

DUPLICATE



THE CITY OF SAN DIEGO

AND

WEST COAST TURF

Percentage Lease

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as Lessor, and West Coast Turf, a California corporation ("LESSEE"), as Lessee, to be effective as of the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property consisting of approximately five hundred and seven (507) total acres and approximately three hundred and sixty-two (362) usable acres of land located on APN # 760-176-18, all as more specifically depicted in **Exhibit A: Lease Boundary**, attached hereto ("Premises").
- B. LESSEE is a well-known industry leader for the growing and harvesting of sod and drought tolerant grasses.
- C. LESSEE has farmed the Premises as a sublessee to CITY's lessee/sublessor and in that capacity has demonstrated its capability to optimize the use of the Premises and the potential return to the CITY.
- D. LESSEE desires to lease the Premises directly from the CITY for the growing and harvesting of sod.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and based upon the foregoing Recitals which are incorporated into this Lease by this reference, the parties agree as follows:

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Leasing. Effective as of the Commencement Date (as defined below in Section 2.1), CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY under the terms and conditions of this Lease.
- 1.2 Allowed Uses. LESSEE shall use the Premises, solely and exclusively for the purposes of growing and harvesting sod and such related and incidental purposes as may be first approved in writing by the City and for no other purpose whatsoever (the "Allowed Uses"). LESSEE's agricultural activities are limited to the useable acres. LESSEE may cross Santa Ysabel and Santa Maria Creeks only at the established crossing depicted on **Exhibit A**. LESSEE may only conduct equipment maintenance at least four hundred (400) feet away from stream channels and environmentally sensitive areas, and at locations with impervious surfaces, a roof or canopy, containment, and sumps. LESSEE shall implement a program to remove any material collected in the sump(s) in compliance with all

applicable federal, state, and local regulations, and subject to CITY approval.

- 1.3 **Superior Interests.** This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.
- 1.3.1 As set forth in that certain lease on filed with the San Diego City Clerk as Document No. 307542 on June 26, 2012, CITY previously granted Henry Ranch Escondido, LP a right to use water from Well # SP061, access supply pipes, and use vehicles across the Premises, as needed, in accordance with **Exhibit A**. The City may extend this right without notice to LESSEE. LESSEE acknowledges and agrees that this Lease is made subject to the rights previously granted to Henry Ranch Escondido, LP and LESSEE shall not interfere with those rights. LESSEE acknowledges and agrees that City may authorize the installation of a replacement well to Well # SP061 within forty (40) feet of Well # SP061. LESSEE is not responsible for repair, maintenance, and utilities associated with Well # SP061. LESSEE's reporting obligations under this Lease do not extend to the use of Well # SP061.
- 1.3.2 As set forth in that certain lease on filed with the San Diego City Clerk as Document No. OO-19791 on October 21, 2008, CITY previously granted Rancho De La Loma, LLC a right to use water from Well # SP053, access supply pipes, and use vehicles across the Premises, as needed, in accordance with **Exhibit A**. The City may extend this right without notice to LESSEE. LESSEE acknowledges and agrees that this Lease is made subject to the rights previously granted to Rancho De La Loma, LLC and LESSEE shall not interfere with those rights. LESSEE acknowledges and agrees that City may authorize the installation of a replacement well to Well # SP053 within forty (40) feet of Well # SP053. LESSEE is not responsible for repair, maintenance, and utilities associated with Well # SP053. LESSEE's reporting obligations under this Lease do not extend to the use of Well # SP053.
- 1.3.3 As set forth in that certain agreement dated February 19, 1969, as amended, CITY previously granted the Zoological Society of San Diego a right to use water from well # SP046, access supply pipes, and use vehicles across the Premises, as needed, in accordance with **Exhibit A**. The City may extend this right without notice to LESSEE. LESSEE acknowledges and agrees that this Lease is made subject to the rights previously granted to Zoological Society of San Diego, its successors and assigns, and LESSEE shall not interfere with those rights. LESSEE acknowledges and agrees that City may authorize the installation of a replacement well to Well # SP046 within forty (40) feet of Well # SP046. LESSEE is not responsible for repair, maintenance, and utilities associated with Well # SP046. LESSEE's reporting obligations under this Lease do not extend to the use of Well # SP046.

1.4 Governmental Approvals.

1.4.1 By entering into this Lease, neither CITY nor the CITY's City Council (the "City Council") is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals. LESSEE shall be solely responsible for processing all applicable land use, development, and construction approvals required for the occupancy, use, development, rehabilitation, maintenance or restoration of the Premises. This Lease shall not be interpreted by any decision-maker on any CITY issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

1.4.2 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any development, rehabilitation, maintenance or restoration of the Premises, or any other improvements thereon, any aspect thereof, or issues or matters related thereto. Furthermore, CITY does not represent, warrant or guarantee any future approval of any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon, or any aspect thereof by the CITY, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any construction, alteration, rehabilitation, or improvement of the Premises or LESSEE's Facilities, or any other improvements thereon.

1.4.2.1 LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's failure to approve any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon.

1.5 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Lease or as required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided in this Lease.

1.6 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.

1.7 Reservation of Rights.

1.7.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.

1.7.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due under this Lease.

1.7.3 Repairs. CITY may at all reasonable times upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon 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 or off the Premises for the CITY, its contractors, licensees, employees, and agents to conduct tests, such as, but not limited to, aquifer tests, groundwater-level measurements, and water quality sampling.

1.7.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.

1.7.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.8 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

1.9 Supersedes Prior Agreements. As of the Commencement Date (as defined below in Section 2.1), this Lease shall supersede any and all prior agreements, whether oral or in writing, between the parties and related to all or any portion of the Premises.

SECTION 2: TERM AND COMMENCEMENT

2.1 Commencement. The term of this Lease ("**Term**") shall be Thirty (30) years commencing on the first day of the calendar month following the Effective Date ("**Commencement Date**"). "**Lease Year**" as used in this Lease shall mean the 12-month period commencing on the Commencement Date.

