

CITY OF DEL REY OAKS  
LEASE AGREEMENT  
PORTIONS OF WORK MEMORIAL PARK

DEL REY OAKS GARDEN CENTER.

This Lease Agreement ("Lease") is executed at Del Rey Oaks, California, this 20<sup>th</sup> day of January, 2015 (the "Effective Date"), by and between THE CITY OF DEL REY OAKS, a Municipal Corporation, hereinafter referred to as "City" and Del Rey Oaks Garden Center hereinafter referred to as "Tenant." Each is sometimes referred to individually herein as a "Party" and both are collectively referred to herein as "the Parties."

**RECITALS**

WHEREAS, the City owns the real property and the improvements thereon located in the City of Del Rey Oaks, Monterey County, California, which is commonly known as "Work Memorial Park"; and

WHEREAS, the City desires to lease a portion of the Work Memorial Park to the Tenant, for the purpose of operating a Retail Garden Center and associated operations; and

WHEREAS, the City Council finds and determines that this Lease and the use of a portion of Work Memorial Park pursuant to this Lease for Del Rey Oaks Garden Center is beneficial to the public.

NOW, THEREFORE, City leases to Tenant and Tenant leases from City the land described herein, upon the terms and conditions as follows:

**1. Premises**

The City hereby leases to the Tenant and the Tenant hereby leases from the City that portion of Work Memorial Park more particularly shown and described in Exhibit "A", together with any improvements thereon (the "Premises").

**2. Term of Lease**

**A. Definitions**

"Commencement Date" shall mean the earlier of (a) one hundred and eighty (180) days from issuance of a building permit or (b) the date Tenant receives Building Permit Final and Notice of Occupancy from City to operate the Del Rey Oaks Garden Center business.

"Initial Term" shall mean the initial term commencing on the Commencement Date and, unless extended in accordance with this Lease, ending at 12:01 a.m. on December 31 of the tenth (10th) full year after the Commencement Date (the "Expiration Date").

"Extension Period(s)" shall mean additional and consecutive period(s) of five (5) years.

"Term" shall mean the Initial Term and the Extension Period(s), if any.

"Option Denial" shall mean City's option to deny Tenant's Extension Option(s).

**“Effective Date”** shall mean execution of Lease.

**B. Initial Term** This Lease shall be effective as of the Effective Date; however, the rights and obligations ascribed to the Parties herein shall not arise until the Commencement Date. This Lease shall continue in full force and effect for the Initial Term, as defined above, unless extended or terminated sooner pursuant to the terms of this Lease.

### **C. Extension Period(s)**

The City shall have the right and option (the “**Extension Option(s)**”) to extend the Term of this Lease for the number of **Extension Period(s)** set forth below. In order for an Extension Option to be granted by the City, Tenant must deliver a written notice to City requesting an extension of the term (an “**Option Notice Request**”) at least ninety (90) days prior to the conclusion of the Initial Term, or at least ninety (90) days prior to the last day of the then-ongoing Extension Period, as the case may be, and receive written approval from City. Upon receipt of Tenant’s Option Request, City shall have thirty (60) days to approve or deny the request by written notice to Tenant. If Tenant fails to timely give any Option Notice Request, or if City denies any requested Extension Option in accordance herewith, all rights and privileges granted to Tenant shall terminate at the end of the then on-going term.

### **3. Use of Premises**

Tenant proposes to use the Premises for the operation of a Retail Garden Center and other activities customarily associated with or incidental to the operation of a Retail Garden Center including sale or rental of garden related merchandise as permitted by Conditional Use Permit issued by the City or as permitted by other approval or permit which may be required by the City (collectively, the “**Proposed Usage**”). Tenant shall not use the Premises for the sale of garden supplies not for as permitted by unlawful purpose or in a manner as to create a nuisance and shall comply with all applicable federal, state, and local laws, rules and regulations applicable to the Premises or the use conducted on the Premises pursuant to this Lease.

City shall not unreasonably withhold its approval of the Proposed Usage. If the Proposed Usage is denied at as permitted by time prior to the Commencement Date, for as permitted by reason, by as permitted by City governmental or administrative official, agency, department, or employee, this Lease shall be null and void and of no further force or effect.

