



Real Estate Assets Department

SDC003

Environmental Design California Inc
C701WW-090-B01

Document Type

LEGAL DOCUMENTS

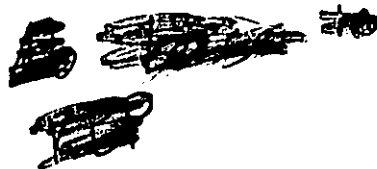


Sub - Category

AGREEMENTS



(50)



8/3/2023

VIA EMAIL

David Cox
 Environmental Design California, Inc.
 12450 Highland Valley Rd
 Escondido, CA 92025

Reference: Consumer Price Index Rate Adjustment – Environmental Design California, Inc.
 (City Clerk Document RR-267334, Assigned May 1, 2014)
 Lease ID: C701WW-090-B01

Dear Ms. Harlan:

Pursuant to Section 3.2a, CPI Adjustments of the above referenced lease, the rent is subject to adjustment every two (2) years on the anniversary date of this lease beginning on the fifth (5th) anniversary of this lease., based on the Consumer Price Index (CPI) for all Urban Consumers Area of Los Angeles, Long Beach, and Anaheim, California. The effective date of your lease is May 1, 2014, and the last rent adjustment was June 1, 2020. A rent adjustment was due for May 1, 2023. Your new quarterly rate effective May 1, 2022 is \$6,750.

The computations will adjust your rent accordingly.

Base Figure (Average of Sept. 2014, Oct. 2014, & Nov. 2014)	242.906
Current Index (Average of Nov. 2022, Dec. 2022, & Jan. 2023)	315.275
Adjustment Figure (315.275 Current Index / 242.906 Base Figure)	<u>1.298</u>
Percentage Increase Calculated	29.8%

Effective Quarterly Rate Beginning June 1, 2022 (\$5,200.59 Present Annual Rent x 1.298 Adjustment Figure)	<u>\$6,750</u>
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Thank you for your cooperation in this matter. If you have any questions, please contact me at nbaldwin@sandiego.gov or (619) 977-6234.

Sincerely,

Nick Baldwin
 Program Coordinator

cc: Shelly Redman, Lease Billing Supervisor

Department of Real Estate and Airport Management

CPI for All Urban Consumers (CPI-U)
Original Data Value

Series Title: All items in Los Angeles-Long Beach-Anaheim, CA, all
Area: Los Angeles-Long Beach-Anaheim, CA
Item: All items
Base Period: 1982-84=100
Years: 2013 to 2023

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2013	238.015	239.753	239.995	239.043	239.346	239.223	238.920	239.219	239.611	239.940	238.677	238.742	239.207	239.229	239.185
2014	239.857	241.059	242.491	242.437	243.362	243.528	243.727	243.556	243.623	243.341	241.753	240.475	242.434	242.122	242.746
2015	239.724	241.297	243.738	243.569	246.093	245.459	247.066	246.328	245.431	245.812	245.711	245.357	244.632	243.313	245.951
2016	247.155	247.113	247.873	248.368	249.554	249.789	249.784	249.700	250.145	251.098	250.185	250.189	249.246	248.309	250.184
2017	252.373	253.815	254.625	254.971	255.674	255.275	256.023	256.739	257.890	258.883	259.135	259.220	256.210	254.439	257.982
2018	261.235	263.012	264.158	265.095	266.148	265.522	266.007	266.665	268.032	269.482	268.560	267.631	265.962	264.195	267.730
2019	269.468	269.608	271.311	273.945	274.479	274.380	274.682	274.579	276.054	278.075	277.239	275.553	274.114	272.199	276.030
2020	277.755	278.657	276.589	275.853	276.842	278.121	279.899	280.116	279.366	279.947	280.102	279.560	278.567	277.303	279.832
2021	280.178	281.347	282.648	285.808	287.620	289.218	290.890	291.333	292.209	294.961	296.790	297.925	289.244	284.470	294.018
2022	301.209	302.164	306.679	308.302	310.649	314.072	313.415	313.608	315.033	317.014	314.633	312.601	310.782	307.179	314.384
2023	318.591	317.571	317.873	320.089	320.514	322.055								319.449	

Environmental Designs Calculations	
Base Index (Average)	242.906
Current Index (Average)	315.275
Adjustment Figure (Current/Base)	1.298
Base Figure	\$5,201
Adjustment Figure	1.298
New Quarterly Rate (Adjustment x Present)	\$6,750

Current Quarterly Rent	\$5,200.59
% Increase Calculated	29.80%

Real Estate Assets Department

LEASE COMPLETION FORM

BILLING (\$\$\$) / KEY DATES

CHECK APPROPRIATE BOXES BELOW:

SUPERVISOR'S SIGNATURE		ADM SERVICES USE ONLY
REQUIRED	NOT REQUIRED	
☐ NEW AGREEMENT	☐ EXTENSION	LEASE BILLING SUPV. _____
☐ RENEWAL	☐ CORRECTION	DATE ENTERED _____
☒ RENT CHANGE		CONTRACT ACCOUNT _____
☐ HOLDOVER		BUSINESS PARTNER # _____
☐ ASSIGNMENT (EFF. DATE: _____)		
☐ AMENDMENT (AMEND. #: _____ EFF. DATE: _____) DOC. #: _____)		

BILLING \$\$\$ ☐ ADD ☒ CHANGE

RENT CHANGE EFFECTIVE DATE May 1, 2022 RENT AMOUNT \$ 6,750

RENT START DATE _____ (NEW LEASE ONLY)

BILLING TYPE: FIXED ☒ PERCENT ☐

BILLING PERIOD: MONTH ☐ QUARTER ☒ 6 MOS ☐ YEAR ☐ ONE-TIME BILLING ONLY ☐

BILLING IN: ADVANCE ☒ ARREARS ☐

RENT DUE: _____

PENALTY: _____ TO _____ DAYS _____ %, MORE THAN _____ DAYS, % _____

OTHER:

MINIMUM PENALTY AMOUNT: \$ _____ NO PENALTY: ()

FUND	GL ACCOUNT	COST CENTER	AMOUNT	COMMENTS
700011	418031	2000000001	\$6,750	
		TOTAL:	\$ 6,750	

PERCENTAGE RENTS ONLY

ANNUAL MINIMUM? (%RENT) ☐ YES ☒ NO (IF YES, FILL IN ONE OF THE AMOUNT LINES BELOW)

YEARLY AMOUNT _____ (IF PAYABLE ANNUALLY)

MONTHLY AMOUNT _____ (IF PAYABLE ANNUALLY) _____

(\$\$\$) COMMENTS

PERCENTAGE REVENUE CATEGORY DESCRIPTION

%

FIXED RENT INCREASES:

EFFECTIVE DATE: Increased rent based on required CPI instructions in	AMOUNT:
EFFECTIVE DATE: section 3.2 of the lease agreement.	AMOUNT:
EFFECTIVE DATE:	AMOUNT:
EFFECTIVE DATE:	AMOUNT:
EFFECTIVE DATE:	AMOUNT:

AGENT N Baldwin DATE 7/28/2023 VERIFIED BY SUPERVISOR

SITE CODE: C701WW LEASE # 090 AGMT # B01

LESSEE Environmental Design California, Inc.



Real Estate Assets Department

August 26, 2020

**David Cox
Environmental Design California, Inc.
12450 Highland Valley Road
Escondido, CA 92025**

**Reference: Consumer Price Index Rate Adjustment – Environmental Design California, Inc. (City Clerk Document RR-267334, Assigned May 1, 2014)
Lease ID: C701WW-090-B01**

Dear Mr. Cox:

Pursuant to the Agreement, Section 3.2a. CPI Index Adjustments, 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 annual rent shall be adjusted to reflect increases in the Consumer Price Index (CPI) for the Los Angeles/Riverside/Orange County. The effective date of your lease is May 1, 2014, therefore the CPI Rate Adjustment will be effective May 1, 2019. Your new annual rate is \$18,049.92 or \$4,512.48 per quarter.

The computations will adjust your rent accordingly.

Base Figure (Average of September, October, November 2014)	242.906
Current Index (Average of November 2018, December 2018, and January 2019)	268.553
Adjustment Figure (268.553 Current Index / 242.906 Base Figure)	1.106
Effective Quarterly Rate Beginning May 1, 2019	
(\$16,320 Present Annual Rent x 1.106 Adjustment Figure)	\$18,049.92

Page 2
Mr. David Cox
August 26, 2020

Since a CPI adjustment was not applied in May 1, 2019, you will receive a supplemental invoice for the unpaid additional rent, which is detailed below.

An invoice in the amount of \$2,594.88 will be sent to you covering May 2019 (Q1), August 2019 (Q2), November 2019 (Q3), February 2020 (Q4), May 2020 (Q1), and August 2020 (Q2). For the period of May 1, 2019 to October 31, 2020 the quarterly rent should have increased to \$4,512.48 from \$4,080.00, an additional \$432.48 per quarter. The next CPI Adjustment is scheduled for May 1, 2021.

Thank you for your cooperation in this matter. If you have any questions, please contact me at lbernhard@sandiego.gov or (619) 236-6081.

Sincerely,



Lourdes Bernhardt
Property Agent

/lab

cc: CaSundra Perry, Asset Manager
Jayne Vanderhagen, Supervising Property Agent
Shelley Redman, Leasing Billing Supervisor



THE CITY OF SAN DIEGO

AND

BIG TREES NURSERY, INC.

Flat Rate Lease

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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 ($\$1,000 \times 1.10$). In the second adjustment it will be \$1,254 per month ($\$1,100 \times 1.14$).

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: _____

THE CITY OF SAN DIEGO, a California municipal Corporation

BY: _____

Name: _____

Title: _____

Date: 3/24/2014

BIG TREES NURSERY, INC., a California Corporation

BY: Charles T. Jancic

Name: Charles T. Jancic

Title: Pres. Big Trees Nursery, Inc.