- 2.2 Holdover. Any holding over by LESSEE after expiration shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration of this Lease 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 may increase the rent to be one hundred twenty-five percent (125%) of the then rental rate based on minimum rent and may terminate the holdover tenancy at will.
- 2.3 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances directly or indirectly related to LESSEE's activities on the Premises or arising in whole or in part from this Lease, and in a condition reasonably satisfactory to CITY.
- 2.3.1 If the LESSEE fails to so surrender the Premises to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY, LESSEE shall be solely responsible for and shall pay for (and shall reimburse CITY for any and all costs incurred by CITY for) the removal of such liens and encumbrances and putting the Premises in a condition reasonably satisfactory to CITY; this provision shall survive the expiration or termination of this Lease.
- 2.3.2 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 expiration of the Term 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) business days after receipt of written demand therefor.

SECTION 3: RENT

- 3.1 Rent. LESSEE shall pay annual rent to CITY in an amount equal to either the Minimum Rent (as defined below) or the Percentage Rent (as defined below), whichever is greater ("Annual Rent"), as follows:
- a. Minimum Rent. The Minimum Rent is six hundred (\$600.00) per useable acre per Lease Year.
 - b. Percentage Rent. Percentage Rent is 5% of annual gross income. Percentage Rent is subject to review by the City in accordance with the provisions of this Lease and will be required and equivalent to a minimum of six hundred dollars (\$600.00) per useable acre per year. Percentage Rent will consist of the following percentage of the gross income (defined below) applied as follows:

Percentage

Five percent (5%)

Business Activities

Of gross income.

The CITY, in its sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2 Allowed Uses, hereof as may be approved in writing by the CITY prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the Premises without prior approval by the CITY shall be subject to the requirements of Section 3.6, Unauthorized Use Charge, hereof.

3.2 Payment Procedure. Within thirty (30) days following the Lease Year in which the gross income subject to rents was earned, LESSEE must provide CITY with a correct schedule of LESSEE's gross income, for the Lease Year, together with a statement of the Percentage Rent payable for that Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and deductions categorized by type, in a form selected by CITY together with a payment of applicable Annual Rent. The schedule and statement must be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement must indicate or include:

- a. The Percentage Rent due City, completed and totaled.
- b. Any rents due CITY from sublease activities or operations shall also be included beginning upon the earliest of the following dates (whether or not prior approval was given by CITY as required by this Lease and whether or not a separate percentage rent was established by CITY); sublease commencement date; or sublease physical occupancy date.

3.3 Gross Income. "Gross income" or "gross receipts," as used in this Lease, shall include all income resulting from occupancy of the Premises from whatever source derived whether received or to become due. Gross income includes, but is not limited to, income from delivery and installation services. Provided, however, gross income shall not include any federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods originally sold on the Premises and returned or refunds of deposits. The amount of such taxes and refunds must be clearly shown on the books and records of LESSEE. The Percentage Rent must be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee, or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said Premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the Percentage Rent hereunder required to be paid by LESSEE to CITY.

- 3.4 Minimum Rent Increases. Effective as of the first day of the sixth (6th) Lease Year of the Term, and as of the first day of each sixth Lease Year thereafter, the Minimum Rent shall be increased by fifteen percent (15%) (“Annual Minimum Rent Adjustment”).
- 3.4.1 In addition to Annual Minimum Rent Adjustments, upon at least one hundred eighty (180) days prior notice to LESSEE, CITY may, at its option adjust Minimum Rent upward, and upward only, as determined by an appraisal of the Premises after the tenth (10th) Lease Year, to be effective as of the first day of the eleventh (11th) Lease Year, and every ten (10) Lease years thereafter to reflect the then-current fair market minimum rent for the Premises. The appraisal shall be made based on the then current fair market rent for the Premises, as evidenced by then-recent leases for similar premises similarly improved, operated and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. The new Minimum Rent rate shall be determined by an appraisal by a qualified professional independent real estate appraiser, reasonably experienced in appraising leases substantially similar to this Lease, in accordance with Section 3.4.2. In no event shall any adjustment decrease the then-current Minimum Rent. The Mayor, or his or her designee, shall have the sole discretion to waive the appraisal process if it is concluded by the Mayor, or his or her designee, that no significant change in Minimum Rent is appropriate.
- 3.4.2 CITY and LESSEE shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by agreement of the parties from a list of City of San Diego-approved appraisers (“Appraiser List”) and within ten (10) days after LESSEE’s receipt of such list. If the parties do not agree on an appraiser within said 10-day period, then CITY and LESSEE shall each select a qualified appraiser from the Appraiser List who in turn, within ten (10) days, shall select a third qualified appraiser from the Appraiser List to perform the appraisal. In the event the two selected appraisers do not agree on a third appraiser within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event the Superior Court judge declines to make the appointment, the CITY and LESSEE agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. The CITY and LESSEE shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third mutually selected appraiser or court-appointed appraiser. “Qualified appraiser” shall mean a licensed “MAI” (or substantially equivalently qualified) appraiser reasonably experienced in appraising leases substantially similar to this Lease. The appraisal shall be ordered for completion within sixty (60) days. Subject to the limitations contained herein regarding no reduction in Minimum Rent, CITY and LESSEE agree to accept and be bound by the Minimum Rent determined by the appraiser selected or appointed to complete the assignment.

