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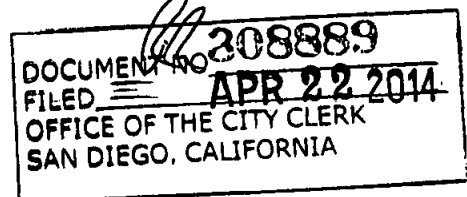


**THE CITY OF SAN DIEGO**

**AND**

**BIG TREES NURSERY, INC.**

**Flat Rate Lease**



ORIGINAL

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## LEASE OUTLINE

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**CITY OF SAN DIEGO  
FLAT RATE LEASE**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and THE BIG TREES NURSERY, INC. , a California corporation, hereinafter called "LESSEE."

**SECTION 1: USES**

**1.1     Premises.**

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property described as a portion of APN 272-131-07 in the community of San Pasqual Valley, City of San Diego, County of San Diego, State of California ("Premises"). The Premises, which constitutes a total area of approximately 43.5 acres, is comprised of the following sub-areas: an Active Use Area (approximately 16 acres); a Passive Use Area (approximately 19.5 acres); and a Non Use Area (approximately 8 acres), as shown and further depicted in **Exhibit A - Premises**, attached to and made part of this Lease. It is further agreed that: the Premises and the sub-areas have not been surveyed; that CITY and LESSEE have agreed to approximate acreage; and that any deviation between approximate and actual acreage of the Premises or sub-areas shall not cause any reduction or change in rent or consideration due under this Lease.

**1.2     Allowed Uses.**

It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of operating a wholesale container and in-ground tree and shrub nursery, along with operating related office facilities ("Allowed Uses"), and for no other purpose whatsoever without CITY's prior written consent in each instance, and all subject to the following conditions, restrictions, and requirements:

**Active Use Area:** May house large trees in containers above ground; no more than fifty percent (50%) of trees may be located in the ground. Only drip and micro irrigation shall be used in the Active Use Area, including for use on all out-of-ground growing containers; No sprinklers or other broadcast methods for irrigation are permitted for this area. For all trees and plant materials grown out of ground, containers may be up to ten (10) feet across in size;

**Passive Use Area:** Shall be planted and maintained by LESSEE as a native plant buffer zone for storm water runoff to protect water quality in Lake Hodges reservoir, to CITY's reasonable satisfaction. Native ground cover plant material shall be established and maintained over and throughout the

entire Passive Use Area, and in between the trees and shrubs that will be harvested. LESSEE shall plant the Passive Use Area at a rate of at least four (4) acres per Lease Year, for sustainable and balanced production and coverage. To establish the native plant material, drip or micro irrigation is permitted and shall be operated in a manner such that no runoff from irrigation occurs from this area; No sprinklers or other broadcast methods for irrigation are permitted for this area. LESSEE shall be permitted to harvest certain tree, shrub, and plant material from the Passive Use Area, subject to the following terms and conditions: No such harvesting shall occur within the first (1) Lease Year after the Effective Date. No more than ten percent (10%) of trees, shrubs, and plant material in the Passive Use Area shall be removed in any given harvest. In no event shall there be more than four (4) harvests in any given Lease Year. Replacement or refurbishment of native plant material in the harvested area(s) shall commence within two (2) weeks of each harvest. No harvest shall be permitted in the last Lease Year, and upon the expiration of this Lease, LESSEE shall have no right to or responsibility for any tree, shrub, or plant material in the Passive Use Area.

Non Use Area: Shall not be used by LESSEE, other than for installation of a perimeter fence as required below.

All terms and conditions of the Lease are material, and failure to comply subjects LESSEE to default and termination. LESSEE covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the Term.

1.3 Relocation of Existing Nursery Facilities.

LESSEE, under separate lease with CITY, has maintained certain nursery improvements and activities in portions of the Passive Use Area and Non Use Area. By February 1, 2015, LESSEE shall relocate all existing nursery improvements, plant materials, and all other items and property out of the Passive Use Area and Non Use Area consistent with the Allowed Uses and conditions thereof stated above, and restore and or repair all damage to the Passive Use Area and Non Use Area consistent with the Allowed Uses and conditions thereof stated above.

1.4 Related Council Actions.

By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself to LESSEE or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.5 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If for any reason during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

1.6 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises, together with the right to store and recapture water from the soils beneath the surface of the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use right-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due under this Lease. Access to the Non Use Area shall exclusively be via the existing driveway located on the Active Use Area, and by no other driveway or entry way.
- c. CITY has the right to enter the Premises for the purpose of making repairs to, or developing, municipal resources and services. In addition, LESSEE shall provide access to well(s) on the Premises for the CITY to conduct tests, such as, but not limited to, aquifer tests, groundwater-level measurements, and water quality sampling.
- d. However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the pre-approved improvements located on the Premises resulting from CITY exercising the rights reserved herein. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.7 Competent Management.