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

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

Date: _____

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

JAN I. GOLDSMITH, City Attorney

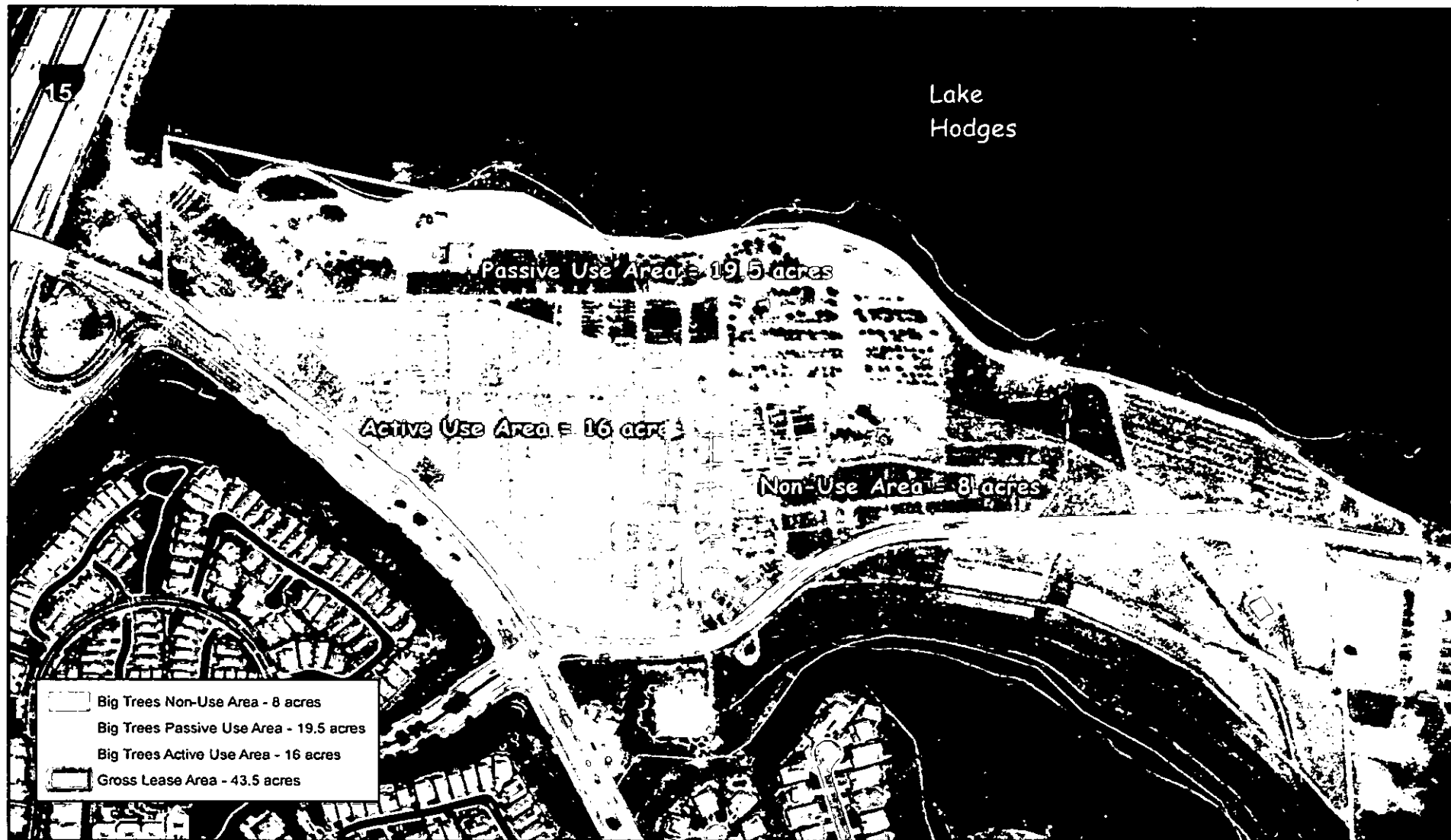
BY: _____

Name: _____

Title: _____

DCM/cb

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GIS Source: SanGIS, ESRI
Date: 09/01/13

Prepared by
City of San Diego Public Utilities Department
Wilderness and Resource Protection Team

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Jancic Lease Area

NATURAL RESOURCES & PLANNING DEPARTMENT | SAN PASQUAL VALLEY | JANCIC

City of San Diego
Public Utilities Department

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT

[Big Trees Nursery, 12450 Highland Valley Road, Escondido, CA 92025]

THIS CONSENT TO ASSIGNMENT ("Consent") is provided by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective upon execution by CITY and approval by the San Diego City Attorney ("Effective Date"), as follows:

RECITALS

- A. WHEREAS, CITY, as the lessor, and BIG TREES NURSERY, INC., a California corporation ("ASSIGNOR"), as the lessee, are parties to that certain FLAT RATE LEASE ("Lease") having an effective date of May 1, 2014, and filed in the Office of the San Diego City Clerk as Document No. RR-308889 on April 22, 2014, and relating to that certain CITY-owned real property located at 12450 Highland Valley Road, Escondido, CA 92025 ("Subject Property"), as more particularly described in the Lease; and
- B. WHEREAS, ASSIGNOR now desires to assign all of its rights, title and interest in and to the Lease to ENVIRONMENTAL DESIGN CALIFORNIA, INC., a California corporation ("ASSIGNEE").
- C. WHEREAS, Section 4.2 of the Lease, titled Assignment and Subletting, requires the CITY to consent to the assignment of any of ASSIGNOR's right, title and/or interest in the Lease.

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated into this Consent by this reference, and for valuable consideration, the receipt and sufficiency of which is acknowledged, City agrees as follows:

1. Consent and Lease Controls. Subject to ASSIGNOR's compliance with the terms and conditions of this Consent, particularly ASSIGNOR's compliance with those requirements set forth in Section 2 of this Consent, CITY hereby consents to ASSIGNOR's request to assign all of its right, title and interest in and to the Lease to ASSIGNEE. This Consent is merely the CITY's consent to ASSIGNOR's assignment of the Lease, in accordance with Section 4.2 Assignment and Subletting of the Lease. CITY is not bound by any term or condition in any purchase agreement, or other assignment agreement, between ASSIGNOR and ASSIGNEE. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any purchase agreement, or other assignment agreement, executed between ASSIGNOR and ASSIGNEE.

2. Assumption of Rights. CITY's Consent is conditioned upon ASSIGNOR delivering to CITY, prior to the Effective Date of this Consent: (1) ASSIGNEE's written agreement that it will assume all rights and obligations as "Lessee" under the Lease, which obligations shall include but not be limited to all indemnification and insurance obligations; and (2) all required ASSIGNEE certificates of insurance and endorsement thereto, or if preapproved, a letter of self-insurance, covering all the required insurances, signed by the appropriate person authorized to issue such a letter.
3. Assignor's Obligations. CITY does not release, discharge or modify ASSIGNOR's obligations to City under the Lease. As set forth in applicable law, ASSIGNOR's obligations under the Lease shall survive said assignment and shall continue through the termination dates of the Lease, as set forth therein.
4. Subsequent Assignment. This Consent does not constitute consent to any subsequent assignment of any right, title and/or interest in and to the Lease.
5. Notices.
 - a) ASSIGNORS's address for notices after the Effective Date will be:

Big Tree Nursery, Inc.
Attn: Charles Jancic
12450 Highland Valley Road
Escondido, CA 92025
 - b) ASSIGNEE'S address for notices after the Effective Date will be:

Environmental Design California, Inc.
Attn: Mark Merit
23544 Coons Road
Tomball, Texas 77375
Email: markmerit@treemover.com
6. Additional Consideration to CITY. Pursuant to Section 4.3 Equity Sharing of the Lease, ASSIGNOR agrees that as additional consideration for the Lease and in addition to all rent otherwise payable to CITY, CITY shall be entitled to participate in any "equity" taken out by the ASSIGNOR during the term of the Lease.
7. Fees. Prior to the Effective Date of this Consent, ASSIGNOR shall pay CITY any applicable processing and/or administrative fee(s) for processing this Consent. The fee owed CITY is the sum of: \$2,000.00 (Two Thousand Dollars).
8. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the assignment, which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense,

including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

IN WITNESS WHEREOF, this Consent to Assignment is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: 1/13/17

BY: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: 1/13/17

BY: [Signature]
Name: NICOLE A. MCGINNIS
Title: SENIOR PLANNER

Approved as to form this
13th Day of January, 2017

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: David Powell
Title: Deputy City Attorney

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is executed this ____ day of January, 2017 (the "Closing Date") to be effective as of 12:01 a.m. the 1st day of January, 2017 (the "Effective Date"), by and between Big Trees Nursery, Inc., a California corporation (hereinafter referred to as "Assignor") and Environmental Design California Inc., a California corporation (hereinafter referred to as "Assignee").

RECITALS

Assignor and Assignee have entered into that certain Asset Purchase Agreement dated as of even date herewith (the "Purchase Agreement"), pursuant to which Assignor will convey its entire right, title and interest in and to the Assets owned by Assignor in connection with the Business (other than the Excluded Assets). All capitalized terms contained herein and not otherwise defined shall have the same meanings as contained in the Purchase Agreement. In connection with the Purchase Agreement, Assignor desires to assign, transfer, convey and set over unto Assignee the entire interest in and to those certain Business Contracts subject to the consent of the City of San Diego, California (the "San Diego Consent").

COVENANTS

NOW, THEREFORE, as additional consideration to Assignee for the payment of the Purchase Price for the Business, Assignor and Assignee covenant and agree as follows:

1. Assignor hereby grants, sells, conveys, transfers and assigns to Assignee, free and clear of any and all Liens, as of the Effective Date, its entire right, title and interest as owner of the Business in and to the Assets, including but not limited to the Business Contracts.
2. Assignor warrants and represents that Assignor has not assigned or agreed to assign the Assets, including but not limited to the Business Contracts, to any other party.
3. Assignor warrants and represents that to Assignor's current actual knowledge, the Business Contracts are in full force and effect, and there exists no defaults thereunder (except as disclosed in certain estoppel certificates and previous disclosures regarding the Business Contracts); and, to the best of Assignor's current actual knowledge, no event has occurred which with notice or the passage of time, or both, would constitute a default by Assignor under the Business Contracts.
4. Assignor represents to Assignee and its successors and assigns that Exhibit A and Exhibit B attached to this Agreement contain a true, accurate and complete description of all existing Business Contracts.
5. Assignee, for itself, its successors and assigns, does hereby assume the rights, obligations and responsibilities from and after the Closing Date for the performance of all covenants required to be performed by Assignor as the owner of the Business under the Business

Contracts and that it will keep and perform all covenants, conditions and provision of the agreements which are applicable to the rights acquired.

6. This Agreement shall be binding upon and inure to the benefit of the personal representatives, heirs, successors and assigns. This Agreement may be amended or modified only by written instrument signed by each of the parties.