- 3.5 Percentage Rate Adjustment. Upon at least one hundred eighty (180) days prior notice to LESSEE, CITY may, at its option, adjust the Percentage Rent upward, and upward only, to be effective as of the first day of the eleventh (11th) and twenty-first (21st) Lease Years to reflect the then-current fair market percentage rent rates for the Premises and the Allowed Uses, as evidenced by then-recent leases for similar premises similarly improved, operated and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California.
- 3.5.1 To the extent relevant to establishing percentage rent rates, in establishing the percentage rates for categories set forth in this LEASE, the appraiser shall consider CITY's interest in the Property as a fee simple absolute estate and as vacant and available on the open market for lease for the Allowed Uses at the commencement of rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California communities as listed above, if available.
- 3.5.2 The fair-market percentage rates set forth in the appraisal that are higher than the then current percentage rate for the Percentage Rent shall become the percentage rates used to determine the Percentage Rent under this Lease as of the applicable effective date for the lease period under review, regardless of when the appraisal is actually completed. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the appropriate LEASE Year, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, shall be retroactively applied to said effective date of rental adjustment as hereinabove established. If any Percentage Rent deficiencies are created by the adjustment process set forth in this section, LESSEE shall pay to CITY any and all such rent deficiencies within ninety (90) days after CITY's notice of the Percentage Rent adjustment.
- 3.5.3 CITY and LESSEE shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by agreement of the parties from a list of City of San Diego-approved appraisers ("Appraiser List") and within ten (10) days after LESSEE's receipt of such list. If the parties do not agree on an appraiser within said 10-day period, then CITY and LESSEE shall each select a qualified appraiser from the Appraiser List who in turn, within ten (10) days, shall select a third qualified appraiser from the Appraiser List to perform the appraisal. In the event the two selected appraisers do not agree on a third appraiser within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event the Superior Court judge declines to make the appointment, the CITY and LESSEE agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. The CITY and LESSEE shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the third

mutually selected appraiser or court-appointed appraiser. "Qualified appraiser" shall mean a licensed "MAI" (or substantially equivalently qualified) appraiser reasonably experienced in appraising leases substantially similar to this Lease. The appraisal shall be ordered for completion within sixty (60) days. Subject to the limitations contained herein regarding no reduction in percentage rates, CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

- 3.6 Payment for Ground Water. It is understood and agreed by CITY and LESSEE that the Minimum Rent includes and covers LESSEE's limited ability to pump and use water from LESSEE-maintained wells on the Premises for Allowed Uses. However, if in the opinion of CITY an additional water charge is deemed warranted for underground water pumped from said wells, CITY shall notify LESSEE in writing one year prior to implementation of the additional water charge ("Water Charge"). The Water Charge shall be based on a percentage of the cost of untreated water and will be determined solely by CITY, who shall have the right to periodically adjust the Water Charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY's Public Utilities Department. The Water Charge shall be payable in arrears on a quarterly basis. All costs associated with the use of ground water shall be at LESSEE's sole cost and expense. The LESSEE may terminate this Lease with twelve (12) months prior written notice delivered to the CITY if the cost of water implemented under this Section 3.4 becomes cost prohibitive.
- 3.6.1 Water Charge Formula. The Water Charge shall be reviewed and adjusted, if necessary, each year on January 1. The Water Charge will be calculated using the San Diego County Water Authority ("CWA") raw water cost to CITY and take into consideration credit for water pumping cost and infrastructure costs related to the well. Water 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 Premises, and the Allowed Uses.
- 3.6.2 Water Conservation. LESSEE shall practice water conservation and abide by all applicable water conservation and storm water related requirements. In the CITY's sole discretion, and upon reasonable notice, the CITY may exercise a charge for excess water usage. LESSEE shall pay any additional water costs resulting from excess water use beyond recommended levels established by the CITY's Water Conservation Manager. In times when it has been determined that there is a water emergency, or when voluntary or mandatory water use restrictions exist, LESSEE's non-compliance may result in penalties, including without limitation LESSEE's payment of fines and corrective action needed to remedy violations. The Premises is subject to metering and/or sub-metering to demonstrate compliance with these provisions. Failure to comply with the obligations set forth in this section 3.4.2 shall constitute a default under this Lease.

3.7 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not an Allowed Use as set forth in Section 1.2 of this Lease (the "Unauthorized Use"), regardless of any related penalties charged LESSEE by competent governmental authorities. Such Unauthorized Use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No Unauthorized Use charges shall satisfy or be credited against any other rent obligations of LESSEE under this Lease. The Unauthorized Use charge shall otherwise be considered additional "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such Unauthorized Use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

3.8 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

3.9 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records must be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Income.

3.9.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term, or for the period since the most recent CITY audit conducted in accordance with this section 3.7.1, and for five (5) years after the Term. LESSEE must make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE must maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may

inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

3.9.2 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- a. For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- b. LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

3.9.3 Financial Statements. Within thirty (30) days after the end of each Lease Year as previously established herein, LESSEE will, at its sole expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the Lease Year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the Premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises.

- 3.10 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount being a total of ten percent (10%), which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
- 3.11 Security Deposit. Upon execution of this Lease, LESSEE must pay to CITY a security deposit equal to three months of rent based on the Minimum Rent.

SECTION 4: ASSIGNMENT & SUBLETTING

- 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, Subletting, Refinancing.

4.2.1 Right to Assign and Sublet. The LESSEE shall not assign this Lease or any interest herein and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without prior written approval from CITY. CITY's approval may be conditioned upon the proposed assignee or sublessee agreeing to revisions to this Lease, to reflect market conditions or CITY requirements that are then in effect. Any such approval shall not be deemed approval to any subsequent assignment, subletting, occupation, or use by another person. This Lease and any interest therein shall not be assignable by operation of law without the written consent of CITY which shall not be unreasonably withheld. The following action will not be allowed under this Lease and will be considered as contrary to CITY's best interest: Assignment by LESSEE for a consideration in excess of LESSEE's installed improvements and/or services rendered.

"**Assignment**" for the purposes of this Lease shall include without limitation any transfer of any 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 shall be conditioned upon the assignee agreeing in writing that it will assume the rights and obligations thereby assigned and that it will keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. CITY may require, as a condition to consenting of any assignment, that the proposed assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed assignment and that this Lease otherwise be revised to comply with standard CITY lease requirements that are then current. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease. The City will not approve any assignee that is not at least comparable to the original LESSEE in financial and professional capabilities to operate the Premises, as determined by the City.

