

FIRST AMENDMENT TO AGRICULTURAL LEASE AGREEMENT

THIS FIRST AMENDMENT TO AGRICULTURAL LEASE AGREEMENT ("First Amendment") by and between the Three Rivers Levee Improvement Authority, a joint powers agency ("Authority"), and Tom O. Miller ("Lessee") is made and entered into this ____ day of _____, 2013 ("Effective Date"). TRLIA and Lessee shall be individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, the Authority and Lessee executed in August 2008 an agricultural lease agreement ("Agreement"), pursuant to which the Authority agreed to lease to Lessee property in Yuba County containing 20.00 acres for agricultural purposes; and

WHEREAS, the Authority and Lessee desire to amend the Agreement to extend the term until June 30, 2014;

NOW, THEREFORE, the Authority and Lessee agree as follows:

AGREEMENT

1. The Parties hereby agree to extend the termination date of the Agreement from August 15, 2013 to June 30, 2014.

2. At the end of Section 3 (Rent) the following sentence shall be added: "For the period between August 16, 2013 and June 30, 2014, in addition to providing a valuable service of maintenance and upkeep of the Property and its orchard trees, wells, pumps, and irrigation systems Lessee shall pay 10 percent of the Gross Income from the walnut crop and Adjusted Gross Income on the other crops from the Property."

3. All other terms and conditions contained in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as follows:

AUTHORITY

Date: 9/9/2013

By: Paul G. Brunner
Paul G. Brunner, Executive Director

LESSEE

Date: 8-30-13

By: Tom O. Miller
Tom O. Miller



AGRICULTURAL LEASE AGREEMENT

TRLIA Parcel Number 113

THIS LEASE AGREEMENT (hereinafter, "Lease") is made and entered into this 15th day of August, 2008, at Marysville, California, by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA), hereinafter known as AUTHORITY, and Tom O. Miller, hereinafter known as Lessee, whose address is 708 Country Club Road, Marysville, CA 95901.

1) **DESCRIPTION:** AUTHORITY, in consideration of the payment of the rent hereinafter specified to be paid by Lessee, and the covenants and agreements herein contained, does hereby lease, demise, and let unto Lessee that certain property in the County of Yuba, State of California, containing 20.00 acres, more or less, identified as (or a portion of) Assessor Parcel Number 014-370-033, and approximately described in **Exhibit A** attached hereto and made a part hereof (hereinafter, the "Property"). The Property includes any and all improvements thereon, including orchard trees, wells, pumps, and irrigation systems.

2) **TERM:** This Lease shall be for a term of sixty (60) months, commencing on the 16th day of August, 2008, and ending on the 15th day of August, 2013, or after harvest of the current year's crop, unless extended by the parties as hereinafter set forth, with the right of cancellation and termination in AUTHORITY and its assigns, and in Lessee as hereinafter set forth.

3) **RENT:** Rent shall be as follows:

For the first twelve-month period of the Lease: In lieu of rent, Lessee will provide a valuable service of maintenance and upkeep of the Property and its orchard trees, wells, pumps, and irrigation systems.

For the second, third, fourth and fifth twelve-month periods of the Lease: In addition to providing a valuable service of maintenance and upkeep of the Property and its orchard trees, wells, pumps, and irrigation systems, Lessee shall pay 10 percent of the gross sales of agricultural products from the Property over the course of the applicable twelve-month period.

Rent shall be paid on or before the 15th day of August in the year following the applicable twelve-month period for which rent is due.

4) **SECURITY DEPOSIT:** AUTHORITY hereby waives any payment by Lessee of any security deposit under this Lease.

5) **UTILITIES:** Lessee shall pay when due all utility and other charges accruing or payable, including utility deposits, in connection with Lessee's use of the Property during the term of this Lease. In the event Lessee fails to maintain service in Lessee's name during the term of this Lease, this Lease will be terminated.

6) **USE:** Lessee shall use the Property for the following purposes only:

- a) Operate a 20.00 acre walnut orchard.
- b) Lessee shall not commit, suffer, or permit any waste on said Property.
- c) Lessee shall comply with all federal, state, and local laws and ordinances concerning said Property and the use thereof;
- d) Lessee shall comply with all pest control regulations and laws;
- e) Lessee(s) shall cultivate, irrigate, fertilize, prune, and otherwise farm the Property including the removal of trees in decline, all in accordance with approved practices of good husbandry and in accordance with the standard farming practices of the vicinity, and to keep any buildings, fences, irrigation or other farming facilities on the Property in good repair; (See inventory attached as **Exhibit C**)
- f) Lessee shall not permit hunting on the premises;
- g) Lessee(s) shall not allow vehicle or equipment washing, fueling, maintenance or repair on the Property, unless separately authorized by this Lease agreement for industrial activity;
- h) Lessee shall advise AUTHORITY of any material changes to the Property.