### **4. Rent**

This Lease shall be in effect as of the Effective Date; however, Tenant’s obligation to pay rent, shall commence on the Commencement Date.

The Rent shall be \$3,000.00 per month payable monthly . Rental payments shall be delinquent if not paid by the tenth (10th) of the month. A ten percent (10%) late payment charge shall attach to delinquent payments. The rent shall be fixed and shall not increase for each year Initial Term.

The Rent shall be fixed during each five (5) year Extension Period except as noted above. The Rent shall be adjusted commencing with the first Extension Period and agreed at that time.

## **5. Utilities**

Tenant agrees to arrange to have furnished and shall pay for all the water, fuel, gas, oil, heat, electricity, power, materials and services, including, sewer service charges and janitorial services and maintenance services, which may be furnished to or used in or about said Premises during the term of this Lease and to keep said Premises free and clear of any lien or encumbrances of any kind whatsoever created by Tenant's acts or omissions. The City shall not be liable in any manner for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

## **6. Irrigation Well**

Other than as specifically set forth in this section, Tenant shall have no rights, title or interest in or to the water well and improvements located on or under the Premises. Tenant agrees to repair, maintain and operate the existing well on said Premises consistent with all local, state and federal laws. Tenant may utilize, free of charge, water required for irrigation of areas directly relating to the Proposed Usage and necessary to maintain the Premises in an attractive condition. City shall have the right to use any surplus water not reasonably needed by the Tenant for the Proposed Usage. If City determines to use such water, City will install an inline flow meter and pay for its proportionate share of the costs of operation, maintenance and repair of said well. Tenant shall be responsible to maintain production and consumption records relating to the use of the well. City may also install an additional well on the Premises for its own use, in which case the City will exercise its best efforts to minimize any impact upon the business operations of the Tenant and it shall compensate Tenant for any loss of business directly caused by such well installation.

## **7. Improvements**

**A. Consent of City** Tenant shall have no right or authority to make improvements or alterations to the Premises or to construct any new buildings or structures on any part of the Premises without the express written consent of the City and without full compliance with all applicable laws, rules, and regulations, including those pertaining to environmental review and the issuance of permits and approvals.

**B. Costs** All costs of design, approval and construction shall be paid by Tenant, including but not limited to, architectural and engineering costs, all governmental jurisdiction fees, permits and exactions. City shall not unreasonably withhold its approval.

### **C. Ownership of Improvements and Alterations**

All structural improvements or alterations made or installed on the Premises by the Tenant, or any other person or entity, shall be considered part of the Premises and on the expiration or earlier termination of this Lease shall remain on the Premises and shall become the property of the City unless the City provides written notice to the Tenant at the time the City gives its consent to the improvements or alterations that such improvements or alterations be removed in which case Tenant shall remove the same prior to expiration or within thirty (30) days after early termination of this Agreement. Notwithstanding the above, all items of equipment, machinery, furniture, furnishings, fixtures, and other personal property placed or

installed on the Premises by the Tenant shall remain the personal property of the Tenant regardless of the mode or manner of attachment and may be removed by the Tenant at any time throughout and including expiration of the then current term, provided that Tenant shall repair any damage caused by said removal, reasonable wear and tear excepted. Such personal property remaining after the expiration of thirty (30) days after early termination shall be deemed abandoned by the Tenant and shall become the property of the City.

All improvements and alterations to the Leased Premises, including those with regard to landscaping and installation, shall be done in accordance with all applicable laws, regulations, and standards including, but not limited to, the Del Rey Oaks Municipal Code and all applicable development standards.

## **8. Use of the Leased Premises**

### **A. Condition of Premises**

Tenant acknowledges personal inspection of the Premises and the surrounding areas and evaluation of the extent to which the physical condition of the Premises and the surrounding areas will or may affect the operation of the Premises. Tenant expressly acknowledges its acceptance of the Premises in its "As Is, Where Is" condition and acknowledges the City has made no representations or warranties as to the condition of the Premises or its fitness for the uses intended by the Tenant hereunder. Tenant shall make no demands upon the City for any improvements or alterations of the Premises.

