



## **RESOLUTION NO. 2013-3051**

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**A RESOLUTION GRANTING A 10 YEAR EXTENSION OF THE FARMLAND LEASE BETWEEN THE CITY OF NEWBERG AND KIRSCH FAMILY FARMS, INC.**

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### **RECITALS:**

1. The city owns farmland in Marion County adjacent to the Willamette River on which the city well field is located. The property is shown as tax lots 100, 200, and 300 on Marion County tax map 3S-2W-29, comprising approximately 110 gross acres with approximately 105 useable acres.
2. The City has for many years leased this land (absent the portion of the land on which the wells and appurtenances are located), to Kirsch Family Farms, Inc. The current farming lease was adopted by Resolution No. 2007-2723, which expires on November 1, 2013, and is attached as Exhibit "A".
3. Brenda and Paul Kirsch of Kirsch Family Farms met with city staff on March 27, 2013 and expressed their desire to continue leasing the city well field property for farming purposes. The Kirsch family has been a very conscientious steward of the City's land over the years and the city looks forward to continuing the beneficial relationship.
4. The proposed lease renewal, attached as Exhibit "B", commences at \$145.00 per acre in November of 2013, and includes regular cost increases averaging 2.4% over the 10 year lease period, similar to the 2007 lease agreement. A 2009 study completed by Oregon State University found average lease rates for irrigated crop land range from \$110.00 to \$190.00 per acre in the southern Willamette Valley.
5. The current 6 year lease term expires in the fall of 2013. A 10 year term is proposed for the new lease; this allows for adequate crop rotation, which is utilized in most modern-day farming practices.

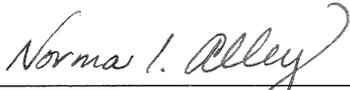
### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City grants a ten-year extension of the farmland lease between the City of Newberg and Kirsch Family Farms, Inc. The new lease term will be to October 31, 2023. The current lease agreement is hereby attached as Exhibit "A", and the lease renewal agreement is hereby attached as Exhibit "B"; Exhibits "A" and "B" are hereby adopted and by this reference incorporated.

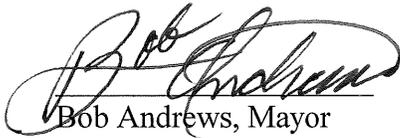
2. The City Manager is authorized to execute all necessary documents to extend the lease for the ten-year term and to negotiate any other terms and conditions that might be necessary. All documents shall be approved as to form and content by the City Attorney.

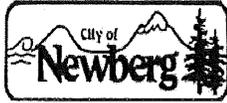
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 16, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 15<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 18<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Bob Andrews, Mayor



**RESOLUTION No. 2007-2723**

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**A RESOLUTION GRANTING A SIX-YEAR EXTENSION OF THE FARMLAND LEASE BETWEEN THE CITY OF NEWBERG AND KIRSCH FAMILY FARMS, INC.**

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**RECITALS:**

1. The City owns farm land in Marion County adjacent to the Willamette River on which its well field is located. The land area is about 110 acres and is located in Sections 29 and 32, Township 3S, Range 2W, Willamette Meridian.
2. The City has, for many years, leased this land, absent the land on which the wells and appurtenances actually are located (currently about 5 acres), to Kirsch Family Farms, Inc. The most recent lease renewal, attached as Exhibit A, will expire on November 1, 2007.
3. Mr. Paul Kirsch, President of Kirsch Family Farms, has expressed his desire to continue leasing this land for farming purposes.
4. Mr. Kirsch has been a very conscientious steward of the City's land over the years.
5. The annual lease amounts in the renewal reflect increases comparable to those in the previous (current) lease minus a reduction to reflect the 4.5% of the property on which the wells are located. This change is reflected in the renewal Exhibit B.
6. The six-year lease term is the same as the previous lease and reflects the practicalities of crop rotation in modern farming.

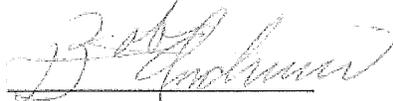
**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City grants a six-year extension of the farmland lease between the City and Kirsch Family Farms, Inc., dated July 15, 2001 with modifications, the lease being extended to November 1, 2013.
2. The City Manager is authorized to execute all necessary documents to extend the lease for the six-year term and negotiate any other terms and conditions that might be necessary.
3. The extension of the lease and any acknowledgment by the Sub-Lessee (Coleman Farms, Inc.) shall be approved as to form and content by the City Attorney.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 17, 2007.  
**ADOPTED** by the City Council of the City of Newberg, Oregon, this 16<sup>th</sup> day of July 2007.