7. A facsimile or electronic transmission of this Agreement or any portion hereof, including the signature page of any party, shall be deemed and original for all purposes.

8. This Agreement shall become effective as of January 1, 2017 upon the receipt by the parties of the San Diego Consent and the occurrence of the Closing; provided that both occur on or before January 13, 2017.

Signature Page Follows:

BOS

IN WITNESS WHEREOF, this Agreement has been executed by the Assignor and Assignee as of the day and year first above written.

ASSIGNOR:

Big Trees Nursery, Inc.,
a California corporation

By:


Charles T. Jancic, President

ASSIGNEE:

Environmental Design California Inc.
a California corporation

By:

Mark Merit, Chief Operating Officer

IN WITNESS WHEREOF, this Agreement has been executed by the Assignor and Assignee as of the day and year first above written.

ASSIGNOR:

Big Trees Nursery, Inc.,
a California corporation

By: _____
Charles T. Jancic, President

ASSIGNEE:

Environmental Design California Inc.
a California corporation

By:  _____
Mark Merit, Chief Operating Officer

EXHIBIT A

Real Property Leases and San Diego Lease-Amended

	<u>NAME</u>	<u>ADDRESS</u>	<u>LANDLORD</u>
1	Borrego	1284 Henderson Canyon Borrego Springs	Ashly Bilyk
2	Cowan	1753 Potrero Rd Camarillo, Ca	James Cowan & Assoc
3	Deluz M	Deluz Rd	Pedro Martinez
4	Deluz- Warren	40724 Deluz rd	Warren Bryant
5	Deluz-Law	40139 Roxanne, Fallbrook	Robert Law
6	Dorothy	1652 Tierra Liberteria, Escondido 92026	Dorothy Elkins
7	Flat Rate Lease, filed in the Office of the San Diego City Clerk as Document No. RR-308889 on April 22, 2014	12450 Highland Valley Road, Escondido, CA 92025	City of San Diego
8	Horseshoe	22396 Horseshoe tr. Homeland	Mike Heikkila
9	Julian	2431 Farley	David Lewis
10	Laurel Ridge	31533 Laurel Ridge VC 92082	Brigido Gama
11	Lavine	30745 Mesa Crest VC	Tom Lavine
12	Mesa Verde	30740 Mesa Crest rd Valley Center	Mike Sanders
13	Mesita	123 Vista Merriam San Marcos	Bob Merriam
14	Rainbow	10201-10389 Rainbrook Dr Fallbrook	Peter Glusac
15	Rancho Trails	722 Rancho Trails Ramona	Larry Toler
16	Steves	31070 Mesa Crest Valley Center	Steve Turley
17	Yermo	37234 Yermo RD Yermo	Don Hanify
18	Anza	49100 Old Sage Rd Aguanaga 92536	Al Kranz

EXHIBIT B

Assumed Contracts

That certain Service Agreement #CP20130429 dated January 14, 2014 by and among Apple Inc. and Big Trees Nursery, Inc.

Name	Date	Order #
A.J.J. Associates		
	12/30/2015	AJJA1109151
	10/10/2016	AJJA1230151
	12/28/2016	AJJA1228161
Apple		
	09/01/2016	APPL071415E
	10/27/2016	APPL050614E
Baldwin & Sons		
	11/17/2015	BALD1117151
	03/08/2016	BALD0307161
BrightView		
	11/04/2016	BRIG1104161
Calligari		
	08/09/2016	CALL0808161
	11/04/2016	CALL1109161
	11/08/2016	CALL1019161
	11/18/2016	CALL1115161
	12/14/2016	CALL0524161
	12/16/2016	CALL1005164
	12/16/2016	CALL1216161
	12/19/2016	CALL1216162
DL Cunningham		
	07/29/2016	DLC0622151
	10/12/2016	DLCU1012162
	10/12/2016	DLCU1012163
	11/08/2016	DLCU1017161
Kevin Johnson		
	12/20/2016	KJOH1220161
Marmol Radziner		
	11/22/2016	MARM1122162
Palm Valley Ranch		
	04/14/2016	PALM0414161
Park West Landscape Construction		
	11/09/2016	PARK1108161
	01/06/2017	PARK0325161
Richard Veyna/ Toscana Development Corp		
	04/21/2016	VEYN0413161
Valley Crest		
	03/17/2016	VALL0314161
	12/07/2016	VALL0111161

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is executed this ___ day of January, 2017, (the "Closing Date") to be effective as of 12:01 AM, the 1st day of January, 2017 (the "Effective Date"), by and between ENVIRONMENTAL DESIGN CALIFORNIA INC., a California corporation (the "Buyer"), BIG TREES NURSERY, INC., a California corporation (the "Seller"). Buyer and Seller may hereinafter sometimes be referred to together as the "Parties" or singularly as a "Party".

WITNESSETH:

WHEREAS, Seller owns certain assets in connection with its tree transplanting, preservation and tree nursery services and all ancillary services reasonably related thereto (the "Business");

WHEREAS, the Seller desires to sell and the Buyer desires to purchase all of the assets owned by Seller in connection with the Business, including but not limited to those set forth on Schedule 2.1, with the exception of Excluded Assets listed on Schedule 1.22 attached hereto ("Assets"); and

WHEREAS, in connection with the purchase and sale of such Assets, the Parties desire to provide for certain terms and conditions with respect to the transfer of such Assets.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, representations and warranties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 Accounts Receivable. The term "Accounts Receivable" means any accounts receivable generated by sales by the Seller prior to the Effective Date.

1.2 Accounts Payable. The term "Accounts Payable" means any accounts payable generated by the Seller's operation of the Business prior to the Effective Date.

1.3 Affiliate(s). The term "Affiliate" of a person shall mean, with respect to that person, a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is acting as agent on behalf of, or as an officer or director of that person. As used in the definition of Affiliate, the term "control" (including the terms "controlling," "controlled by," or "under common control with") means the possession, direct or indirect, of management and policies of a person whether through the ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or

otherwise. As used in this Agreement, the term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an incorporated organization, or a government or political subdivision thereof.

1.4 Ancillary Agreements. The term "Ancillary Agreements" shall mean the Bill of Sale, Noncompetition Agreement and the Standby Letter of Credit.

1.5 Asset Allocation Statement. The term "Asset Allocation Statement" shall have the meaning set forth in Section 6.6.

1.6 Assets. The term "Assets" shall have the meaning set forth in Section 2.1.

1.7 Assumed Contracts. The term "Assumed Contracts" shall include those contracts more specifically described on Schedule 1.7.

1.8 Bill of Sale. The term "Bill of Sale" shall mean that certain mutually agreed upon Bill of Sale, Assignment and Assumption Agreement to be executed at Closing.

1.9 Business. The term "Business" shall mean have the meaning set forth in the recitals.

1.10 Business Contracts. The term "Business Contracts" shall mean the Assumed Contracts, the Real Property Leases and the San Diego Lease – Amended.

1.11 Buyer. The term "Buyer" shall have the meaning as contained in the opening paragraph.

1.12 Buyer's Accounts Receivable. The term "Buyer's Accounts Receivable" means any accounts receivable generated by sales by the Seller or Buyer on or after the Effective Date.

1.13 Buyer Indemnified Parties. The term "Buyer Indemnified Parties" shall have the meaning set forth in Section 7.1(a).

1.14 Cash Purchase Price. The term "Cash Purchase Price" shall mean One Hundred Thousand Dollars (\$100,000).

1.15 Closing. The term "Closing" shall mean the consummation of the events and transactions for the sale and purchase of the Assets to take place on the Closing Date.

1.16 Closing Date. The term "Closing Date" shall have the meaning set forth in the opening paragraph.

1.17 Code. The term the "Code" means the Internal Revenue Code of 1986, as amended.

1.18 Customers. The term "Customers" means any customer that currently or has in the past purchased or rented products or services from Seller related to the Business.

1.19 Damages. The term "Damages" shall have the meaning set forth in Section 7.1(a).

- 1.20 Deposit.** The term "Deposit" shall have the meaning set forth in Section 2.3.
- 1.21 Effective Date.** The term "Effective Date" shall mean the date set forth in the opening paragraph.
- 1.22 Excluded Assets.** The term "Excluded Assets" shall include all of Seller's Accounts Payable, Accounts Receivable and cash, as well as those assets more specifically described on Schedule 1.22.
- 1.23 Financial Statements.** The term "Financial Statements" shall have the meaning set forth in Section 3.13.
- 1.24 Fundamental Representations.** The term "Fundamental Representations" shall have the meaning set forth in Section 7.2(a).
- 1.25 GAAP.** The term "GAAP" shall mean United States generally accepted accounting principles, consistently applied.
- 1.26 Liabilities.** The term "Liabilities" shall have the meaning set forth in Section 2.5.
- 1.27 Liens.** The term "Liens" shall mean any mortgages, pledges, security interests, encumbrances, claims, liens or charges of any kind (including, without limitation, any conditional sale or other title retention agreements or leases in the nature thereof) or any agreements to file any of the foregoing, any sales of receivables with recourse, and any filings or agreements to file a financing statement as debtor under the Uniform Commercial Code or any similar statute.
- 1.28 Lienholders.** The term "Lienholders" shall mean those Persons having Liens on any or all of the Assets as more specifically listed on Schedule 3.10.
- 1.29 Noncompetition Agreement.** The term "Noncompetition Agreement" shall mean that certain five (5) year mutually agreed upon Noncompetition Agreement to be entered into at Closing between Buyer, Buyer's Affiliates, and Seller.
- 1.30 Notice of Action.** The term "Notice of Action" shall have the meaning set forth in Section 7.1(c).
- 1.31 Notice of Election.** The term "Notice of Election" shall have the meaning set forth in Section 7.1(c).
- 1.32 Party or Parties.** The terms "Party" or "Parties" shall have the meaning as contained in the opening paragraph.
- 1.33 Person.** The term "Person" shall mean any natural person or any corporation, partnership, joint venture, association or other entity.
- 1.34 Post-Closing Payments.** The term "Post-Closing Payments" shall have the meaning set forth in Section 2.4.

1.35 Purchase Price. The term "Purchase Price" shall mean the aggregate of the Cash Purchase Price and the Post-Closing Payments.

1.36 Real Property Leases. The term "Real Property Leases" shall mean those certain Real Property Leases listed on Schedule 1.36 with various landlords, and Seller, as tenant.

