensee shall pay all water taxes and fees imposed by the Santa Clara Valley Water District.

## **9. Expenses of Licensors**

During the term of this License and any renewals or extensions of this License, Licensors shall, at Licensors's own cost and expense, do all of the following:

- a. Pay, promptly, as they become due, all taxes and assessments levied or assessed against the Premises;
- b. Provide adequate water for the proper irrigation of any and all crops that may be planted, cultivated, grown, and harvested on the Premises under this License; and
- c. Replace or repair any dwelling or permanent improvement now located on the Premises that may be damaged or destroyed by fire, flood, tornado, or any other caused not the fault and beyond the control of Licensee.

## **10. Insurance**

A. Licensee shall, at all times during the term of this License, maintain and keep in force insurance coverage with insurers which will adequately protect both Licensee and Licensors against public liability and property damage on the Premises. The minimum coverage required by this paragraph shall be \$1,000,000 bodily injury per individual, \$1,000,000 per occurrence, and \$100,000 property damage and 2,000,000 general aggregate. For general liability insurance policies, Licensee shall provide Licensors with a separate endorsement which states that the policy contains the following language:

- The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- the insurer waives the right of subrogation against the City of Morgan Hill, and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- insurance shall be primary non-contributing.

B. Proof of the insurance coverage obtained by Licensee shall be given to Licensors within thirty (30) days after execution of this License. Licensee shall furnish Licensors with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon

receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to Licensor.

**11. Alterations and Mechanics' Liens**

A. Licensee shall not make or permit any permanent alterations or improvements to the Premises without the prior written consent of Licensor. Licensee shall remove all trade fixtures, improvements, and alterations placed by Licensee on the Premises within twentyone (21) days after the expiration of this License.

B. Licensee shall keep the Premises free and clear of any and all liens arising out of work performed or materials furnished at the request of Licensee or obligations incurred by Licensee.

**12. Inspection by Licensor**

Licensee, upon receiving twenty four (24) hours notice from Licensor, shall permit Licensor and Licensor's agents, representatives, or employees to enter the Premises to determine whether Licensee is complying with the terms of this License and for the purpose of doing other lawful acts that may be necessary to protect Licensor's interest in the Premises.

**13. Indemnification of Licensor**

Throughout the term of this License, Licensee shall indemnify and hold Licensor harmless for all damages, injuries, or claims arising from Licensee's operations on the Premises, including crops at any stage, and associated loss of income, real or projected, regardless of the cause of the loss.

**14. Assignment and Subleasing**

Licensee shall not assign, transfer, or encumber this License or any interest in this License without the prior written consent of Licensor. Licensee shall not sublease all or any part of the Premises or allow any persons other than Licensee's agents, family, or employees to occupy or use all or any part of the Premises without the prior written consent of Licensor. Licensor's consent to one (1) assignment, sublease, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, sublease, occupation, or use by any other person. Any consent to assignment or subleasing of any interest in this License by Licensee shall not be unreasonably withheld.

**15. Termination Upon Default of Licensee**

A. Pursuant to Section 1, Licensor may terminate this License without cause. However, if Licensor decides to terminate based on cause, Licensor may do so with all rights ensuing therefrom as provided by applicable law if any one or more of the following events of default occur:

- i. Any failure by Licensee to make any other payment required to be made by Licensee under this License when that failure continues for thirty (30) days after written notice of the failure is given by Licensors to Licensee;
  - ii. The abandonment or vacation of the Premises by Licensee;
  - iii. A failure by Licensee to observe and perform any other provision of this License to be observed or performed by Licensee, when that failure continues for thirty (30) days after written notice of Licensee's failure is given by Licensors to Licensee; provided, however, that if the nature of that default is such that it cannot reasonably be cured within a thirty (30) day period, Licensee shall not be deemed to be in default if Licensee commences that cure within the thirty (30) day period and thereafter diligently prosecutes it to completion; or
  - iv. The making by Licensee of any general assignment for the benefit of creditors; the filing by or against Licensee of a petition to have Licensee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy; the appointment of a trustee or receiver to take possession of substantially all of Licensee's assets located at the Premises or of Licensee's interest in this License, when possession is not restored to Licensee within thirty (30) days, or the attachment, execution, or other judicial seizure of substantially all of Licensee's assets located at the Premises or of Licensee's interest in this License, when that seizure is not discharged within thirty (30) days.
- B. The notices provided for in subsections (i) through (iii) of this paragraph are not intended to replace, but rather are in addition to, any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161 et seq.

#### **16. Oil, Gas, and Mineral Rights**

All rights in any and all minerals, oil, gas, and other hydrocarbons located on or under the Premises are reserved to Licensors and are particularly accepted from the property covered by the terms of this License. Licensee hereby grants to Licensors, Licensors' agents and licensees, and Licensees of these rights, a right of entry and right of way for access to the Premises for the exploration, drilling, and mining of minerals, gas, oil, and other hydrocarbons on or under the Premises. Licensors, however, shall reimburse Licensee for any interference with the quiet enjoyment or agricultural operation on the Premises arising from exploration, drilling, or mining operations performed by Licensors, Licensors' agents and licensees, and tenants of these rights.