Throughout the Term, LESSEE shall provide competent management of the Premises to the reasonable satisfaction of CITY. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a wholesale container tree nursery, and other activities as set forth in Section 1.2, consistent with industry standards and

best management practices, and performing all practices and related activities in a responsible manner.

## **SECTION 2: TERM**

2.1 City Council Action Required. LESSEE acknowledges that this Lease is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization to enter into and execute this Lease ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's modification of the final terms and conditions of this Lease, or the City Council's failure to grant the Council Authorization.

2.2 Commencement.

Subject to Council Authorization as stated above, the Lease shall commence on May 1, 2014 ("Commencement Date") and shall expire on April 30, 2034 ("Term"). "Lease Year" shall mean each consecutive twelve (12) month period commencing on each anniversary of the Commencement Date succeeding thereafter during the Term.

2.3 Holdover.

Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to both adjust the rent to fair market value existing at said future time and to terminate the holdover tenancy at will.

2.4 Quitclaim and Surrender of LESSEE'S Interest.

Upon execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record such deed only on the expiration or earlier termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except for those liens and encumbrances which existed on the date of execution hereof or which CITY subsequently provided consent as required herein, and in a decent, safe, and sanitary condition.

2.5 Lessee Right to Terminate.

LESSEE may terminate this agreement with no less than one (1) year prior written notice delivered to the CITY, if the cost of water or the cost to treat water quality from the underground water supply for the Allowed Uses at the Premises becomes cost prohibitive.

**SECTION 3: RENT**

3.1 Time and Place of Payment.

All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 92101.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- a. Rent Amount. The initial annual rent shall be \$16,320.00, payable quarterly at \$4,080.00. Rent, either initially or as subsequently adjusted, does not include the cost of water. The initial annual rent is subject to adjustment pursuant to Section 3.2 below, and all rent shall be paid quarterly during each Lease Year.
- b. Invoicing Courtesy. CITY may invoice LESSEE for amounts payable under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Lease.
- c. Payment for Ground Water. In addition to the annual rent paid quarterly, LESSEE shall pay for all ground water used from the Premises and as otherwise required herein. The cost of ground water currently is \$162 per acre foot, and shall be subject to adjustment as stated in section 3.6 below. Water costs shall be determined by LESSEE reading all ground water meters on the Premises, and calculating total water costs based on then-current ground water rates. LESSEE shall pay all such water costs quarterly, and concurrent with rent payments. All payments for water costs are subject to periodic review and auditing by CITY, and LESSEE shall pay any arrearage as determined by CITY's review or audit of ground water actually used.

### 3.2 CPI Adjustments.

- a. The rent is subject to adjustments beginning on the fifth anniversary of the Commencement Date, and shall be adjusted on the anniversary date of the Commencement Date every two years thereafter. The rent adjustment shall be based on percentage increases in the Consumer Price Index (CPI), pursuant to the formula stated below. The "current index" shall be the three (3) month average of index figures published by the CPI. The three months to be used to establish the average shall be the fourth, fifth, and sixth full month preceding the adjustment date.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

CPI Adjustment Computation. The rent for each adjustment period shall be calculated by CITY as follows:

- b. The "adjustment figure" shall be established by dividing the "current index" by the "base figure" as defined below.
- c. The "base figure" for the first such adjustment shall be the three (3) month average of index figures published by said CPI using November, October, and September.
- d. The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period. (Example 2).

- e. The "current index" shall be the three (3) month average of index figures published by the CPI for the fourth, fifth, and sixth full months (November, October, September) preceding the adjustment date.

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

3.3 Inspection of Records.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of local, state, or federal governments concerning the Premises and or activities thereon.

LESSEE shall keep and make available to CITY upon demand, any and all records or documents pertaining to the costs and usage of water on the Premises which shall include records of costs of construction, maintenance, operation and pumping, and meter readings. LESSEE shall maintain all such records, documents, and accounts for a minimum period of five (5) years.

3.4 Delinquent Rent

If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code.

Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

3.5 Unauthorized Use Charge.

LESSEE shall pay CITY one-hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Lease or not otherwise authorized by CITY in writing. This payment is subject to the due date provided in this Lease for rent payments and the provision for delinquent rent. The existence of the one-hundred percent (100%) charge in this clause and the payment of this charge or any part of it does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate this Lease for LESSEE participating in or allowing any unauthorized use of the Premises.