  
\_\_\_\_\_  
James H. Bennett, City Recorder

**ATTEST** by the Mayor this 19<sup>th</sup> day of July 2007.

  
\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_\_ / \_\_\_\_ / \_\_\_\_ meeting. Or,  None.  
(committee name) (date) (check if applicable)

**CITY OF NEWBERG**  
**FARM LEASE**

CITY OF NEWBERG  
CITY RECORDER INDEX NO. 1854

THIS FARM LEASE AGREEMENT ("Agreement") is made and entered into on the 3<sup>rd</sup> day of August, 2007 between the City of Newberg ("Lessor") and Kirsch Family Farms, Inc. ("Lessee").

**AGREEMENTS**

NOW, THEREFORE, for the consideration of the agreements set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Property to be Leased.** The Lessor leases to the Lessee the following described property on the terms and conditions stated below:

That certain farm property containing approximately 105 acres, situated in Section 29 and 32, Township 3 S, Range 2 W, Willamette Meridian, Marion County.

2. **Term.** The term of this lease shall commence on the date of this Agreement and continue through November 1, 2013, subject to termination for default and termination by notification as set out in Paragraphs 11 and 12 of this Agreement.

3. **Annual Rent Payments.** The Lessee shall pay annual rent to the Lessor for the leased premises as follows:

\$14,175.00 on or before November 1, 2007;

\$14,700.00 on or before November 1<sup>st</sup> in the years 2008, 2009, and 2010; and

\$15,225.00 on or before November 1<sup>st</sup> in the years 2011, 2012, and 2013.

Make payment directly to **City of Newberg, Public Works Director, P.O. Box 970, 414 E. First Street, Newberg, Oregon 97132**

4. **Farming Practices.** Lessee shall farm said land in a good farmer-like manner according to usual farming practices in the area and will not commit waste or damage. Lessee acknowledges that the Lessor has located on the property eight (8) well sites for municipal water use, and plans to install up to two (2) more wells in the foreseeable future. The Lessee shall farm said land in a good farmer-like manner, but regardless of the farming practices in the area Lessee shall farm in a manner that complies with Attachment "A" (Additional Farming Conditions) which is attached hereto and by this reference incorporated herein.

5. **Value of Perennial Grass Seed Upon Expiration of Term.** Upon expiration of the term of this lease or renewal thereof, perennial grass seed stands which have been planted on the leased premises by Lessee shall be destroyed and not harvested in the future by Lessor. However, in lieu of such destruction, the Lessor shall pay the Lessee the fair value of such grass stands as may be agreed upon by the parties. If the parties cannot agree as to such value, then the amount to be paid by Lessor to Lessee shall be determined by three disinterested appraisers, one to be selected by the Lessor, one by Lessee, and the third as agreed upon by the two appraisers selected. If either the Lessor or Lessee fails to name an appraiser within ten (10) days after the first appraiser is selected, the party making the first selection, after giving ten (10) days written notice of his selection to the other party, shall also have the right to name the second appraiser, provided the party notified fails to make the selection within the ten (10) day period of the notice.

6. **Notice to Quit the Premises.** Lessee waives notice to quit the premises at the expiration of the term of this lease or renewal thereof, and agrees to surrender possession of the leased premises to Lessor or its successor in interest. Lessee, however, shall have the right to harvest the crop for the year in which the lease or renewal thereof expires or is terminated if such crop, or crops, have not yet been fully harvested. All irrigation equipment belonging to Lessee and used on the leased premises shall remain the property of Lessee.
7. **Failure of Lessee to Pay Rent.** Lessee shall perform his agreements contained herein at the time and in the manner herein stated. In the event of failure of Lessee to pay rent within thirty (30) days after it is due and/or to other defaults by Lessee in the performance of the agreements herein, Lessor shall give thirty (30) days written notice to Lessee. Thereupon, unless the default is remedied within the thirty (30) day period of the notice, the Agreement shall terminate and the Lessor may enter into possession of the leased premises.
8. **Compensation for Crop Loss due to Well Development.** The Lessor is said to provide just compensation for crop loss due to well development on the property by reducing, by 10%, the annual rent for the year said well development occurs. The Lessor shall make all efforts possible to minimize crop damage during the development. Well development does not include drilling of test wells or other activities which do not result in crop loss.
9. **Non-assignment.** The Lessor is very concerned about the farming operations conducted on the property since the property is the source of the municipal water supply for the Lessor. The Lessor needs to be insured that the farming operations will be carried out at a very high standard. Therefore, this Agreement cannot be assigned, transferred or any portion of the property be subleased without prior consent by Lessor. The Lessor may give written permission for an assignment, transfer or sublease. However, such permission is totally within the discretion of the Lessor and the Lessor may require additional conditions, change in terms including rent payment as a condition of consent.

