

ORIGINAL



THE CITY OF SAN DIEGO

and

THE PINERY, LLC

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 PINERY, LLC., 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 portions of portions of APN 272-132-22, 272-150-04, 272-11504, and 272-214-01 in the community of San Pasqual Valley, City of San Diego, County of San Diego, State of California. The real property consists of approximately 133.96 total acres and approximately 120.47 production acres and is further described in Exhibit A- Premises, Pinery, LLC attached to and made part of this agreement, including the right to use the water from wells for the use described in Section 1.2, Uses, and subject to Section 3.5 Water Payment Formula and Section 8.6, Water Rights, hereof. The real property is hereinafter called the "Premises". It is further agreed that the leasehold has not been surveyed however CITY and LESSEE agree to approximate acreage.

1.2 Uses.

It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of a wholesale container nursery, farmers market, educational agricultural purposes, related office facilities, and for such other related or incidental purposes, as may be first approved in writing by the Mayor, and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the Premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions.

By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself 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.

1.4 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 lease 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 the Mayor of 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.

1.5 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 leased Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- 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 in this section. 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.

1.6 Competent Management

Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the reasonable satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a wholesale container nursery, and other uses as set forth in Section 1.2, consistent with industry standards and best management practices, and performing all

practices and related activities in a physically responsible manner. The CITY hereby acknowledges and agrees that present management of the Premises is competent.

SECTION 2: TERM

2.1 Commencement.

The Term of this Lease shall be twenty (20) years. The Term is effective on the first day of the calendar month following execution by the Mayor and approval by the City Attorney ("Commencement Date"). The Term shall expire on the last day of the calendar month. "Lease Year" as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12 month period thereafter during the Term.

2.2 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 agreement constitutes 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 bring the rent to fair market value and to terminate the holdover tenancy at will.

2.3 Quitclaim and Surrender of LESSEE'S Interest

On 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 those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the Mayor.

2.4 Lessee Right to Terminate.

The LESSEE may terminate this agreement with no less than three (3) months 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 approved uses of 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 established for the lease term following the Effective Date of this Lease is \$61,952.76 payable quarterly at \$15,488.19. The initial rent is \$514.26 per production acre per year and does not include the cost of water. The initial annual rent is subject to adjustment pursuant to Section 3.2 below.
- b. Payment for Water. In addition to the annual rent paid quarterly, water use will be calculated by LESSEE and paid quarterly per Section 3.6. The cost of water is currently \$125.00 per acre foot.

3.2 CPI Adjustments.

The rent is subject to adjustments with the commencement of year five of the lease and shall be adjusted on the anniversary date of the lease every two years thereafter. The rent adjustment will be based on percentage increases in the Consumer Price Index (CPI) as provided in this Lease. The rent shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August and September) of the calendar year prior to each adjustment.

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 the adjusted rent as established by the CPI 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:

- a. The "adjustment figure" shall be established by dividing the "current index" by the "base figure" as defined below.
- b. The "base figure" for the first such adjustment shall be a three (3) month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the Effective Date of this Lease.
- c. To illustrate, if the Lease commences in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).
- d. 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.
- e. The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

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

(\$1,000 x 01.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

3.3 Inspection of Records.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

LESSEE agrees to make available to CITY upon demand, any and all records pertaining to the costs and usage of water on the leased Premises which shall include records of costs of construction, maintenance, operation and pumping, and meter readings. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a cause for termination of the Lease. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

3.4 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will 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).

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 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 a service or use or to LESSEE for participating in or allowing any unauthorized use of the leased Premises.

3.6 Water Payment Formula.

The cost for ground water, currently \$125.00 an acre foot, shall be reviewed and adjusted, if necessary, each year on January 1. The cost for water will be the San Diego County Water Authority (CWA) untreated "All-in" water cost to the CITY, and take into consideration credit averaging for water pumping cost, infrastructure costs related to the well, water returned to groundwater, and water quality. Pumping cost shall be the utility

cost to bring the 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 the Mayor 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 the Mayor.