7) **MAINTENANCE; CONDITION:** Lessee shall properly use, operate and safeguard the Property, and shall keep the Property in good order and condition, at Lessee's own cost and expense. Lessee agrees to abate weeds on the Property in accordance with prevailing area farm management practices.

8) **ALTERATIONS; REPAIRS:** Lessee shall not make any repairs, alterations or improvements in or about the Property without AUTHORITY's written consent. AUTHORITY shall not be responsible for the costs of any repairs, alterations or improvements made by Lessee and Lessee shall not deduct from rent the costs of any repairs, alterations or improvements, without AUTHORITY's prior written consent.

9) **ENCUMBRANCES:** Lessee shall not encumber the leased premises in any manner whatsoever without AUTHORITY's prior written consent.

10) **RIGHT OF ENTRY:** Lessee shall permit AUTHORITY or its authorized agent to enter into and upon the Property during normal business hours, subject to a twenty-four hour (24-hour) notice, for the following purposes: routine inspection, maintaining the Property, installing protective or conservation devices and for showing the Property to prospective purchasers and/or tenants. AUTHORITY reserves its right, without notice, to enter the Property in case of emergency or to prevent imminent harm to persons or property.

11) **ASSIGNMENT; SUBLETTING:** Lessee shall not sublet all or any part of the Property, or assign or transfer this Lease or any interest in it, without AUTHORITY's prior written consent. Any purported sublease, assignment or transfer is null and void.

12) **VACATING THE PROPERTY:** At the expiration of the term, or any sooner termination of this Lease, Lessee agrees to quit and surrender possession of the Property to AUTHORITY in as good order and condition as the Property was delivered to Lessee. Lessee agrees to reimburse AUTHORITY for any damage done to the Property caused by Lessee occupation or tenancy excepting reasonable wear and tear and damage by the elements, normal attrition and tree removal in accordance with normal and usual cultural practices for walnut orchards in the area. Lessee shall not leave or allow to remain on the Property any garbage, refuse, debris, or personal property. Lessee will pay AUTHORITY any removal costs incurred by AUTHORITY. On the date the Property is vacated, Lessee agrees to deliver the Property keys, if any, to AUTHORITY in person or at the address listed in this Lease.

13) **HOLD OVER:** Should Lessee hold over after expiration of the term of this Lease with AUTHORITY's express or implied consent, the tenancy shall be deemed to be a tenancy only from month to month, subject otherwise to all of the terms and conditions of this Lease so far as applicable. Rent shall be paid on or before the final day of the month, and shall be 15 percent of the Adjusted Gross Income from the Property over the course of that month.

14) **TERMINATION:** This Lease shall be subject to cancellation or termination at the end of any calendar year, by either party, with or without cause, by giving the other party notice in writing at least 60 days next prior to the date when such termination shall become effective.

In addition to any other rights and remedies available to AUTHORITY, should Lessee fail to keep, perform, and observe any covenant, condition or provision of this Lease, and such failure shall continue for a period of three (3) days after written notice thereof given by AUTHORITY to Lessee, then AUTHORITY may immediately terminate the Lease.

If, at the time of termination, Lessee has received receipts from the sale of agricultural products produced on the Property, but has not yet paid the requisite amount on such receipts pursuant to Section 3, then Lessee shall pay to AUTHORITY, within one (1) year after termination, an amount in accordance with Section 3, prorated for the fraction of the twelve-month period the Lease was in effect.

Should AUTHORITY terminate the Lease, then the provisions of Section 17 shall apply, if applicable.

15) **OWNERSHIP OF FACILITIES.** Upon expiration of this Lease, or sooner termination, any and all irrigation facilities upon the Property, including but not limited to any wells, pumps, electric motors, pipelines, valves and water gates, but excepting portable sprinkler irrigation facilities and tail water pumps provided by Lessee, shall become the property of AUTHORITY free of cost to AUTHORITY. Ownership and removal of facilities or improvements placed on the Property with prior written approval of AUTHORITY shall be as stated in the written approval. All other facilities or improvements placed on the Property by Lessee which are required to comply with generally recommended farming practices shall be the property of Lessee so long as this Lease is in effect and shall be removed by Lessee upon termination of this Lease.