1.37 Retained Liabilities. The term "Retained Liabilities" shall have the meaning set forth in Section 2.5.

1.38 San Diego Lease - Original. The term "San Diego Lease - Original" shall mean that certain Real Property Lease by and between the City of San Diego, as landlord, and Seller, as tenant, dated as of June 18, 2014.

1.39 San Diego Lease - Amended. The term "San Diego Lease - Amended" shall mean that certain Amendment to Real Property Lease by and between the City of San Diego, California, as landlord, and Seller, as tenant, dated as of January, 2017.

1.40 San Diego Consent. The term "San Diego Consent" shall mean the consent of the City of San Diego, California to the assignment of the San Diego Lease - Amended from Seller to Buyer.

1.41 Seller. The term "Seller" shall have the meaning as contained in the opening paragraph.

1.42 Seller Indemnified Parties. The term "Seller's Indemnified Parties" shall have the meaning set forth in Section 7.1(b).

1.43 Standby Letter of Credit. The term "Standby Letter of Credit" shall have the meaning set forth in Section 2.4.

1.44 Suppliers. The term "Suppliers" means any supplier that currently or has in the past sold or rented products or services to Seller related to the Business.

1.45 Tax or Taxes. The term "Tax" or "Taxes" shall mean all (a) United States federal, state or local or non-United States Taxes, assessments, charges, duties, levies or other similar governmental charges of any nature, including all net or gross income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, stamp duty reserve, license, payroll, withholding, ad valorem, value added, alternative minimum, environmental, customs, social security (or similar), unemployment, sick pay, disability, registration and other Taxes, assessments, charges, duties, fees, levies or other similar governmental charges of any kind whatsoever, whether disputed or not, together with all estimated Taxes, deficiency assessments, additions to Tax, penalties and interest; (b) any liability for the payment of any amount of a type described in clause (a) arising as a result of being or having been a member of any consolidated, combined, unitary or other group or being or having been included or required to be included in any Tax Return related thereto; and (c) any liability for the payment of any amount of a type described in clause (a) or clause (b) as a result of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

1.46 Tax Return. The term "Tax Return" shall mean all returns, statements, reports, estimates, declarations of estimated Tax (including information returns, statements and reports) relating to, or required to be filed in connection with, any Taxes and any schedules attached to or amendments of (including refund claims with respect to) any of the foregoing.

1.47 Vendors. The term "Vendors" means those certain Suppliers more specifically identified on Schedule 3.14 attached hereto.

ARTICLE II

PURCHASE AND SALE OF ASSETS AND PURCHASE PRICE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement and except with respect to the Excluded Assets, the Seller agrees to sell, convey, transfer, assign and deliver to the Buyer, and the Buyer agrees to purchase from the Seller on the Closing Date to be effective as of the Effective Date, all those assets owned by Seller in connection with the Business, including but not limited to those set forth on Schedule 2.1 (such assets to be referred to herein as the "Assets").

2.2 Cash Purchase Price. On the terms and subject to the conditions set forth in this Agreement, (a) on the Closing Date, Buyer shall purchase from Seller, and Seller shall sell, assign, convey and transfer to Buyer to be effective as of the Effective Date, all of the Assets, except for the Excluded Assets, free and clear of any Liens; and (b) in consideration of the sale of the Assets and the covenants and agreements of the Seller contained herein, the Buyer shall pay the Seller the Cash Purchase Price.

2.3 Accounts Payable. Seller shall pay all accounts payable prorations incurred before the Effective Date and Buyer shall pay all accounts payable incurred or properly prorated to on and after the Effective Date. Seller shall promptly pay all of its accounts payable that are received after the Effective Date. Seller will provide Buyer with a list of accounts payable incurred before the Effective Date but received after the Closing. The following items will be prorated on a thirty (30) day basis, as of the Effective Closing Date:

- a. The rent due under the San Diego Lease -- Amended; and
- b. Water bills to the individual tree storage locations;

Utilities will be transferred the day of the Closing to Buyer. Seller shall be responsible for the cost of all utilities up until the Effective Date and Buyer shall be responsible for all utilities costs from the Effective Date and thereafter.

In the event any of the utility companies refund any deposits to Seller, Buyer shall pay the utility company the required amount of deposit to provide the service (the "Deposit"). Alternatively, if the utility company retains the Deposit, then Buyer shall pay the amount of each such Deposit to Seller at the Closing, in which event Buyer shall be deemed to be the owner of the Deposit.

2.4 Post-Closing Payments. In addition to the Cash Purchase Price, Buyer shall pay Seller additional payments in the amounts and at the times set forth below (collectively, the "Post-Closing Payments"):

- (a) One Hundred Twenty Five Thousand Dollars (\$125,000) twelve (12) months after the Closing Date;
- (b) One Hundred Twenty Five Thousand Dollars (\$125,000) twenty four (24) months after the Closing Date;
- (c) One Hundred Twenty Five Thousand Dollars (\$125,000) thirty six (36) months after the Closing Date; and
- (d) One Hundred Twenty Five Thousand Dollars (\$125,000) forty eight (48) months after the Closing Date.

At Closing, Buyer shall furnish to Seller a standby letter of credit from a financial institution reasonably acceptable to Seller guaranteeing payment of the Post-Closing Payments and shall provide a pro forma copy of the Standby Letter of Credit ten (10) days before the Closing Date (the "Standby Letter of Credit"). The failure of Buyer to make any Post Closing Payment either by direct payment or the partial draw down of the Standby Letter of Credit within five (5) business days after Buyer's receipt of written notice from Seller of such default, shall cause all Post Closing Payments to become immediately due and payable.

2.5 Business Contracts; Retained Liabilities. As a condition precedent to Closing, Seller shall disclose all Liens, accounts payable, accrued liabilities, lawsuits, demands, debts owed to or alleged by third parties, and any and all obligations or liabilities of Seller of any kind (including those related to the Business) ("Liabilities"). Except as otherwise provided in this Agreement, Buyer shall assume and agrees to pay, perform and discharge when due obligations of Seller under the Business Contracts that are assigned to Buyer at Closing or thereafter otherwise assumed by Buyer pursuant to Section 5.2. Except for the Business Contracts, Buyer shall not assume by virtue of this Agreement or the transactions contemplated hereby, and shall have no liability for, any Liabilities of Seller of any kind, character or description whatsoever, contingent or otherwise (the "Retained Liabilities").

2.6 Title to Assets and Risk of Loss. Title to the Assets and risk of loss or damage to the Assets by casualty (whether or not covered by insurance) will pass to the Buyer immediately upon completion of the Closing. The Parties agree to allocate all revenues and expenses for all tax, financial and accounting purposes incurred by the Business in the ordinary course of business to the Seller up until the Effective Date and to the Buyer commencing with the Effective Date and thereafter.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

The term "knowledge" as used in this Agreement shall mean the current awareness of a fact, or the current awareness of sufficient information and circumstances so as to cause one to believe that a certain situation or condition probably exists, or which a person associated with Seller should reasonably be expected to know based upon their involvement with the Seller, for which the Seller shall retain total liability. The phrase "Seller has no knowledge" or "to the best of Seller's knowledge" or to Seller's current actual knowledge" or any similar terminology does not impose any duty upon Seller to inspect the property, inspect the records and files of Seller or any government agency or to conduct any due diligence to refresh the Seller's recollection or to provide a more complete response. As a material inducement to Buyer to enter into this Agreement, Seller represents and warrants as of the Effective Date that:

3.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of California and has all the necessary corporate powers to own the Assets and to carry on the Business as now owned and operated by Seller. The legal name of the Seller is exactly as set forth in the opening paragraph of this Agreement.

3.2 Authority. Seller has the right, power, legal capacity, and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party, and except for the Real Property Leases, the San Diego Lease – Amended and any other Assumed Contract requiring consent, all of which consents have been procured, no approvals or consents of any persons or other entities are necessary in connection herewith or therewith. The execution and delivery of this Agreement, the Ancillary Agreements to which Seller is a party to and the consummation of the transactions contemplated hereby and thereby have been duly authorized.

3.3 Valid and Binding Obligations. Upon execution and delivery hereof, this Agreement and each Ancillary Agreement to which it is a party will constitute the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as limited by bankruptcy laws, insolvency laws, and other similar laws affecting the rights of creditors generally.

3.4 Title to and Condition of the Assets. Except as set forth on Schedule 3.4, Seller has good, marketable and indefeasible title to the Assets free and clear of Liens. The tangible personal property Assets are in reasonable operating condition, reasonable wear and tear accepted, but are delivered "as is". Upon consummation of the Closing, Seller will convey good, marketable and indefeasible title to the Assets to Buyer.

3.5 Tax Compliance. Except as provided below, within the times and in the manner prescribed by law, including extensions permitted thereunder, Seller has filed and will file all federal, state and local Tax Returns required by law and has paid and will pay all Taxes, assessments and penalties due and payable that would or Seller might reasonably expect to encumber the Assets through and including the Effective Date. Seller has received no notice of any present disputes as to Taxes of any nature payable by Seller with respect to the Business. The Seller has an ongoing dispute regarding payroll taxes for which the Buyer shall have no liability.

3.6 Business Contracts. Except as set forth on Schedule 3.6, each of the Business Contracts is valid and in full force and effect, and there has not been any default by Seller or any event that would, by notice or lapse of time or both, constitute a default by Seller. There has not been any default by Seller or, to the best of Seller's knowledge, any other party to any of the Business Contracts, or any event that, by notice or lapse of time or both, would constitute a default by Seller or any other party due to the Business Contracts which might reasonably be expected to have a material adverse effect on such Business Contracts, any other Asset or the Business. To the best of Seller's knowledge, each of the Business Contracts is assignable to the Buyer as stated by its terms or in accordance with Section 5.1 hereof. Seller has not received notice that any party to any of the Business Contracts intends to cancel or terminate any of the Business Contracts or exercise or not exercise any options that they might have under any of the Business Contracts.

3.7 Compliance with Laws. To the best of Seller's knowledge, Seller has complied with, and is not in violation of, applicable federal, state or local statutes, laws, and regulations that affect, or are likely to materially adversely affect, directly or indirectly, any of the Assets or the Business. Seller has received no notice of any uncured violations of federal, state or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the Assets or the Business.

3.8 Litigation. There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, to the best of Seller's knowledge, or threatened against, or based on events known to Seller, which could reasonably be expected to affect the Assets.