“Assignment” for the purposes of this clause shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

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. The Mayor 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, the Mayor must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The Mayor’s approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

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 lease term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment or major sublease. "Major sublease" shall mean any sublease or subleases which individually or cumulatively involves twenty-five (25%) percent or more of the total leasehold area. Also, "equity" shall mean any proceeds of a loan for which the leasehold interest is pledged as security, proceeds of which are not totally expended for permanent leasehold improvements as described above. 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 for CITY entering into this Lease. The amount upon which the twenty percent (20%) shall be based the total consideration resulting from the transaction 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, major subletting or refinancing, 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, sublessee or a refinancing agencies to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. 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, subletting or refinancing 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 the Mayor 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 thereby.

4.4 Encumbrance.

Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, 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 the purpose of developing 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 subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the Mayor. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. Provided, however, after the Premises are fully developed in accordance with said Development Plan to the satisfaction of the Mayor, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY, and further that LESSEE understands and specifically agrees that the Mayor shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent 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.

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, the Mayor must review and approve every person or entity which will have a financial interest in this Lease. The Mayor's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this Lease 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

(2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

(3) LESSEE shall be adjudicated a bankrupt; or

(4) 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. Provided, however, in the event that any default described in Section 4.5a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such 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 (30) 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 by CITY 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 property, 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 the Mayor 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 the Mayor or CITY staff to discover a default or take prompt action to require the cure of any 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 when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

4.6 Eminent Domain.

If all or part of the Premises is 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 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 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 or improvements 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 the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance

- a. LESSEE shall deliver to CITY a current certificate of insurance for:
 - (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000).
 - (2) Fire, extended coverage, and vandalism insurance policy on all CITY owned insurable property on the Premises, as further described in Exhibit B-City Owned Insurable Property, in an amount to cover one hundred percent (100%) of the replacement. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. LESSEE shall submit to the CITY recommendations and an accounting of

funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.4, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

- (3) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a 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 on the leased Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.
 - (4) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- b. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - c. Primary & Non-Contributory. Insurance policies shall be endorsed such that that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the Term and any extended use.
 - d. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - e. 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.

- f. 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. 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.
- g. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term 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 LESSEE'S use of the Premises.
- h. 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.
- i. 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 on the Premises, excepting wells, irrigation piping, and plant material, in an amount to cover one hundred 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 previously 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 agreed use per this Lease will not practicable, the LESSEE may opt to return that portion 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, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 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 making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease. LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.

6.2 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 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.

6.3 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. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY. LESSEE shall maintain and repair perimeter fencing for the protection of

Sycamore Creek located on the western portion of the leasehold to the CITY'S satisfaction. LESSEE is responsible for compliance with Federal and State regulations such as, but not limited to, Administrative Code, Title 14, Section 4307; and Penal Code, Title 14, Section 622.5 which deal with the protection of cultural resources.

6.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the Mayor. 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 the Mayor 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.

6.5 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.

6.6 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.

6.7 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.

6.8 Signs.

LESSEE agrees not to 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 agrees to remove the item at its expense within 48 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 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 lease expiration or termination 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 the items described in Exhibit B, Property Inventory, attached to and made part of this Agreement.
- b. If CITY elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, structures, and 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 as directed, LESSEE agrees to 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 remaining improvements on the Premises, LESSEE agrees to 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 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 said Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 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:

Mayor
City of San Diego
Attn: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

LESSEE:

The Pinery, LLC.
P.O. Box 668
Rancho Cucamonga, CA 91729

Or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may be 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 the Mayor or his authorized representative under the authority of any such law, statute, ordinance or regulation.