Tenant covenants and agrees to maintain the Premises and surrounding property in good repair and in an attractive condition at all times. Should the Tenant fail to maintain said Premises and property in good repair and in an attractive condition, City shall give written notice reciting any defects in the condition of the Premises or property. If Tenant fails to correct said defects within twenty (20) days after receipt of said notice, City shall have the right to enter and make repairs, billing Tenant for cost of repairs.

### **B. Non-Discrimination**

Tenant shall not discriminate on the basis of a person's place of residence, race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex or sexual orientation, against any user or potential user of the Premises. The Tenant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and non-discrimination in the provision of any service or the offering of use of any portion of the Premises.

### **C. Americans With Disabilities Act (ADA) and Title 24 Compliance**

Tenant shall ensure and shall be responsible for ensuring that all buildings, structures, and other facilities located on the Premises or installed or constructed by it on the Premises are compliant with the Americans With Disabilities Act and Title 24 of the California Code of Regulations and Tenant shall be solely responsible for making any repairs or improvements necessary to bring such buildings, structures, and other facilities into compliance.

#### **D. Grounds Maintenance**

Tenant shall be solely responsible for all grounds maintenance services including, but not limited to, the obligation to mow, edge, trim, reseed, fertilize, irrigate, and renovate the turf areas located on the Premises, as well as provide the necessary maintenance of any landscaping located on the Premises.

#### **E. Accident Reports**

Tenant shall immediately report to the City in writing any accident or occurrence causing, or reasonably estimated to have caused, more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to person or to property that occurs on or in connection with the Premises. This written report shall contain the names and the addresses of the parties involved, a statement of the circumstances, the date and the hour, the names and addresses of any witnesses, and any other pertinent information.

#### **E. Quality Assurance**

By entering into this Lease, Tenant agrees that its management and operation of the Premises pursuant to this Lease shall be performed in a fully competent manner. By entering into this Lease, Tenant further agrees and represents to the City that Tenant possesses or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the services contemplated under this Lease and that the City relies upon the professional skills of Tenant to do and to perform Tenant's work.

#### **9. Compliance With Law**

Tenant agrees, at its sole cost and expense, to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Premises, all applicable federal, state, and local laws, rules, and regulations now in force or which may hereafter be in force. Nothing herein shall be constructed to allow Tenant to use the Premises without obtaining all permits required by the Del Rey Oaks Municipal Code.

#### **10. Taxes**

Tenant agrees to pay before delinquency all taxes, assessments and fees assessed or levied upon Tenant or the Premises, whatsoever, including the land- and any buildings, structures, machines, appliances or other property or improvements of any nature whatsoever, erected, installed or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the leased Premises. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to further payment of property or possessory interest taxes levied on such interest. Tenant further agrees that all such tax payments shall not reduce any rent due to the City hereunder and that any such taxes shall be paid by Tenant before becoming delinquent.

## **11. Indemnity**

Tenant agrees that City, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the good, properties, or effects of Lessee, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or any other person whomsoever, or for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omissions of Tenant in or about the Premises, or any act or omission of any person or from any defect in any part of the Premises or from any other cause or reason whatsoever arising from the use and occupancy of the Premises. Tenant agrees to indemnify, hold free and harmless, and defend City and its authorized agents, officers and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by City on account of any claim or claims thereafter. Tenant shall not be liable for acts or omissions of the City or any of its employees, officers or agents. This indemnification and hold harmless obligation shall apply whether or not such insurance policies have been determined applicable to any of such damages or claims for damages. Tenant's obligation with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or the termination of this Lease, as to claims arising or accruing prior to the expiration or the termination of this Lease.

Tenant shall be fully responsible for any and all damage done to the Premises, damage to personal property of private individuals or other property of the public, and for any injury to any individual, including any guest, employee, agent, licensee, invitee or member of the City that results from the affirmative act and/or negligence of the Tenant or Tenant's agents, employees, invitees or licensees.

The City assumes no responsibility for the guarding or the safe-keeping of the Premises or any of the equipment or improvements located thereon or used in connection with Tenant's use of the Premises. Tenant waives all claims against the City, its officers, employees, agents, and volunteers for any damage to such equipment or improvements and for injuries to any employees and/or volunteers or their agents, guests or invitees in or about the Premises arising from any cause at any time.

