

CITY OF SAN DIEGO LEASE AGREEMENT

THIS CITY OF SAN DIEGO LEASE AGREEMENT (“**AGREEMENT**”) is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation (“**CITY**”), and **ROBERT NEAL**, (“**LESSEE**”), to be effective as of April 18, 2019 (the “**Effective Date**”), when signed by the parties and approved by the San Diego City Attorney.

For valuable consideration, the receipt and sufficiency of which is acknowledged, CITY and LESSEE agree as follows:

SECTION 1: PREMISES; ALLOWED USES

1.1 Premises. Under the terms and conditions of this Agreement, CITY hereby leases the Premises to LESSEE and LESSEE leases the Premises from CITY. The “Premises” means the approximate 3,640 acres of real property described as portions of Sections 2, 3, 10, 11, 14, 15, 22, 23, 25, 26, 27, 34 and 35 of Township 11 South, Range 1 East and portion of Section 11, Township 12 South, Range 1 East, S.B.B.M. in the community of Pamo Valley, County of San Diego, State of California and further described in Exhibit A-Premises. The parties acknowledge that the Premises has not been surveyed and agree to the approximate acreage of the Premises identified in this Lease.

1.2 Uses. The Premises are leased to LESSEE solely and exclusively for the following purposes (“Allowed Uses”): (i) grazing cattle; (ii) cultivation and storage of hay; (iii) related agricultural uses; (iv) the residential use of three housing units located on the Premises further identified in Exhibit B (v) and other out buildings; and (vi) for such other related or incidental purposes as may be first approved in writing by the Mayor, and for no other purpose whatsoever.

1.2.1 Two housing units located on the Premises, **and identified on Exhibit B , may not be used by LESSEE or any sublessee for any purpose and are not part of the leasehold.**

LESSEE covenants and agrees to use the Premises for the Allowed Uses and to diligently, continuously, and regularly conduct the Allowed Uses on the Premises throughout the Term, as defined below.

1.3 Governmental Approvals. LESSEE shall obtain and maintain all necessary permits and licenses for LESSEE’s operations and activities on the Premises.

By entering into this Agreement, neither CITY nor the San Diego City Council is obligating itself to LESSEE or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE’s occupancy, use, development, rehabilitation, maintenance, or operation of the Premises. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

- 1.4 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.5 Quiet Possession. LESSEE, performing the covenants and agreements in this Agreement, shall at all times during the term of this Agreement peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Agreement shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.6 Reservation of Rights.
- a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, across, and through the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and municipal services.
 - d. Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.7 Competent Management. Throughout the Term, defined in Section 2.1 below, LESSEE shall provide competent management of the Allowed Uses of the Premises to the CITY's satisfaction. For the purposes of this Agreement, "competent management" shall mean demonstrated ability in the management and operation of grazing and pasture lands, using sustainable agricultural and best management practices whenever possible and related activities in a fiscally responsible manner.
- 1.8 Political Activities. LESSEE shall not use the Premises for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan, or for the adoption or defeat of any ballot measure; however, LESSEE shall not be precluded from providing a forum for open public debate by two or more candidates, such as occurs at a candidate forum and similar events.

- 1.9 Public Use. With exception of a public trail known as the Pamo Valley Trail, the general public shall be excluded the Premises. LESSEE agrees that all activities conducted on the Premises will be as stated in Section 1.2, Uses, hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this Agreement (“**Term**”) shall be three (3) years commencing on the first day of the calendar month following the Effective Date.
- 2.2 Holdover. Any holding over by LESSEE after expiration shall not be considered a renewal or extension of this Agreement. LESSEE’s occupancy of the Premises after the expiration of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement shall continue in full force and effect; provided, however, CITY may increase the rent to fair market value existing at said future time and CITY retains the right to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. Concurrent with the execution of this Agreement, LESSEE shall execute, acknowledge and deliver to CITY a valid and recordable quitclaim deed quitclaiming all its rights in and to all of the Premises. CITY may record such deed only on the expiration of the Term or earlier termination of this Agreement. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) business days after receipt of written demand therefor. At the expiration or earlier termination of this Agreement, the Premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.
- 2.4 Lessee Right to Terminate. LESSEE may terminate this Agreement by providing CITY with no less than one (1) year’s advance written notice.