7.3 CITY'S, Consent, Discretion.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor, unless otherwise specified, 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. All references to "Mayor" herein shall be deemed to refer to the Mayor of San Diego, or his designee, for the duration of the time period which CITY operates under mayor-council form of governance (commonly referred to as "strong mayor"), pursuant to Article XV of The City Charter of the City of San Diego, California. Should CITY no longer operate under a mayor-council form of governance, all references to "Mayor" shall then be deemed to refer to the "City Manager" or other term as may be set forth in the Municipal Code.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor unless otherwise specified, without need for further resolution by the City Council.

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 physical 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 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/ vendor/ service provider listed in the report.

- b. Equal Employment Opportunity. LESSEE will 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 any other applicable federal and state laws and regulations hereafter enacted. LESSEE will 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.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets for the actions the LESSEE will take to achieve the CITY'S goal for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

- c. 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.

LESSEE understands that failure to comply with the above requirements 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.

7.6 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.

7.7 Legal Fees.

In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

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 sublessees 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 sublessees shall be individually responsible for their own ADA employment programs.

7.14 Criminal Notice.

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 Criminal Notice.

The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

7.15 Standard of Employees.

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

7.16 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment from City whatsoever upon termination of this Lease.

7.17 Supersedure.

It is mutually agreed that this lease, upon execution, supersedes and annuls 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 void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

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 approved and periodically reviewed by the Water Department. Upon written notice from the Mayor 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 leasehold areas and approved use, 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.

8.2 Reporting Requirements.

LESSEE agrees to provide to the 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. 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), annual cropping patterns (acres), and upon request provide cooperation as the Groundwater Management Plan is implemented. Failure to provide the information requested under this section shall constitute a default under the terms of this Lease.

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.

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 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 in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather

conditions or other natural causes. LESSEE is authorized to minimize potential flood damage though improved drainage and other flood control improvements as agreed upon with 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 would not enter into this Lease.

8.6 Water Rights.

CITY reserves all of its 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 lease 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 the CITY'S rights, title or interest in the water on 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 1.5, 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 purpose of this Lease, 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 Section 3.6 Water Payment Formula, 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) LESSEE may only make material modifications to existing wells or construct new wells with the express written approval of CITY and per appropriate County Code. 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.
 - (3) 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 during the term of this Lease 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 1.5.

SECTION 9: SPECIAL PROVISIONS

9.1 Potential Construction of Public Hiking, Biking and Riding Trails.

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. LESSEE agrees that, in the event such trails are to be constructed through the Premises that the property needed for such trails may be deleted from the leasehold area subject to 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 minimum or fixed rent shall be reduced accordingly. 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 Mayor. 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 installed on the leasehold 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 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites.

LESSEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere 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 lease boundary fencing. However, if additional measures for protecting the site 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.

9.3 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 leasehold. In this event the property needed for public access may be deleted from the leasehold area upon 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 Mayor. 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 1.5 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. When the boundaries have been established by the City, the LESSEE shall maintain identifying markers at the leasehold.

9.6 Housing of Permanent Employees.

If there is a benefit to the leasehold operation, the 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. If the LESSEE chooses to provide housing on the Premises, LESSEE shall install and maintain housing in accordance with applicable City of San Diego and Health and Safety Zoning requirements.

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 leasehold:

- 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 leasehold interest at any time following the first five (5) years of the term of this Lease. The 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 (20%) percent of one another (the larger appraiser being not more than twenty (20%) percent 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 (20%) percent and the Mayor 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 or damages 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 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 10 days after LESSEE vacates the Premises.

9.9 Hazardous/Toxic Waste

Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the Premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including, but not limited to, costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the Mayor within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the Mayor immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the Mayor immediately of any notice of violation received or initiation of environmental action or private suits relative to the Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

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.

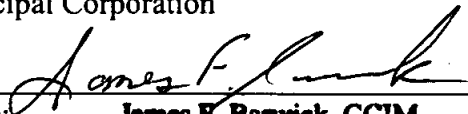
SECTION 10: SIGNATURES

10.1 Signature Page.

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its Mayor, and by LESSEE, acting by and through its lawfully authorized officers.