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

- 4.3 Additional Consideration to CITY. In the event of an Assignment (as defined in Section 4.2, above); in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved Assignment of the Lease, two percent (2%) of any amount paid to LESSEE in consideration of a sublease of all or a majority portion of the leasehold, two percent (2%) of any amount paid to LESSEE in consideration of a sublicense or all or a majority portion of the License, or two percent (2%) of the amount of any new loan or encumbrance against the property plus, if applicable, the cost of the new improvements constructed on the Premises as required or allowed under this Lease. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments, less the amount listed in LESSEE most recent federal tax return as the current depreciated value of the improvements upon the Premises. Prior to CITY's consent to any assignment, majority subletting or sublicense, 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, sublicensee, or refinancing agency as 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, a sublicense, or a refinancing. For majority subleases or sublicenses, such additional consideration shall be payable to CITY when accrued regardless of actual receipt by LESSEE. Any assignment, subletting, sublicense, 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 (in an individual) or (ii) of LESSEE's principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold or license, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in, beneficial use of, or legal title to, the leasehold or license as an asset or the income produced thereby.

4.4 Encumbrance of Agreement. Subject to CITY's prior written consent, LESSEE may encumber this Lease, its interest in the Lease and its improvements on the Premises 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 improving the Premises.

- a. CITY shall not be required to subject its fee estate and interest in the Premises to the lien of any leasehold financing or mortgage sought or obtained by LESSEE.
- b. The term of the encumbrance shall not exceed the Term.

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 or its rights hereunder to its designee, if, in the opinion of CITY, the designee is a reputable, qualified, and financially responsible person. 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 San Diego City Charter section 225, all mortgagees, beneficiaries, designees and nominees shall make a full and complete disclosure of the name and identity of any and all persons or entities proposed to be directly or indirectly involved in this Lease and the precise nature of all interests of all persons or entities therein. Every person or entity which will have an interest in this Lease must be reviewed and approved by CITY in advance.

SECTION 5: DEFAULT AND REMEDIES

- 5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:
- 5.1.1 LESSEE fails to make any payment required under this Lease when due;
 - 5.1.2 LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - 5.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - 5.1.4 LESSEE is adjudicated bankrupt; or
 - 5.1.5 LESSEE makes a general assignment for the benefit of creditors.
- 5.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:
- 5.2.1 the worth at the time of any unpaid rent that was due at the time of termination;
 - 5.2.2 the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
 - 5.2.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
 - 5.2.4 any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
 - 5.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 5.2.1 and 5.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 5.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount

rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

5.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;

5.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and,

5.3.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

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

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 6: EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 6.1.1 Full Taking. If 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.
- 6.1.2 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for continued lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.3 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises are 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 rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 6.1.4 LESSEE's Award. Subject to the rights of mortgagees, LESSEE shall receive the

fair market value of its leasehold interest under this Lease for the remaining Term and the value of its loss of goodwill, if any, awarded by the taking authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

6.1.5 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 LESSEE-owned improvements on the Premises in accordance with this Lease.

6.1.6 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.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease, approval of this Lease or LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

7.2 Insurance. Prior to the Commencement Date, LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Lease

and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

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

7.2.1 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

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

7.2.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

7.2.1.3 Workers' Compensation. For all of LESSEE's employees who are subject to the Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

7.2.1.4 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost.

7.2.2 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

7.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Lease shall only be carried by insurance companies with

a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.2.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Commencement Date.

7.2.4.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4.2 Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of LESSEE.

7.2.4.3 Worker's Compensation Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

7.2.5 Reservation of Rights and Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Lease at any time, by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

7.2.6 Additional Insurance. LESSEE may obtain additional insurance not required by the Lease.

7.2.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

SECTION 8: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

8.1 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 as to the conditions of the Premises and its suitability for the Allowed Uses. LESSEE further represents and warrants that LESSEE is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses, and that LESSEE is relying solely on its own independent inspections, tests, investigations, and observations of the current conditions, and acknowledges and agrees that CITY has fulfilled all obligations CITY may have had to improve modify, repair, replace, alter, or otherwise develop the Premises prior to the Effective Date. LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, within the Premises. LESSEE accepts and assumes all risk of harm to all persons and property, including, without limitation, LESSEE's employees, from any defects within the Premises, and shall be solely responsible therefor. LESSEE has been given the

opportunity to investigate the Premises or the presence of any Hazardous Substances, including without limitation, the opportunity to perform soil borings and tests. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any Hazardous Substances in any of the Premises. LESSEE waives any claims against CITY which may result from the presence of Hazardous Substances on or within any of the Premises.

- 8.2 Improvements/Alterations. No improvements shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval, which shall be at the CITY's discretion. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

- 8.3 Construction Bond. If LESSEE constructs improvements on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

Prior to the commencement of any work on the Premises, LESSEE shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. Lessee shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, Lessee shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

- 8.4 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, upgrades, construction or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, upgrades, construction or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien,

and, within thirty (30) days after the filing, either: (a) take all actions necessary to record a valid release of the 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.

8.5 Ownership of Improvements and Personal Property.

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

- 8.6 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 rent 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.

- 8.7 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.
- 8.8 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. In the event that such entry or inspection by CITY discloses that said 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. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 8.9 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of all portions of the Premises and all wells and 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 and in compliance with all applicable laws. LESSEE agrees to assume full responsibility to fence and maintain such fencing around non useable acres to prevent unauthorized access or use of the Premises and to curtail illegal or unwanted activity on the Premises.
- 8.10 Utilities. LESSEE may order and install utilities, subject to obtaining all necessary approvals and permits. LESSEE shall order, obtain and pay for all utilities and service and installation charges in connection with the Premises excluding any utilities for Well # SP061, Well # SP053, and Well # SP046.
- 8.10.1 LESSEE agrees and acknowledges that LESSEE has access to eight (8) wells on the Premises. As noted in Section 1.3, Well # SP061 is exclusively used by Henry Ranch Escondido, Well # SP053 is exclusively used by Rancho De La Loma, and Well # SP046 is exclusively used by the Zoological Society of San Diego. LESSEE

may install additional wells at its sole cost and expense, subject to CITY consent in accordance with Section 8.2 and subject to LESSEE securing all applicable local, state and federal approvals and permits.