## **12. Insurance Coverage**

A. During the entire term of this Lease, Tenant agrees to procure and maintain Comprehensive General Liability (CGL) insurance with an insurance company satisfactory to City licensed to do business in California, naming City and its officers and employees as an additional insured, to protect against loss from liability imposed by law for damages occurring on or related to the Premises on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of City or Tenant, or any person acting for City or Tenant, or under their control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of City or Tenant, or any person acting for City or Tenant, or under their control or direction. Such insurance shall also provide for and protect City against incurring any legal cost in defending claims for alleged loss.

B. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of not less than ONE MILLION

DOLLARS (\$1,000,000.00) COMBINED SINGLE LIMIT LIABILITY PER OCCURRENCE, with a general aggregate of TWO MILLION DOLLARS (\$2,000,000).

C. Tenant agrees to submit a policy of said insurance to City on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days' prior written notice thereof to City, and to provide a full and correct copy of the entire policy within ninety (90) days of execution of the Lease.

D. If the operation under this Lease results in an increased or decreased risk, in the reasonable opinion of City, then Tenant agrees that minimum limits hereinabove designated shall be changed accordingly upon request by the City. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the Tenant may be held responsible for the payment of damages to persons or property resulting from Tenant's activities, the activities of its sublessees or the activities of any person or persons for which Tenant is otherwise responsible.

E. Tenant also agrees to procure and maintain during the entire term of this Lease a Workers' Compensation Insurance Policy. Evidence of this insurance shall be provided to the City in the form of a Certificate of Insurance and the insurer must give thirty (30) days' written notice to the City before cancellation or non-renewal of the policy.

F. Waiver of Subrogation. Tenant, to the extent and limits of insurance coverage applicable under any policy of insurance procured as required under this Lease, releases the City, its officers, employees, and agents from any claims for damage to any person or to the Premises, or any part thereof including the buildings, fixtures, personal property, and other improvements or alterations located thereon, of either the City or the Tenant, including loss of income, that are caused by or result from risks insured against under any insurance policies required by this Lease and in force at the time of any such damage.

Tenant shall cause each such insurance policy obtained by it including, but not limited to the Workers Compensation insurance required by this Lease, to provide that the insurance company waives all rights of recovery by way of subrogation against the City in connection with any damage or injury covered by such policy. The City shall not be liable to Tenant or to any other party for any damage caused by fire or any other risk insured against under any property insurance policy carried under the terms of this Lease, to the extent and limits of coverage applicable under any policy of insurance procured as required under this Lease.

### 13. Assignment or Sublease

Tenant shall not assign this Lease or any interest therein, nor lease or underlet the said Premises, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person, including any concessionaire or otherwise place control of the Premises under a corporation or partnership without the written consent of City first had and obtained, and a consent to one assignment, subletting or occupancy shall not act as a consent to any subsequent subletting or assignment and any assignment without the prior written consent of City, shall at the option of City, terminate this Lease and any such purported assignment, sublease, occupancy or use shall be null and void. City shall not

unreasonably withhold its consent to such an assignment, sublease or use in which the assignee or other person continues the business of the assignor.

#### **14. Entry by City and Public Easement**

Tenant will permit the City's representatives to enter the Premises for the purposes of determining compliance with this Lease, making of repairs, vehicle access for maintenance of City's Park and tennis courts. No such entry provided by this section shall constitute an eviction of Tenant or a disturbance of its quiet enjoyment to use and to occupy the Premises. Public access for bicycle and pedestrian traffic shall be provided.

#### **15. Conduct of Business**

Tenant shall conduct its business in a first-class manner and shall not use the Premises for, nor carry on nor permit upon said Premises, any offensive, noisy, unsafe or dangerous trade, business, manufacture, or occupation, or any nuisance. The Premises shall not be used or permitted to be used in whole or in part during the said term of the Lease for any purposes or uses in violation of any laws, ordinances, regulations, or rules of any public authority at any time applicable thereto, specifically including but not limited to those laws relating to any alcoholic beverage license; and Tenant expressly agrees at all times during the term of this Lease at Tenant's own cost to construct, repair, maintain, and do all things necessary to maintain the Premises, in a clean, neat, safe and sanitary manner and in compliance with any and all laws, ordinances, rules and regulations of any public authority in force during the term of this Lease.