The Lessor consents to a land swap between the Lessee and Coleman Farms, Inc., subject to Coleman Farms, Inc. agreeing to abide by the terms and conditions of this Agreement, specifically paragraph 4 dealing with farming practices and Attachment "A". Coleman Farms, Inc. will enter into a written acknowledgment to the Lessee to abide by these terms and conditions and the Lessee shall provide the Lessor with a copy of that acknowledgment. The Lessor shall send any notice of default of the Agreement to Coleman Farms, Inc., as well as to the Lessor.

10. **Indemnification.** Each party agrees to indemnify and hold harmless the other party for any claims or actions due to that party's actions or negligence. The Lessee agrees to defend and indemnify the Lessor against any actions due to the Lessee's farming operations upon the property.
11. **Early Termination.** Lessor may terminate this lease prior to November 1, 2013, if Lessor elects, in its sole discretion, to utilize the leased premises for some purpose other than the production of farm crops and if such purpose renders substantially all of the leased premises un-farmable. In this event, Lessor must give the Lessee six (6) months notice of termination. Lessee, however, shall have the right to harvest the crops for the crop year in which the lease is terminated if the crops have not yet been fully harvested. However, Lessor may choose to compensate the Lessee for the loss of crops. If Lessor and Lessee cannot agree on the amount of compensation due, the compensation shall be determined in the same manner as paragraph 5 above.
12. **Notice.** Any notice that is required to be sent by the terms and conditions of this Agreement shall be sent by Certified Mail, Return Receipt Requested, or delivered personally as follows:

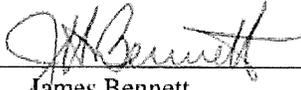
City of Newberg  
City Manager  
PO Box 970  
414 E. First Street  
Newberg, OR 97132

Kirsch Family Farms, Inc.  
Paul & Karen Kirsch  
4350 Mahony Road  
St. Paul, OR 97137

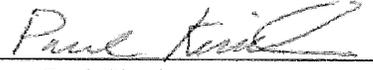
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relative to the farm lease of the above described property and supersedes all prior agreements between the parties relating thereto. This Agreement may be modified only by instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Farm Lease Agreement in duplicate as of the 3rd day of August, 2007.

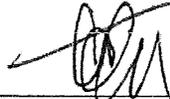
**CITY OF NEWBERG**

By:   
James Bennett,  
City Manager

**KIRSCH FAMILY FARMS, INC.**

By:   
Paul Kirsch,  
President

APPROVED AS TO FORM:

  
Terrence D. Mahr  
City Attorney

**ATTACHMENT "A"**  
**ADDITIONAL FARMING CONDITIONS**  
**City of Newberg Farm Lease**

1. Storage of agricultural chemicals, pesticides and fertilizers on-site shall be prohibited.
2. No manure shall be stored or stockpiled on-site. Agricultural chemicals shall be stored in locked buildings in standard approved packaging with labels clearly indicating their contents.
3. Chemicals shall be applied to cropland under Best Management Practices (BMP) established by the State of Oregon Department of Agriculture. BMP's may include and are not limited to the following:
  - a. Chemicals shall be applied strictly in accordance with authorized uses, label directions and other federal, state and local government policies and requirements;
  - b. No manure shall be applied on-site unless such application meets all state and federal requirements;
  - c. Irrigation of crops at rates, recommended in the Oregon State University Irrigation Guide, that do not promote leaching below the root zone;
  - d. Do not flood irrigate within 50 feet of wells;
  - e. Spray equipment shall be properly calibrated and maintained;
  - f. All mixing and application shall be performed by an Oregon licensed applicator;
  - g. Rinse water from containers and application equipment shall be diluted and spread on crops;
  - h. Chemical use shall be registered at the federal, state and local levels;
  - i. Mixing of chemicals shall be done in a designated area in the general vicinity of the intersection at the southwest corner of the property.
4. Lessee shall maintain and provide to lessor an annual record of all chemicals used on the cropland including quantity, application rate and application period.
5. Lessee shall notify the Lessor of any spills of agricultural chemicals exceeding 5 gallons and fuels exceeding 10 gallons.
6. Agricultural chemicals shall not be applied within 100 feet of each well.
7. Permanent storage of fuels (e.g. gasoline, diesel) shall be prohibited.
8. Lessor shall reserve the right to inspect chemical storage areas and farming practices. Lessor shall also reserve the right to terminate the lease agreement, upon 30 day notification, if the above practices are not followed.
9. Lessee shall notify Lessor at least five (5) days prior to the application of any agricultural chemicals. Lessee shall provide Lessor copies of federal, state or local approvals for the intended uses.