SECTION 3: RENT

- 3.1 Rent. In lieu of rent, LESSEE, at LESSEE’s sole cost and expense, shall maintain the Premises as required in this Agreement. LESSEE shall further, at LESSEE’s sole cost and expense, install fencing, as needed, and maintain fencing, structures, and the three residential housing units identified on Exhibit B on and around the Premises and maintain a presence and appearance at the Premises for protection from unauthorized access and unwanted activity.
- 3.2 Inspection of Records.
- a. Records. LESSEE shall, at all times during the Term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Premises.
 - b. Right to Inspect. All LESSEE’s books of account, records, and supporting documentation related to this Agreement or to LESSEE’s use of the Premises will be

kept for at least five (5) years and made available to CITY upon reasonable notice at the Premises or other suitable location mutually agreed upon by the parties. These books and records must be maintained separately from all other accounts not relating to the Premises. This section shall survive expiration or earlier termination of this Agreement. At CITY's request, LESSEE shall promptly provide, at LESSEE's sole cost and expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Premises. Such data will include, if required, a detailed breakdown of LESSEE's receipts and expenses.

- 3.3 Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not permitted by this Agreement and of which CITY has not given its prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities ("**Unauthorized Use Charge**"). Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Agreement. The existence of the Unauthorized Use Charge and CITY's acceptance thereof does not constitute an authorization for a particular use and does not waive any CITY rights under this Agreement.

SECTION 4: ASSIGNMENT AND SUBLETTING; ENCUMBRANCES

- 4.1 Right to Assign and Sublet. Except for the three residential houses located on the Premises discussed in Section 4.2, LESSEE shall not assign this Agreement or any interest therein and shall not sublet the Premises or any part of the Premises, or grant any other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises or any part thereof, without prior written approval from CITY. CITY's approval may be conditioned upon the proposed assignee or sublessee agreeing to revisions to this Agreement, to reflect market conditions or CITY requirements that are then in effect. Any such approval shall not be deemed approval to any subsequent assignment, sublease, occupation, or use by another person. This Agreement and any interest therein shall not be assignable by operation of law without the written consent of CITY.

Approval of any assignment shall be conditioned upon the assignee agreeing in writing that it will assume the rights and obligations thereby assigned and that it will keep and perform all covenants, conditions and provisions of this Agreement which are applicable to the rights acquired. CITY may require, as a condition to consenting of any assignment, that the proposed assignee pay full fair market rent justifiable at the date of such proposed assignment and that this Agreement otherwise be revised to comply with standard CITY lease requirements that are then current. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Agreement be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Agreement. Also, no assignee will be approved who is not at least comparable to the original LESSEE in financial and professional capabilities to operate the Premises, as determined by the CITY.

Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. Pursuant to San Diego City Charter Section 225, every person or entity which will have an interest in this Agreement must be reviewed and approved by CITY.

4.2 Residential Subleases. LESSEE may sublease the three houses located on the Premises, identified on Exhibit B, for residential purposes during the Term. LESSEE must comply with all applicable laws relating to leasing residential property, including providing all required disclosures, ensuring the habitability of the subleased premises at all times, and any applicable laws relating to the occupancy and use of a residence of similar size and character as the three houses on the Premises. LESSEE shall enter into written subleases for each house that comply with all applicable state and local laws and make all legally required disclosures. No residential sublease shall be for a term longer than the Term remaining in this Agreement at the time the sublease is executed.

4.2.1 LESSEE shall provide CITY with copies of any and all subleases and all exhibits and/or attachments thereto for the three housing units identified in paragraph 1.2.

4.2.2 Any new residential subleases shall prohibit the smoking of cigarettes or any other tobacco product inside any subleased building on the Premises.

4.2.3 Pursuant to San Diego City Charter section 225, LESSEE or LESSEE's residential subtenant shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the sublease of any of the three houses located on the Premises. Pursuant to San Diego City Charter Section 225, every person or entity which will have an interest in this Agreement must be reviewed and approved by CITY.

4.3 Encumbrance. LESSEE shall not encumber this Agreement, its leasehold estate, or any improvements on the Premises, by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.