#### **17. Notices**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this License or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed, or in lieu of personal service when deposited in the United States mail, first-class postage prepaid, addressed to Licensee at 15500 Hill Road, Morgan Hill, California 95037 or to Licensors at City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, California 95037. Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

**18. Binding on Heirs and Successors**

This License and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this License. Nothing contained in this paragraph shall be construed as consent by Licenser to any assignment of this License or any interest in this License by Licensee except as provided in Paragraph 14 of this License.

**19. Time of Essence**

Time is of the essence of this License and each provision contained within, and each provision is made and declared to be a material, necessary, and essential part of this License.

**20. Sole and Only Agreement**

This instrument constitutes the sole and only agreement between Licenser and Licensee respecting the Premises, the licensing of the Premises to Licensee, or the license term created under this License, and correctly sets forth the obligations of Licenser and Licensee to each other as of its date. Any agreements or representations respecting the Premises or their licensing by licensing by Licenser to Licensee not expressly set forth in this License are null and void. This License may not be extended, amended, modified, altered, or changed, except in writing signed by Licenser and Licensee.

**21. Effect of Partial Invalidity**

If any term or provision of this License or any application of this License shall be held invalid or unenforceable, the remainder of this License and any application of the terms and provisions shall remain valid and enforceable under this License or California law

**22. Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the State of California.

**23. Waiver of Relocation Assistance**

If Licenser terminates this License pursuant to Sections 1 or 15, or decides, in its sole discretion, not to renew the License, or sells or transfers the Premises to another governmental entity (a "Public Entity"), Licensee knowingly and voluntarily agrees that Licensee hereby fully releases, waives and discharges a Public Entity and Licenser from any and all relocation obligations, demands or claims, if any exist now known or existing, or now unknown or hereinafter arising or relating to a relocation of Licensee or Licensee's operations from the Premises following the expiration or termination of the term of the License, which release, waiver and discharge includes, without limitation, a release, waiver, and discharge of any relocation rights Licensee may claim pursuant to California Government Code sections 7260 *et. seq.*, California Code of Regulations Sections 600 *et. seq.*, or pursuant to any federal relocation assistance laws. Licensee understands that Licensee's release, waiver, and discharge under this Section is a material

inducement for Licensor to enter into this License and that but for this release, waiver, and discharge, Licensor would not have entered into this particular licensing arrangement, specifically including, without limitation, the provisions related to a one-year notice of termination by Licensor to Licensee. By forever releasing, waiving, and discharging the relocation obligations, demands or claims that may be available to Licensee, Licensee expressly waives any rights under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEN'D TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER .MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

ATTEST:

THE CITY OF MORGAN HILL

\_\_\_\_\_  
City Clerk

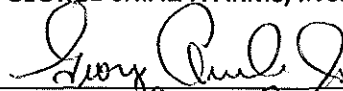
Date: \_\_\_\_\_

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_


APPROVED AS TO FORM:

GEORGE CHIALA FARMS, INC.



\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

By:   
Date: 11/20/15

By: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

Order No.: FWPS-4475140001

For APN/Parcel ID(s): 817-14-004, 817-14-005 and 817-14-009

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOTS 64, AND 85, AS LAID DOWN, DESIGNATED AND DELINEATED AS SHOWN ON THAT CERTAIN MAP ENTITLED, " CATHERINE DUNNE RANCH MAP NO. 7," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON IN BOOK L OF MAPS PAGE(S) 26.

PARCEL TWO:

BEGINNING AT THE COMMON CORNER OF LOTS 85, 86, 98 AND 99, AS SHOWN BY SAID MAP OF THE CATHERINE DUNNE RANCH MAP NO. 7, THENCE RUNNING N. 25° 29' W. 12.50 CHS. TO THE SOUTHEAST CORNER OF LOT 63 OF SAID TRACT; THENCE AT RIGHT ANGLES S. 64° 31' W. 4.00 CHAINS; THENCE S. 25° 29' W. 12.50 CHS. TO THE CENTER LINE OF FISHER AVENUE AND THENCE ALONG THE CENTER LINE OF FISHER AVENUE, N. 64° 31' E. 4.00 CHAINS TO THE PLACE OF BEGINNING, BEING THE EASTERLY 5 ACRES OF LOT 86 OF SAID TRACT.

EXCEPTING FROM PARCEL ONE ABOVE, THE FOLLOWING DESCRIBED PARCEL CONDEMNED BY THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES ORDER RECORDED OCTOBER 28, 1969 IN BOOK 8717 OF OFFICIAL RECORDS, PAGE 376 OUT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA, CASE #216778, DESCRIBED AS FOLLOWS:

A PORTION OF LOT 64, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CATHERINE DUNNE RANCH MAP NO. 7," FILED IN BOOK L OF MAPS, AT PAGE 26, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 64 THENCE ALONG THE SOUTHWESTERLY LINE THEREOF S. 24° 44' 10" E. 387.31 FEET; THENCE (1) N. 29° 40' 26" E. 464.13 FEET; THENCE (2) N. 24° 44' 10" W. 59.06 FEET; THENCE (3) N. 53° 50' 26" E. 66.31 FEET; THENCE N. 24° 44' 10" W. 45.00 FEET TO THE CENTER LINE OF TENNANT AVENUE, AS SAID AVENUE IS SHOWN ON SAID MAP; THENCE ALONG SAID CENTER LINE S. 65° 15' 50" W. 442.43 FEET TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN TENNANT AVENUE.