Tenant may store on the Premises only personal property that the Tenant owns, leases or rents and shall not improperly store any flammable materials, explosives or other dangerous or hazardous materials.

#### **16. Hours of Operation**

Tenant agrees that the public use of the Premises shall be restricted to 7:30A.M. until 5:30P.M. Monday – Friday, 8:00A.M. until 3:00P.M. Saturday and twelve (12) Sunday's a calendar year and in accord with all applicable laws and ordinances with all hours subject to any restrictions contained in the Del Rey Oaks Municipal code.

#### **17. Signs**

No temporary or permanent signs shall be placed or installed upon the Premises and no existing signs shall be altered without the prior written consent of City.

#### **18. No Right to Encumber**

Tenant may not encumber the Premises, this Lease, its leasehold estate or its improvements thereon by deed of trust, mortgage, chattel mortgage, lien or other security-type instrument or other encumbrance for any purpose whatsoever without City's written consent. City shall not unreasonably withhold its consent.



## **19. Default**

Upon breach of this Lease by Tenant, then City, besides other rights or remedies it may have in law or in equity, shall have all of the following remedies:

a) The remedies provided for by California Civil code §1951.2 including, but not limited to, the right to recover the worth at the time of the award of the amount by which unpaid rent for the balance of the term until the time of the award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of §1951.2 of the California civil code.

b) The right, by mailed or delivered notice to Tenant, to terminate this Lease.

c) The power to enter the Premises and remove therefrom all persons and property; such property may be stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. City may from time-to-time sublet the Premises, or any part thereof, for such term or terms (which may extend beyond the term hereof) and at such rentals and upon such other terms as City in its sole discretion may deem advisable with the right to make alterations and repairs to said Premises; upon each such subletting.

1) Tenant shall be immediately liable to pay to City, in addition to indebtedness other than rent due hereunder, the cost of such subletting and of such alterations and repairs, incurred by City and the amount by which the rent hereunder for the period of such subletting (to the end of the term hereof) exceeds the amount agreed to be paid as rent for the Premises for such period of such subletting; or

2) At the option of City, rents received from such subletting shall be applied: First to payment of indebtedness other than rent due hereunder from Tenant to City; second, to the payment of costs of such subletting and of such alterations and repairs; third, to payment of rent due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future rent as the same becomes due hereunder.

3) If Tenant has been credited with any rent to be received by each subletting under: option (1), and such rent shall not be promptly paid to City by the sublessees, or if such rentals received from such subletting under option (2) during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to City. Such deficiency shall be calculated and paid monthly. No taking possession of said premises by City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous breach.

d) Upon application by City, a receiver for Tenant shall be appointed to take possession of the premises and to exercise all the rights granted to City set forth in subparagraph (3) above, and apply any rentals collected from the leased Premises as therein provided.

## **20. Lease Validity**

If any portion of this Lease is or shall be held to be invalid, such invalidity shall not affect the validity of the balance or remainder of same. There are no covenants and warranties other than those express herein, other than the City's warranty of title declaring that it owns the subject property.

## **21. Holding Over**

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Premises except as otherwise expressly provided in this Lease. In the event of holding over, without waiver of default and without extension of the Lease, Tenant shall agree that the rental value shall be 200% of the amount derived in accordance with paragraph 4 herein, and Tenant shall pay the increased amount to City during any period of holdover tenancy, whether said tenancy shall be lawful or not.

## **22. Time is of the Essence**

Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successor of Tenant as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any assigns or sublessees of Tenant.

## **23. Waiver**

The waiver by City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of City to require or exact full and complete compliance with any of the covenants, conditions or agreements of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent City from enforcing any provision hereof.