8.10.2 LESSEE agrees and acknowledges that these wells may be used for domestic drinking water and as such are subject to complying with San Diego County Department of Environmental Health ("DEH") regulations. The DEH has an agreement with the State Water Resources Control Board, Division of Drinking Water for administration and enforcement of the Federal and State statutes and regulations for any water systems under 200 service connections, including State Small Water Systems. A State Small Water System is a public water system that has 5 to 14 residential service connections, and does not regularly serve potable water to more than 25 individuals for more than 60 days out of the year.

8.11 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges 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 that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

8.12 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent or approval. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item without further notice, at LESSEE's cost.

SECTION 9: GENERAL PROVISIONS

9.1 Accessibility Assessment. In accordance with California Civil Code Section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CAsp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a

CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

- 9.2 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States Postal Service, postage prepaid and addressed as follows:

If to LESSEE:

Joseph Foster, Senior Vice President
West Coast Turf
P.O. Box 4563
Palm Desert, CA 92261

If to CITY:

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

- 9.3 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE’s sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).
- 9.4 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE’s sole expense, any action brought against CITY resulting from CITY’s nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct

its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

9.4.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

9.4.2 LESSEE's Waiver. LESSEE EXPRESSLY AGREES TO HOLD HARMLESS AND WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

9.5 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

9.6 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease.

9.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with 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 all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

9.7.1 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.

- 9.7.2 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.
- 9.7.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 9.7.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 9.7.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.
- 9.7.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.
- 9.8 Drug-free Workplace. LESSEE shall 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:
 - 9.8.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - 9.8.2 Establish a drug-free awareness program to inform employees about all of the following:
 - 9.8.2.1 The dangers of drug abuse in the workplace;
 - 9.8.2.2 LESSEE's policy of maintaining a drug-free workplace;
 - 9.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 9.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 9.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- 9.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 9.11 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 9.12 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 9.13 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 9.14 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 9.15 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

- 9.16 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.
- 9.17 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 shall remain in full force and effect.
- 9.18 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
- 9.19 Ability to Harvest. Upon the expiration of the Lease, LESSEE has the option to harvest the last crop; harvesting must be completed within twelve (12) months. Lessee shall provide City with a proposed schedule for the crop's removal within 30 days after expiration.
- 9.20 Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. LESSEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 9.20.1 LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any commercial sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require commercial sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- 9.20.1 Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

SECTION 10: AGRICULTURAL PROVISIONS

- 10.1 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 Public Utilities Department, prior to the execution of this Lease, RMP, BMP, and SWPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The RMP, BMP, and SWPPP will be periodically reviewed by CITY's Public Utilities Department, and are subject to approval by the Public Utilities Department in each instance. Upon written notice from CITY requesting an update, LESSEE shall submit updated plans for the Public Utilities Department review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the RMP, BMP, and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

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

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

- 10.2 Reporting Requirements. LESSEE agrees to provide to CITY's Public Utilities Department reports about all activities conducted on the Premises. These reports will detail the usage of pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the RMP, which may be amended from time to time. In addition, LESSEE must provide to CITY, upon request by CITY, the following information: map showing location of well(s), well installation permit(s), well condition (operating, non-operating, abandon), annual pumping volumes, drilling/geologic or hydrologic data, well construction details, well modifications or rehabilitation, all pump test data and analysis, electrical efficiency tests of well pump, all groundwater-level analyses, annual pumping volumes (acre feet), and annual cropping patterns (acres).
- 10.3 Noxious Weeds, Pests, and Erosion. LESSEE must take commercially reasonable corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire Premises, in compliance with all applicable laws and with the RMP, BMPs, and SWPPP.
- 10.4 No Warranty. CITY does not warrant that the Premises are suitable for the purposes for which they are leased as stated herein.
- 10.5 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the Premises is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any

such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs, including from Lake Hodges, in such a way as to control, alleviate, or minimize potential damages to the Premises. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other similar causes. LESSEE is authorized to minimize potential flood damage though improved drainage and other flood control improvements as approved by CITY.

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

10.6 Water Use and Access Rights.

CITY reserves all right, title and interest in and to the water on the Premises. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.7, CITY shall have, the right throughout the Term to divert, impound, store, and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the Premises, together with the right to divert, inject, spread, or percolate water in or through the soils beneath the surface of the Premises. Notwithstanding any provision to the contrary in this Lease, CITY has no obligation to provide water. Nothing in this Lease shall result in the transfer of CITY's rights, title or interest in the Water on, in, or under the Premises to any other person or entity.

a. LESSEE has been expressly advised and acknowledges that:

- (1) The Premises are located within the San Pasqual groundwater basin.
- (2) The CITY is the lawful owner and has at all times asserted its pueblo, overlying and appropriative water rights in the San Pasqual groundwater basin;
- (3) The CITY intends to take any and all steps necessary to fully protect its water rights in the San Pasqual groundwater basin, including but not limited to, the Groundwater Management Plan, adopted November 2007, and possible adoption of a groundwater management ordinance;
- (4) Protection of the CITY's water rights in the San Pasqual groundwater basin is an essential element of the CITY's long-term plan to ensure a reliable and cost-effective water supply for city residents;
- (5) Another essential element of the CITY's long-term plan to ensure a reliable and cost-effective water supply for city residents is the

increased production and distribution of recycled water for non-potable uses such as those which are the subject of this Lease;