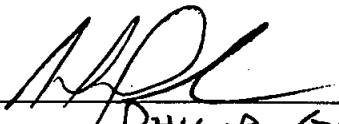
Date: 5/12/11

THE CITY OF SAN DIEGO, a California
municipal Corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: 3/14/11

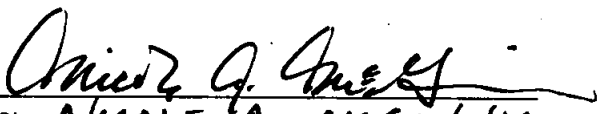
THE PINERY, LLC. a California Corporation

BY: 
Name: PHILIP GUARDIA
Title: PRESIDENT

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

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

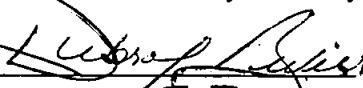
Date: 4/4/11

BY: 
Name: NICOLE A. MEGINNIS
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 5/13/11

JAN I GOLDSMITH, City Attorney

BY: 
NAME: Debra J. Reiser
TITLE: Deputy City Attorney

DCM/cb
I:\Support Staff Group\WPO\2011\MARTENS\LEASE-THE PINERY.docx
3-10-11

R- 306760

SECTION 11: EXHIBITS

EXHIBIT A: Premises, Pinery, LLC.