**INITIALS:**

Lessor: JNB  
Date: 08/3/07

Lessee: PK  
Date: 7-29-07

**CITY OF NEWBERG  
FARM LEASE**

**EXHIBIT B**

THIS FARM LEASE AGREEMENT ("Agreement") is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2013 between the City of Newberg ("Lessor") and Kirsch Family Farms, Inc. ("Lessee").

**AGREEMENTS**

NOW, THEREFORE, for the consideration of the agreements set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Property to be Leased.** The Lessor leases to the Lessee the following described property on the terms and conditions stated below:

Portions of Tax lots 100, 200, and 300, Tax Map 3S-2W-29, Marion County, Oregon, comprising approximately 105 acres.

2. **Term.** The term of this lease shall commence on the date of this Agreement and continue to October 31, 2023, subject to termination for default and termination by notification as set out in Paragraphs 11 and 12 of this Agreement.

3. **Annual Lease Payments.** The Lessee shall pay annual rent to the Lessor for the leased premises as follows:

\$15,225.00 on or before November 1, 2013	(\$145/acre)
\$16,800.00 on or before November 1, 2014, 2015, and 2016	(\$160/acre)
\$18,375.00 on or before November 1, 2017, 2018, and 2019	(\$175/acre)
\$19,950.00 on or before November 1, 2020, 2021, and 2022	(\$190/acre)

Make payment directly to **City of Newberg, Public Works Director, P.O. Box 970, 414 E. First Street, Newberg, Oregon 97132**

4. **Farming Practices.** Lessee shall farm said land in a good farmer-like manner according to usual farming practices in the area and will not commit waste or damage. Lessee acknowledges that the Lessor has located on the property well sites for municipal water use, and may install up to four (4) more well sites during the lease period. The Lessee shall farm said land in a good farmer-like manner, but regardless of the farming practices in the area Lessee shall farm in a manner that complies with Attachment "A" (Additional Farming Conditions) which is attached hereto and by this reference incorporated herein.

5. **Value of Perennial Grass Seed Upon Expiration of Term.** Upon expiration of the term of this lease early termination or renewal thereof, perennial grass seed stands which have been planted on the leased premises by Lessee shall be destroyed and not harvested in the future by Lessor. However, in lieu of such destruction, the Lessor shall pay the Lessee the fair value of such grass stands as may be agreed upon by the parties. If the parties cannot agree as to such value, then the amount to be paid by Lessor to Lessee shall be determined by three disinterested appraisers, one to be selected by the Lessor, one by Lessee, and the third as agreed upon by the two appraisers selected. If either the Lessor or Lessee fails to name an appraiser within ten (10) days after the first appraiser is selected, the party making

the first selection, after giving ten (10) days written notice of his selection to the other party, shall also have the right to name the second appraiser, provided the party notified fails to make the selection within the ten (10) day period of the notice.

6. **Notice to Quit the Premises.** Lessee waives notice to quit the premises at the expiration of the term of this lease or renewal thereof, and agrees to surrender possession of the leased premises to Lessor or its successor in interest. Lessee, however, shall have the right to harvest the crop for the year in which the lease or renewal thereof expires or is terminated if such crop, or crops, have not yet been fully harvested. All irrigation equipment belonging to Lessee and used on the leased premises shall remain the property of Lessee.
7. **Failure of Lessee to Pay Rent.** Lessee shall perform his agreements contained herein at the time and in the manner herein stated. In the event of failure of Lessee to pay rent within thirty (30) days after it is due and/or to other defaults by Lessee in the performance of the agreements herein, Lessor shall give thirty (30) days written notice to Lessee. Thereupon, unless the default is remedied within the thirty (30) day period of the notice, the Agreement shall terminate and the Lessor may enter into possession of the leased premises.
8. **Compensation for Crop Loss due to Well Development.** The Lessor is said to provide just compensation for crop loss due to well development on the property by reducing, by 10%, the annual rent for the year said well development occurs. The Lessor shall make all efforts possible to minimize crop damage during the development. Well development does not include drilling of test wells or other activities which do not result in crop loss.
9. **Non-assignment.** The Lessor is very concerned about the farming operations conducted on the property since the property is the source of the municipal water supply for the Lessor. The Lessor needs to be insured that the farming operations will be carried out at a very high standard. Therefore, this Agreement cannot be assigned, transferred or any portion of the property be subleased without prior consent by Lessor. The Lessor may give written permission for an assignment, transfer or sublease. However, such permission is totally within the discretion of the Lessor and the Lessor may require additional conditions, change in terms including rent payment as a condition of consent.