16) DEPARTMENT OF WATER RESOURCES: It is understood that title to the Property will be eventually transferred to the California Department of Water Resources (hereinafter, "DWR"). If so, then DWR may extend this Lease under terms mutually agreeable to DWR and Lessee.

17) LESSEE EXPENSES: Should AUTHORITY (1) terminate the Lease before the term of this Lease has expired, and (2) before crops growing on the Property have matured to a degree suitable for harvesting, or before Lessee has had, in the exercise of reasonable diligence, an opportunity to harvest the crops, then AUTHORITY shall do the following: pay to Lessee, as of the date of termination, that Expected Adjusted Gross Income (as defined in **Exhibit B**) of such crops that Lessee(s) is unable to harvest due to AUTHORITY's reentry.

18) INSURANCE: AUTHORITY will not keep the Property insured against fire, theft, vandalism, flood or any other cause and Lessee will make no claim of any nature against AUTHORITY by reason of any damages to Lessee's leasehold in the event it is damaged or destroyed by fire, theft, vandalism, flood, or by any other cause.

19) LIABILITY AND PROPERTY DAMAGE INSURANCE: Lessee shall, at Lessee's expense, take out and keep in force during the full term of the tenancy:

General liability insurance providing coverage in an amount not less than one million dollars (\$1,000,000) per occurrence for Bodily Injury and Property Liability combined, in a company or companies to be approved by AUTHORITY. The insurance policy shall be endorsed with the following language:

- A. AUTHORITY, its officers, officials, agents, contractors and employees are to be covered as additional insured with respect to all claims, suits or actions of every name, kind, and description brought forth, or on account of, injuries to or death of any person occurring in or about the Property or on account of damage to property incident to the use of, or resulting from, any and every cause occurring in or about the Property which is the subject of this Lease, including any and all claims, suits or actions for damage to vehicles on the Property.
- B. This policy shall be considered primary insurance as respects to AUTHORITY, its officers, officials, agents, contractors and employees. Any insurance maintained by AUTHORITY shall be considered excess insurance only and shall not contribute with it.
- C. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- D. The insurer waives all rights of subrogation against AUTHORITY, its officers, officials, agents, contractors and employees.
- E. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to AUTHORITY, its officers, officials, agents, contractors and employees.
- F. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by AUTHORITY.

Lessee shall provide certificates of insurance with original endorsements to AUTHORITY, as evidence of the insurance coverage required herein.

20) POSSESSORY INTEREST: Lessee's interest may be subject to possessory interest tax (hereinafter, "Tax") that may be imposed by the County. Lessee is required to pay any such Tax directly to the County. If Lessee fails to pay the Tax and AUTHORITY for any reason is required to pay the Tax, AUTHORITY shall have a claim against Lessee for all amounts owed plus interest at the rate of ten per cent (10%) per annum. Tax bills inadvertently received by AUTHORITY should be forwarded to Lessee for payment.

21) INDEMNIFICATION: Lessee expressly agrees that Lessee shall assume the defense of (by counsel reasonably satisfactory to AUTHORITY's counsel), indemnify, and hold harmless AUTHORITY, its officers, officials, agents, contractors, and employees from any and all liability whatsoever for injury to or death of any person or persons, or loss of or damage to any property, whether real or personal, caused by, or arising out of, or in any way connected with the

operations, activities, or omissions of Lessee, its employees, agents, contractors, or subcontractors arising from Lessee's use of the Property, except to the extent such loss or damage is caused by the negligence or willful misconduct of AUTHORITY, its officers, officials, agents, contractors, or employees.

With respect to third-party claims against Lessee, Lessee waives any and all rights to any type of express or implied indemnity against AUTHORITY, its officers, officials, agents, contractors or employees.

Authority expressly agrees to indemnify, defend and hold harmless Lessee from and against any and all third party claims, suits, damages, losses, liability, and expenses, including attorneys' fees, arising out of any activity conducted by Authority on the property acquired by Authority herein, except for any losses, liability, expense claims, costs, suits and damages including attorneys' fees arising out of Lessee's negligence or willful misconduct.

22) HAZARDOUS MATERIALS: Hazardous materials are those substances listed in California Code of Regulations, Title 22, Section 66261.126, Appendix X, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Title 22 of the above Code, as well as any other substance which poses a hazard to health or environment.