**EXHIBIT A - PREMISES
PINERY, LLC**

Useable Acres - 120.465
Total Acres - 133.964



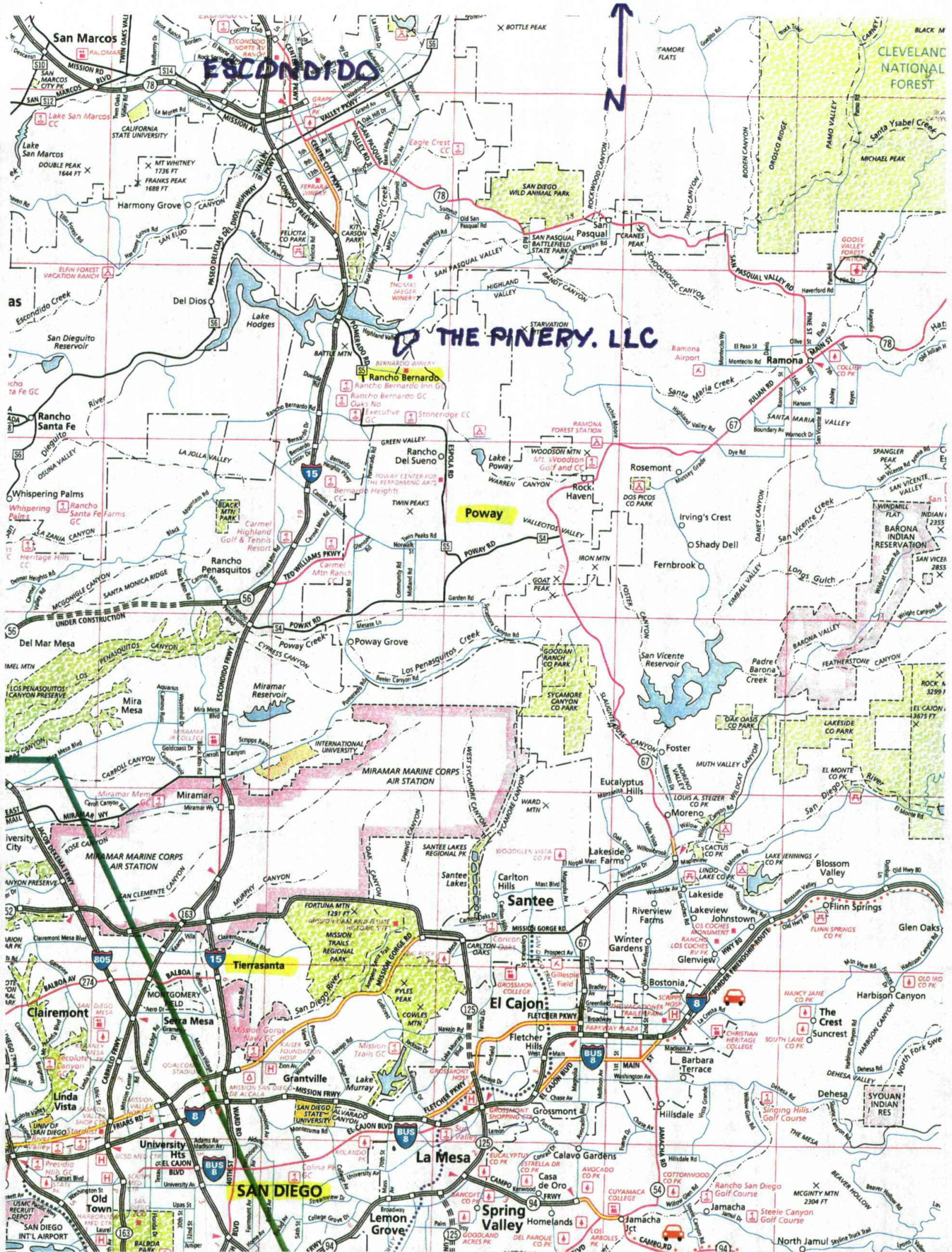


EXHIBIT B: Property Inventory

EXHIBIT B

LESSEE PROPERTY INVENTORY

Four-unit modular office building (leased). 2,880 square feet (approx). Equipped with H.V.A.C., full plumbing and lavatory(s), concrete steps, entry and walkways, handicapped access, and landscaping.

One 125 H.P. turbine deep well and controls (owned) with pump set at 660' below ground.
One 60 H.P. submersible pump and controls (owned) with pump set at 500' below ground.
One 5 H.P. domestic water pump and controls (owned) with pump set at 300" below ground.
Two 25 H.P. Booster pumps and controls with pumps set in reservoir.

"Hoop style" greenhouse (owned) 4,000 square feet (approx). With plumbing, heat and ventilation systems, end doors, and concrete walkway.

"Hoop style" greenhouse (owned) 4,900 square feet (approx). With plumbing, heat and ventilation systems, end doors, and concrete walkway.

"Hoop style" greenhouse (owned) 4,500 square feet (approx). With plumbing, heat and ventilation systems, end doors, and concrete walkway.

"Hoop Style" greenhouse (owned) 4,800 square feet (approx). With ventilation system and end doors.

A.P. Shade house (owned) 78,000 square feet (approx). Lodge pole and cable construction, fully irrigated, with ground cover cloth throughout.

6 Haygrove 18' x 250' shade/frost tunnels (owned) galvanized hoop construction.

Two 10'x40' storage containers (owned) with roll-up doors, 12' x 40' concrete slab, 40'x 35' shade structure, with electrical. 18'x40' wash rack with shade cover.

10'x20' storage shed (owned) with electrical.

10'x40' storage container (owned) with three roll-up doors, inner chain-link partitions, and electrical.

One 1,030-gallon gasoline tank, one 540-gallon diesel tank with electric pumps, metal steps, and concrete containment system. (all owned)

One 1,000-gallon propane tank (leased) plumbed to greenhouses 1, 2, and 3.

Sub-main piping, and above ground valves and regulators of 2 ½ to 1" PVC, and various valves and regulators, managing flow to final irrigation systems.

100 Kwh Pivot Power generator and controls, (owned) with corrugated steel cover.

EXHIBIT B

CITY PROPERTY INVENTORY

One multi-purpose room/garage (owned). 750 square feet (approx). With plumbing (sinks) and electrical, 2 roll-up doors, and 2 standard doors. Pitched roof, and shade "porches" front and rear. Concrete and wood stepped entries and exits with metal railings, and 45' x 45' shade covered "lunch area" attached.