- (6) In order for the CITY to accomplish its long-term objectives, it is planned that San Pasqual groundwater basin will be utilized, in part, for the storage of imported or non-potable water, and, that such storage will necessitate certain activities by CITY employees and consultants on the Premises; and
 - (7) Any injury that results from the percolation, storage and recapture of water from the soil beneath the surface of the Premises shall not be considered unreasonable or substantial interference with the LESSEE's use of the Premises, nor otherwise entitle LESSEE to damages or other legal recourse against CITY.
- b. LESSEE shall have the limited right, at LESSEE's sole cost, to develop and use on the Premises only the amount of water available and necessary to carry out the Allowed Uses, as follows:
- (1) With the exception of Well # SP061, Well # SP053, and Well # SP046, LESSEE shall have the right to operate the existing wells and use the water on the Premises, subject to the process, timeframes, and rates as otherwise provided in **Section 3: Rent** herein, including the right of ingress and egress to the well area. CITY shall install, at CITY's sole cost, a metering device on all well(s) (including open wells) satisfactory to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering devices(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.
 - (2) LESSEE may only make material modifications to existing wells or construct new wells with the express written approval of CITY and in conformity with all appropriate San Diego County Code(s) and subject to the provisions of this Lease. Said approval shall not be unreasonably withheld. 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. Notwithstanding any provision to the contrary in this Lease, CITY has no obligation to provide water to LESSEE or ensure that water is available for use.
 - (5) LESSEE expressly agrees that said water shall be used only on the

Premises.

- c. LESSEE agrees that upon termination of this Lease, it will leave any wells developed or used on the Premises in good order and condition and that the casing shall be left in place.
- d. CITY shall at all times have the right to 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 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 1.7.
- f. In the event that the CITY, or an entity with explicit authorization to act on the CITY's behalf, diverts, impounds, stores, or transports water by means of dams, reservoirs, or by pumping water on the Premises for a period of six (6) continuous months, and the CITY's action materially interferes with LESSEE's ability to grow and harvest sod on the Premises, LESSEE may terminate this Lease upon six (6) months prior written notice to the CITY.

10.7 Water Usage. CITY may charge LESSEE for groundwater upon one (1) year prior written notice. The Percentage Rent rate will be reevaluated and adjusted based on the cost of groundwater prior to the City implementing a charge for groundwater. The City will also have the option to exercise a charge for excessive water usage. If this option is exercised, the City will not charge for water usage that is considered sustainable yield for the property, but only for water usage that is considered above a sustainable yield for the San Pasqual Groundwater Basin.

10.8 Water Quality. It is the intent of the CITY that agricultural operations on the Premises achieve a minimum impact on surface water and groundwater. LESSEE's uses of the Premises will achieve a balance between the import and export of nitrogen, phosphorous, and total salts. In accordance with this intent, LESSEE must develop and implement a plan to complete the following requirements ("Plan"):

- a. Establish Premises-specific practices to balance the import and export of nitrogen, phosphorous, and total salts;
- b. Measures and keep records the import onto the Premises of all types and sources of

nitrogen, phosphorous, and salts; including fertilizers, soil amendments, soil conditioners;

- c. Measure and keep records of forms and methods of export from the Premises and out of the San Pasqual Basin;
- d. Have an independent third party, approved by the CITY, verify import and export quantities on an annual basis; and
- e. Report the import and export amounts, types, and schedule to the CITY annually.

The Plan must include actions and procedures that allow the LESSEE's agricultural operations to approach equilibrium of nitrogen, phosphorous, and total salts and include provisions for adaptive management that will take the agricultural operations closer to equilibrium. The Plan must be approved by the CITY in writing.

10.9 Use of Water. At the request of the CITY, LESSEE must install and maintain in working order a water meter on each well used by the LESSEE and sub-meters to track how much water is used on certain tracks of land or certain crops. Water meters will be Advanced Metering Infrastructure ("AMI") compatible and meet CITY's water flow meter assembly, standards and specifications. LESSEE must read the meters and record the data on a monthly basis. LESSEE shall not receive any credits for water returned to the groundwater aquifer, except that if LESSEE provide a, at LESSEE's expense and to the CITY's satisfaction, in its sole and unfettered discretion, accurate measurements of extracted water returned to the aquifer, then that amount of water may be deducted from the calculation. No adjustment to the rate shall be made for water quality or water quality changes. LESSEE must comply with the Sustainable Groundwater Management Act ("SGMA") and its follow-on Groundwater Sustainability Plan ("GSP") in the management of the groundwater basin for groundwater extraction levels, pumping rates and groundwater quality. LESSEE must comply with direction from the CITY regarding groundwater pumping rates and frequency. For example, in times of drought, compliance with the GSP may involve decreasing pumping levels. Failure to comply with the provisions of this section shall constitute a default under this Lease.

10.10 Climate Action Plan. LESSEE must document and report to the CITY actions that align with the CITY's Climate Action Plan, relative to transportation, energy usage (electricity, natural gas, etc.), waste disposal, greenhouse gas emissions, methane capture, water use and conservation, climate resiliency, and tree planting.

SECTION 11: SPECIAL PROVISIONS

11.1 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites.