3.9 Consents and Approvals. Except as set forth on Schedule 3.9 and as required by the terms of any Assumed Contract, the Real Property Leases or the San Diego Lease – Amended, or as otherwise stated herein, no consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, or any other Person or entity is required to be made or obtained by Seller in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

3.10 Liens on Assets. Schedule 3.10 contains a list of all Lienholders on any or all the Assets. On or before the Closing, Seller has furnished Buyer payoff letters from each of the Lienholders evidencing the entire principal amount and accrued interest due and owing by Seller to said Lienholders as of the Closing Date. All Liens or security interests of any third party as to all of the Assets shall be removed on or before the Closing Date, and Seller shall have furnished evidence thereof to Buyer.

3.11 Brokers. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Seller or its Affiliates.

3.12 Financial Statements. Seller has delivered to Buyer an unaudited balance sheet and income statement, and the related statements of operations, stockholders' equity and cash flows of the Business as of December 31, 2014 and December 31, 2015 (the "Financial Statements"). Except as disclosed on Schedule 3.12, each of the foregoing Financial Statements

(including in all cases the notes thereto, if any) is reasonably accurate and complete and prepared in accordance with customary and sound accounting procedures, consistently applied, and is consistent with the books and records of the Business. Each of the Financial Statements present fairly in all respects the financial condition and results of operations of the Business for the periods referred to therein.

3.13 Customers. Schedule 3.13 sets forth a true and correct list of all Customers of the Business since January 1, 2013, through the most recent month-end period prior to the Closing Date. Except as set forth on Schedule 3.13, Seller has no information, nor is Seller aware of any facts or circumstances, that might reasonably be expected to indicate that any of the Customers intend to cease or materially reduce doing business with Seller.

3.14 Vendors. Schedule 3.14 sets forth a true and correct list of all Suppliers including the Vendors of the Business since January 1, 2013, through the most recent month-end period prior to the Effective Date. Except as set forth on Schedule 3.14, Seller has not received any notice that any of its Suppliers has terminated or intends to terminate or materially reduce its business with Seller. Schedule 3.14 also sets forth the entire amount of principal and accrued interest due and owing to said Vendors by Seller as of the Effective Date.

3.15 Full Disclosure. To the best of Seller's knowledge, there are no facts or circumstances relating to the Assets which might reasonably be expected to adversely affect or might reasonably be expected to adversely affect the Assets or the Business, or the ability of Seller to perform this Agreement or any of its obligations hereunder.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF BUYER**

As a material inducement to Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date that:

4.1 Organization. The Buyer is a corporation duly organized and validly existing and in good standing under the State of California and has all the necessary corporate powers to own its properties and to carry on its business as now owned and operated by it.

4.2 Authority. Buyer has the right, power, legal capacity, and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party, and no approvals or consents of any persons or other entities are necessary in connection herewith. The execution, delivery and performance of this Agreement and each Ancillary Agreement to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized.

4.3 Valid and Binding Obligations. Upon execution and delivery hereof, this Agreement and each Ancillary Agreement to which it is a party will constitute the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as limited by bankruptcy laws, insolvency laws, and other similar laws affecting the rights of creditors generally.

4.4 Consents and Approvals. No consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, or any other Person or entity, is required to be made or obtained by the Buyer in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

4.5 No Breach or Violation. The consummation of the transactions contemplated by this Agreement will not result in or constitute the following: (i) a breach or violation of any contract or agreements by which the Buyer is bound; or (ii) any term or provision of this Agreement.

4.6 Brokers. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer or its affiliates.

4.7 Ability to Perform. Buyer represents and warrants Buyer is creditworthy and has sufficient funds, or the ability to obtain sufficient funds, to purchase the business and perform all acts under the Agreement and each Ancillary Agreement.

ARTICLE V

COVENANTS OF THE PARTIES

The Parties covenant and agree as follows:

5.1 Assignment of Business Contracts. On or before the Closing, Seller shall have executed and delivered to Buyer assignments of the Business Contracts that are assignable. With respect to any Assumed Contract in which the consent of a governmental authority or third party is required, Seller shall, with Buyer's reasonable cooperation, use commercially reasonable efforts to procure the assignment of all such Business Contracts to Buyer. Prior to the successful procurement of any such consent or approval to the assignment of any Business Contracts in which same is required, Seller agrees that it shall perform all acts and execute any and all documents as may be reasonably requested by Buyer so that Buyer may realize the benefits of such Business Contracts, until such time as such Business Contracts are successfully assigned to Buyer. In the event any of the Business Contracts are, or are later determined to be, non-assignable, and the other party to any such Assumed Contract refuses to consent to the assignment of same, then if allowed under the terms of such non-assigned Assumed Contract(s): (i) the Seller shall subcontract to the Buyer or its designee, if the Buyer so desires, the Assumed Contract, and the Seller shall forward to the Buyer or its designee all proceeds of such Assumed Contract received by the Seller; provided, however, that Seller shall be reimbursed for any reasonable third party out-of-pocket expenses incurred by it. To the extent any such Assumed Contract cannot be subcontracted, Buyer agrees to cooperate with Seller and enter into such other commercially reasonable arrangements as will enable Seller to fulfill its remaining obligations under said Business Contracts to the extent possible. Buyer agrees to indemnify and hold harmless Seller and its Affiliates from all Damages incurred by them in connection with Buyer's performance of its obligations under this Section 5.1 and under the Business Contracts, provided that such Damages are not the result of Seller's default thereunder.

5.2 Further Assurances; Additional Cooperation.

(a) At the Closing, Seller, at the reasonable request of Buyer, shall promptly execute and deliver all such further assignments, bills of sale, endorsements, and other documents, in form and substance reasonably satisfactory to the other Party and its counsel, as such Party may reasonably request in order to (a) vest in Buyer title to and possession of the Assets and (b) otherwise carry out or evidence the terms of this Agreement. At or after the Closing, Seller shall promptly deliver to Buyer and Buyer shall promptly deliver to Seller the original of any mail or other communication received by it after the Closing Date pertaining to or belonging to the other and any moneys, checks or other instruments of payment to which the other is entitled.

(b) In addition to access and availability of records set forth in Section 5.3 below, so long as Seller or Buyer actively are contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against any Person, other than the other Party hereto in connection with (x) the transactions contemplated by this Agreement, or (y) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving any of the Assets or Business Contracts being assigned hereunder, Buyer and Seller will cooperate with each other and their respective counsel in the contest or defense, make available such personnel and provide such testimony and access to each party's books and records as shall be necessary in connection with the contest or defense. Buyer shall be solely responsible for the cost and expense of any assistance provided by Seller to Buyer under this Section 5.2(b) and Seller shall be solely responsible for the cost and expense of any assistance provided by Buyer to Seller under this Section 5.2(b).

5.3 Books and Records. For a period of eighteen (18) months after the Closing Date, Buyer and Seller agree to allow the other Party, its or his representatives, attorneys, and accountants, at such other Party's own expense, access to the books and records relating to the Assets and the Business upon reasonable request and during normal business hours for the purpose of examination and copying to the extent reasonably required in connection with any tax procedure, any obligation or duty hereunder, or compliance with any other legal duty or obligation.

5.4 Further Obligations of Seller. Following the Closing, Seller shall use commercially reasonable best efforts to (a) assist in the orderly transition of the Assets and the Business from Seller to Buyer, and (b) cooperate with Buyer in the preparation of all press releases and other media contacts in a form mutually agreeable to the Parties; provided, however, that Seller's consent to the form of such press releases and other media contacts shall not be unreasonably withheld or delayed.

5.5 Accounts Receivable. Payments on Accounts Receivable and Buyer's Accounts Receivable shall be applied to the oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. No Party shall influence account specification pursuant to the preceding sentence. In the event the Seller collects any of Buyer's Accounts Receivable, Seller shall on a monthly basis forward any of such collections of Buyer's Accounts Receivable to Buyer. In the event the Buyer collects any Accounts Receivable, Buyer shall on a monthly basis forward any of such collections of Accounts Receivable to Seller.

5.6 . **Name.** Commencing on the Closing Date, Seller and all of its Affiliates will discontinue use of the name "Big Trees Nursery, Inc." or any similar variation thereof, in connection with its Business or otherwise and file Articles of Amendment changing its name from "Big Trees Nursery, Inc.". In doing so Seller will cooperate with Buyer should Buyer elect to make a simultaneous filing adopting the name "Big Trees Nursery" or a substantially similar derivative thereof. Seller shall furthermore execute any and all documents reasonably necessary to convey the name "Big Trees Nursery" to Buyer.

ARTICLE VI THE CLOSING

6.1 **Closing.** Payment of the Cash Purchase Price required to be made by the Buyer to the Seller, the transfer of the Assets by the Seller and the other transactions contemplated hereby shall take place at the offices of the Seller located at 12450 Highland Valley Road, Escondido, California 92025, or by the electronic exchange of signed signature pages and the Cash Purchase Price on the Closing Date.

6.2 **Seller and Owner's Deliveries.** At the Closing, the Seller shall deliver or cause to be delivered to the Buyer, all executed by Seller or such other third parties under the Seller's control, as applicable:

- (a) this Agreement;
- (b) Ancillary Agreements;
- (c) the Asset Allocation Statement;
- (d) such other consents, waivers, estoppel letters or similar documentation as the Buyer shall reasonably request in connection with the transfer of the Assets;
- (e) a copy of the executed resolutions of the Board of Directors and the stockholders of Seller approving the sale and granting the Chief Executive Officer or the President or other duly authorized officers of Seller the authority to execute this Agreement, the Ancillary Agreements and any other transaction documents; and
- (f) All other items required to be delivered hereunder or as may be requested which are necessary or would reasonably facilitate consummation of the transactions contemplated hereby.

In addition, immediately upon Closing, the Seller will put the Buyer into full possession and enjoyment of all Assets, free and clear of all debts, liens, claims and encumbrances.

6.3 **Buyer's Deliveries.** At the Closing, the Buyer will deliver or cause to be delivered to the Seller, or other designated person, the following documents all executed by Buyer or such other third parties under the Buyer's control, as applicable:

- (a) Wire transfer to the Seller of the Cash Purchase Price;

- (b) this Agreement;
- (c) Ancillary Agreements;
- (d) The Asset Allocation Statement;
- (e) A copy of the executed resolutions of the Board of Directors approving the sale and granting the Chief Executive Officer, Chief Operating Officer or the President or other duly authorized officers or directors of Buyer the authority to execute this Agreement, the Ancillary Agreements and any other transaction documents; and
- (f) All other items required to be delivered hereunder or as may be requested or which are necessary or would reasonably facilitate consummation of the transactions contemplated hereby.