Except as otherwise permitted in this Lease, Lessee shall not use, create, store or allow any such substances on the premises. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. Also excepted are those substances used in normal and usual cultural practices for walnut orchards in the area

In no case shall Lessee cause or allow the deposit or disposal of any such substance on the leased Property. However, household products necessary for routine cleaning and maintenance of the Property may be kept on the leased premises in quantities reasonable for current needs.

AUTHORITY, or its agents or contractors shall at all times have the right to go upon and inspect the leased premises and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing and/or testing soils or underground tanks on the premises.

23) RELOCATION PAYMENT: Lessee acknowledges the following: Lessee commenced occupancy of the premises after AUTHORITY acquired title to it, AUTHORITY acquired the premises for a public project, Lessee may be required to vacate the premises to allow construction of the public project, and Lessee is not entitled to receive any payments under either California or federal relocation assistance laws (Government Code, Section 7260, et seq.; 42 United States Code, Section 4601, et seq.).

24) AMENDMENTS: The terms of the Lease may be, in writing, amended, revised, altered, or changed, by mutual consent of the parties hereto upon thirty (30) days' written notice. Any amendment, revision, alteration, or change shall operate with the same force and effect as the original agreement.

25) SEVERABILITY/WAIVER: If any part of this Lease is invalid by reason of law or governmental regulation, or if any provisions hereof are waived by AUTHORITY, the remaining portions of this Lease shall remain in full force and effect. AUTHORITY's receipt of rent with the knowledge of any breach of a provision of this Lease shall not constitute a waiver of such breach.

26) PREVIOUS AGREEMENTS: Any existing Lease or rental agreement between Lessee and AUTHORITY (or its predecessor in interest) covering this Property is terminated as of the effective date of this Lease.

27) HEADINGS: The marginal or clause headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

28) NOTICES: All Notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when served personally or when made in writing and mailed addressed as follows:

to Authority:
TRLIA c/o
Bender Rosenthal, Inc.
4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841

to Lessee:
Tom O. Miller
708 Country Club Rd
Marysville, California, 95901

The address to which the notices shall be mailed to either party shall be changed by written notice by either party to the other, but nothing herein shall preclude the giving of notice by personal service. AUTHORITY shall also be able to serve notices by posting and subsequent mailing to Lessee.

29) ASSIGNMENT FOR BENEFIT OF CREDITORS, INSOLVENCY, OR BANKRUPTCY: Appointment of a receiver to take possession of Lessee's assets, Lessee's general assignment for benefit of creditors, or Lessee's insolvency or taking or suffering action under the Bankruptcy Act is a breach of this Lease and this Lease shall terminate.

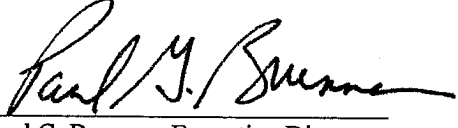
30) POSTING OF PROPERTY: AUTHORITY or its agents shall at all times have the right to serve or to post thereon any notice required or permitted by law for protection of any right or interest of AUTHORITY.

31) AMENDMENT TO LEASEHOLD AREA: Should any of the Property become uneconomic to farm due to trees in decline or other natural causes, this Lease may be amended as provided herein to remove the uneconomic area from the leasehold.

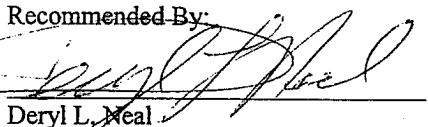
IN WITNESS WHEREOF, the parties have executed this Lease as follows:

AUTHORITY

Date: 9-15-08

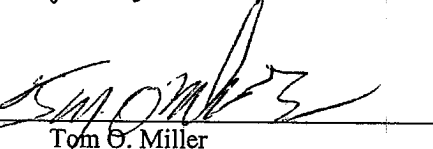
By: 
Paul G. Brunner, Executive Director

as directed by Resolution No. 07-01
dated February 6, 2007.

Recommended By: 
Deryl L. Neal
Contract Right of Way Agent
(916) 978-4900

LESSEE

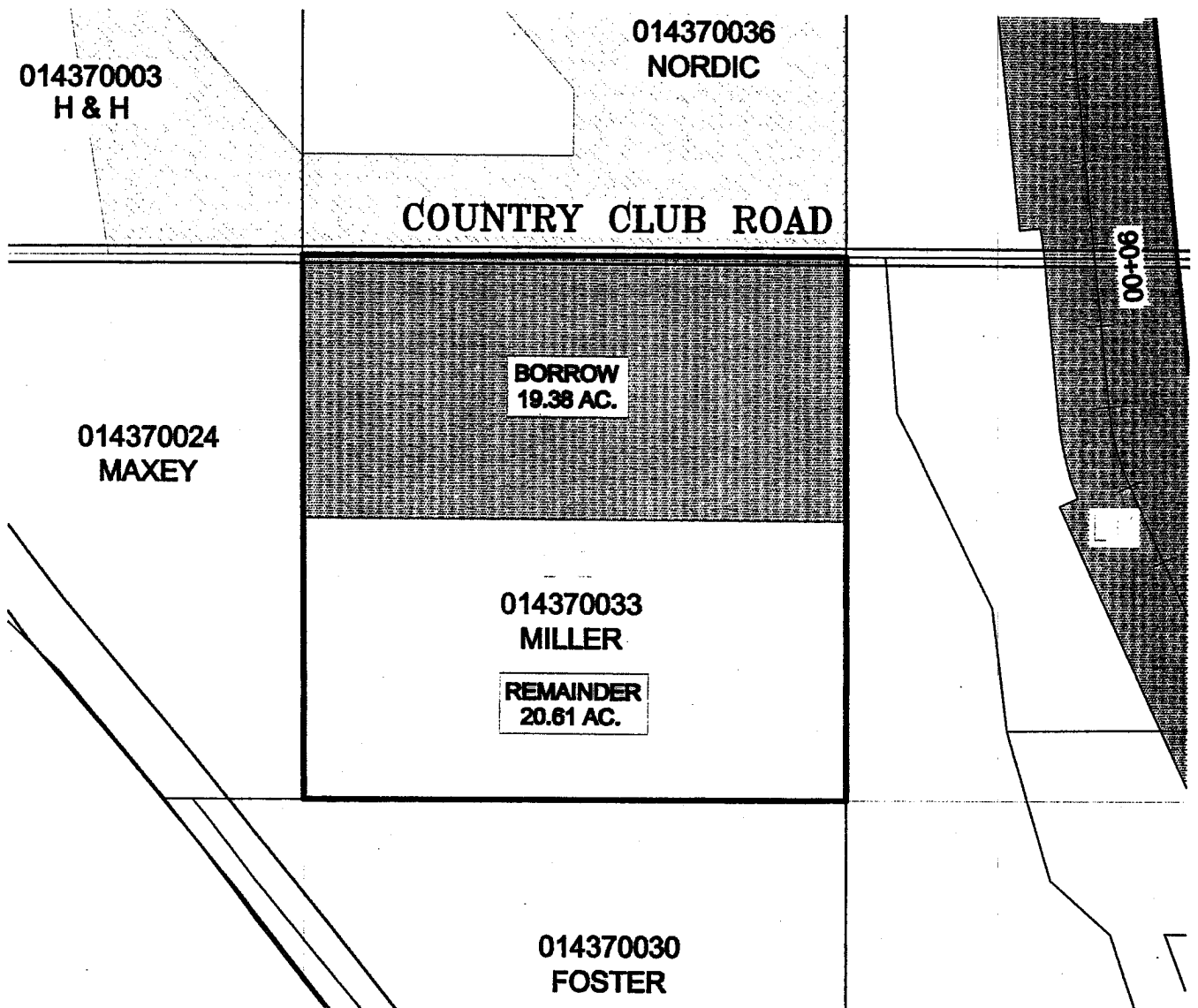
Date: 8-26-08

By: 
Tom G. Miller

Address: 708 Country Club Road
Marysville, California, 95901
Telephone: 530-308-2514

EXHIBIT "A"

T.R.L.I.A.
FEATHER RIVER SETBACK LEVEE
MILLER PROPERTY - A.P.N. 014-370-033
SCALE: 1"=400' AUGUST, 2008



CTA Engineering - Surveying
3233 Mendocino Circle
Emeryville, CA 94702
(916) 636-0819
(916) 636-3478 Fax

EXHIBIT B

Definitions

EXPECTED ADJUSTED GROSS INCOME: The projected fair market value of the crops at the expected time of selling such crops, less the projected prevailing industry charges for the continued processing, packing and marketing of such crops. This amount shall be determined by AUTHORITY in consultation with Lessee. The projected fair market value of the crops at the expected time of marketing shall take into account any projected crop losses prior to sale due to mishandling, pests, weather, tree loss, or other causes. The projected charges shall not include any costs already borne by the Lessee with respect to such crops.

EXHIBIT C

INVENTORY OF FIXTURES AND EQUIPMENT

1. Water well with 25 horsepower turbine
2. Fixed sprinkler irrigation system