LESSEE understands and agrees that sensitive resource sites as well as environmental, historical, and cultural resources may be identified on the Premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably

feasible and, if required by CITY, would include boundary fencing. However, if additional measures for protecting a sensitive site or resource are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

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

LESSEE has been advised and acknowledges that the Premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE has further been advised and acknowledges that a system of public hiking, biking and riding trails has been proposed for inclusion through the San Dieguito River Valley Park. In addition, LESSEE understands and agrees that public access to sensitive environmental, historical, and cultural sites and resources is an absolute and that CITY may require LESSEE to accommodate such access over the Premises. LESSEE agrees that, in the event such trails or means of access are to be constructed through the Premises as determined by CITY in its sole discretion, then the property needed for such trails shall be removed from the Premises, subject to ninety (90) days prior written notice from CITY. The notice of intent to remove the trail area shall include a plat clearly designating the area to be removed. In the event of such modification of Premises, CITY agrees that the rent shall be reduced proportionally. In addition, should any leasehold improvements in the area removed for trails be damaged or destroyed, CITY agrees to reimburse LESSEE for the value any improvements in a total amount as reasonably determined by the LESSEE and CITY. CITY further agrees that, in the event a portion of the Premises is removed for such trails as described above, the trails shall be fenced as necessary for the reasonable security and/or protection of the remainder of the Premises. All costs related to the construction and maintenance of trails and security fencing relating to the public trails or access to sensitive sites and resources shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

11.3 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, or cultural resources sites located on the Premises. In the event the Premises is needed for public access, that portion of the Premises needed may be removed from the leasehold area upon ninety (90) day prior written notice from the CITY. Said notice of intent to remove the public access area shall include a plat clearly designating the property to be removed. In the event of such modification of Premises, CITY agrees that the Minimum Rent shall be reduced accordingly. In addition, should leasehold improvements in the area removed for public access be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of any improvements in an amount reasonably determined by the LESSEE and CITY. CITY further agrees that, in the event a portion of the leasehold is removed 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.

- 11.4 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 removed from the Premises, upon 180 days prior written notice from CITY. The notice of intent to remove said property shall include a plat clearly designating the area to be removed. In the event of such modification of leasehold area, CITY agrees that the rent shall be reduced accordingly and LESSEE shall be compensated for the loss of improvements.

11.5 Leasehold Boundaries.

The CITY may, at CITY's option, survey the Premises and identify, on ground, demarcation boundaries. All such boundary demarcation markers installed on the Premises shall be maintained by LESSEE.

11.6 Housing.

Subject compliance with all applicable laws, rules, and regulations, including but not limited to zoning laws, building, health, and safety regulations, LESSEE may provide housing for permanent and or seasonal employees who work on the Premises. LESSEE shall be responsible for the maintenance, improvement, repair, and habitability of all housing on the Premises. Subject to the requirements of this Lease, including but not limited to Section 8, LESSEE may be allowed to expand housing on the Premises.

11.7 Annual Report on Farmworker Housing.

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

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

11.8 Hazardous Substances.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under or from

the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

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

- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental laws and regulations are achieved, and LESSEE shall pay all costs and expenses therefor. Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the Premises prior to the effective date of this Lease. City reserves the right to make any changes to this agreement prior to execution.

- 11.9 Deletion of Portion of the Leased Premises. In the event any portion of the Premises is not used by LESSEE for its highest and best use, then CITY may, at CITY's option, delete that portion from the Premises. Provided, however, Rent shall be adjusted downward by the CITY on an equitable basis.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

**SIGNATURE PAGE TO PERCENTAGE LEASE BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
WEST COAST TURF**

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

Date: May 12 2019

West Coast Turf, a California corporation

BY: [Signature]

Joseph Foster
Senior Vice President

Date: 5/28/20

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: [Signature]

Cybele L. Thompson, CCIM
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) and
Section 15303 (New Construction or Conversion of Small Structures).

Date: 6/11/2020

By: [Signature]

Name: Nicole A. McGinnis
Title: Project Officer II

Approved as to Form
this 15th day of June, ~~2019~~ 2020

MARA W. ELLIOT, San Diego City Attorney

By: [Signature]

Name: Marco A. Verdugo

Title: Deputy City Attorney

**SIGNATURE PAGE TO PERCENTAGE LEASE BY AND BETWEEN
THE CITY OF SAN DIEGO
AND
WEST COAST TURF**

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

Date: Nov 1/2019

West Coast Turf, a California corporation
BY: [Signature]
Joseph Foster
Senior Vice President

Date: 5/28/20

THE CITY OF SAN DIEGO, a California
municipal corporation
BY: [Signature]
Cybele L. Thompson, CCIM
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

Date: _____

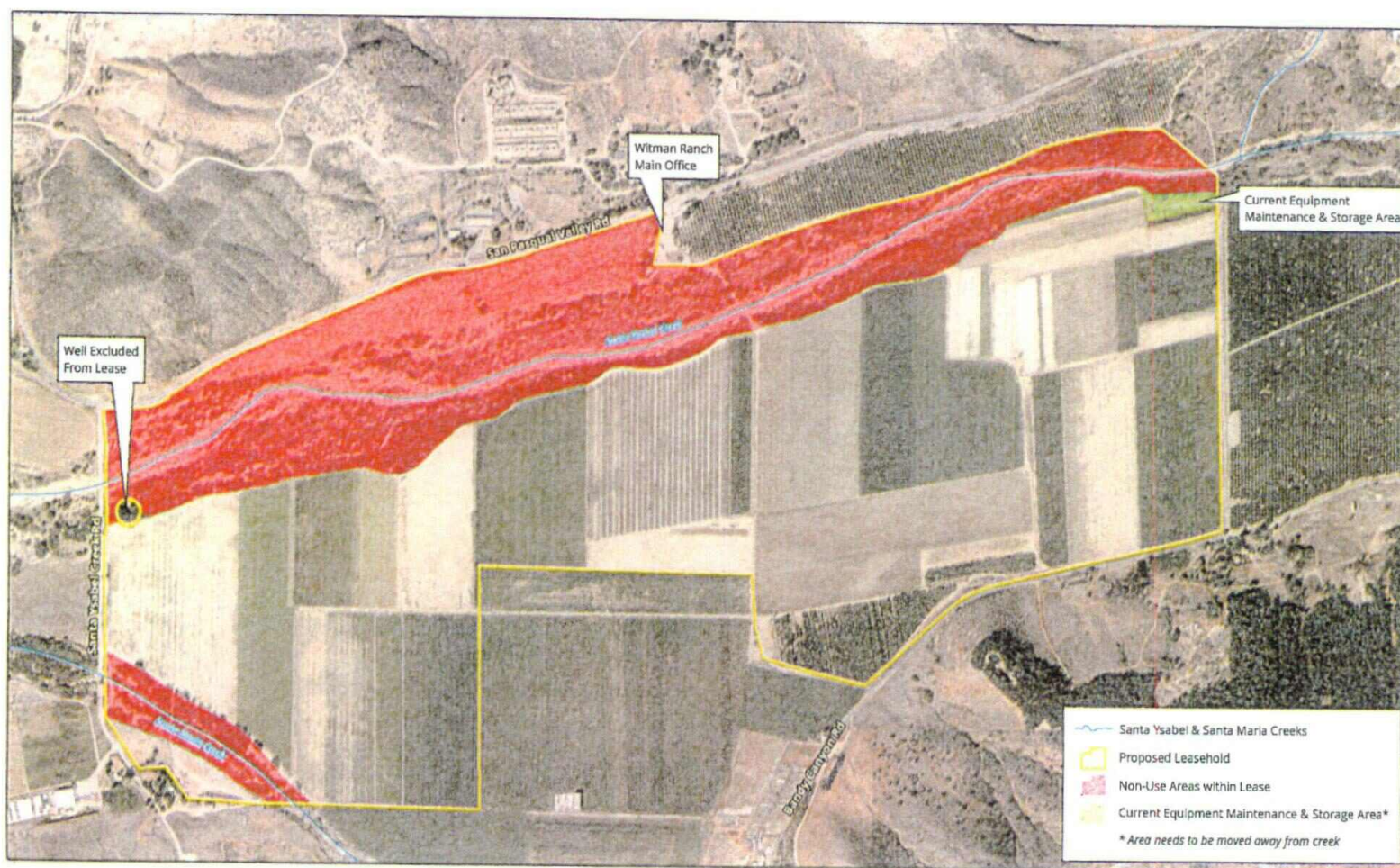
By: _____
Name: Nicole A. McGinnis
Title: Project Officer II