The failure to exercise any right or option or privilege hereunder by City shall not preclude the City from exercising any right, option or privilege hereunder, and shall not be deemed a waiver of said right, option or privilege, nor shall it relieve Tenant from Tenant's obligation to perform each and every covenant and condition on City's part to be performed hereunder nor from damages or other remedy for failure to perform or meet the obligations of this Lease.

## **24. Recordation**

The City shall record this Lease with the Monterey County Recorder.

## **25. Negation of Partnership**

It is expressly understood and agreed by both parties that Tenant, while using and occupying the Premises and complying with any of the terms and conditions of this Lease, is a tenant of the City and is not an employee or agent of the City and this lease is not intended, and shall not be construed, to create the relationship of agent, contractor, servant, employee, partnership, joint venture or association.

## **26. Attorney's Fees**

In case suit should be brought for recovery of the Premises or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

## **27. Notices**

All notices to City shall be addressed to:

City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey Road  
Del Rey Oaks, California, 93940

All notices to Tenant shall be addressed to:

Del Rey Oaks Garden Center  
899 Rosita Rd.  
Del Rey Oaks, California, 93940

## **28. Arbitration**

If both parties in their sole discretion agree in writing in advance, claims, disputes and other controversies arising out of or relating to this Lease shall be decided by arbitration according to the rules and practices of the American Arbitration Association, and any such arbitration decision shall be binding on the parties and enforceable in court.

## **29. Entire Agreement**

This Lease contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Lease has been or is relied on by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

### **30. Successors**

Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall insure to the benefit of the heirs, successors, executors, administrators, assigns, sublessees, tenants, subtenants and personal representatives of the respective parties.

**31. Joint and Several Liability** Tenant and each and all of the officers of the Tenant, shall be jointly and severally liable hereunder. All individuals signing this Lease as users of the Premises shall be jointly and severally liable for the obligations imposed upon the Tenant hereunder.

**32. Jurisdiction** This Lease shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

**33. Force Majeure** Neither the City nor the Tenant shall be deemed in breach of this Lease for failure to perform any of the obligations or the duties imposed upon it under this Lease as the direct result of any reason beyond its reasonable control including, without limitation, acts of God, terrorist attacks, riots, strikes, fires, storms or any regulation of any federal, state or local government or agency thereof; however, such excuse shall continue only during the pendency of the particular occurrence or force majeure.

**34. Conflict of Interest** Tenant warrants and declares that, to the best of its knowledge, it has no interest, and shall not knowingly acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Lease a violation of any applicable local, state or federal law. In the event that any conflict of interest should nevertheless arise, Tenant shall promptly notify the City of the existence of such conflict of interest so that the City may determine whether to terminate this Lease.

**35. Rights and Obligations Under this Lease** By entering into this Lease, the Parties do not intend to create any obligations express or implied other than those set out herein; further, this Lease shall not create any rights in any party not a signatory hereto.

**36. Licenses** If any license or permit of any kind is required of the Tenant, its representatives, agents or employees by federal, state or local law, Tenant warrants that such licenses or permits have been or will be obtained, are valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

**37. Counterparts** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.

**38. Warranty of Authority** Each Party represents and warrants that it has the right, power, and authority to enter into this Lease. Each Party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Lease for it, to enter into this Lease.

**39. Joint Representation** The language of all parts of this Lease shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Lease, or any part thereof, shall be applicable or invoked.

**40. Records and Reporting** In addition to any reporting or record-keeping that may be required under this Lease, Tenant shall be responsible for making any regulatory reporting that may be required for any activities performed by it under this Lease.

**41. Audit and Examination of Accounts** Tenant hereby agrees to disclose and to make available to the City and its representatives any and all information, reports or books of records or accounts pertaining to this Lease. All records provided for in this section are to be maintained and made available throughout the performance of this Lease and for a period of not less than five (5) years, additionally any and all such records which pertain to actual disputes, litigation, appeals or claims shall be maintained and made available for a period of not less than five (5) years after final resolution of such disputes, litigation, appeals or claims.

**42. Exhibits Incorporated** All exhibits and/or attachments referred to in this Lease and attached to it are hereby incorporated by this reference. In the event of a conflict between any of the terms of this Lease and any of the terms of an exhibit or attachment to this Lease, the terms of the Lease shall control the respective duties and liabilities of the Parties.