3.6 Water Payment Formula.

The cost for ground water, currently \$162 an acre foot, shall be reviewed by CITY and adjusted, if necessary as determined by CITY in its sole discretion, each year on January 1. The cost for ground water will be the San Diego County Water Authority (CWA) untreated "All-in" water cost to the CITY, and shall take into consideration credit averaging for water pumping cost, infrastructure costs related to the well, water returned to groundwater, and water quality, all as determined by CITY in its sole discretion based on generally-applicable criteria. Pumping cost shall be the utility cost to bring ground water to the well head at 40-60 pounds per square inch (PSI). Infrastructure cost is the cost of maintaining the pump and well. Water quality relates to the quality of water, location in the valley, and approved leasehold use.

## **SECTION 4: ASSIGNMENT**

4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

#### 4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of CITY in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of CITY. "Assignment" for the purposes of this clause shall include any transfer of any ownership interest in LESSEE by any partners, principals, or stockholders, as the case may be, from the original partners, principals, or stockholders of LESSEE

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. CITY shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.3, Equity Sharing, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with current standard CITY lease requirements. Pursuant to City Charter Section 225, CITY must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. CITY's approval will not be unreasonably withheld, provided all such persons and entities are reputable, qualified, and financially responsible.

#### 4.3 Equity Sharing.

LESSEE agrees that as additional consideration for this Lease and in addition to all rent otherwise payable to CITY, CITY shall be entitled to participate in any "equity" taken out by the LESSEE during the Term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment or major sublease (less the value of permitted inventory and equipment for authorized use). "Major sublease" shall mean any sublease or subleases which individually or cumulatively involves twenty-five (25%) percent or more of the total leasehold area. In the event of any action resulting in "equity" as described above, LESSEE agrees that CITY shall be entitled to twenty percent (20 %) of any such equity as additional

consideration. The amount upon which the twenty percent (20%) shall be based shall be the total consideration resulting from the transaction, whether actually received by LESSEE or not, including total cash payments and the market value of non-cash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. Prior to CITY'S consent to any assignment or major subletting involving the Premises, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee or sublessee of the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the subject equity transaction. In the instance of a major sublease which provides for periodic payment of rent, CITY shall be entitled to fifty percent (50%) of the difference between the rent paid by LESSEE to CITY and the rent paid by the sublessee to LESSEE, which amounts shall be added to the periodic rent paid to CITY. Any assignment or subletting in violation of the terms and conditions of this paragraph shall be void.

The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which CITY determines that the legal and equitable ownership interests in the legal or fictitious name of the LESSEE has not changed, as there is no change in the equity, in beneficial use of, or legal title to the leasehold as an asset or the income produced therefrom.

#### 4.4 Encumbrance.

Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber its leasehold estate and its permanent improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of improving, repairing or maintaining the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any encumbrance must first have the approval in writing of CITY. Subsequent encumbrances shall also be for the exclusive purpose of development, improvement, repair, or maintenance of the Premises. LESSEE understands and specifically agrees that CITY shall have the sole and absolute discretion to approve, disapprove, or condition any proposed encumbrance, including but not limited to amending the Lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease, on condition the mortgagee or beneficiary is reputable, qualified, and financially responsible in the opinion of CITY.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, CITY must review and approve every person or entity which will have an interest in this Lease. CITY's approval will not be unreasonably withheld, provided all such persons and entities are reputable, qualified, and financially responsible

#### 4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE fails to make any payment required under this Lease when due and fails to cure the breach within five (5) days following written notice thereof from CITY;
- (2) LESSEE shall default in the performance of any covenant, term, or condition required by this Lease other than payment of rent or any other amount due, to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty day period and diligently pursue such cure to completion; or
- (3) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE shall be adjudicated a bankrupt; or

- (5) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession thereof; and CITY may enter and take possession of the Premises.

In the event there is an encumbrance of this Lease, LESSEE's leasehold estate, or LESSEE's permanent improvements thereon, CITY shall provide the approved mortgagee or beneficiary a right to cure any alleged default. Said mortgagee or beneficiary shall have thirty (30) days from notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty day period after receiving written notice of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by CITY in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right

for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by CITY or CITY staff to discover a default or take prompt action to require the

cure of any discovered default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default.

#### 4.6 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 Lease 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, if, in the reasonable opinion of CITY, the remaining part of the Premises is unsuitable for the lease operation, this Lease 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, if, in the reasonable opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease 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 minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
- d. Award. 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, improvements, and inventory of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. 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. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

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

CITY shall notify LESSEE as soon as reasonably possible of any above-mentioned action.

## **SECTION 5: INSURANCE RISKS/SECURITY**

### **5.1 Indemnity.**

LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or willful misconduct of the CITY, its agents, officers, or employees.

### **5.2 Insurance.** LESSEE shall obtain and maintain throughout the Term, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein.