Approved as to Form
this _____ day of _____, 2019

MARA W. ELLIOT, San Diego City Attorney

By: _____
Name: _____
Title: _____

Exhibit A: Lease Boundary



RESOLUTION NUMBER R- 312908

DATE OF FINAL PASSAGE APR 09 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A THIRTY-YEAR LEASE AGREEMENT WITH WEST COAST TURF, FOR THE OPERATION AND MAINTENANCE OF CITY-OWNED REAL PROPERTY LOCATED IN THE SAN PASQUAL VALLEY IN SAN DIEGO AND AUTHORIZING A WAIVER OF A PORTION OF COUNCIL POLICY 700-10.

WHEREAS, the City of San Diego (City) owns certain real property consisting of five hundred and seven acres of land currently used for agricultural purposes located in the southeast corner of San Pasqual Valley Road (State Highway 78) and Santa Ysabel Creek Road in the San Pasqual Valley, San Diego, California (Property); and

WHEREAS, West Coast Turf is an industry leader for the growing and harvesting of sod and has farmed the Property as sublessee to the City's lessee/sublessor, and in that capacity has demonstrated its capability to optimize the use of the Property; and

WHEREAS, the City has directly negotiated a thirty-year lease with West Coast Turf, on file with the City Clerk as Document No. RR- 312908, which will require West Coast Turf to continue to operate and maintain the Property as a sod farm (Lease); and

WHEREAS, under the Lease, West Coast Turf will pay initial annual rent of \$600 per useable acre or five percent (5%) of gross income, whichever is greater; and

WHEREAS, Council policy 700-10 provides that the minimum rent shall be adjusted upward throughout the duration of the lease at intervals of not more than every five years to reflect no less than eighty percent (80%) of the average annual rent paid or accrued during the three years preceding the adjustment. City staff requests a waiver of this requirement of Council

Policy 700-10 and has negotiated upward minimum rent adjustments every five years throughout the duration of the Lease at a fixed rate of fifteen percent (15%); and

WHEREAS, City staff has determined that the Property is not material to the operation of the Water System and the Lease will not materially reduce Net System Revenues; and

WHEREAS, the market value of the Property as appraised by an independent fee appraiser is \$3,400,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego (Council), that the Mayor, or his designee, is authorized to execute the City of San Diego Lease with West Coast Turf, on file with the City Clerk as Document No. RR- 312908.

BE IT FURTHER RESOLVED, that the Council waives the requirement set forth in Council Policy 700-10 regarding minimum rent adjustments.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to accept and deposit all lease revenues into Fund 700011, Water Utility Operating Fund.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Marco A. Verdugo
Marco A. Verdugo
Deputy City Attorney

MAV:als
03/03/2020
Or.Dept:READ
Doc. No.: 2341974

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 04/07/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Gil Sanchez
Deputy City Clerk

Approved: 4/9/2020
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 07 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☐	☐	☒	☐
Vivian Moreno	☐	☒	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage APR 09 2020.

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

AUTHENTICATED BY:

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

(Seal)

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

By Connie Patterson, Deputy
for Stacy Ready

Office of the City Clerk, San Diego, California

Resolution Number R- 312908

Passed by the Council of The City of San Diego on April 07, 2020, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, & GÓMEZ.**

NAYS: **MORENO.**

NOT PRESENT: **SHERMAN.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

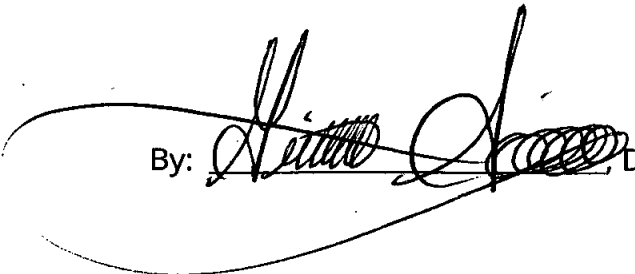
By: **Gil Sanchez**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312908**, approved on **April 07, 2020**. The date of final
passage is **April 09, 2020**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By:  Deputy