The Lessor consents to a land swap between the Lessee and other farm entities, subject to the other farm entity agreeing to abide by the terms and conditions of this Agreement, specifically paragraph 4 dealing with farming practices and Attachment "A". Upon land swapping, other farm entities will enter into a written acknowledgment to the Lessee to abide by these terms and conditions and the Lessee shall provide the Lessor with a copy of that acknowledgment. The Lessor shall send any notice of default of the Agreement to the Lessor who is responsible to notify any other farm entity.
10. **Indemnification.** Each party agrees to indemnify and hold harmless the other party for any claims or actions due to that party's actions or negligence. The Lessee agrees to defend and indemnify the Lessor against any actions due to the Lessee's farming operations upon the property.
11. **Early Termination.** Lessor may terminate this lease prior to October 31, 2023, if Lessor elects, in its sole discretion, to utilize the leased premises for some purpose other than the production of farm crops and if such purpose renders substantially all of the leased premises un-farmable. In this event, Lessor must give the Lessee six (6) months notice of termination. Lessee, however, shall have the right to harvest the crops for the crop year in which the lease is terminated if the crops have not yet been fully harvested. However, Lessor may choose to compensate the Lessee for the loss of crops. If Lessor and Lessee

cannot agree on the amount of compensation due, the compensation shall be determined in the same manner as paragraph 5 above.

12. **Notice.** Any notice that is required to be sent by the terms and conditions of this Agreement shall be sent by Certified Mail, Return Receipt Requested, or delivered personally as follows:

City of Newberg  
City Engineer  
PO Box 970  
414 E. First Street  
Newberg, OR 97132  
503-537-1211

Kirsch Family Farms, Inc.  
Brenda Kirsch  
4350 Mahony Road NE  
St. Paul, OR 97137  
503-633-4772

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relative to the farm lease of the above described property and supersedes all prior agreements between the parties relating thereto. This Agreement may be modified only by instrument in writing signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed this Farm Lease Agreement in duplicate as of the \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF NEWBERG**