- a. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

- (1) Commercial General Liability Insurance ("CGL") 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, including death, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). 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 Insurance ("Auto"), if and when LESSEE uses vehicles on the Premises and/or in connection with LESSEE's use of the Premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.
- (3) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees, if any, who work on the Premises and/or in connection with LESSEE's use of the Premises, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- b. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" 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 without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.
- c. Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- d. Severability of Interest. Each CGL and Auto policy must be endorsed to provide that 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.
- e. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease 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 may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- f. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- g. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- h. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage 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 Allowed Uses.
- i. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises. 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.
- j. 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 or the Premises in an amount to cover 100 percent

(100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

5.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the 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 submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

In the event of flood damage and it becomes evident that the Allowed Use(s) will not be practicable, LESSEE may opt to return the affected portion of the Premises to the CITY and have the leasehold reduced accordingly.

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

## **SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

6.1 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).

6.2 Acceptance of Premises.

By signing this Lease, 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 such independent inspection, tests, investigations, and observations in executing this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease. CITY has no obligation to improve, modify, repair, replace, alter, secure, or

otherwise develop the Premises at any time either prior to, on or after the Commencement Date. LESSEE shall release and does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.

6.3 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said Premises, for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. If such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition

6.4 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of all portions of the Premises and all improvements located on the Premises throughout the term. In addition, LESSEE shall install, by February 1, 2015, and maintain throughout the Term, three-strand and metal-polled barbwire fencing and appropriate gates on the perimeter of the entire Premises, to curtail unwanted and unauthorized access to the Premises to the CITY'S satisfaction. LESSEE shall remove and control all invasive plant species from the Passive Use Area and Non Use Area throughout the Term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY. LESSEE is responsible for compliance with all Federal and State regulations, including but not limited to California Code of Regulations, Title 14, Section 4307 and Penal Code Section 622.5, which pertain to the protection of cultural resources.

6.5 Improvements/Alterations.

No improvements, structures or installations shall be constructed on the Premises, except for improvements used in the ordinary course of nursery production including irrigation systems and tree staking systems, 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 by CITY and such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements, except as set forth in this

Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.6 Utilities.

LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises.

6.7 Liens.

LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.9 Signs.

LESSEE shall not erect or display on the Premises any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within 48 hours notice thereof by CITY, or CITY may thereupon summarily remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all permanent improvements, in-ground plant or tree material, in-ground irrigation and water wells, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at expiration or termination of this Lease be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, structures, or installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations installed by LESSEE as directed, LESSEE shall pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the Premises or any improvements thereon, LESSEE shall repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination hereof shall require LESSEE to pay rent to CITY on a per diem basis at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.11 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this

provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

## **SECTION 7: GENERAL PROVISIONS**

### **7.1 Notices.**

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the Premises or at such other address designated in writing by LESSEE; and to CITY as follows:

#### **CITY:**

City of San Diego  
Real Estate Assets Department  
1200 Third Avenue, Ste. 1700  
San Diego, CA 92101-4155

#### **LESSEE:**

Big Trees Nursery, Inc.  
12450 Highland Valley Rd.  
Escondido , CA 92025

Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

### **7.2 Compliance with Law.**

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by CITY or its authorized representatives under the authority of any such law, statute, ordinance or regulation.

### **7.3 CITY's Consent, Discretion.**

All references to CITY herein shall be deemed to refer to the Mayor of San Diego, or his designee ("Mayor"), unless otherwise expressly provided herein or required by law. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor, unless otherwise specified or required by law, without need for further resolution by the City Council. CITY's discretionary acts hereunder

shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.

7.4 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or disability in LESSEE'S 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.

7.5 Equal Benefits

LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which may be amended from time to time, which require lessees of City-owned 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 lease. LESSEE's failure to maintain equal benefits shall be a material breach of this Lease.

7.6 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. 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 Lease 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 Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids

and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

7.7 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

7.8 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

7.9 Captions.

The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is unintentional and shall have no effect on the enforceability of this Lease.

7.10 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

7.11 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an

individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The LESSEE'S policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling rehabilitation and employees assistance programs.
  - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessee shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance.

LESSEE agrees to comply, as applicable, with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to 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 comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessee shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease .

7.14 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

7.15 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payments, "government project"-related benefits, inverse condemnation damages, or any other compensation or award of damages whatsoever from CITY available in law or equity upon termination of this Lease or upon CITY's exercise of any right(s) stated in this Lease, unless expressly stated otherwise herein.

7.16 Supersedure.

It is mutually agreed that this lease, upon execution, supersedes that certain lease executed on the 15th day of December 1986 filed with the office of the City Clerk as Document No. 267334, which is hereafter terminated and of no effect except as to any rentals and fees which may have accrued or any rights, indemnities, and remedies accrued or granted to CITY under said lease.

7.17 California Public Records Act.

CITY shall determine, in its sole discretion, whether information provided by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY and 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.