One 6.9 - Acre foot capacity reservoir (owned) with 300' concrete sluice.

One 10,000-gallon (approx) single chamber concrete drainage sump with clean-out ramp.

One 30,000-gallon (approx) dual chamber concrete drainage sump with silt filter and clean out ramp.

Main line piping system, consisting of no less than 650' of 10" PVC, 3,000' of 8" PVC, 2,400' of 6" PVC, 7,000' of 4" PVC, 3,500' of 3" PVC. This system is capable of supplying a minimum of 250 GPM to most areas of the property.

One 5,000 square foot 6" thick reinforced concrete slab.

One 120' wide loading dock. Reinforced concrete construction, with 4' wide walkway running the length of dock face.

Approx. 2,700 feet of 4 strand barbed wire fencing, with t-posts 10' on center, installed on northern property boundary.

170' x 100' 6' chain link fenced compound with three strand barbed wire topper and 4 18' double swing gates. (at shop area)

580' x 580' 6' chain link fenced compound with tree strand barbed wire topper and 2 30' double swing gates (at reservoir)

20' x 30' 6' chain link fenced compound, consisting of one fixed 20' section and three hinged panels, with tree strand barbed wire topper, and one walk through entry gate.

Approx 150' 6' cedar fencing, and approx 60' 4' chain link fencing around recycle sumps.

RESOLUTION NUMBER R- 306760DATE OF FINAL PASSAGE APR 28 2011

A RESOLUTION AUTHORIZING THE CITY OF SAN DIEGO TO ENTER INTO A 20-YEAR FLAT RATE LEASE WITH THE PINERY, LLC, FOR THE LEASE OF APPROXIMATELY 133.96 ACRES OF PUBLIC UTILITIES DEPARTMENT PROPERTY IN THE SAN PASQUAL VALLEY AGRICULTURAL PRESERVE.

WHEREAS, the proposed new 20-year lease will let an area of approximately 133.96 acres of Public Utilities Department property to The Pinery, LLC; and

WHEREAS, the management of The Pinery, LLC, purchased out of bankruptcy the nursery that was owned by the previous tenant of this leasehold area, and has maintained the leasehold area during current lease negotiations; and

WHEREAS, The Pinery, LLC, has begun a new era of specialized wholesale container nursery in the San Pasqual Valley Agricultural Preserve, utilizing an experienced team of employees, many of whom previously worked at the nursery that went bankrupt; and

WHEREAS, The Pinery, LLC, uses drip irrigation for water conservation and has best management practices in place for irrigation and storm water management; and

WHEREAS, The Pinery, LLC, is currently operating at 95% of total production, has 105 employees, and sold more than 750,000 plants to various retail locations throughout the United States during the 2010 holiday season; and

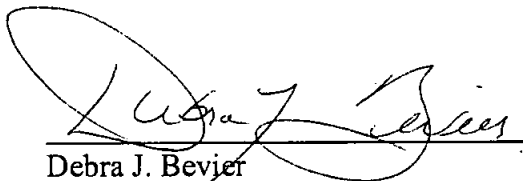
WHEREAS, The Pinery, LLC, will pay market rent for the leasehold premises. The lease will result in no cost to the City as all costs associated with the development, operation, and

maintenance of the nursery, including water development, is at the sole cost of the The Pinery, LLC; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is hereby authorized to enter into and execute a new 20-year Flat Rate Lease with The Pinery, LLC, for the purposes of operating a wholesale container nursery within the San Pasqual Agricultural Preserve.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mm

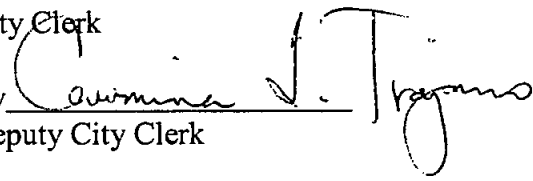
4/4/2011

Or.Dept:Real Estate Assets Dept.