**43. Headings** The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Lease.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the City of Del Rey Oaks and of Del Rey Oaks Garden Center have entered into this Lease.

CITY OF DEL REY OAKS

ATTEST:



Daniel J. Dawson, City Clerk

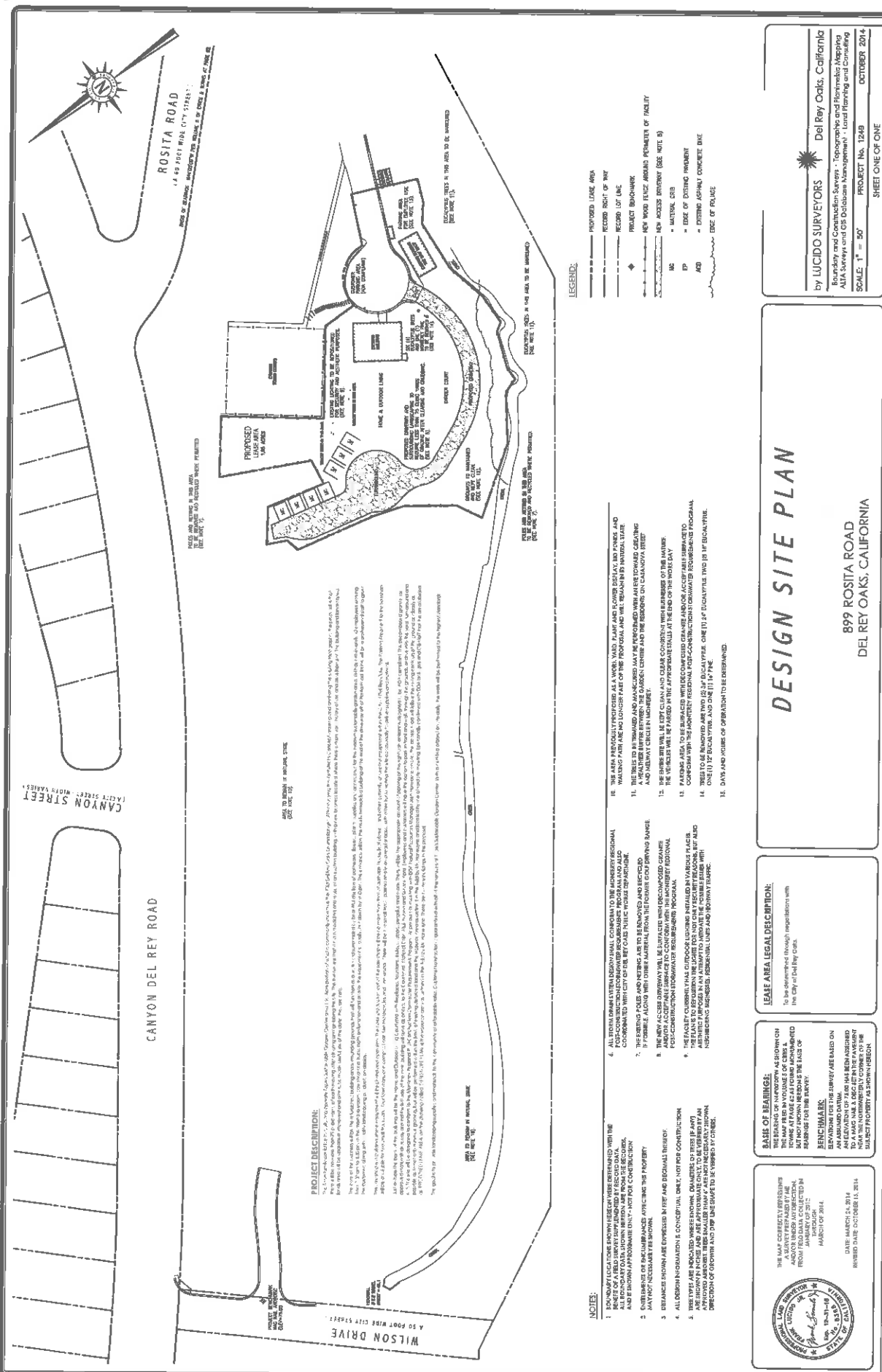
Dated: 1/20/15, 2015

TENANT:

Del Rey Oaks Garden Center

  
Mistugu Mori

Dated: 1/20, 2015



**PROPOSED LEASE AREA**  
 RECORDS OF SURVEY  
 RECORDS OF TITLE  
 PROJECT BENCHMARK  
 NEW WOOD FENCE AROUND PERIMETER OF FACILITY  
 NEW ACCESS DRIVEWAY (SEE NOTE 9)  
 NATURAL CURB  
 EDGE OF EXISTING PAVEMENT  
 EXISTING ASPHALT CONCRETE DRIVE  
 EDGE OF POLICE

**NOTES:**  
 1. THE LOCATION SHOWN HEREON HAS BEEN DETERMINED WITH THE ASSISTANCE OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT. ALL BOUNDARY DATA SHOWN HEREON ARE FROM THE RECORDS OF SURVEY AND ARE SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.  
 2. THE RECORDS OF SURVEY AND RECORDS OF TITLE HAVE BEEN FILED WITH THE COUNTY CLERK'S OFFICE.  
 3. DISTANCES SHOWN ARE EXPRESSED IN FEET AND DECIMAL INCHES.  
 4. ALL DESIGN INFORMATION IS CONSIDERED TO BE PRELIMINARY AND NOT FOR CONSTRUCTION.  
 5. THE ELEVATIONS ARE INDICATED WHERE SHOWN IN FEET AND INCHES AND ARE SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.  
 6. THE ELEVATIONS SHOWN ARE FOR THE SURVEY POINTS AND ARE SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.  
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**PROJECT DESCRIPTION:**  
 THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT HAS BEEN ADVISED THAT THE PROPOSED LEASE AREA IS TO BE USED AS A STORAGE AREA FOR THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT. THE PROPOSED LEASE AREA IS TO BE ADJACENT TO THE EXISTING STORAGE AREA. THE PROPOSED LEASE AREA IS TO BE ADJACENT TO THE EXISTING STORAGE AREA. THE PROPOSED LEASE AREA IS TO BE ADJACENT TO THE EXISTING STORAGE AREA.

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**DESIGN SITE PLAN**  
 899 ROSITA ROAD  
 DEL REY OAKS, CALIFORNIA

by LUCIDO SURVEYORS Del Rey Oaks, California  
 Boundary and Construction Surveys - Topographic and Photometric Mapping  
 ALTA Surveys and GIS Database Management - Land Planning and Consulting  
 SCALE: 1" = 80'  
 PROJECT NO. 12449  
 OCTOBER 2014  
 SHEET ONE OF ONE

**LEAVE AREA LEGAL DESCRIPTION:**  
 To be determined through negotiations with the City of Del Rey Oaks.

**DATE OF BEARING:**  
 THE BEARING OF THE SURVEY AS SHOWN ON THE MAP IS CORRECTLY REPRESENTED BY A SURVEY REPAIRED BY THE CITY OF DEL REY OAKS AND THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT. THE BEARING OF THE SURVEY IS SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.

**BENCHMARK:**  
 THE BENCHMARK FOR THE SURVEY IS EMBEDED IN THE PAVEMENT AND IS LOCATED AT THE INTERSECTION OF ROSITA ROAD AND CANYON DEL REY ROAD. THE BENCHMARK IS SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.

THE MAP WAS COLLECTED BY THE SURVEYORS AND THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT. THE MAP IS SUBJECT TO THE REQUIREMENTS OF THE DEL REY OAKS COMMUNITY DEVELOPMENT DEPARTMENT.

DATE: MARCH 24, 2014  
 REVISED DATE: OCTOBER 13, 2014





LEASE AREA  
1.97 ACRES



EXHIBIT "B"  
FOR  
GARDEN LEASE AREA

DEL REY OAKS COUNTY OF MONTEREY STATE OF CALIFORNIA

PREPARED FOR  
The City of Del Rey Oaks

by LUCIDO SURVEYORS  Del Rey Oaks, California

SCALE: 1" = 80' PROJECT No. 1249 NOVEMBER 2014