SECTION 5: DEFAULT AND REMEDIES

5.1 Default. LESSEE shall be in default of this Agreement if any of the following occurs:

- a. LESSEE fails to make any payment required under this Agreement when due and fails to cure the default within five (5) days following written notice thereof from CITY;
- b. LESSEE breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, shall fail to commence to cure the breach within thirty (30) days and diligently pursue such cure to completion;

- c. LESSEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law;
- d. LESSEE is adjudicated as bankrupt; or
- e. LESSEE makes a general assignment for the benefit of creditors.

5.2. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate this Agreement and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- a. the worth at the time of award of any unpaid rent that was due at the time of termination;
- b. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- c. the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- d. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- e. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Agreement.

5.3 Default if Leasehold Is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Agreement, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable

within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- a. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- b. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- c. CITY may terminate this Agreement as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Agreement. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Agreement will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Agreement.

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Agreement shall continue in effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies hereunder, including without limitation to the right to recover the rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a

particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 6. EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire Premises are taken, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the premises is unsuitable for the continued Agreement operation, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking of the Premises occurs, and in the opinion of CITY, the remainder of the Premises is suitable for continued Agreement operation, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The Annual Minimum Rent shall be equitably reduced to reflect the portion of the premises taken, only to the extent that LESSEE's operations are reduced or impaired.
 - d. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE's then remaining leasehold interest in installations or improvements owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

- 6.2 No Inverse Condemnation. The exercise of any CITY right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for condemnation or inverse condemnation.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or LESSEE's acts or omissions in the performance of its rights and obligations under this Agreement, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 7.2 Insurance. LESSEE shall not begin operating under this Agreement until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term, and any extension of said Term, of this Agreement may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.

- a. Types of Insurance. At all times during the Term, and any extension of said Term, of this Agreement, the LESSEE shall maintain insurance coverage as follows:

1. Commercial General Liability. Commercial General Liability (CGL) Insurance

written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

2. Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 3. Workers' Compensation. For all of LESSEE's employees who are subject to the Agreement and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
 4. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses under this Agreement or the PREMISES in an amount to cover one hundred percent (100%) of the replacement cost.
- b. Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
 - c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
 - d. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Effective Date.

- e. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.
- f. Primary & Non-Contributory. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents, and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.
- g. Severability of Interest. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- h. Automobile Liability Insurance Endorsements. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of LESSEE.
- i. Worker's Compensation Insurance Endorsements. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.
- j. Reservation of Rights and Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Agreement at any time, by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Uses.

- k. Additional Insurance. LESSEE may obtain additional insurance not required by this Agreement.
- l. Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- m. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

SECTION 8: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 8.1 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 7.2, Insurance, above.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

- 8.2 Acceptance of Premises. By signing this Agreement, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. LESSEE further acknowledges that the Premises is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Premises and required by this Agreement, and that LESSEE shall hold CITY harmless for any defects, whether apparent or latent, in the Premises, including without limitation the presence of any hazardous substances.
- 8.3 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. Provided further that CITY's right to entry and inspection of the Premises, in the absence of any emergency or other proper authorization, shall require reasonable notice and be limited to reasonable business hours.

- 8.4 Maintenance. The Premises are offered in “as is” condition and all maintenance and repairs shall be the responsibility of the LESSEE throughout the Term without expense to CITY. The LESSEE shall maintain the Premises and all improvements thereon in a clean, safe, healthy, and sanitary condition throughout the Term, to the satisfaction of the CITY and in compliance with all applicable laws. CITY will maintain the structural supports and exterior walls, roof and floor of the buildings of the Premises in good order and repair. LESSEE shall be responsible for the maintenance of the three residential houses on the Premises, as identified in Exhibit B, including interior painting, interior and exterior lights, and sewer and water line maintenance.
- 8.5 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by CITY. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval of CITY. This provision shall not relieve LESSEE of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition and state or repair, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.
- 8.6 Ownership of Improvements. All structures and improvements existing on the Premises on the Effective Date are owned by CITY. Any and all improvements, except trade fixtures and equipment, structures and installations or additions installed on the Premises during the Term shall be owned by the LESSEE during the Term. Upon the expiration or termination of the Agreement, all such improvements, except trade fixtures and equipment, structures and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE upon termination or thirty (30) days prior to the expiration of this Agreement, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE. In that case, LESSEE shall, at LESSEE’s sole cost and expense, remove those items designated for removal in CITY’s notice and restore to the condition it was in on the Effective Date. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE’s sole cost and expense.
- a. Personal Property. LESSEE shall remove from the Premises all LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of this Agreement, or as soon as practicable after termination of this Agreement, but in no event later than thirty (30) days after the expiration or termination of this Agreement. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY’s property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE’s sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