PARCEL THREE:

BEGINNING AT THE COMMON CORNER OF LOTS NUMBERED 86, 87, 97 AND 98 ON THE CATHERINE DUNNE RANCH MAP NO. 7, WHICH MAP IS NOW ON FILED AND OF RECORD IN BOOK L OF MAPS, AT PAGE 26, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND RUNNING THERE ALONG THE CENTER LINE OF FISHER AVENUE N. 64° 31' E. 4 CHS.; THENCE AT RIGHT ANGLES N. 25° 29' W. 12 1/2 CHS.; THENCE AT RIGHT ANGLES S. 64° 31' W. 4 CHS. TO THE COMMON CORNER OF LOTS NUMBERED 62, 63, 86 AND 87 AS SAID LOTS ARE SHOWN AND DELINEATED ON SAID MAP NO. 7; THENCE ALONG THE LINE BETWEEN LOTS 86 AND 87, S. 25°



## EXHIBIT A

(continued)

29° E. 12 1/2 CHS. TO THE POINT OF BEGINNING, SAID LAND BEING THE WESTERLY 5 ACRES OF LOT NO. 86 ON SAID MAP NO. 7.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL CONDEMNED BY THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES OUT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA CLARA, CASE #216778, DESCRIBED AS FOLLOWS:

A PORTION OF LOT 86, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "CATHERINE DUNNE RANCH MAP NO. 7," FILED IN BOOK L OF MAPS, AT PAGE 26, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID LOT 86 ON THE CENTER LINE OF FISHER AVENUE, AS SAID AVENUE IS SHOWN ON SAID MAP; THENCE ALONG SAID CENTER LINE N. 65° 15' 50" E. 245.81 FEET; THENCE N. 24° 44' 10" W. 29.70 FEET TO THE NORTHWESTERLY LINE OF SAID FISHER AVENUE; THENCE FROM A TANGENT THAT BEARS S. 65° 15' 50" W. ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 20.00 FEET, THROUGH AN ANGLE OF 36° 42' 53" AN ARC LENGTH OF 12.82 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 42.00 FEET, THROUGH AN ANGLE OF 81° 41' 27" AN ARC LENGTH OF 59.88 FEET TO SAID NORTHWESTERLY LINE OF FISHER AVENUE; THENCE ALONG LAST SAID LINE S. 65° 15' 50" W. 14.94 FEET; THENCE (1) FROM A TANGENT THAT BEARS N. 29° 30' 45" W. ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 7,000.00, THROUGH AN ANGLE OF 0° 34' 47" AN ARC LENGTH OF 70.83 FEET; THENCE (2) N. 20° 56' 47" W. 726.47 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 86, THENCE ALONG LAST SAID LINE AND ALONG THE SOUTHWESTERLY LINE OF SAID LOT 86, S. 65° 15' 50" W. 206.41 FEET AND S. 24° 44' 10" E. 825.17 FEET TO THE POINT OF COMMENCEMENT.

### PARCEL FOUR:

A PORTION OF LOT 63, AS SAID LOT IS SHOWN UPON THE MAP ENTITLED, "CATHERINE DUNNE RANCH MAP NO. 7, BEING A SUBDIVISION OF PART OF THE RANCHO OJO DE LA COCHE, AND PART OF THE RANCHO SAN FRANCISCO DE LAS LLAGAS, SANTA CLARA COUNTY, CALIFORNIA," FILED ON MARCH 5, 1906 IN BOOK L OF MAPS, AT PAGE 26, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCEING AT THE SOUTHWESTERLY TERMINUS OF THAT COURSE DESCRIBED AS "N. 29° 40' 26" E. 464.13 FEET," IN PARCEL 1C OF THE FINAL ORDER OF CONDEMNATION, RECORDED ON OCTOBER 28, 1969 IN VOLUME 8717, PAGE 376, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF LAST SAID COURSE S. 29° 40' 26" W. 188.54 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 400.00 FEET, THROUGH AN ANGLE OF 50° 37' 13" AN ARC LENGTH OF 353.40 FEET; THENCE S. 20° 56' 47" E. 29.19 FEET TO THE NORTHEASTERLY TERMINUS OF THAT COURSE DESCRIBED AS "S. 65° 15' 50" W. 206.41 FEET," IN PARCEL 1A IN SAID FINAL ORDER OF CONDEMNATION; THENCE ALONG THE SOUTHEASTERLY AND NORTHEASTERLY LINE OF SAID LOT 63, N. 65° 15' 50" E. 321.59 FEET AND N. 24° 44' 10" W. 437.70 FEET TO THE POINT OF COMMENCEMENT.