6.3.1 Buyer's Post-Closing Deliveries. After Closing, the Buyer will deliver the Post-Closing Payments in accordance with Section 2.4 of this Agreement.

6.4 Ad Valorem Taxes. With regard to ad valorem taxes on the Assets for the calendar tax year in which the Closing occurs, the Seller and the Buyer agree that the taxes to be paid shall be prorated to Seller prior to the Effective Date and Buyer on and after the Effective Date.

6.4.1 Transaction Taxes. Seller shall timely pay or cause to be paid all federal and state income, and franchise returns with respect to Seller, allocable to the time period before the Effective Date. Buyer shall pay all sales and/or use tax, if any, arising from consummation of the transactions contemplated herein.

6.4.2 Taxes. Seller shall be responsible for any business, income, withholding or similar Tax, or any Taxes of any kind of Seller in connection with the Assets being transferred hereunder, related to any period before the Effective Date. Commencing on and after the Effective Date, Buyer shall be responsible for any business, income, withholding or similar Tax, or any Taxes of any kind of Seller or the Buyer in connection with the Assets being transferred hereunder, related to any period on and after the Effective Date.

6.4.3 Tax Inquiries. The Buyer shall notify the Seller promptly, and in no event more than twenty (20) business days after the Buyer's receipt, of any Tax inquiries or notifications thereof which relate to any period prior to the Effective Date, and the Seller shall prepare and deliver responses to such inquiries as the Seller deems necessary or appropriate.

6.5 Confidential Information. After the Closing, except as otherwise specifically permitted in this Agreement, each Party agrees, on behalf of itself and its Affiliates, to use commercially reasonable best efforts not to divulge, communicate, use to the detriment of the other Party or its Affiliates or for the benefit of any other Person or persons, any confidential information or trade secrets of such Party, including personnel information, secret processes,

know-how, customer lists, formulae, or other technical data; provided, if either Party or its Affiliates are compelled to disclose such information to any tribunal, regulatory or governmental authority or agency or else stand liable for contempt or suffer other censure and penalty, such Party or its Affiliates may so disclose such information without any liability hereunder, upon furnishing the other Party at least ten (10) days prior written notice, if possible under the circumstances. The Parties acknowledge that a remedy at law for any breach or threatened breach of this Section 6.5 will be inadequate and that the Parties shall be entitled to specific performance, injunctive relief, and any other remedies available to it for such breach or threatened breach. If a bond is required to be posted in order for a nonbreaching Party to secure an injunction, then the Parties stipulate that a bond in the amount of \$1,000.00 will be sufficient and reasonable in all circumstances to protect the rights of the Parties with regard to this Section 6.5.

6.6 Asset Allocation. The Parties agree to allocate the Purchase Price, and other relevant items amongst the Assets pursuant to Section 1060 of the Code, and each will file Form 8594 ("Asset Allocation Statement") in the form attached hereto as Schedule 6.6 with the Internal Revenue Service, based on the allocation mutually agreed upon at the Closing. Following the Closing, Buyer and Seller in connection with their respective United States, federal, state and local income tax returns and other filings, shall not take any position inconsistent with such allocation unless otherwise required by law. Any adjustment to the Purchase Price shall be allocated as provided by Treas. Reg. Sections 1.1060-1(c)(2) and 1.338-7.

ARTICLE VII

INDEMNIFICATION

7.1 Indemnification.

(a) By the Seller. The Seller shall indemnify, save, defend and hold harmless the Buyer and Buyer's members, shareholders, managers, directors, officers, partners, agents and employees (collectively, the "Buyer Indemnified Parties") from and against any and all costs, lawsuits, losses, liabilities, deficiencies, claims and expenses, including interest, penalties, attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively referred to herein as "Damages"), (i) incurred in connection with or arising out of or resulting from or incident to any breach of any covenant or warranty, or the inaccuracy of any representation, made by the Seller in or pursuant to this Agreement, the Ancillary Agreements or any other agreement contemplated hereby or in any schedule, certificate, or other instrument furnished or to be furnished by the Seller or its Affiliates under this Agreement, or (ii) based upon, arising out of, or otherwise in respect of any liability or obligation of the Business or relating to the Assets and to the Business Contracts, or to the conduct of Seller relating to any period prior to the Effective Date and with respect to any breach by Seller of the Business Contracts up until the Closing Date or operating the Business outside the ordinary course of business; provided, however, that the Seller shall not be liable for any such Damages to the extent, if any, such Damages result from or arise out of a breach or violation of this Agreement or the negligence, whether by action or inaction, or other conduct by any Buyer Indemnified Parties.

(b) By the Buyer. The Buyer shall indemnify, save, defend and hold harmless the Seller and its directors, officers, partners, agents and employees (collectively, the "Seller's Indemnified Parties") from and against any and all Damages (i) incurred in connection with or arising out of or resulting from or incident to any breach of any covenant or warranty, or the inaccuracy of any representation, made by the Buyer in or pursuant to this Agreement, the Ancillary Agreements or any other agreement contemplated hereby or in any schedule, certificate, or other instrument furnished or to be furnished by the Buyer under this Agreement, or (ii) based upon, arising out of or otherwise in respect of any liability or obligation of the Business or relating to the Assets and the Business Contracts or the conduct of Buyer, relating to any period after the Effective Date except to the extent of a breach in the Business Contracts caused by Seller or Seller's operation of the Business outside the ordinary course of business; and further provided, however, that the Buyer shall not be liable for any such Damages to the extent, if any, resulting from or arising out of a breach or violation of this Agreement or the negligence, whether by action or inaction, or other conduct by Seller's Indemnified Parties.

(c) Defense of Claims. If any lawsuit or enforcement action is filed against any Party entitled to the benefit of indemnity hereunder, written notice thereof describing such lawsuit or enforcement action in reasonable detail and indicating the amount (estimated, if necessary) or good faith estimate of the reasonably foreseeable estimated amount of Damages (which estimate shall in no way limit the amount of indemnification the indemnified Party is entitled to receive hereunder), shall be given to the indemnifying Party as promptly as practicable (and in any event within ten (10) days, after the service of the citation or summons) ("Notice of Action"); provided that the failure of any indemnified Party to give timely notice shall not affect its rights to indemnification hereunder to the extent that the indemnified Party demonstrates that the amount the indemnified Party is entitled to recover exceeds the actual damages to the indemnifying Party caused by such failure to so notify within ten (10) days. The indemnifying Party may elect to compromise or defend any such asserted liability and to assume all obligations contained in this Section 7.1 to indemnify the indemnified Party by a delivery of notice of such election ("Notice of Election") within ten (10) days after delivery of the Notice of Action. Upon delivery of the Notice of Election, the indemnifying Party shall be entitled to take control of the defense and investigation of such lawsuit or action and to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying Party's sole cost, risk and expense, and such indemnified Party shall cooperate in all reasonable respects, at the indemnifying Party's sole cost, risk and expense, with the indemnifying Party and such attorneys in the investigation, trial, and defense of such lawsuit or action and any appeal arising therefrom; provided, however, that the indemnified Party may, at its own cost, risk and expense, participate in such investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. If the Notice of Election is delivered to the indemnified Party, the indemnified Party shall not pay, settle or compromise such claim without the indemnifying Party's consent. If the indemnifying Party elects not to defend the claim of the indemnified Party or does not deliver to the indemnified Party a Notice of Election within ten (10) days after delivery of the Notice of Action, the indemnified Party may, but shall not be obligated to defend, or the indemnified Party may compromise or settle

(exercising reasonable business judgment) the claim or other matter on behalf, for the account, and at the risk, of the indemnifying Party.

(d) Third Party Claims. The provisions of this Section 7.1 are not limited to matters asserted by the Parties, but cover costs, losses, liabilities, damages, lawsuits, claims and expenses incurred in connection with third party claims. The indemnity hereunder is in addition to any and all rights and remedies of the Parties in connection herewith.

7.2 Duration of Indemnity

(a) Each Party's respective indemnity obligations as to the Assets purchased by Buyer hereunder shall survive for the following periods of time following the Closing Date:

(i) Seller's indemnity obligations for breaches by Seller of Sections 3.1 (Organization), 3.2 (Authority), 3.4 (Title), and 3.11 (Brokers); and Buyer's indemnity obligations for breaches by Buyer of Sections 4.1 (Organization), 4.2 (Authority) and 4.6 (Brokers) (collectively, the "Fundamental Representations") shall survive for four (4) years.

(b) All other representations and warranties made by the Parties, shall survive for a period of eighteen (18) months following the Closing Date.

7.3 Insurance. Notwithstanding anything to the contrary set forth in this Article VII, the Parties shall, to the extent insurance is available to cover a claim, look to either Parties' respective insurance policies to satisfy any indemnification claims and shall file claims in a timely manner with the appropriate insurance carrier and cooperate in all respects with the terms of any applicable insurance policy including selection of counsel, control of the trial and defense of any lawsuit and the compromise or settlement of any claim. The foregoing shall not preclude either Party from pursuing its rights to indemnification as provided herein.

ARTICLE VIII **MISCELLANEOUS**

8.1 Fees. Except as expressly set forth herein to the contrary, each Party shall be responsible for all costs, fees and expenses (including attorney and accountant fees and expenses) paid or incurred by such Party in connection with the preparation, negotiation, execution, delivery and performance of this Agreement, or otherwise in connection with the transaction contemplated hereby.

8.2 Modification of Agreement. This Agreement may be amended or modified only in writing signed by all of the Parties, and by the individuals joining in the execution hereof.

8.3 Notices. All notices, consents, demands or other communication required or permitted to be given pursuant to this Agreement shall be deemed sufficiently given when delivered personally, when delivered by email or telefaxed during regular business hours during a business day to the appropriate location described below, or three (3) business days after

posting thereof by United States first-class, registered or certified mail, return receipt requested, with postage and fees prepaid and addressed as follows:

IF TO SELLER: Big Trees Nursery, Inc.
Attention: Charlie T. Jancic, President
18950 Starvation Mountain Road
Escondido, CA 92025
Email: charliejancic@gmail.com

With Copy to: Clinton L. Blain, Esq.
3990 Old Town Avenue, Suite B-101
San Diego, California 92110
(619) 584-1600
Email: cb@blainlaw.com

IF TO BUYER: Environmental Design California Inc.
Attn: Mark Merit
23544 Coons Road
Tomball, Texas 77375
Email: markmerit@treemover.com

With copy to: Randolph Ewing
Ewing & Jones, PLLC
6363 Woodway, Suite 1000
Houston, Texas 77057
Email: rewing@ewingjones.com

Any Party at any time by furnishing notice to the other Party in the manner described above may designate additional or different addresses for subsequent notices or communications.

8.4 Severability. The invalidity or unenforceability of any provision of this Agreement shall not invalidate or affect the enforceability of any other provision of this Agreement.

8.5 Entire Agreement; Binding Effect. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

8.6 Integration. This Agreement and the Ancillary Agreements referenced herein constitute the entire understanding of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified or amended only in writing as provided for herein. Its terms are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The Parties further intend that this Agreement and the Ancillary Agreements referenced herein constitute the complete and exclusive statement of its

terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement and the Ancillary Agreements referenced herein. ***EACH PARTY SIGNING BELOW WARRANTS THEY HAVE READ AND UNDERSTAND THIS AGREEMENT.***

8.7 Waiver. No delay in the exercise of any right under this Agreement shall waive such rights. Any waiver, to be enforceable, must be in writing.

8.8 Governing Law/Arbitration. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas without regard to the conflict of laws principals thereof. The Parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt in good faith to first resolve any dispute amicably through mediation conducted in San Diego, California. In the event such attempted resolution is unsuccessful, each Party agrees that upon the written demand of the other Party, whether made before or after the institution of any legal proceedings, but prior to the rendering of any judgment in that proceeding, all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Agreement, or any document, instrument, or agreement executed in connection herewith, including without limitation contract disputes and tort claims, shall be resolved by binding arbitration pursuant to the Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted by one (1) arbitrator who shall be selected using a listing process whereby the AAA administrator shall provide each Party with a list of proposed arbitrators who are generally familiar with the underlying subject matter made the basis of the dispute. Thereafter, each Party shall be given ten (10) days to strike any unacceptable names from the list and number the remaining names in order of mutual preference. The arbitration shall be conducted in San Diego, California. The language of the arbitration shall be in English. This arbitration provision shall not limit the right of either Party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting any rights of any Party, and any such action shall not be deemed an election of remedies. Such remedies include, without limitation, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, in which event, the Party seeking such equitable relief can file an action in court notwithstanding this arbitration provision. In the event such a court action becomes necessary, each Party agrees to submit to the personal jurisdiction of the federal and state courts located in San Diego, California. Any disputes, claims or controversies concerning the lawfulness or reasonableness of an act, or exercise of any right or remedy, including any claim to rescind, reform, or otherwise modify this Agreement, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of either Party. It is understood and agreed that the arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a Party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this arbitration provision. Each Party shall

bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. The arbitrator shall be neutral and unbiased. The arbitrator's decision shall be in compliance with the substantive laws of the State of Texas and to the extent applicable, with the laws of California but excluding the law exempting arbitrators from rendering a decision in compliance with the substantive law.

8.9 Assignment. Seller shall not assign this Agreement or any interest herein without the prior written consent of Buyer. Any attempted assignment by a Party of its rights or obligations without such consent shall be null and void except as otherwise permitted herein. Reference to any of the Parties in this Agreement shall be deemed to include the successors and assigns of such Party.

8.10 Headings. Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

8.11 Schedules. All Schedules attached to this Agreement are and shall be hereby incorporated in and made a part of this Agreement.

8.12 Rights and Liabilities of Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over against any Party to this Agreement.

8.13 Survival. Except as otherwise expressly provided herein, this Agreement, including but not limited to, all covenants, warranties, representations and indemnities contained herein, shall survive the Closing, as to and to the extent provided for herein, and all other documents, instruments or agreements relating to the Assets and the transactions contemplated herein, and shall not be deemed merged therein. Any action relating to any breach of this Agreement must be filed within four (4) years.

8.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of an original, and all of which shall constitute one and the same agreement. A facsimile or electronic signature of this Agreement or any portion hereof, including the signature page of any party, shall be deemed an original for all purposes.

8.15 Attorneys' Fees. If any litigation is instituted to enforce or interpret the provisions of this Agreement or the transactions described herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees from the other Party hereto.

8.16 Drafting. The Parties hereto acknowledge that each Party was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against any Party hereto because one is deemed to be the author thereof.

8.17 Counsel. Each of the Parties have engaged legal counsel.

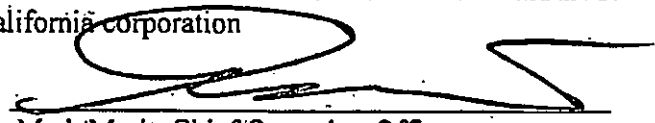
8.18 San Diego Consent. This Agreement shall become effective as of January 1, 2017 upon the receipt by the Parties of the San Diego Consent and the occurrence of the Closing; provided that both occur on or before January 13, 2017.

SIGNATURES APPEAR ON NEXT PAGE

EXECUTED AND DELIVERED effective as of the date first written above.

BUYER:

ENVIRONMENTAL DESIGN CALIFORNIA INC.
a California corporation

By: 

Mark Merit, Chief Operating Officer

SELLER:

BIG TREES NURSERY, INC.

By: _____

Charlie T. Jancic, President

Schedules

Schedule 1.7	Assumed Contracts
Schedule 1.22	Excluded Assets
Schedule 1.36	Real Property Leases
Schedule 2.1	Assets
Schedule 3.4	Title to and Condition of the Assets
Schedule 3.6	Business Contracts
Schedule 3.9	Consents and Approvals
Schedule 3.10	Lienholders
Schedule 3.12	Financial Statements
Schedule 3.13	Customers
Schedule 3.14	Vendors
Schedule 6.6	Asset Allocation

DISCLOSURE SCHEDULES

TO THAT CERTAIN

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

ENVIRONMENTAL DESIGN CALIFORNIA INC.

and

BIG TREES NURSERY, INC.

Dated as of January __, 2017.

Schedule 1.7

Assumed Contracts

That certain Service Agreement #CP20130429 dated January 14, 2014 by and among Apple Inc. and Big Trees Nursery, Inc.

The following purchase orders:

Name	Date	Order #
A.J.J. Associates		
	12/30/2015	AJJA1109151
	10/10/2016	AJJA1230151
	12/28/2016	AJJA1228161
Apple		
	09/01/2016	APPL071415E
	10/27/2016	APPL050614E
Baldwin & Sons		
	11/17/2015	BALD1117151
	03/08/2016	BALD0307161
BrightView		
	11/04/2016	BRIG1104161
Calligari		
	08/09/2016	CALL0808161
	11/04/2016	CALL1109161
	11/08/2016	CALL1019161
	11/18/2016	CALL1115161
	12/14/2016	CALL0524161
	12/16/2016	CALL1005164
	12/16/2016	CALL1216161
	12/19/2016	CALL1216162
DL Cunningham		
	07/29/2015	DLC0622151
	10/12/2015	DLCU1012162
	10/12/2015	DLCU1012163
	11/08/2015	DLCU1017161
Kevin Johnson		
	12/20/2016	KJOH1220161
Marmol Radziner		
	11/22/2016	MARM1122162
Palm Valley Ranch		
	04/14/2016	PALM0414161
Park West Landscape Construction		
	11/09/2016	PARK1108161
	01/06/2017	PARK0325161
Richard Veyna/ Toscana Development Corp		
	04/21/2016	VEYN0413161
Valley Crest		
	03/17/2016	VALL0314161
	12/07/2016	VALL0111161

Schedule 1.22

Excluded Assets

2013 VW beetle-license # 7KGN064

2009 tundra 5TFBV54179X087250 Lic 31365E1

Schedule 1.36
Real Property Leases

	<u>NAME</u>	<u>ADDRESS</u>	<u>LANDLORD</u>
1	Borrego	1284 Henderson Canyon Borrego Springs	Ashly Bilyk
2	Cowan	1753 Potrero Rd Camarillo, Ca	James Cowan & Assoc
3	Deluz M	Deluz Rd	Pedro Martinez
4	Deluz- Warren	40724 Deluz rd	Warren Bryant
5	Deluz-Law	40139 Roxanne, Fallbrook	Robert Law
6	Dorothy	1652 Tierra Liberteria, Escondido 92026	Dorothy Elkins
7	Escondido	12450 Highland Valley Escondido, Ca 92025	City of San Diego
8	Horseshoe	22396 Horseshoe tr. Homeland	Mike Heikkila
9	Julian	2431 Farley	David Lewis
10	Laurel Ridge	31533 Laurel Ridge VC 92082	Brigido Gama
11	Lavine	30745 Mesa Crest VC	Tom Lavine
12	Mesa Verde	30740 Mesa Crest rd Valley Center	Mike Sanders
13	Mesita	123 Vista Merriam San Marcos	Bob Merriam
14	Rainbow	10201-10389 Rainbrook Dr Fallbrook	Peter Glusac
15	Rancho Trails	722 Rancho Trails Ramona	Larry Toler
16	Steves	31070 Mesa Crest Valley Center	Steve Turley
17	Yermo	37234 Yermo RD Yermo	Don Hanify
18	Anza	49100 Old Sage Rd Aguanaga 92536	Al Kranz

Schedule 2.1

Assets

Equipment

Kawasaki Loader 80z IV Serial 180c2-5039
Caterpillar 980c loader serial # 63x03333
Bobcat 1994-773 serial # 509640581
Kubota Excavator KX 121 Serial 404901
Kubota Excavator KX 121 serial # 34439
Boom Extension for Cat 980
3000 gal. Water tank.
500 gal water tank
Misc small tools

DMV Registered Trucks and trailers

water wagon vin # 1M9BTO8233L516887 LIC # SE 620915
cozad lowboy trailer lic # 4HZ7225 serial CC79265
Aztec 48' Flatbed Trailer Lic # 4EB9184 vin 1GVEX162141307651
Zieman equipment hauler vin # 1ZCE26S231ZP23443 lic # 4AW2252 t
Rears spray rig lic # SE 648375 vin L001205
2004 Big Tex Trailer 1GVEX162141307651 Lic # 4EW4988
6x10 single axle trailer Ameron Lic # 4HU6995 vin 1A9BU16104A577196
1999 f-450- LIC # 5W44924 VIN 1FDXF46F4XEA28456
1999 f-450 6a42251 vin 1FDXF46F3XED77995
2007 gmc sierra 2GTEC13V971105838 lic 8E82759 Eziquio
2004 tacoma 5TEVL52N44Z310161 LIC # 53120H1 Pedro
2001 chevy Felix lic 74902C1 vin 1gcec19t91z179247 re due 1-31
Chev 1500 2001 - lic 7R86249 vin 1GCEK19T11E135897 Berna
1997 Chevy s-10 Rigo 1gccs1440vk114294 lic 5N04551

Portable office Bldg. at 12450 Highland Valley Rd. Escondido
2 farm sheds at 12450 Highland Valley Rd. Escondido
Well , pump and irrigations systems at 12450 Highland Valley Rd. Escondido
Irrigation systems at 14 leased properties

Tools List

Berna Truck
Felix Truck
Eziquio Truck
Cargo Container

Supplies

1 ¼ banding- 10 rolls

¾ banding 3 rolls

5g pots one pallet 1530

24" assembled boxes- 26

36" assembled boxes -3

75, 24" boxes sides only

4-, 48" boxes

7. 60" boxes

6, 72" boxes

12 unopened skids of lumber

3 opened skids of lumber

Truckload- 23fbm lumber delivered to Yermo

12 rolls 1 ¼ banding

3 rolls ¾ banding

6 boxes nails

1 pallet water

Approx 80 yards soil mix

Tree Inventory- See attached.

Tree #	Location	BOX SIZE	In Ground TYPE	Form	Trk Diam	Ht x width	Sh-w	Sh-h	AVAILABLE	Client	Notes	\$
	Madera- Calligari Stone Pine											
Tag #	shipping width	date shipped										
695	8.5											
698	8.5											
731	8.5	28-Nov										
733	8.5											
738	8.5											
740	12											
743	8.5											
744	8.5	28-Nov										
782	12											
784	8.5											
779	8.5											
812	8.5											
808	8.5											
942	8.5											
1098	8.5											
: It cypress 9 trees 60" in grd Winchester will take 200 for these 34925 Washington Winchester, 92596												
	Al Kranz Barbara Trail-											
Trees Rob C tagged 11-30-18 aleppo pine and he has some manzanita												
our #	his #	box	ht									
7	3211	132										
3	3212	96										
12	3213	108										
13	3214	108										
9	3215	108	38									
5	3216	96	31									
8	3217	108										
2	3218	120	36									
10	3219	108	36									
by propane	3220	120	36									
Pat & Diane Ralston	23565 pico ovo.		92565									
1		100 aleppo				30x18				iganer		
2		100 aleppo				30x18						
3		100 aleppo				28x18						
4		100 aleppo				28x20						
5		96 aleppo				24x18						
6		96 aleppo				34x14						
7		100 aleppo				33x16						
Dorothy-Tierra Libertia Rd												
1		84 Cupressus				35' x 30"						
2		84 Cupressus				35' x 28"						
3		72 Cupressus				32						
4		84 Cupressus				35' x 30"						
5		72 Cupressus				29"					On not dig	
6		72 Cupressus				29"						
7		72 Cupressus				29"						
8		72 Cupressus				29"					Bad top	
9		72 Cupressus				30"						
10		84 Cupressus				40"						
11		84 Cupressus				36' x 42"						
12		84 Cupressus				38"						
13		84 Cupressus				36' x 34"						
14		84 Cupressus				39"						
15		84 Cupressus				36' x 40"						
16		84 Cupressus				41"						
17		84 Cupressus				39"						
18		72 Cupressus				27"						
19		72 Cupressus				28"						
20		72 Cupressus				29"						
21		72 Cupressus				30"						
22		72 Cupressus				29"						
23		72 Cupressus				25"						
24		72 Cupressus				31"						

[illegible]

[illegible]

Schedule 3.6
Business Contracts

None.

Schedule 3.10

Lienholders

None.

AMENDMENT TO FLAT RATE LEASE

This First Amendment to the Flat Rate Lease (First Amendment) is made and entered into by and between the City of San Diego (City) and Environmental Design California, Inc. (EDI), also referred to individually as "Party" and collectively as the "Parties."

RECITALS

1. CITY, as the lessor, and Big Tress Nursery, Inc. (Big Trees), as the lessee, were parties to that certain FLAT RATE LEASE ("Lease") dated May 1, 2014, and filed in the Office of the San Diego City Clerk as Document No. RR-308889, relating to certain CITY-owned real property located at 12450 Highland Valley Road, Escondido, CA 92025, as more particularly described in the Lease ("Subject Property").

2. On January 13, 2017, CITY executed the Consent to Assignment, which assigned the Lease and all right thereunder, from Big Trees to EDI. EDI is now the current lessee under the Lease.

3. The City has exercised its right under section 9.5 of the Lease and has surveyed a portion of the leasehold area of the Lease (the portion of the leasehold immediately adjacent to Highland Valley Road) for the purpose of identifying demarcation boundaries.

4. Pursuant to CITY's survey, CITY and EDI now wish to amend the Lease in order to clarify the leasehold boundary of the Lease.

TERMS

1. This First Amendment will be effective when it is signed by both parties and approved by the City Attorney in accordance with Charter section 40.

2. Section 1.1 of the Lease "Premises" is hereby deleted in its entirety and replaced to read as follows:

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 constitute 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 Exhibits A1 – A3 - Premises, and attached to and made part of this Lease. It is further agreed that: not all of the Premises and the sub-areas have been surveyed; 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.

3. All references to Exhibit A are hereby deleted in their entirety and replaced as amended with Exhibits A1 – A3, as attached hereto.

IN WITNESS WHEREOF, this First Amendment is executed by City and EDI acting by and through their authorized officers.

Environmental Design California, Inc.
a California corporation

By: 
Name: MARK HARBIT
Title: COO
Date: 5/22/2017

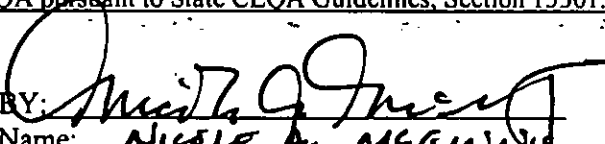
City of San Diego
a California municipal corporation

By: 
Name: CHERYL THOMPSON
Title: CHIEF, PUBLIC AFFAIRS
Date: 5/23/17

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: 5/14/17

By: 
Name: NICOLE A. MCGINNIS
Title: SENIOR PLANNER

Approved as to form this 24th day of
May, 2017

MARA W. ELLIOTT, City Attorney

By: 
Name: David Powell
Title: Deputy City Attorney

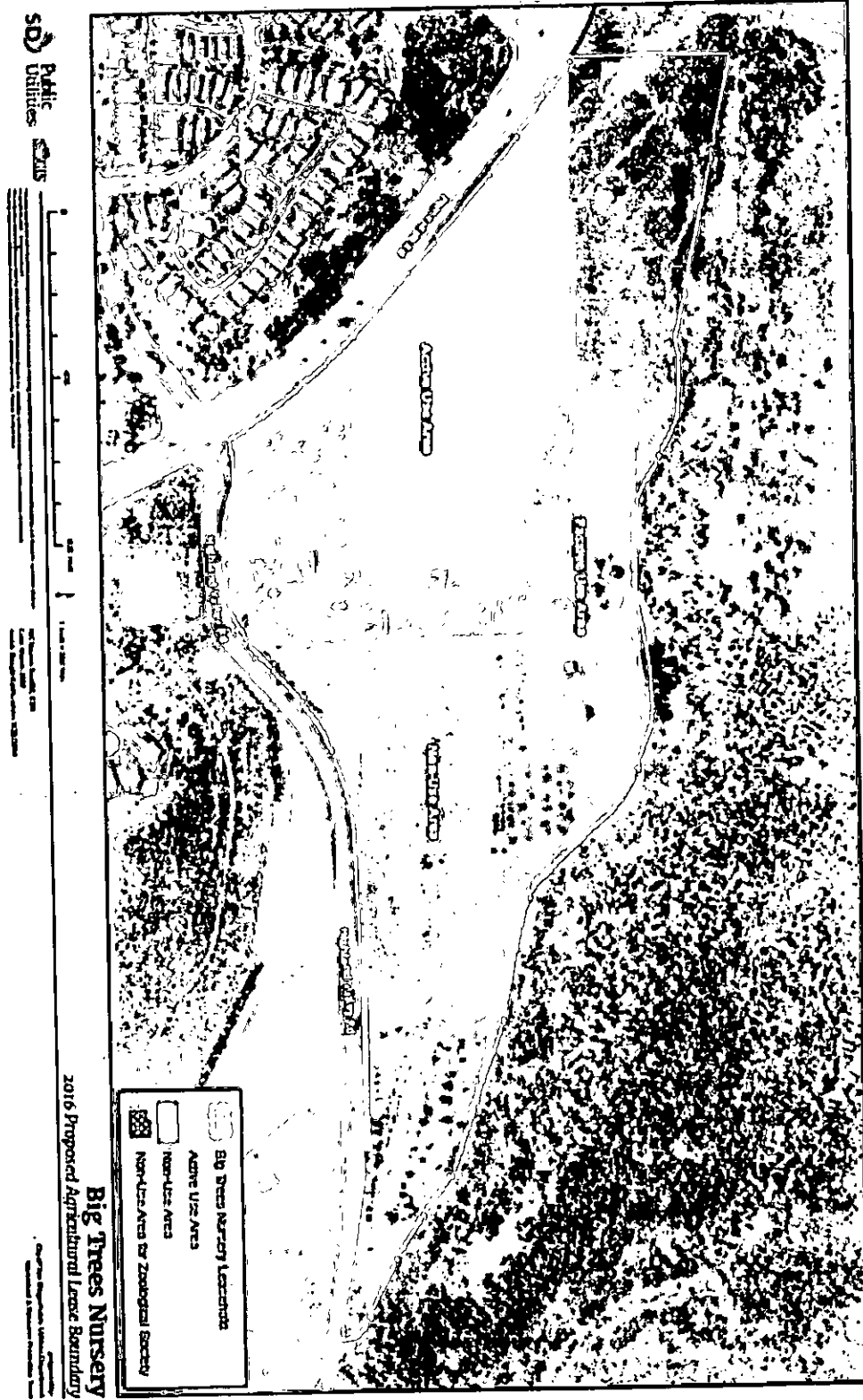
Exhibit A-1

Exhibit A-2