**SECTION 8: AGRICULTURAL PROVISIONS**

8.1 Water Quality – Resource Management Plan, Best Management Practices, and Storm Water Pollution Prevention Plan.

CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's valuable water resources. LESSEE shall comply with the Resource Management Plan ("RMP"), Best Management Practices ("BMP") including the Storm Water Pollution Prevention Plan ("SWPPP") approved by CITY'S Storm Water Management Program. LESSEE shall submit for review and approval by the CITY'S Water Department, prior to the execution of this Lease, RMP, BMP, and SWPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The RMP, BMP, and SWPPP will be periodically reviewed by CITY's Water Department, and are subject to approval by the Water Department in each instance. Upon written notice from CITY requesting an update, LESSEE shall submit updated plans for the Water Department review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the RMP, BMP, and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the RMP, BMP, and SWPPP have been developed and implemented, specific to the Premises and Allowed Uses, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents and vendors of the RMP, BMP, and SWPPP.

LESSEE shall, upon request from CITY, cooperate with implementation of CITY's Groundwater Management Plan.

8.2 Reporting Requirements.

LESSEE agrees to provide to CITY's Water Department reports about all activities conducted on the Premises. These reports will detail the usage of water, and all agricultural practices including but not limited to use of

pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the RMP, which may be amended from time to time. In addition, LESSEE shall provide to CITY, upon request by CITY, the following information: map showing location of well(s), well installation permit(s), well condition (operating, non-operating, abandon), annual pumping volumes, drilling/geologic or hydrologic data, well construction details, well modifications or rehabilitation, all pump test data and analysis, electrical efficiency tests of well pump, all groundwater-level analyses, annual pumping volumes (acre feet), and annual cropping patterns (acres).

8.3 Noxious Weeds, Pests, and Erosion.

LESSEE shall take commercially reasonable corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire Premises, in compliance with all applicable laws and with the RMP, BMPs, and SWPPP.

8.4 No Warranty.

CITY does not warrant that the Premises are suitable for the purposes for which they are leased as stated herein.

8.5 Hold Harmless, Flood Damage and Other Acts of God.

LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs, including from Lake Hodges, in such a way as to control, alleviate, or minimize potential damages to the Premises. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other similar causes. LESSEE is authorized to minimize potential flood damage through improved drainage and other flood control improvements as approved by CITY.

Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard to controlling or mitigating or reducing flood damages or potential flood damages, CITY represents and LESSEE acknowledges that CITY would not enter into this Lease.

8.6 Water Rights.

CITY reserves all right, title and interest in and to the water on the Premises. There is hereby reserved to CITY, and LESSEE herein expressly agrees CITY shall have, the right throughout the Term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the Premises, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the Premises. Nothing in this Lease shall result in the transfer of CITY'S rights, title or interest in the water on, in, or under the Premises to any other person or entity.

a. LESSEE has been expressly advised and acknowledges that:

- (1) The Premises are located within the San Pasqual groundwater basin.
- (2) The CITY is the lawful owner and has at all times asserted its pueblo, overlying and appropriative water rights in the San Pasqual groundwater basin;
- (3) The CITY intends to take any and all steps necessary to fully protect its water rights in the San Pasqual groundwater basin, including but not limited to, the Groundwater Management Plan, adopted November 2007, and possible adoption of a groundwater management ordinance;
- (4) Protection of the CITY'S water rights in the San Pasqual groundwater basin is an essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for city residents;
- (5) Another essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for city residents is the increased production and distribution of recycled water for non-potable uses such as those which are the subject of this Lease;
- (6) In order for the CITY to accomplish its long term objectives, it is planned that San Pasqual groundwater basin will be utilized, in part, for the storage of imported or non-potable water, and , that such storage will necessitate certain activities by CITY employees and consultants on the Premises; and
- (7) Any injury that results from the percolation, storage and recapture of water from the soil beneath the surface of the Premises shall not be considered unreasonable or substantial interference with the LESSEE'S use of the Premises, nor otherwise entitle LESSEE to

damages or other legal recourse against CITY, except as otherwise provided in Section 1.6, Easements and Reservations.