- b. Late Removal. Notwithstanding any provision of this Agreement to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Agreement needed to remove LESSEE improvements or personal property as required by this Agreement, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the fair market rental rate at the expiration or termination of this Agreement as determined by competent CITY staff.
 - c. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Agreement, CITY shall have the first right to acquire such personal property.
- 8.7 Utilities. LESSEE agrees to order, obtain and pay for all utilities, including telecommunication, services, installation and repair charges in connection with the operation of the Premises.
- 8.8 Signs. LESSEE may erect or display signs designating "Pamo Valley Ranch," "City of San Diego," "No Trespassing," and "No Hunting" without obtaining the CITY's prior written consent. LESSEE shall not erect or display any other banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost.

SECTION 9: SPECIAL PROVISIONS

- 9.1 Leasehold Boundaries. The CITY may, at CITY's option, survey the leasehold area and identify, on ground, demarcation boundaries. All such boundary demarcation markers installed on the Premises shall be maintained by LESSEE.
- 9.2 Acceptance of Existing Housing. LESSEE acknowledges that CITY completed what is referred to as a "Healthy Home Project" on the existing Housing, which included lead and asbestos remediation. Based on the foregoing and LESSEE'S knowledge of the "Premises", LESSEE accepts the current condition of the existing housing located on Premises and takes possession of the housing "as is." CITY has not made and makes no representations or warranty as to the condition or suitability of the housing for LESSEE'S intended use, and assumes no obligation to alter or improve the housing. LESSEE has relied solely on his own independent investigations of the condition and suitability of the housing, and is satisfied with the condition thereof, including but not limited to electrical and fire sprinkler systems, security, asbestos, air quality, and other environmental aspects, seismic and earthquake requirements, and compliance with applicable zoning, municipal, county, state and federal laws, ordinances and regulations, and any covenants or restrictions of record.
- 9.3 Disclosure Addendum. By signing this Agreement, LESSEE Acknowledges receipt of "CITY Disclosure Addendum", which is attached hereto, and is incorporated as part of this

Agreement.

- a. Lead Paint Disclosure. By signing this Agreement, LESSEE acknowledges receipt of a "Lead Paint Disclosure Addendum", "CITY Assessment Report(s)" & "Protect your Family From Lead in Your Home Pamphlet", which is attached hereto, and is incorporated as part of this Agreement. LESSEE acknowledges he will provide a copy of this "Addendum" and the Environmental Protective Agencies "Protect Your Family From Lead in Your Home" pamphlet to any resident on the Premises.
- b. Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Residence may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos at/in/on the Premises to others as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos at/in/on the Premises.

SECTION 10: GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to LESSEE at LESSEE's Address for Notices, and to CITY as follows:

If to LESSEE:

Attention: Robert Neal
Pamo Valley Ranch
3664 Highway 67
Ramona, CA 92065

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 10.2 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and

permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.
- b. Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractors or agents shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of the Agreement. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from the LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or operation of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.
- 10.3 Nondiscrimination. LESSEE shall not discriminate in any manner against any person by reason of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or disability in the use of the Premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 10.4 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises during the Term, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or

property of any nature whatsoever erected, installed or maintained by LESSEE, or levied by reason of LESSEE's occupancy, use, development, maintenance, or operation of the Premises, including without limitation licensing and permitting costs and fees. LESSEE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment for such taxes, fees, and assessments shall not reduce any payment due CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

10.5 Construction Requirements. LESSEE shall construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not limited to the California Environmental Quality Act, Americans with Disabilities Act and this Agreement.

10.6 Prevailing Wage. By signing this Agreement, the LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing work or services.

a. Prevailing Wage. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair, and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the LESSEE and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

(1) Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the LESSEE and its contractors and subcontractors shall ensure that all workers who perform work under the Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

a. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The LESSEE and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

- b. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of the Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the Agreement, each successive predetermined wage rate shall apply to the Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the Agreement, such wage rate shall apply to the balance of the Agreement.
- (2) Penalties for Violations. LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 - 1861.
- a. Payroll Records. LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
 - b. Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6, and 1777.7.
 - c. Working Hours. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate

of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- d. Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.
- e. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Agreement, the LESSEE will certify that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."
- f. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- g. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- (1) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following

apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

- (2) A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- (3) By submitting a bid or proposal to the CITY, LESSEE is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of subcontractor registration to the CITY upon request.

10.7 Performance and Payment Bond.

- a. Performance Bond. LESSEE shall provide to CITY, prior to commencement of any construction on the Premises, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction to be commenced by the LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. This requirement is not intended to be duplicative of a construction bond otherwise required of the LESSEE.
- b. Payment Bond. Prior to the commencement of any work on the Premises, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by CITY and until all claims for materials and labor are paid, and must otherwise comply with the Government Code.

Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.

- 10.8 Equipment. LESSEE shall furnish all equipment necessary for the operation of the Premises in conformity with this Agreement, and agrees to properly maintain such equipment.
- 10.9 CITY's Consent, Discretion. CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
- 10.10 Standard of Conduct. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a professional and creditable manner.
- 10.11 California Public Records Act. CITY shall determine, in its sole discretion, whether this Agreement or information provided to CITY by LESSEE pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, LESSEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- a. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of this Agreement or LESSEE information requested pursuant to the CPRA. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS AGREEMENT OR ANY LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

- 10.12 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this Agreement so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 10.13 Equal Benefits. LESSEE shall comply with San Diego Municipal Code Sections 22.4301-22.4308, as amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Agreement. LESSEE's failure to maintain equal benefits shall be a material breach of this Agreement.
- 10.14 Disabled Access Compliance. LESSEE shall comply with Title 24 of the California Code of Regulations (i.e., the "**California Building Code**"); the Americans with Disabilities Act of 1990 ("**ADA**"); and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions, and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE;
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - d. Where required by law, LESSEE shall, at LESSEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Premises which deny access to disabled persons; and

- e. LESSEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

LESSEE and each of its sublicensees, if any, shall be individually responsible for their own ADA compliance program. LESSEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Agreement.

- 10.15 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Agreement and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 10.16 LESSEE's Risk. LESSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with LESSEE's use or occupancy of the Premises and any damages to the improvements on, under or in the vicinity of the Premises resulting directly or indirectly thereby.
- 10.17 No Nuisance. LESSEE shall not use the Premises in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
- 10.18 Security and Safety of Premises. LESSEE shall bear sole responsibility for the security and safety of the Premises affected by or relating to the Allowed Uses during the Term. LESSEE shall be responsible for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and safety. LESSEE shall comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, at LESSEE's sole cost and expense. CITY has no obligation to provide oversight of the Allowed Uses or staffing or resources for the Allowed Uses at the Premises during the Term.
- 10.19 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASP).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the

premises.”

- 10.20 Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY’s citizens. CITY’s failure to insist upon the strict performance of any of LESSEE’s obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY’s waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY’s delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY’s acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY’s failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- 10.21 Cumulative Remedies. CITY’s rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY’s rights or remedies at law or in equity.
- 10.22 Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
- 10.23 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Agreement.
- 10.24 No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 10.25 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Agreement and LESSEE’s occupancy, use, development, maintenance, and operation of the Premises. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Agreement is binding upon such party in accordance with its terms.
- 10.26 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.27 Compliance with Laws. LESSEE shall secure and maintain full compliance with all

applicable municipal, county, state, and federal laws and regulations at its own cost, regarding all aspects of this Agreement and activities at the Premises.

- 10.28 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
- 10.29 Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
- 10.30 Water Quality - Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312). It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
- 10.31 Controlling Law and Venue. This Agreement and all Agreement documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.
- 10.32 No Third Party Beneficiaries. None of the provisions of this Agreement are intended to benefit any third party not specifically referenced herein. No party other than CITY and LESSEE shall have the right to enforce any of the provisions of this Agreement.
- 10.33 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 3-26-2019

ROBERT NEAL

BY: _____
Name: Robert Neal
Title: TENANT

Date: 3-26-2019

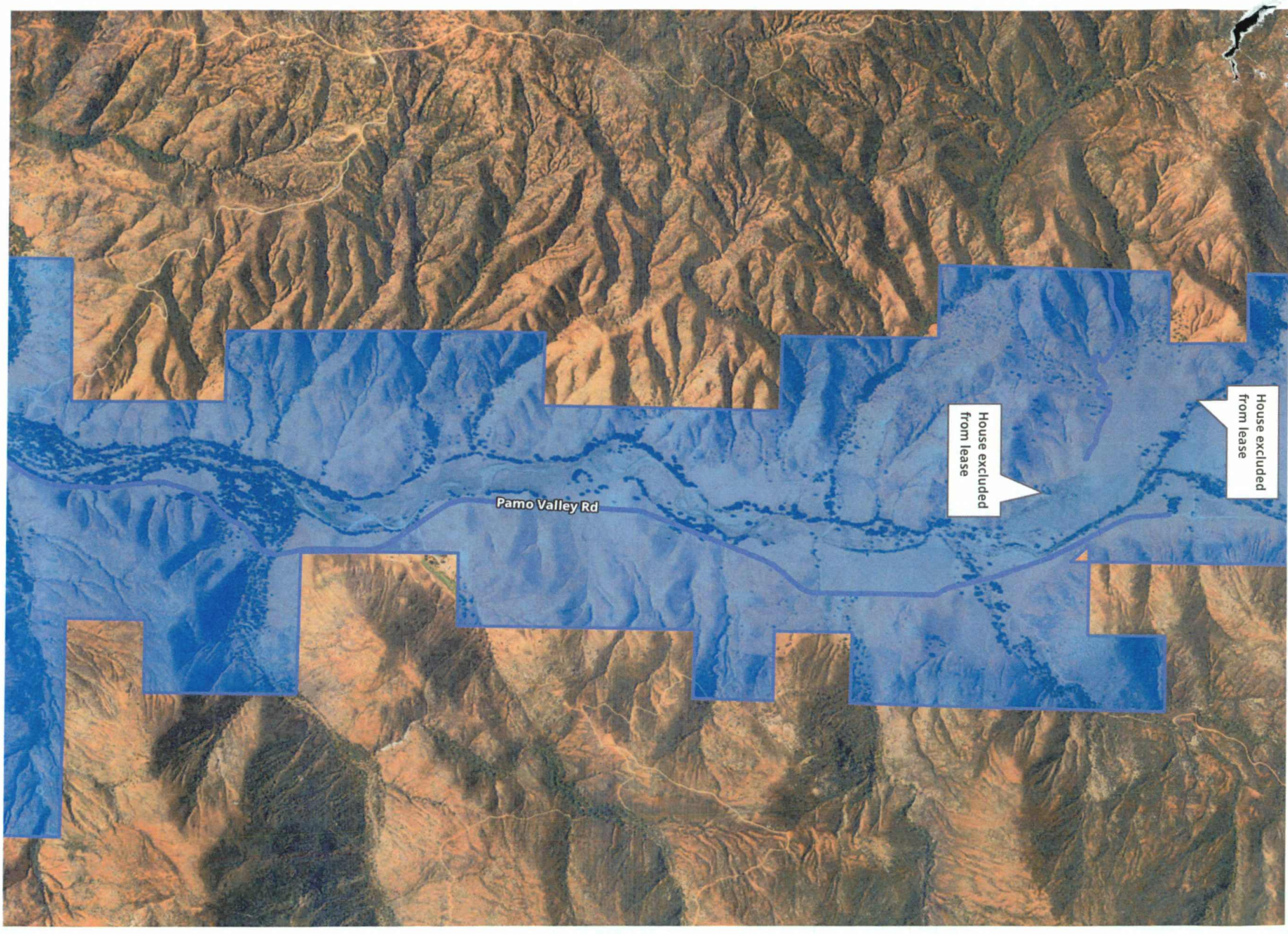
THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Cybele Thompson, CCIM
Director, Real Estate Assets

Approved as to form this 18th day
of April, 2019.

MARA W. ELLIOTT, City Attorney

By: Kathy J. Steinman
Name: Kathy J. Steinman
Title: Deputy City Attorney



Pamo Valley Rd

House excluded
from lease

House excluded
from lease