PL#2010-01412

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 19 2011

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4.28.11

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

APR 19 2011

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Kevin Faulconer	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Anthony Young	☒	☐	☐	☐
Carl DeMaio	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐

Date of final passage APR 28 2011

AUTHENTICATED BY:

JERRY SANDERS

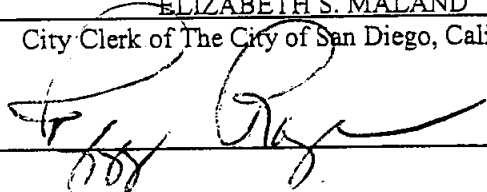
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By



, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 306760

Passed by the Council of The City of San Diego on April 19, 2011 by the following vote:

YEAS: **LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, ZAPF, EMERALD, ALVAREZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

VACANT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

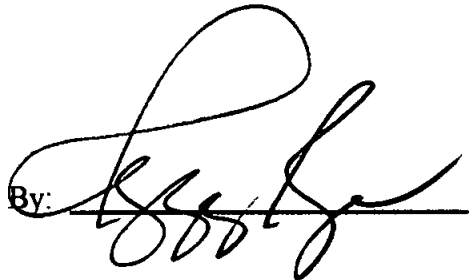
By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-306760 approved by the Mayor of The City of San Diego, California on
April 28, 2011.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:

CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: THE PINERY LLC Contact Name: PHIL GUARDIA
Company Address: 13701 HIGHLAND VALLEY RD. Contact Phone: (619) 675-3575
ESCONDIDO, CA 92025 Contact Email: PHIL@PINERYTREE.COM

CONTRACT INFORMATION

Contract Title: _____ Start Date: _____
Contract Number (if no number, state location): _____ End Date: _____

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract. To maintain equal benefits a contractor shall:

- Offer equal benefits to employees with spouses and employees with domestic partners in accordance with the EBO.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation; employee assistance programs; credit union; or any other benefit.
 - If a contractor does not offer a benefit to an employee with a spouse, that same benefit is not required to be offered to an employee with a domestic partner.
- Post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Allow City access to records, when requested, to confirm compliance with EBO requirements.
- Submit EBO Certification of Compliance, signed under penalty of perjury, prior to award of contract.

This summary is provided for convenience. Full text of the EBO and Rules Implementing the EBO are available at www.sandiego.gov.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO by selecting A, B, or C below. The City may request supporting documentation.

- A. ☒ I affirm compliance with the EBO because my firm (contractor must select one reason):
- ☒ Provides identical benefits to spouses and domestic partners.
 - ☐ Provides no benefits to spouses or domestic partners.
 - ☐ Has no employees.
- B. ☐ I am not now in compliance, but request approval of **provisional compliance** with the EBO (contractor must select one):
- ☐ Until my firm completes administrative steps to implement compliance (3 month maximum).
 - ☐ Until effective date of my firm's first open enrollment period (1 year maximum).
 - ☐ Until expiration of current collective bargaining agreement(s) with my firm.
- C. ☐ I request approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm (contractor must select all):
- ☐ Made reasonable efforts to comply, but will not be able to comply with EBO requirements before contract completion.
 - ☐ Will amend policies to extend benefits for which a cash equivalent is not available to domestic partners.
 - ☐ Will notify employees of the availability of a cash equivalent in lieu of equal benefits.

Under penalty of perjury under laws of the State of California, I certify I understand and will comply with requirements of the Equal Benefits Ordinance in the manner affirmed above in accordance with San Diego Municipal Code, Chapter 2, Article 2, Division 43 and the Rules Implementing the Equal Benefits Ordinance.

LESA BRYANT / MANAGER
Name/Title of Signatory

[Signature]
Signature

4/5/11
Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ ☐ Approved ☐ Not Approved – Reason: _____