- b. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the Premises only the amount of water available and necessary to carry out the Allowed Uses, as follows:
  - (1) As to any existing well, LESSEE shall have the right to operate the well and use the water on the Premises, subject to the process, timeframes, and rates as otherwise provided in **Section 3: Rent** herein, including the right of ingress and egress to the well area. CITY shall install, at CITY'S sole cost, a metering device on all well(s) (including open wells) satisfactory to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering devices(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.
  - (2) In addition to the right to use water derived from wells on the Premises, LESSEE is hereby granted the right to access and use that certain existing well immediately adjacent to and off site from the Premises, and identified on Exhibit A. Use of water from said well shall be limited to the Allowed Uses on the Premises. LESSEE shall pay for all well maintenance, well utility costs, and actual water used from said well, subject to the process, timeframes, and rates as otherwise provided in **Section 3: Rent** herein.
  - (3) LESSEE may only make material modifications to existing wells or construct new wells with the express written approval of CITY and in conformity with all appropriate San Diego County Code(s). Said approval shall not be unreasonably withheld and CITY shall respond within 30 days of a written request for approval from LESSEE. Any abandoned well shall be closed per the standards of the County Sanitarian.
  - (4) CITY has made no representations or guarantees to LESSEE as to the quantity or quality of water which may be available to LESSEE.
- c. LESSEE agrees that upon termination of this Lease, it will leave any wells developed or used on the Premises in good order and condition and that the casing shall be left in place.
- d. CITY shall at all times have the right to reasonable access to the Premises to protect its water rights and water quality; for monitoring the level and quality of natural surface and groundwater over and under the Premises; and, for purposes necessary to the implementation of any groundwater management plan that may be adopted by CITY. Should

the monitoring indicate surface and/or groundwater quality degradation, the CITY shall in its sole discretion have the right to require reasonable alteration of any irrigation or other practices by LESSEE which may cause such water quality degradation as determined by CITY.

- e. CITY shall have the right in its sole discretion to construct over and under the Premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the Premises, consistent with Section 1.6.

## **SECTION 9: SPECIAL PROVISIONS**

### **9.1 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites.**

LESSEE understands and agrees that sensitive resource sites as well as environmental, historical, and cultural resources may be identified on the Premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible and, if required by CITY, would include boundary fencing. However, if additional measures for protecting a sensitive site or resource are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

### **9.2 Potential Construction of Public Hiking, Biking and Riding Trails, and Access to Sensitive Sites and Resources.**

LESSEE has been advised and acknowledges that the Premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE has further been advised and acknowledges that a system of public hiking, biking and riding trails has been proposed for inclusion through the San Dieguito River Valley Park. In addition, LESSEE understands and agrees that public access to sensitive environmental, historical, and cultural sites and resources is an absolute and that CITY may require LESSEE to accommodate such access over the Premises. LESSEE agrees that, in the event such trails or means of access are to be constructed through the Premises as determined by CITY in its sole discretion, then the property needed for such trails shall be deleted from the leasehold area, subject to ninety (90) days prior written notice from CITY. The notice of intent to delete the trail area shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the rent shall be reduced proportionally. In addition, should any trees, crops or leasehold improvements growing in the area taken for trails be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and CITY. CITY further agrees that, in the event a portion of the leasehold is taken for such trails as described above, the trails shall be fenced as necessary for the reasonable

security and/or protection of the remainder of the Premises. All costs related to the construction and maintenance of trails and security fencing relating to the public trails or access to sensitive sites and resources shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.3 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites.

LESSEE has been advised and acknowledges that public access may be required through the Premises to access hiking, biking, and riding trails constructed on the property. Also such public access may be necessary for viewing environmental, historical, and/or cultural resources sites located on the Premises. In this event the property needed for public access may be deleted from the leasehold area upon ninety (90) day prior written notice from the CITY. Said notice of intent to delete for the public access area shall include a plat clearly designating the property to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any trees, other plant material, or leasehold improvements in the area taken for public access be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees, other plant material, and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and CITY. CITY further agrees that, in the event a portion of the leasehold is taken for such public access as described above, said public access shall be fenced as necessary for the reasonable security and/or protection of the remainder of the Premises. All costs related to the construction and maintenance of the security fencing shall be the responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.4 Boundary Adjustments.

LESSEE has been advised and acknowledges that the boundaries of the Premises are subject to adjustment related to the Multiple Species Conservation Program. LESSEE agrees that, in the event such boundary adjustments are made, the property needed for Multiple Species Conservation Program may be deleted from the leasehold area, subject to Section 1.6 and with 180 days prior written notice from CITY. The notice of intent to delete said property shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the rent shall be reduced accordingly and LESSEE shall be compensated for the loss of improvements.

9.5 Leasehold Boundaries.

The CITY shall, 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.

9.6 Housing of Permanent Employees.

On condition of compliance with all zoning laws and applicable building, health, and safety regulations, LESSEE may provide housing for permanent employees, i.e., those who work on the Premises on a daily basis for a minimum of eleven (11) months during the calendar year.

9.7 Annual Report on Farmworker Housing.

By March 1 of each Lease Year, if applicable, LESSEE shall submit an annual report to CITY with the following information for each farm worker residence located on the Premises:

- a. Street address or leasehold area location;
- b. Tenant of record and total number of occupants;
- c. Itemized list of improvements performed by LESSEE over the previous one-year period and the cost.