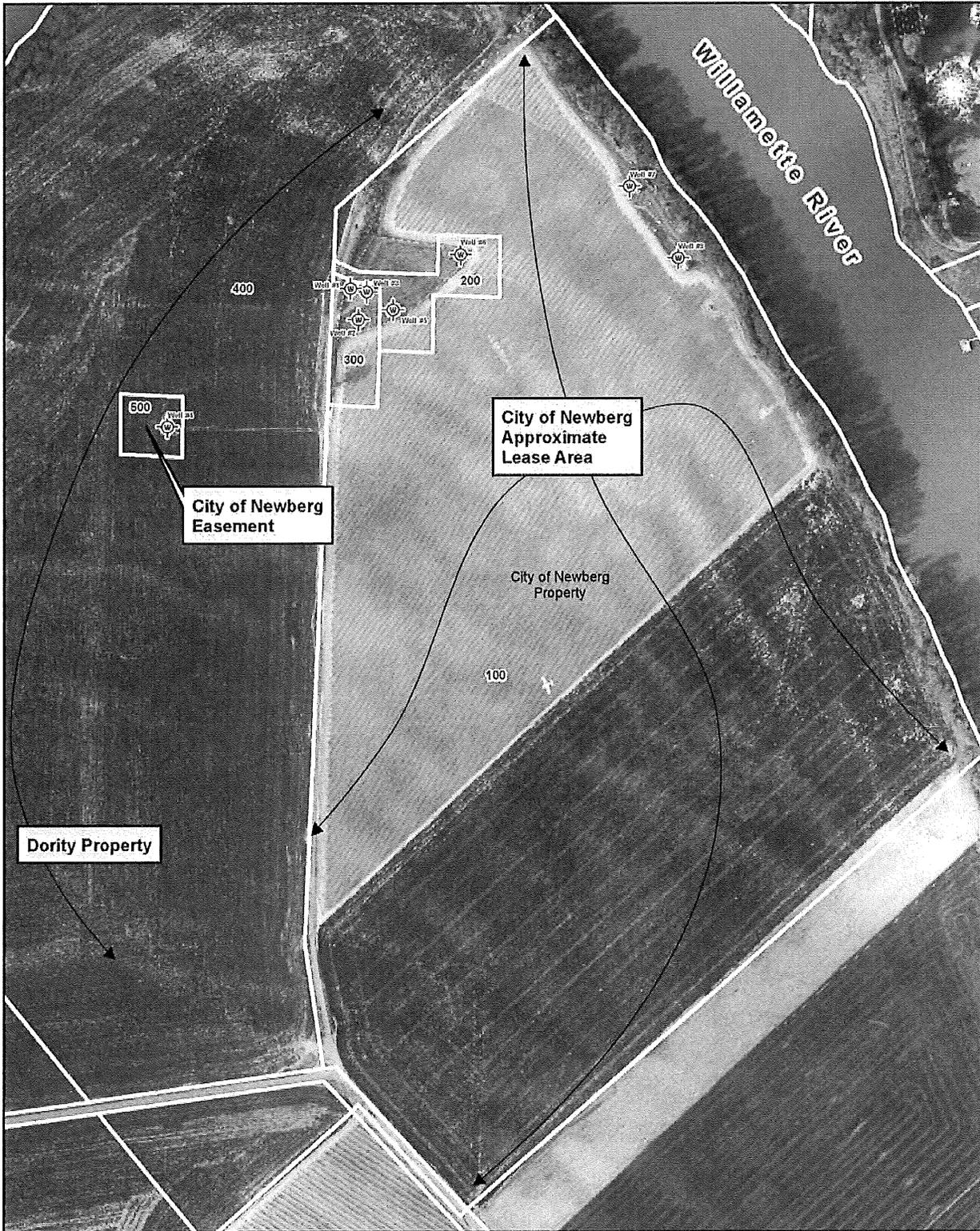
**KIRSCH FAMILY FARMS, INC.**

By: \_\_\_\_\_  
Dan Danicic,  
City Manager

By: \_\_\_\_\_  
Paul Kirsch,  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
Terrence D. Mahr  
City Attorney



400

Feet

### City of Newberg Wellfield Farming Lease Sketch

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**ATTACHMENT "A"**

**ADDITIONAL FARMING CONDITIONS  
City of Newberg Farm Lease**

1. Storage of agricultural chemicals, pesticides and fertilizers on-site shall be prohibited.
2. No manure shall be stored or stockpiled on-site. Agricultural chemicals shall be stored in locked buildings in standard approved packaging with labels clearly indicating their contents.
3. Chemicals shall be applied to cropland under Best Management Practices (BMP) established by the State of Oregon Department of Agriculture. BMP's may include and are not limited to the following:
  - a. Chemicals shall be applied strictly in accordance with authorized uses, label directions and other federal, state and local government policies and requirements;
  - b. No manure shall be applied on-site unless such application meets all state and federal requirements;
  - c. Irrigation of crops at rates, recommended in the Oregon State University Irrigation Guide, that do not promote leaching below the root zone;
  - d. Do not flood irrigate within 50 feet of wells;
  - e. Spray equipment shall be properly calibrated and maintained;
  - f. All mixing and application shall be performed by an Oregon licensed applicator;
  - g. Rinse water from containers and application equipment shall be diluted and spread on crops;
  - h. Chemical use shall be registered at the federal, state and local levels;
  - i. Mixing of chemicals shall be done in a designated area in the general vicinity of the intersection at the southwest corner of the property.
4. Lessee shall maintain an annual record of all chemicals used on the cropland including quantity, application rate and application period. Record shall be submitted to Lessor upon request. The record shall include the date of application, EPA chemical number, amount applied, and the trade name.
5. Lessee shall notify the Lessor of any spills of agricultural chemicals exceeding 5 gallons and fuels exceeding 10 gallons.
6. Agricultural chemicals shall not be applied within 100 feet of each well.
7. Permanent storage of fuels (e.g. gasoline, diesel) shall be prohibited.
8. Lessor shall reserve the right to inspect farming practices. Lessor shall also reserve the right to terminate the lease agreement, upon 60 day notification, if the above practices are not followed.

**INITIALS:**

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

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

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