9.8 City's Right to Buy Back Leasehold Interest.

LESSEE agrees that CITY may, at its option, purchase LESSEE'S entire remaining leasehold interest at any time following the first five (5) years of the Term. CITY's option shall be exercised by giving LESSEE at least six (6) months prior written notice of intent to purchase the leasehold.

Upon LESSEE'S receipt of such notice, LESSEE agrees to cooperate with CITY in designating an appraiser satisfactory to both CITY and LESSEE to conduct an appraisal of LESSEE'S remaining leasehold interest. The appraiser's determination of the leasehold value shall be binding on the CITY and LESSEE. If no concurrence upon an individual appraiser is reached within 15 days following LESSEE'S receipt of notice of CITY'S intent to repurchase, CITY and LESSEE agree that each shall immediately appoint and pay for the services of an individual appraiser both of whom shall be charged with determining the fair market value of the LESSEE'S remaining leasehold interest. If the appraisals are within twenty percent (20%) of one another (the larger appraiser being not more than twenty percent (20%) higher than the lower appraisal), the fair market value shall be the average of the two appraisal amounts.

If the two appraisals differ by more than twenty percent (20%) and CITY and LESSEE cannot agree to a fair market value and an impasse is thus reached, then the two appraisers shall be asked to mutually agree upon a third independent appraiser. If the two appraisers do not mutually agree upon a third appraiser within a reasonable time after such request, the CITY and LESSEE agree that the Presiding Judge of the Superior Court in San Diego shall be requested to appoint the third appraiser. If the Presiding Judge for any reason declines to make such appointment, the parties agree that such appointment shall be made expeditiously and in accordance with the standard rules of the American Arbitration Association.

The third appraiser shall review the results of the two appraisals and render an opinion as to the fair market value. The third appraiser's determination shall be binding on the CITY and LESSEE. The CITY and LESSEE shall equally bear the cost of the third appraiser.

Upon a determination of the leasehold value, CITY shall have ninety (90) days in which to determine whether or not to allocate funds and authorize the expenditure of such funds for the acquisition of the leasehold. In the event CITY determines not to acquire the leasehold, CITY agrees to reimburse LESSEE for its actual costs for the appraisal and shall have no further obligations to LESSEE for any costs, damages, or burdens incurred by LESSEE as a result of such determination not to proceed with acquisition.

In determining the fair market value of LESSEE'S leasehold interest, CITY and LESSEE agree that the appraiser or appraisers will be directed to establish the leasehold value based upon all the terms and conditions of the Lease. LESSEE specifically agrees, however, that no "bonus" value (representing the difference between rent due under this Lease and the fair market rent value) shall be paid for LESSEE'S leasehold interest. The appraiser or appraisers shall be directed to assume that the Lease requires the payment of full fair market rent on the leasehold property at all times during the remaining lease term. LESSEE further specifically agrees that any permanent capital improvements constructed by LESSEE on the Premises shall be appraised by taking the initial construction cost of such improvements and depreciating such improvements on a straight-line basis over a twenty-five year (25) year period from the date of installation of such improvements, or over the remaining lease term, whichever time period is the lesser.

In the event there are City-approved loans or encumbrances against LESSEE'S leasehold interest, CITY agrees that the buy-out price shall in no event be less than the then remaining balance of any such loans or encumbrances.

Should the CITY determine to repurchase, LESSEE shall have up to one year in which to vacate the Premises. During any such continued use by LESSEE, LESSEE shall continue to pay to CITY the rents provided for in the Lease.

The buy-out price shall be paid within ten (10) days after LESSEE vacates the Premises.

9.9 Hazardous Substances.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances 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, prior to initiating any operations, obtain all required 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. For purposes of this Lease, 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. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations") 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.
- c. 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 to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other 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.
- d. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's Operations, 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.

- e. 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.
- f. Environmental Assessment. Upon reasonable cause to believe that 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, then 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 laws and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the Premises prior to the effective date of this Lease.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the date of execution by the parties and when approved by the San Diego City Attorney.

Date: 6/18/14

THE CITY OF SAN DIEGO, a California municipal Corporation

BY: K. Geitz

Name: Kristin Geitz

Title: Interim Director, Real Estate Assets Dept.

Date: 3/24/2014

BIG TREES NURSERY, INC., a California Corporation

BY: Charles T. Jancie

Name: Charles T. Jancie

Title: Pres. Big Trees Nursery, Inc.

**ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:**

*This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301. San Diego City Council Resolution No. R-308889.*

Date: June 19, 2014

BY: Nicole A. McGinnis

Name: NICOLE A. MCGINNIS

Title: SENIOR PLANNER

**APPROVED AS TO FORM AND LEGALITY:**

Date: 6/24/14

JAN I. GOLDSMITH, City Attorney

BY: Jeremy Fonseca

Name: Jeremy Fonseca

Title: Deputy City Attorney

308889

## **EXHIBITS**

Exhibit A - Premises



RESOLUTION NUMBER R- 308889

DATE OF FINAL PASSAGE APR 30 2014

ITEM #102  
SWB-A  
4/22/14

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING AND DIRECTING THE  
EXECUTION OF A NEW 20-YEAR LEASE WITH BIG TREES  
NURSERY, INC., FOR THE LEASE OF PROPERTY LOCATED  
IN SAN PASQUAL VALLEY FOR THE PURPOSE OF  
OPERATING A TREE AND NATIVE PLANT NURSERY.

WHEREAS, the City of San Diego (City) owns approximately 43.5 acres of real property located in San Pasqual Valley, near the intersection of Highland Valley Road and Pomerado Road in San Diego, California (Property); and

WHEREAS, the Property was originally leased in 1986 to Big Trees Nursery, Inc., a California corporation (Big Trees), for a tree, shrub, and native plant nursery and sales center. The original lease expired in December 2006 and Big Trees has remained in operation at the Property in a holdover status since then; and

WHEREAS, Big Trees now requests a new long-term lease of the Property to continue operation of the nursery and sales center, to reduce the size of the leasehold, and to be able to obtain financing for contemplated improvements to the leasehold; and

WHEREAS, City staff has negotiated a proposed twenty (20) year flat rate lease (New Lease) with Big Trees for the operation of a tree, shrub, and native plant nursery and sales center at the Property. Among other things, the New Lease requires Big Trees to reduce the size of the existing active nursery area on the Property and to establish certain improvements and practices to reduce water runoff into the adjacent Lake Hodges reservoir. The New Lease requires Big Trees to pay the City \$16,320 annually, adjusted periodically for Consumer Price Index increases, along with all costs for ground water used at the Property. The amount of \$16,320

reflects the price of \$1,020 per acre for the sixteen (16) acres that will be actively used for the commercial nursery at the Property; and

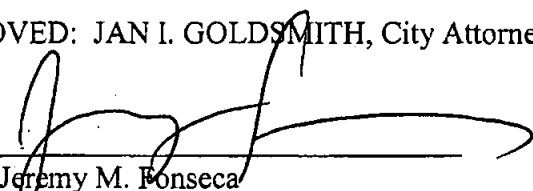
WHEREAS, the market value of the subject real estate is \$1,020 per acre; NOW,  
THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain "Flat Rate Lease," which is on file with the City Clerk as Document No. ~~RR-308889~~, with Big Trees, Inc., a California corporation, for the continued operation of a tree, shrub, and native plant nursery and sales center in San Pasqual Valley at the location described in the "Flat Rate Lease."

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to accept and deposit the lease revenues and all payments for water pursuant to the same "Flat Rate Lease" into Water Operating Fund 700011.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
Jeremy M. Fonseca  
Deputy City Attorney

JMF:als  
04/02/14  
Or.Dept: READ  
Doc. No. 758254

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 22 2014.

ELIZABETH S. MALAND  
City Clerk

By Karen Orwick  
Deputy City Clerk

Approved: 4/29/14  
(date)

Kevin L. Faulconer  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 22 2014, by the following vote:

| Councilmembers  | Yeas                                | Nays                     | Not Present                         | Recused                  |
|-----------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Sherri Lightner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Ed Harris       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Todd Gloria     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Myrtle Cole     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Mark Kersey     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Lorie Zapf      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Scott Sherman   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| David Alvarez   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Marti Emerald   | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Date of final passage APR 30 2014

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Karen Crenshaw, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308889

Passed by the Council of The City of San Diego on April 22, 2014 by the following vote:

**YEAS:**                **LIGHTNER, HARRIS, GLORIA, COLE, KERSEY, ZAPF, SHERMAN, ALVAREZ.**

**NAYS:**                **NONE.**

**NOT PRESENT:**    **EMERALD.**

**RECUSED:**           **NONE.**

**VACANT:**            **NONE.**

**AUTHENTICATED BY:**  
**KEVIN FAULCONER**  
Mayor of The City of San Diego, California  
**ELIZABETH S. MALAND**  
City Clerk of The City of San Diego, California

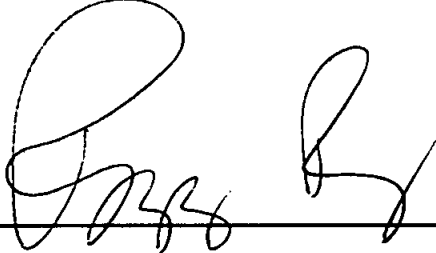
(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R-308889 approved by the Council of the City of San Diego, California on ,  
April 22, 2014 and approved by the Mayor of the City of San Diego on April 30, 2014.

**ELIZABETH S. MALAND**  
City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy