



Phelan Piñon Hills Community Services District

4176 Warbler Road • P. O. Box 294049 • Phelan, CA 92329-4049 • (760) 868-1212 Fax (760) 868-2323

SPECIAL PROPERTY MANAGEMENT COMMITTEE MEETING

July 11, 2018 – 10:00 a.m.

PPHCSD Office

4176 Warbler Road, Phelan, CA 92371

AGENDA

1. **Call to Order** – Pledge of Allegiance
2. **Roll Call**
3. **Approval of Agenda**
4. **Public Comment** – Under this item, any member of the public wishing to directly address the Board on any item of interest that may or may not be within the subject matter jurisdiction of the Board, but not listed on the agenda, may do so at this time. However, the Board is prohibited by law from taking any action on any item not appearing on the agenda unless the action is otherwise authorized by the Brown Act. Any member of the public wishing to directly address the Board on any item listed on the agenda may do so when the item is being considered by the Board. If you wish to address the Board, please complete a Comment Card and present it to the Board Secretary. Speakers are requested to be brief in their remarks. The Chair may limit each speaker to a comment period of five (5) minutes.
5. **Review & Discussion of Lease with Circle Green**
6. **Adjourn**

Pursuant to Government Code Section 54954.2(a), any request for a disability-related modification or accommodation, including auxiliary aids or services, that is sought in order to participate in the above-agendized public meeting should be directed to the District's General Manager at (760) 868-1212 at least 24 hours prior to said meeting.

Agenda materials can be viewed online at <http://www.pphcsd.org>

LEASE

THIS LEASE AGREEMENT is made this ____ day of _____, 2018, (“Lease”), by and between PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT, a public agency (hereinafter “the District”), and CIRCLE GREEN, INC., a corporate entity (hereinafter “the Tenant”).

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RECITALS

A. The District is a Community Services District organized and operating pursuant to California Government Code Section 61000 et seq.

B. The Tenant is a corporation duly organized and operating under California law.

C. The District is the owner of approximately 157 acres of real property located at 17900 Sheep Creek Road, in the unincorporated area of El Mirage, County of San Bernardino, State of California, which is more particularly described as Assessor Parcel Number 0457-161-10, and as further set forth in the legal description attached hereto as Exhibit “A” and incorporated herein by this reference (“the Property”).

D. On or about July 18, 2016, the District and the Tenant entered into a lease agreement (the “Original Lease”) wherein the Tenant began leasing a portion of the Property consisting of approximately 132 acres as depicted on Exhibit “B” attached hereto and incorporated herein by this reference (“the Premises”) for the purpose of site management, composting, other related activities.

E. Tenant desires to develop the Premises to operate various types of emerging green technologies, including, but not limited to, composting, food waste digestion, organic farming, and green power generation.

F. The District and the Tenant now wish to terminate the Original Lease and enter into a new agreement wherein the Tenant would lease the Premises for the purposes described in Section 4 of this Lease. The portions of the Property reserved for the District’s use in said Exhibit “B” are expressly excluded from the Premises leased herein.

G. The purpose of this Lease agreement is to set forth the terms and conditions under which the District will lease the Premises to the Tenant.

COVENANTS

NOW THEREFORE, in consideration of the preceding Recitals and the mutual Covenants contained herein, the parties hereto agree as follows:

Section 1. LEASE OF PREMISES

(a) Termination of Original Lease. The Original Lease shall terminate by mutual consent of the District and the Tenant on the Commencement Date (defined in 2(a) below) of this Lease.

(b) New Lease. The District hereby leases to the Tenant, and the Tenant hereby hires from the District, the Premises in the limited manner as strictly provided in this Lease. The Tenant has inspected the Property and agrees that the acreage stated herein is only approximate and the District does not hereby warrant or guarantee the actual amount of acreage stated in this Lease. In the event that the District determines in its reasonable discretion that it requires additional portions of the Premises to pump and/or transport water from the Premises, the Parties agree to work together in good faith to modify the Lease on terms mutually acceptable to the Parties.

Section 2. TERM

(a) Term. The term of this Lease shall commence on _____, 2018 (the "Commencement Date"), and shall expire five (5) years after said date ("the Term"), unless earlier terminated pursuant to the provisions of Sections 18 or 22 of this Lease.

(b) Extensions. Tenant shall have the option to extend this Lease for up to five (5) additional 5-year terms (each a "Renewal Term"). Other than Rent, which shall be subject to Section 3(a) below, each Renewal Term shall be on the same terms and conditions set forth herein. Tenant shall exercise such option for a Renewal Term by providing written notice thereof to the District no less than six (6) months prior to the scheduled expiration of the then-current Term or Renewal Term.

(c) Holding Over. Any holding over after the expiration or termination of the Term or Renewal Term, with the consent of the District expressed or implied, shall be deemed only a month-to-month tenancy and shall otherwise be on the same terms and conditions set forth in this Lease; except that, if a holdover occurs, the Tenant shall pay to the District rent in the amount of the then-current Rent (as defined below) plus ten percent (10%) on a monthly basis during the period of holdover.

Section 3. LEASE PAYMENTS

(a) Rent. In consideration for leasing the Premises, the Tenant shall pay rent to the District in the amount of \$3,605.00 per month on the first day of each month during the Term and any Renewal Term ("Rent"), which payment shall be deemed delinquent and subject to an additional late fee equal to ten percent (10%) of the outstanding balance due if unpaid on the fourth day of the month. The amount of the Rent shall be subject to an automatic annual increase equal to three percent (3%) of the Rent for the prior year beginning on first of the month following the year anniversary of the Commencement Date, and continuing every year thereafter during the Term and any Renewal Term of this Lease. Such sum so calculated shall become the new Rent hereunder, the payment of which shall be deemed delinquent and subject to an additional late fee equal to ten percent (10%) of the outstanding balance due if unpaid on the fourth day of the month.

(b) Royalty Agreement. In addition to Rent, Tenant and the District intend to enter into a separate agreement (the “Royalty Agreement”) concurrently with the execution of this Lease, whereby Tenant shall pay the District royalty payments in conjunction with Tenant’s various uses of the Property. In the event Tenant purchases the Property pursuant to its Purchase Option, it is the intent of the Parties that the Royalty Agreement shall remain in effect.

Commented [AB1]: clarification

(c) Security Deposit. The District acknowledges receipt of a cash sum in the amount of \$5,000.00 that Tenant deposited with the District at the execution of the Original Lease (“Security Deposit”). The District shall hold the Security Deposit as security for the performance of the Tenant’s obligations under this Lease. If the Tenant defaults on any provision of this Lease, the District may (but shall not be required to), without prejudice to any other remedy it has, apply all or part of the Security Deposit to: (1) any Rent or other sum in default; (2) any amount that the District may spend or become obligated to spend in exercising the District’s rights under this Lease; and/or (3) any expense, loss, or damage that the District may suffer due to the Tenant’s default. The Tenant waives the provisions of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that the District may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of accrued Rent to repair damage caused by the Tenant, or to clean the Premises. The Tenant and the District agree that the District may, in addition, claim those sums reasonably necessary to compensate the District for any other foreseeable or unforeseeable loss or damage caused by the act or omission of the Tenant or the Tenant’s officers, agents, employees, independent contractors, or invitees, including future Rent payments.

Section 4. USE OF PREMISES

The Tenant’s use of the Premises shall be strictly limited to the reasonable and lawful performance of only those activities approved by the District in the exercise of its reasonable discretion following its environmental review thereof, the exercise of which by the Tenant shall not be conducted in a manner that is otherwise inconsistent with the terms and conditions of this Lease. The Tenant agrees not to use or permit the use of the Premises for any purpose not specifically allowed in this Lease and any amendments thereto without first obtaining prior written consent from the District, which shall not be unreasonably withheld, conditioned or delayed. The Tenant also agrees to exercise due diligence in the protection of the Property from damage or destruction by fire, vandalism, earthquake, floods, or other cause. Notwithstanding the foregoing, Tenant is currently permitted to use the Premises as set forth in Exhibit “C.” Tenant shall be applying in the future for approvals for a composting operation (“Tenant’s Composting Approvals”), as well as other uses consistent with the terms and conditions of this Lease and upon the District’s approval of such operations in the exercise of its reasonable discretion following its environmental review thereof, the parties shall amend Exhibit “C.” to include such uses approved by the District.

Section 5. NO WASTE, NUISANCE, OR UNLAWFUL USE

Other than in amounts customarily used in the normal course of business in connection with any of the Permitted Uses (defined below), the Tenant shall not commit, or allow to be committed, on the Property any waste thereon, nor the presence, use, manufacture, handling, generation, or storage, of any hazardous substance which is or becomes listed, regulated, or addressed under any federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree (“Hazardous Substance”). Notwithstanding the forgoing, in no event shall Tenant commit, or allow to be committed, on the Property any treatment, discharge, release, burial, or disposal of any Hazardous Substance, nor create or allow any nuisance to exist on the Property, nor use or allow the Property to be used for any illegal or unconstitutional purpose. The Tenant, at its sole cost and expense, shall be solely responsible for ensuring that the Premises, and the Tenant’s use and occupancy thereof, complies with all of the requirements of all local, state, and federal authorities now in force, or which may be in force, including but not limited to those identified in this Section 5 of this Lease. The Tenant shall also be solely responsible for all costs necessary to ensure that the Tenant’s uses of the Premises under this Lease comply with all applicable requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the Guidelines promulgated thereunder (California Code of Regulations Section 15000 et seq.).

Section 6. IMPROVEMENTS

(a) Construction. No alteration of the Premises, construction of improvements thereon, or installation of signage shall be permitted until the District has approved the complete plans and specifications therefor in the exercise of its reasonable discretion. Any building signage installed by Tenant on the Premises, and any improvements, repairs, and construction performed on the Premises by the Tenant or its employees, agents, contractors, consultants, or subcontractors shall be performed at Tenant’s sole cost and expense and shall comply with the applicable rules, regulations, laws, statutes, and standards of the District and any other entity with jurisdiction over the activities conducted thereon. Where approval or acceptance by the District is indicated in this Lease, it is understood to be conceptual approval only and will not operate to relieve the Tenant or its contractors, consultants, or subcontractors of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or their own willful misconduct. Further, neither the District’s review, approval, or acceptance of any of the work or services performed in connection with this Lease shall be construed as a waiver of any rights hereunder or of any defense or cause of action which it may have arising out of the performance of this Lease or any previous or subsequent agreements. The Tenant shall furnish the District with copies of all plans that are prepared and permits that are issued.

(b) Relocation. If a duly-empowered government entity other than the District, determines that any improvements constructed by the Tenant, or any part thereof, require repair, replacement, protection, removal, and/or relocation, such action shall be performed by the Tenant, at its sole expense, and in the manner reasonably required and approved by such government entity, subject to Section 21 hereof.

(c) Ownership. At the expiration or termination of this Lease, any improvements constructed on the Property shall vest in the District. Upon expiration or termination of the Term and/or Renewal Term, the Tenant shall deliver the Premises to the District in good condition and repair, reasonable wear and tear excepted, without compensation to the Tenant, and free and clear of any and all liens and/or claims.

Section 7. REPAIRS AND MAINTENANCE

The Tenant, at its own expense, shall have full and sole responsibility for all maintenance, repair, and remediation of, on, or about the Premises, and shall maintain, preserve, and keep the Premises in good repair, working order, and lawful state, and shall from time to time make all repairs, replacements, and improvements necessary to keep the Premises in such condition (subject to the requirements of Section 6 above) to protect the Premises. Notwithstanding the above, maintenance of the District-owned wells, pipelines, and related water systems located on the Premises shall not be the responsibility of the Tenant.

Section 8. FEES, TAXES, CHARGES, AND ASSESSMENTS

The Tenant shall install on the Premises current meters to measure the amount of electricity and all other utility services consumed by the Tenant, and the cost of such metering and the installation, maintenance, and repair thereof shall be paid for by the Tenant. The Tenant shall also pay when due all gas, water, electricity, power, telephone, refuse, and other charges incurred in the operation, maintenance, use, occupancy, abatement, and upkeep of the Premises. The Tenant shall also pay when due all property and excise taxes and governmental charges of any kind whatsoever that may at any time be assessed or levied against or with respect to the Tenant's use of the Premises, as well as all special assessments and charges made by any governmental body for any improvements installed on the Premises by Tenant. Notwithstanding the foregoing, the Parties acknowledge that the District is the water purveyor for the Premises, and any water that Tenant requires in connection with its Permitted Uses herein, shall be charged to Tenant at the District's then current rate for construction water.

Section 9. LIENS

The Tenant shall not, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, citation, abatement order, encumbrance, or claim on or with respect to the Property, other than the respective rights of the District and the Tenant as provided in this Lease and any amendments thereto. The Tenant shall promptly, at its own expense, take such action as may be necessary to immediately discharge or remove any such mortgage, pledge, lien, charge, citation, order, encumbrance, or claim as the same shall arise out of the operation of this tenancy. The Tenant shall reimburse the District for any expense incurred by the District to discharge or remove any such mortgage, pledge, lien, charge, citation, order, encumbrance, or claim.

Section 10. ACCESS TO THE PREMISES

The District shall have reasonable access to the Property at all times during the Term and any Renewal Term of this Lease upon giving reasonable notice thereof to the Tenant.

Section 11. OTHER PROPERTY INTERESTS

The Tenant's rights under this Lease are subject to all applicable easements, licenses, rights of way, and mineral rights currently in existence. The Tenant shall not interfere, in any way, with the interests of any person or entity that may presently, or in the future, hold any easement, license, right of way, or oil, gas, or other mineral interest, upon, across, above, or under the Property; nor shall the Tenant interfere, in any way, with the rights of ingress and egress of such interest holders. Notwithstanding the foregoing to the contrary, in the event the District desires to grant additional easements, licenses, and/or rights of way to the Premises to other parties, the District shall not do so without the prior written consent of Tenant, not to be unreasonably withheld, conditioned, or delayed. Furthermore, in the event that the District desires to expand, alter, or modify portions of the Property that it reserved for its own use, to include portions of the Premises, the Parties agree to work together in good faith to modify the Lease to accommodate the Parties' needs.

Section 12. NON-DISCRIMINATION

The Tenant shall not permit any practice of discrimination against, or segregation of, any person or group of persons on account of sex, race, color, creed, marital status, age, sex, religion, handicap, national origin, or ancestry in its ownership, employment, selection of contractors, subcontractors, and vendees, or in the enjoyment, use, and occupancy of the Premises.

Section 13. NO REPRESENTATIONS, WARRANTIES, OR WATER RIGHTS

It is expressly understood by the parties hereto that the physical condition of the Premises as of the effective date of this Lease is such that it is leased to the Tenant as-is without any representation or warranty. The District makes no express or implied representations or warranties concerning the Property or its fitness for any particular purpose. The Tenant shall bear the costs of any action necessary to place the Premises in a condition that meets the requirements of law, except for any hazardous condition that may have existed at the time of the commencement of the Original Lease, or that is otherwise suitable for the use contemplated herein. The District shall not be held liable to the Tenant or to any other party for any losses incurred or damages sustained as a direct or indirect result of the condition of the Property or any use or failure thereof. Any water produced on or extracted from the Property shall not serve as the basis of, or otherwise support, any water rights claim that may be asserted by the Tenant. Non-potable water will be available to Tenant at the District's normal cost of construction water.

Section 14. LIABILITY FOR DAMAGES

The District shall not be held liable or responsible for any debts or claims that may arise from the operation of this Lease, or for any damage claims for injury to persons, including the Tenant and its agents or employees, or for property damage, or for other loss to any vehicle or

the contents thereof, from any cause arising out of or in any way related to the Tenant's obligations hereunder or its use or occupancy of the Premises, including those arising out of damages or losses occurring on the Property or areas adjacent to the Premises.

Excepting the sole negligence or willful misconduct of the District, the Tenant hereby expressly waives and releases the District and its agents, officers, directors, and employees from any and all liability for the claims, actions, and/or losses set forth above and for any costs and expenses incurred in connection therewith.

Section 15. HOLD HARMLESS

Excepting the sole negligence or willful misconduct of the District, the Tenant agrees to indemnify and hold the District and its officers, directors, agents, and employees, harmless from and against all claims and liabilities of any kind arising out of, in connection with, or resulting from, any and all acts or omissions on the part of the Tenant and/or its agents, guests, invitees, trespassers, contractors, consultants, and employees in connection with the performance of their obligations under this Lease and/or their occupancy of the Premises, and defend the District and its officers, directors, agents, and employees from any suits or actions at law or in equity and to pay all court costs and counsel fees incurred in connection therewith.

In addition, the Tenant agrees to defend, indemnify, and hold the District and its officers, directors, agents, and employees harmless from and against and all claims, losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs, expenses (including, without limitation, the reasonable fees and disbursements of legal counsel, expert witnesses, and accountants), and all foreseeable and unforeseeable consequential damages which might arise or be asserted against the District and/or the Tenant, with regard to the condition of the Property or the activities conducted thereon, which are alleged and/or determined to be tortious and/or in violation of present and future federal, state, and local laws (whether under common law, statute, rule, regulation, or otherwise).

Section 16. INSURANCE

(a) Security. The District reserves the right to demand at any time during the Term and any Renewal Term of this Lease and any extensions thereof that the Tenant procure and maintain bonds from an acceptable surety, cash deposits, or other form of security in amounts and upon terms deemed sufficient by the District in its reasonable discretion to protect the District from any and all exposure to loss or liability.

(b) Coverage. In addition, the Tenant shall procure and maintain during the Term and any Renewal Term of this Lease and any extensions thereof such policies of insurance as will protect it and the District in such a manner and in such amounts as set forth below. The premiums for such insurance coverage shall be paid by the Tenant. The failure to comply with these insurance requirements may constitute a material breach of this Lease at the sole discretion of the District.

(1) Certificates of Insurance. No later than ten (10) calendar days after execution of this Lease, the Tenant shall furnish the District with Certificates of Insurance and endorsements verifying the insurance coverage required by this Lease is in full force and effect. The District reserves the right to require complete and accurate copies of all insurance policies required under this Lease.

(2) Required Provisions. The insurance policies required by this Lease shall include the following provisions or have them incorporated by endorsement(s):

(i) Primary Coverage. The insurance policies provided by the Tenant shall be primary insurance and any self-insured retention and/or insurance carried by or available to the District or its employees shall be excess and non-contributory coverage so that any self-insured retention and/or insurance carried by or available to the District shall not contribute to any loss or expense under the Tenant's insurance.

(ii) Additional Insured. The policies of insurance provided by the Tenant, except Workers' Compensation, shall include as additional insureds: the District, its directors, officers, employees, and agents when acting in their capacity as such in conjunction with the performance of this Lease. Such policies shall contain a "severability of interests" provision, also known as "Cross liability" or "separation of insured".

(iii) Cancellation. Each certificate of insurance and insurance policy shall provide that the policy may not be non-renewed, canceled (for reasons other than non-payment of premium) or materially changed without first giving thirty (30) days advance written notice to the District, or ten (10) days advance written notice in the event of cancellation due to non-payment of premium.

(iv) Waiver of Subrogation. The insurance policies provided by the Tenant shall (1) contain a waiver of subrogation against the District, its directors, officers, employees and agents for any claims arising out of this Lease, or (2) allow the Tenant to waive subrogation, in writing, before any loss, in which case this provision of the Lease shall be deemed to be the Tenant's written waiver of subrogation against the District for any and all losses covered by any and all insurance policies required under this Lease.

(v) Claim Reporting. The Tenant shall not fail to comply with the claim reporting provisions or cause any breach of a policy condition or warranty of the insurance policies required by this Lease that would affect the coverage afforded under the policies to the District.

(vi) Deductible/Retention. If the insurance policies provided by the Tenant contain deductibles or self-insured retentions, any such deductible or self-insured retention shall not be applicable with respect to the coverage provided to the District under such policies. The Tenant shall be solely responsible for any such deductible or self-insured retention and the District, in its sole discretion, may require the Tenant to secure the payment of any such

deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

(vii) Sub-Contractors. The Tenant shall include all sub-contractors as additional insureds under the insurance policies required by this Lease to the same extent as the District or shall furnish separate certificates of insurance and policy endorsements for each sub-contractor verifying that the insurance for each sub-contractor complies with the same insurance requirements applicable to the Tenant under this Lease.

(3) Insurance Company Requirements. The Tenant shall provide insurance coverage through insurers that have at least an "A" Financial Strength Rating and a "VII" Financial Size Category in accordance with the current ratings by the A. M. Best Company, Inc. as published in *Best's Key Rating Guide* or on said company's web site. In addition, any and all insurers must be admitted and authorized to conduct business in the State of California and be a participant in the California Insurance Guaranty Association, as evidenced by a listing in the appropriate publication of the California Department of Insurance.

(4) Policy Requirements. The insurance required under this Lease shall meet or exceed the minimum requirements as set forth below:

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(i) Workers' Compensation. The Tenant shall maintain Workers' Compensation insurance as required by law in the State of California to cover the Tenant's obligations as imposed by federal and state law having jurisdiction over the Tenant's employees and Employers' Liability insurance, including disease coverage, of not less than \$1,000,000. Even if Tenant contends that it has no employees, Tenant shall obtain a policy to cover its potential exposure on a payroll basis of "if any" for the workers' classification applicable to the Tenant's occupancy under this Lease.

(ii) General Liability. The Tenant shall maintain Comprehensive General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 aggregate. The policy shall include, but not be limited to, coverage for bodily injury, property damage, fire legal liability, personal injury, products, completed operations and contractual to cover, but not be limited to, the liability assumed under the indemnification provisions of this Lease. In the event the Comprehensive General Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years after expiration or termination of this Lease.

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(iii) Automobile Liability. The Tenant shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence for any owned, hired, or non-owned vehicles.

(iv) Property Insurance. The Tenant shall maintain property insurance in an amount sufficient to cover the full replacement cost for (1) any physical damage to or destruction of any and all structures, improvements, or other real property (not including

the land) on the Premises, and (2) any physical damage to or destruction of any and all personal property of any person, other than the Tenant, that is on the Premises. The determination of the specific dollar amounts of property coverage that will be sufficient for this section shall be in the reasonable discretion of the District.

(v) Manner of Satisfaction. The insurance required in subsections (ii) through (iv) above may be provided by separate policies of insurance or combined into a single package policy.

Section 17. DEFAULT

The following shall be deemed events of default and cause for termination of this Lease by the District:

(a) Rent. The Tenant fails to pay any installment of Rent, and such failure continues for a period of ten (10) days.

(b) Insolvency. The Tenant becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.

(c) Receivership. A receiver or trustee is appointed for all or substantially all of the assets of the Tenant.

(d) Abandonment. The Tenant deserts or vacates any substantial portion of the Premises.

(e) Breach. The Tenant fails to comply with any term, condition, or covenant of this Lease.

Section 18. REMEDIES FOR BREACH

Upon the occurrence of any event of default described in Section 17 of this Lease, the District shall give the Tenant written notice thereof. With respect to an event of default described in Section 17(a) of this Lease, said notice shall be given by the District in the manner required by law. With respect to all other events of default described in Section 17 of this Lease, the District shall give the Tenant a period of thirty (30) calendar days after the date of said written notice in which to cure said breach or default to the reasonable satisfaction of the District, unless the District determines in its reasonable discretion that the default represents a hazard or emergency that requires immediate action, in which the cure period shall be reduced according to a reasonable amount of time given the particular circumstance. If the breach or default is not timely cured by the Tenant to the satisfaction of the District, the District shall have the option to pursue any one or more of the following remedies, with or without the benefit of court order, in addition to its other rights and remedies under the law:

(a) Reentry. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages therefor, and perform whatever act the Tenant is obligated to perform under the terms of this Lease; and the Tenant agrees to reimburse the District, on demand, for any expenses which the District may incur in effectuating compliance with the Tenant's obligations under this Lease, and the Tenant further agrees that the District shall not be liable for any damages resulting from such actions.

(b) Eviction. Enter upon and take possession of the Premises and any personal property found thereon, and expel or remove the Tenant and/or any person who may be occupying the Premises, or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, and subsequently sublease the Premises and receive the rent and receipts therefor; and the Tenant agrees to pay to the District, on demand, any deficiency that may arise by reason of such subsequent subleasing. The District may store any personal property removed from the Premises in a public warehouse or at another place of its choosing within the County of San Bernardino at the Tenant's expense or to the Tenant's account.

(c) Termination. Termination of this Lease, in which case the Tenant shall immediately surrender the Premises to the District, and if the Tenant fails to do so, the District may, without prejudice to any other remedy which it may have for possession or arrearages in rent or receipts, enter upon and take possession of the Premises and expel or remove the Tenant and any other person who may be occupying the Premises, or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and the Tenant agrees to pay to the District, on demand, the full amount of all loss and damage which the District may suffer by reason of such termination, whether through inability to subsequently sublease the Premises on satisfactory terms or otherwise.

Section 19. TENANT'S OPTION TO PURCHASE

For the sum of One Hundred Dollars and No Cents (\$100) as independent consideration for the rights under this Lease ("Independent Consideration"), and other good and valuable consideration, the receipt of all of which are hereby acknowledged, and subject to the terms of this Lease, Tenant shall have a one-time option to purchase the Property (except any and all water rights otherwise appurtenant thereto and/or associated therewith, and reservation of easements, which shall remain the ownership of the District) and all improvements located thereon ("Purchase Option") from the District, subject to the following conditions:

Commented [AB2]: added clarifications

(a) Time to Exercise Tenant's Purchase Option. Tenant shall have the right to exercise its Purchase Option any time within three (3) years from the date of this Lease by giving the District written notice of its intent to exercise its Purchase Option. If during the Term, Tenant fails to exercise Tenant's Purchase Option within the time frame set forth herein, Tenant shall retain a right of first refusal to purchase the Property for so long as this Lease remains in effect.

(b) Price. For a period of ~~sixty (60)~~ days following Tenant's timely written notice of intent to exercise its Purchase Option, the District and Tenant shall negotiate in good faith in an effort to reach agreement on the terms and conditions of the purchase and sale of the Property, including but not limited to the market value of the Property (along with all improvements, easements, and encumbrances located thereon) collectively, the "Price" as of the date in which Tenant tendered such notice of intent to exercise its Purchase Option (the "Exercise Date"). Notwithstanding the foregoing, the Parties agree that the determination of the Price shall be subject to the following: (i) The sales comparison approach (and not the income approach) shall be the sole method used for determining the fair market value ("FMV") of the land; (ii) the FMV of the land as of the Exercise Date shall not be lower than the FMV of the land as of June 30, 2018. With respect to the improvements located on the Premises, any improvements constructed on the Premises after June 30, 2018 shall not be included in the calculation of Price.

Commented [AB3]: I shortened this negotiation period because the rest of the "arbitration" period takes additional time.

Deleted: one hundred and twenty (120)

Deleted: as of the date in which Tenant tendered such notice of intent to exercise its Purchase Option.

(c) Arbitration Procedure for Determining the Price. In the event that after the 60-day period the Parties cannot agree on the Price of the Property and improvements, the following procedure shall be used for determining the Price:

Commented [AB4]: Made "Price" a defined term which I use later. Eliminated the income approach per our discussion in the last committee meeting. Establish a floor price as of June 30, 2018. Eliminated improvements made after June 20, 2018 from the appraised value.

(1) The Parties shall immediately each appoint an appraiser of their choice to act as arbitrators. Both Parties, through their respective arbitrators, shall each immediately make a reasonable determination of the FMV of the Property and improvements subject to the conditions above and submit such determination to the other in writing, as part of this arbitration.

(2) The two arbitrators so appointed shall immediately select a third mutually acceptable appraiser to act as a third arbitrator. The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual FMV of the Property and the improvements is, and whether Tenant's or the District's submitted FMV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted FMV which is determined to be the closest to the actual FMV shall thereafter be used by the Parties as the Price.

(3) The entire cost of such arbitration shall be paid by the party whose submitted FMV is not selected as the Price (i.e. the one that is NOT the closest to the actual FMV determined by the arbitrators pursuant to the process above).

Commented [AB5]: Last meeting the consensus was to use "baseball" arbitration.

(d) Reservation of Rights. Nothing herein shall be construed as granting the Tenant a Purchase Option to acquire any water rights held by the District.

Commented [AB6]: This was addressed above by adding the minimum price of the value as of June 30, 2018

(e) Royalty Agreement to Remain in Effect. In the event Tenant purchases the Property from the District, the Royalty Agreement shall remain in effect per its own terms.

Deleted: , nor shall anything herein be interpreted as compelling either party to consummate the purchase or sell the Property on any term or condition not otherwise acceptable to both parties. In the event the parties are unable to reach agreement on the purchase and sale of the Property, Tenant's Purchase Option hereunder shall terminate.

Section 20. EFFECT OF DISTRICT'S WAIVER

Any failure by the District to enforce any provision of this Lease, or any waiver thereof by the District, shall not constitute a waiver of its right to enforce subsequent violations of the same or any other terms or conditions herein.

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Section 21. FORCE MAJEURE

The Tenant shall not be in default under this Lease in the event that the performance of its obligations hereunder are temporarily interrupted for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, and fires, and other labor disturbances or other catastrophic events which are beyond the reasonable control of the Tenant. Other catastrophic events do not include the financial inability of the Tenant to perform, or failure of the Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility.

Section 22. CONDEMNATION OF PROPERTY

Should all any part of the Premises be taken by any public or quasi-public agency or entity (other than the District) under the power of eminent domain during the Term and/or Renewal Term of this Lease, the following shall apply:

(a) Termination of Lease. Except as set forth in subparagraph (c) below, either party may terminate this Lease by giving the other party ninety (90) days written notice thereof.

(b) Allocation of Damages. Any and all damages and compensation awarded or paid because of the taking of any real property interests in the Premises shall belong to the District; any and all damages and compensation awarded or paid because of the taking of the leasehold interest of, and improvements constructed on the Premises by, the Tenant shall belong to the Tenant.

(c) Partial Taking. In the event of a partial taking of the Premises, Tenant shall have the right to terminate the Lease by giving the District ninety (90) days written notice thereof. In the event only a portion of the Premises be taken by eminent domain and Tenant elects not to terminate the Lease, the Rent thereafter payable under this Lease shall be abated proportionally as to the portion taken which is then not usable by the Tenant.

Section 23. ATTORNEYS' FEES

If either the District or the Tenant is the prevailing party in any legal dispute caused by the non-prevailing party, which said legal dispute arose out of, under, in connection with, or in relation to this Lease, and any amendments thereto, or the breach thereof, the prevailing party shall be entitled to receive from the non-prevailing party all attorneys' fees and costs actually incurred by the prevailing party in connection therewith. In any such action, arbitration,

mediation, or other proceeding, the entitlement to recover attorney's fees and costs will be considered an element of costs and not of damages.

Section 24. NOTICES

All notices, demands, or other writing in this Lease required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the District: Phelan Pinon Hills Community Services District
4176 Warbler Road
P.O. Box 294049
Phelan, CA 92329-4049
Attention: General Manager

To the Tenant: Circle Green, Inc.
8271 Chino Avenue
Ontario, CA 91761
Attention: Kevin Sutton

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

Section 25. SUCCESSORS AND ASSIGNS

The Tenant shall not sublet, assign, mortgage, pledge, hypothecate, or otherwise dispose of the Premises, or any part thereof, or any right or privilege connected therewith, or to allow any other person, except the Tenant's agents and employees, to occupy the Premises or any part thereof, without first obtaining the written consent of the District which shall not be unreasonably withheld, conditioned or delayed. Any such consent by the District shall not constitute consent to any subsequent assignment, sublease, or occupation by the Tenant or other persons. The Tenant's unauthorized assignment, sublease, or license to occupy shall be void, and shall terminate this Lease at the District's option.

Notwithstanding the foregoing to the contrary, the following shall apply:

(a) Subleases: With respect to anticipated subtenants of the Premises consistent with the terms and conditions of this Lease, all subleases shall require the District's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the issue of whether the District's consent, or lack thereof, is reasonable, may take into account whether the District is receiving any monetary benefit, or otherwise, through a separate agreement.

(b) Assignment: The Tenant's interest in this Lease is not assignable by operation of law, nor is any assignment of its interest herein, without the written consent of the District which shall not be unreasonably withheld. Further, any change in stock ownership of the Tenant which results in the current shareholders not owning a majority interest in Tenant, shall be deemed an assignment prohibited by this Section, unless the written consent of the District be obtained, such consent not to be unreasonably withheld, conditioned, or delayed.

Section 26. INUREMENT

This Lease and the covenants and conditions hereof apply to and are binding upon the heirs, successors, legal representatives, and assigns of the parties hereto.

Section 27. INTEGRATION AND AMENDMENT

This Lease constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, whether oral or written, between the parties in connection therewith. This Lease may not be amended unless in writing and signed by both parties hereto.

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Section 28. CAPTIONS

The captions of sections and subsections of this Lease are for reference only and are not to be construed in any way as a part of this Lease.

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Section 29. INTERPRETATION AND ENFORCEMENT

This Lease shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared this Lease and any uncertainty or ambiguity contained herein shall not be interpreted against any one party. This Lease shall be enforced and governed by and under the laws of the State of California, and venue for any action brought to interpret and/or enforce any provision of this Lease shall be in a state or federal court located in the State of California with in rem jurisdiction over Property in San Bernardino County.

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Section 30. TIME OF THE ESSENCE

Time is of the essence in this Lease and each and every provision thereof.

Section 31. AUTHORITY

The persons executing this Lease hereby represent and warrant that they are fully and duly authorized and empowered to so execute on behalf of each of the respective parties hereto.

Deleted: Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers as of the date first above written.

Deleted: Agreement

PHELAN PINON HILLS COMMUNITY
SERVICES DISTRICT

By: _____
President, Board of Directors

ATTEST:

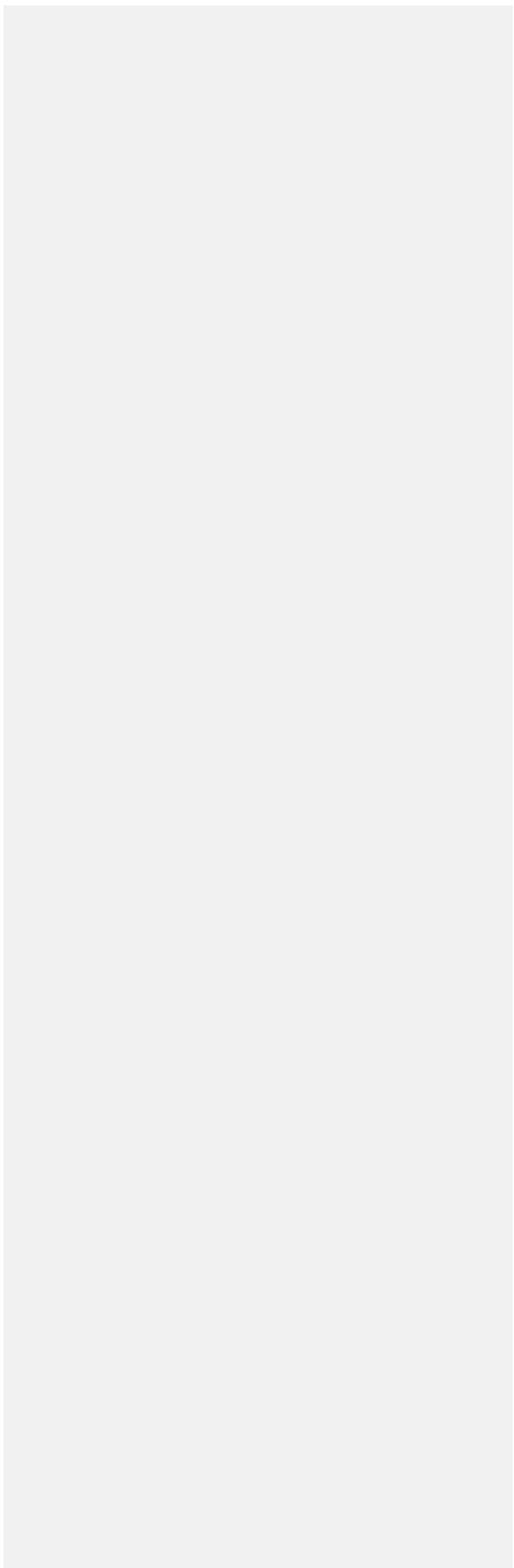
Secretary

CIRCLE GREEN, INC.

By: _____
Kevin P. Sutton, President

ATTEST:

Notary Public



LEASE

THIS LEASE AGREEMENT is made this ____ day of _____, 2018 (“Lease”), by and between PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT, a public agency (hereinafter “the District”), and CIRCLE GREEN, INC., a corporate entity (hereinafter “the Tenant”).

RECITALS

A. The District is a Community Services District organized and operating pursuant to California Government Code Section 61000 et seq.

B. The Tenant is a corporation duly organized and operating under California law.

C. The District is the owner of approximately 157 acres of real property located at 17900 Sheep Creek Road, in the unincorporated area of El Mirage, County of San Bernardino, State of California, which is more particularly described as Assessor Parcel Number 0457-161-10, and as further set forth in the legal description attached hereto as Exhibit “A” and incorporated herein by this reference (“the Property”).

D. On or about July 18, 2016, the District and the Tenant entered into a lease agreement (the “Original Lease”) wherein the Tenant began leasing a portion of the Property consisting of approximately 132 acres as depicted on Exhibit “B” attached hereto and incorporated herein by this reference (“the Premises”) for the purpose of site management, composting, other related activities.

E. Tenant desires to develop the Premises to operate various types of emerging green technologies, including, but not limited to, composting, food waste digestion, organic farming, and green power generation.

F. The District and the Tenant now wish to terminate the Original Lease and enter into a new agreement wherein the Tenant would lease the Premises for the purposes described in Section 4 of this Lease. The portions of the Property reserved for the District’s use in said Exhibit “B” are expressly excluded from the Premises leased herein.

G. The purpose of this Lease agreement is to set forth the terms and conditions under which the District will lease the Premises to the Tenant.

COVENANTS

NOW THEREFORE, in consideration of the preceding Recitals and the mutual Covenants contained herein, the parties hereto agree as follows:

Section 1. LEASE OF PREMISES

(a) Termination of Original Lease. The Original Lease shall terminate by mutual consent of the District and the Tenant on the Commencement Date (defined in 2(a) below) of this Lease.

(b) New Lease. The District hereby leases to the Tenant, and the Tenant hereby hires from the District, the Premises in the limited manner as strictly provided in this Lease. The Tenant has inspected the Property and agrees that the acreage stated herein is only approximate and the District does not hereby warrant or guarantee the actual amount of acreage stated in this Lease. In the event that the District determines in its reasonable discretion that it requires additional portions of the Premises to pump and/or transport water from the Premises, the Parties agree to work together in good faith to modify the Lease on terms mutually acceptable to the Parties.

Section 2. TERM

(a) Term. The term of this Lease shall commence on _____, 2018 (the "Commencement Date"), and shall expire five (5) years after said date ("the Term"), unless earlier terminated pursuant to the provisions of Sections 18 or 22 of this Lease.

(b) Extensions. Tenant shall have the option to extend this Lease for up to five (5) additional 5-year terms (each a "Renewal Term"). Other than Rent, which shall be subject to Section 3(a) below, each Renewal Term shall be on the same terms and conditions set forth herein. Tenant shall exercise such option for a Renewal Term by providing written notice thereof to the District no less than six (6) months prior to the scheduled expiration of the then-current Term or Renewal Term.

(c) Holding Over. Any holding over after the expiration or termination of the Term or Renewal Term, with the consent of the District expressed or implied, shall be deemed only a month-to-month tenancy and shall otherwise be on the same terms and conditions set forth in this Lease; except that, if a holdover occurs, the Tenant shall pay to the District rent in the amount of the then-current Rent (as defined below) plus ten percent (10%) on a monthly basis during the period of holdover.

Section 3. LEASE PAYMENTS

(a) Rent. In consideration for leasing the Premises, the Tenant shall pay rent to the District in the amount of \$3,605.00 per month on the first day of each month during the Term and any Renewal Term ("Rent"), which payment shall be deemed delinquent and subject to an additional late fee equal to ten percent (10%) of the outstanding balance due if unpaid on the fourth day of the month. The amount of the Rent shall be subject to an automatic annual increase equal to three percent (3%) of the Rent for the prior year beginning on first of the month following the year anniversary of the Commencement Date, and continuing every year thereafter during the Term and any Renewal Term of this Lease. Such sum so calculated shall become the new Rent hereunder, the payment of which shall be deemed delinquent and subject to an additional late fee equal to ten percent (10%) of the outstanding balance due if unpaid on the fourth day of the month.

(b) Royalty Agreement. In addition to Rent, Tenant and the District intend to enter into a separate agreement (the “Royalty Agreement”) concurrently with the execution of this Lease, whereby Tenant shall pay the District royalty payments in conjunction with Tenant’s various uses of the Property. In the event Tenant purchases the Property pursuant to its Purchase Option, it is the intent of the Parties that the Royalty Agreement shall remain in effect.

(c) Security Deposit. The District acknowledges receipt of a cash sum in the amount of \$5,000.00 that Tenant deposited with the District at the execution of the Original Lease (“Security Deposit”). The District shall hold the Security Deposit as security for the performance of the Tenant’s obligations under this Lease. If the Tenant defaults on any provision of this Lease, the District may (but shall not be required to), without prejudice to any other remedy it has, apply all or part of the Security Deposit to: (1) any Rent or other sum in default; (2) any amount that the District may spend or become obligated to spend in exercising the District’s rights under this Lease; and/or (3) any expense, loss, or damage that the District may suffer due to the Tenant’s default. The Tenant waives the provisions of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that the District may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of accrued Rent to repair damage caused by the Tenant, or to clean the Premises. The Tenant and the District agree that the District may, in addition, claim those sums reasonably necessary to compensate the District for any other foreseeable or unforeseeable loss or damage caused by the act or omission of the Tenant or the Tenant’s officers, agents, employees, independent contractors, or invitees, including future Rent payments.

Section 4. USE OF PREMISES

The Tenant’s use of the Premises shall be strictly limited to the reasonable and lawful performance of only those activities approved by the District in the exercise of its reasonable discretion following its environmental review thereof, the exercise of which by the Tenant shall not be conducted in a manner that is otherwise inconsistent with the terms and conditions of this Lease. The Tenant agrees not to use or permit the use of the Premises for any purpose not specifically allowed in this Lease and any amendments thereto without first obtaining prior written consent from the District, which shall not be unreasonably withheld, conditioned or delayed. The Tenant also agrees to exercise due diligence in the protection of the Property from damage or destruction by fire, vandalism, earthquake, floods, or other cause. Notwithstanding the foregoing, Tenant is currently permitted to use the Premises as set forth in Exhibit “C.” Tenant shall be applying in the future for approvals for a composting operation (“Tenant’s Composting Approvals”), as well as other uses consistent with the terms and conditions of this Lease and upon the District’s approval of such operations in the exercise of its reasonable discretion following its environmental review thereof, the parties shall amend Exhibit “C” to include such uses approved by the District.

Section 5. NO WASTE, NUISANCE, OR UNLAWFUL USE

Other than in amounts customarily used in the normal course of business in connection with any of the Permitted Uses (defined below), the Tenant shall not commit, or allow to be committed, on the Property any waste thereon, nor the presence, use, manufacture, handling, generation, or storage, of any hazardous substance which is or becomes listed, regulated, or addressed under any federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree (“Hazardous Substance”). Notwithstanding the forgoing, in no event shall Tenant commit, or allow to be committed, on the Property any treatment, discharge, release, burial, or disposal of any Hazardous Substance, nor create or allow any nuisance to exist on the Property, nor use or allow the Property to be used for any illegal or unconstitutional purpose. The Tenant, at its sole cost and expense, shall be solely responsible for ensuring that the Premises, and the Tenant’s use and occupancy thereof, complies with all of the requirements of all local, state, and federal authorities now in force, or which may be in force, including but not limited to those identified in this Section 5 of this Lease. The Tenant shall also be solely responsible for all costs necessary to ensure that the Tenant’s uses of the Premises under this Lease comply with all applicable requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the Guidelines promulgated thereunder (California Code of Regulations Section 15000 et seq.).

Section 6. IMPROVEMENTS

(a) Construction. No alteration of the Premises, construction of improvements thereon, or installation of signage shall be permitted until the District has approved the complete plans and specifications therefor in the exercise of its reasonable discretion. Any building signage installed by Tenant on the Premises, and any improvements, repairs, and construction performed on the Premises by the Tenant or its employees, agents, contractors, consultants, or subcontractors shall be performed at Tenant’s sole cost and expense and shall comply with the applicable rules, regulations, laws, statutes, and standards of the District and any other entity with jurisdiction over the activities conducted thereon. Where approval or acceptance by the District is indicated in this Lease, it is understood to be conceptual approval only and will not operate to relieve the Tenant or its contractors, consultants, or subcontractors of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or their own willful misconduct. Further, neither the District’s review, approval, or acceptance of any of the work or services performed in connection with this Lease shall be construed as a waiver of any rights hereunder or of any defense or cause of action which it may have arising out of the performance of this Lease or any previous or subsequent agreements. The Tenant shall furnish the District with copies of all plans that are prepared and permits that are issued.

(b) Relocation. If a duly-empowered government entity other than the District, determines that any improvements constructed by the Tenant, or any part thereof, require repair, replacement, protection, removal, and/or relocation, such action shall be performed by the Tenant, at its sole expense, and in the manner reasonably required and approved by such government entity, subject to Section 21 hereof.

(c) Ownership. At the expiration or termination of this Lease, any improvements constructed on the Property shall vest in the District. Upon expiration or termination of the Term and/or Renewal Term, the Tenant shall deliver the Premises to the District in good condition and repair, reasonable wear and tear excepted, without compensation to the Tenant, and free and clear of any and all liens and/or claims.

Section 7. REPAIRS AND MAINTENANCE

The Tenant, at its own expense, shall have full and sole responsibility for all maintenance, repair, and remediation of, on, or about the Premises, and shall maintain, preserve, and keep the Premises in good repair, working order, and lawful state, and shall from time to time make all repairs, replacements, and improvements necessary to keep the Premises in such condition (subject to the requirements of Section 6 above) to protect the Premises. Notwithstanding the above, maintenance of the District-owned wells, pipelines, and related water systems located on the Premises shall not be the responsibility of the Tenant.

Section 8. FEES, TAXES, CHARGES, AND ASSESSMENTS

The Tenant shall install on the Premises current meters to measure the amount of electricity and all other utility services consumed by the Tenant, and the cost of such metering and the installation, maintenance, and repair thereof shall be paid for by the Tenant. The Tenant shall also pay when due all gas, water, electricity, power, telephone, refuse, and other charges incurred in the operation, maintenance, use, occupancy, abatement, and upkeep of the Premises. The Tenant shall also pay when due all property and excise taxes and governmental charges of any kind whatsoever that may at any time be assessed or levied against or with respect to the Tenant's use of the Premises, as well as all special assessments and charges made by any governmental body for any improvements installed on the Premises by Tenant. Notwithstanding the foregoing, the Parties acknowledge that the District is the water purveyor for the Premises, and any water that Tenant requires in connection with its Permitted Uses herein, shall be charged to Tenant at the District's then current rate for construction water.

Section 9. LIENS

The Tenant shall not, directly or indirectly, create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, citation, abatement order, encumbrance, or claim on or with respect to the Property, other than the respective rights of the District and the Tenant as provided in this Lease and any amendments thereto. The Tenant shall promptly, at its own expense, take such action as may be necessary to immediately discharge or remove any such mortgage, pledge, lien, charge, citation, order, encumbrance, or claim as the same shall arise out of the operation of this tenancy. The Tenant shall reimburse the District for any expense incurred by the District to discharge or remove any such mortgage, pledge, lien, charge, citation, order, encumbrance, or claim.

Section 10. ACCESS TO THE PREMISES

The District shall have reasonable access to the Property at all times during the Term and any Renewal Term of this Lease upon giving reasonable notice thereof to the Tenant.

Section 11. OTHER PROPERTY INTERESTS

The Tenant's rights under this Lease are subject to all applicable easements, licenses, rights of way, and mineral rights currently in existence. The Tenant shall not interfere, in any way, with the interests of any person or entity that may presently, or in the future, hold any easement, license, right of way, or oil, gas, or other mineral interest, upon, across, above, or under the Property; nor shall the Tenant interfere, in any way, with the rights of ingress and egress of such interest holders. Notwithstanding the foregoing to the contrary, in the event the District desires to grant additional easements, licenses, and/or rights of way to the Premises to other parties, the District shall not do so without the prior written consent of Tenant, not to be unreasonably withheld, conditioned, or delayed. Furthermore, in the event that the District desires to expand, alter, or modify portions of the Property that it reserved for its own use, to include portions of the Premises, the Parties agree to work together in good faith to modify the Lease to accommodate the Parties' needs.

Section 12. NON-DISCRIMINATION

The Tenant shall not permit any practice of discrimination against, or segregation of, any person or group of persons on account of sex, race, color, creed, marital status, age, sex, religion, handicap, national origin, or ancestry in its ownership, employment, selection of contractors, subcontractors, and vendees, or in the enjoyment, use, and occupancy of the Premises.

Section 13. NO REPRESENTATIONS, WARRANTIES, OR WATER RIGHTS

It is expressly understood by the parties hereto that the physical condition of the Premises as of the effective date of this Lease is such that it is leased to the Tenant as-is without any representation or warranty. The District makes no express or implied representations or warranties concerning the Property or its fitness for any particular purpose. The Tenant shall bear the costs of any action necessary to place the Premises in a condition that meets the requirements of law, except for any hazardous condition that may have existed at the time of the commencement of the Original Lease, or that is otherwise suitable for the use contemplated herein. The District shall not be held liable to the Tenant or to any other party for any losses incurred or damages sustained as a direct or indirect result of the condition of the Property or any use or failure thereof. Any water produced on or extracted from the Property shall not serve as the basis of, or otherwise support, any water rights claim that may be asserted by the Tenant. Non-potable water will be available to Tenant at the District's normal cost of construction water.

Section 14. LIABILITY FOR DAMAGES

The District shall not be held liable or responsible for any debts or claims that may arise from the operation of this Lease, or for any damage claims for injury to persons, including the Tenant and its agents or employees, or for property damage, or for other loss to any vehicle or

the contents thereof, from any cause arising out of or in any way related to the Tenant's obligations hereunder or its use or occupancy of the Premises, including those arising out of damages or losses occurring on the Property or areas adjacent to the Premises.

Excepting the sole negligence or willful misconduct of the District, the Tenant hereby expressly waives and releases the District and its agents, officers, directors, and employees from any and all liability for the claims, actions, and/or losses set forth above and for any costs and expenses incurred in connection therewith.

Section 15. HOLD HARMLESS

Excepting the sole negligence or willful misconduct of the District, the Tenant agrees to indemnify and hold the District and its officers, directors, agents, and employees, harmless from and against all claims and liabilities of any kind arising out of, in connection with, or resulting from, any and all acts or omissions on the part of the Tenant and/or its agents, guests, invitees, trespassers, contractors, consultants, and employees in connection with the performance of their obligations under this Lease and/or their occupancy of the Premises, and defend the District and its officers, directors, agents, and employees from any suits or actions at law or in equity and to pay all court costs and counsel fees incurred in connection therewith.

In addition, the Tenant agrees to defend, indemnify, and hold the District and its officers, directors, agents, and employees harmless from and against and all claims, losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs, expenses (including, without limitation, the reasonable fees and disbursements of legal counsel, expert witnesses, and accountants), and all foreseeable and unforeseeable consequential damages which might arise or be asserted against the District and/or the Tenant, with regard to the condition of the Property or the activities conducted thereon, which are alleged and/or determined to be tortious and/or in violation of present and future federal, state, and local laws (whether under common law, statute, rule, regulation, or otherwise).

Section 16. INSURANCE

(a) Security. The District reserves the right to demand at any time during the Term and any Renewal Term of this Lease and any extensions thereof that the Tenant procure and maintain bonds from an acceptable surety, cash deposits, or other form of security in amounts and upon terms deemed sufficient by the District in its reasonable discretion to protect the District from any and all exposure to loss or liability.

(b) Coverage. In addition, the Tenant shall procure and maintain during the Term and any Renewal Term of this Lease and any extensions thereof such policies of insurance as will protect it and the District in such a manner and in such amounts as set forth below. The premiums for such insurance coverage shall be paid by the Tenant. The failure to comply with these insurance requirements may constitute a material breach of this Lease at the sole discretion of the District.

(1) Certificates of Insurance. No later than ten (10) calendar days after execution of this Lease, the Tenant shall furnish the District with Certificates of Insurance and endorsements verifying the insurance coverage required by this Lease is in full force and effect. The District reserves the right to require complete and accurate copies of all insurance policies required under this Lease.

(2) Required Provisions. The insurance policies required by this Lease shall include the following provisions or have them incorporated by endorsement(s):

(i) Primary Coverage. The insurance policies provided by the Tenant shall be primary insurance and any self-insured retention and/or insurance carried by or available to the District or its employees shall be excess and non-contributory coverage so that any self-insured retention and/or insurance carried by or available to the District shall not contribute to any loss or expense under the Tenant's insurance.

(ii) Additional Insured. The policies of insurance provided by the Tenant, except Workers' Compensation, shall include as additional insureds: the District, its directors, officers, employees, and agents when acting in their capacity as such in conjunction with the performance of this Lease. Such policies shall contain a "severability of interests" provision, also known as "Cross liability" or "separation of insured".

(iii) Cancellation. Each certificate of insurance and insurance policy shall provide that the policy may not be non-renewed, canceled (for reasons other than non-payment of premium) or materially changed without first giving thirty (30) days advance written notice to the District, or ten (10) days advance written notice in the event of cancellation due to non-payment of premium.

(iv) Waiver of Subrogation. The insurance policies provided by the Tenant shall (1) contain a waiver of subrogation against the District, its directors, officers, employees and agents for any claims arising out of this Lease, or (2) allow the Tenant to waive subrogation, in writing, before any loss, in which case this provision of the Lease shall be deemed to be the Tenant's written waiver of subrogation against the District for any and all losses covered by any and all insurance policies required under this Lease.

(v) Claim Reporting. The Tenant shall not fail to comply with the claim reporting provisions or cause any breach of a policy condition or warranty of the insurance policies required by this Lease that would affect the coverage afforded under the policies to the District.

(vi) Deductible/Retention. If the insurance policies provided by the Tenant contain deductibles or self-insured retentions, any such deductible or self-insured retention shall not be applicable with respect to the coverage provided to the District under such policies. The Tenant shall be solely responsible for any such deductible or self-insured retention and the District, in its sole discretion, may require the Tenant to secure the payment of any such

deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

(vii) Sub-Contractors. The Tenant shall include all sub-contractors as additional insureds under the insurance policies required by this Lease to the same extent as the District or shall furnish separate certificates of insurance and policy endorsements for each sub-contractor verifying that the insurance for each sub-contractor complies with the same insurance requirements applicable to the Tenant under this Lease.

(3) Insurance Company Requirements. The Tenant shall provide insurance coverage through insurers that have at least an "A" Financial Strength Rating and a "VII" Financial Size Category in accordance with the current ratings by the A. M. Best Company, Inc. as published in *Best's Key Rating Guide* or on said company's web site. In addition, any and all insurers must be admitted and authorized to conduct business in the State of California and be a participant in the California Insurance Guaranty Association, as evidenced by a listing in the appropriate publication of the California Department of Insurance.

(4) Policy Requirements. The insurance required under this Lease shall meet or exceed the minimum requirements as set forth below:

(i) Workers' Compensation. The Tenant shall maintain Workers' Compensation insurance as required by law in the State of California to cover the Tenant's obligations as imposed by federal and state law having jurisdiction over the Tenant's employees and Employers' Liability insurance, including disease coverage, of not less than \$1,000,000. Even if Tenant contends that it has no employees, Tenant shall obtain a policy to cover its potential exposure on a payroll basis of "if any" for the workers' classification applicable to the Tenant's occupancy under this Lease.

(ii) General Liability. The Tenant shall maintain Comprehensive General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 aggregate. The policy shall include, but not be limited to, coverage for bodily injury, property damage, fire legal liability, personal injury, products, completed operations and contractual to cover, but not be limited to, the liability assumed under the indemnification provisions of this Lease. In the event the Comprehensive General Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years after expiration or termination of this Lease.

(iii) Automobile Liability. The Tenant shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence for any owned, hired, or non-owned vehicles.

(iv) Property Insurance. The Tenant shall maintain property insurance in an amount sufficient to cover the full replacement cost for (1) any physical damage to or destruction of any and all structures, improvements, or other real property (not including

the land) on the Premises, and (2) any physical damage to or destruction of any and all personal property of any person, other than the Tenant, that is on the Premises. The determination of the specific dollar amounts of property coverage that will be sufficient for this section shall be in the reasonable discretion of the District.

(v) Manner of Satisfaction. The insurance required in subsections (ii) through (iv) above may be provided by separate policies of insurance or combined into a single package policy.

Section 17. DEFAULT

The following shall be deemed events of default and cause for termination of this Lease by the District:

(a) Rent. The Tenant fails to pay any installment of Rent, and such failure continues for a period of ten (10) days.

(b) Insolvency. The Tenant becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.

(c) Receivership. A receiver or trustee is appointed for all or substantially all of the assets of the Tenant.

(d) Abandonment. The Tenant deserts or vacates any substantial portion of the Premises.

(e) Breach. The Tenant fails to comply with any term, condition, or covenant of this Lease.

Section 18. REMEDIES FOR BREACH

Upon the occurrence of any event of default described in Section 17 of this Lease, the District shall give the Tenant written notice thereof. With respect to an event of default described in Section 17(a) of this Lease, said notice shall be given by the District in the manner required by law. With respect to all other events of default described in Section 17 of this Lease, the District shall give the Tenant a period of thirty (30) calendar days after the date of said written notice in which to cure said breach or default to the reasonable satisfaction of the District, unless the District determines in its reasonable discretion that the default represents a hazard or emergency that requires immediate action, in which the cure period shall be reduced according to a reasonable amount of time given the particular circumstance. If the breach or default is not timely cured by the Tenant to the satisfaction of the District, the District shall have the option to pursue any one or more of the following remedies, with or without the benefit of court order, in addition to its other rights and remedies under the law:

(a) Reentry. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages therefor, and perform whatever act the Tenant is obligated to perform under the terms of this Lease; and the Tenant agrees to reimburse the District, on demand, for any expenses which the District may incur in effectuating compliance with the Tenant's obligations under this Lease, and the Tenant further agrees that the District shall not be liable for any damages resulting from such actions.

(b) Eviction. Enter upon and take possession of the Premises and any personal property found thereon, and expel or remove the Tenant and/or any person who may be occupying the Premises, or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, and subsequently sublease the Premises and receive the rent and receipts therefor; and the Tenant agrees to pay to the District, on demand, any deficiency that may arise by reason of such subsequent subleasing. The District may store any personal property removed from the Premises in a public warehouse or at another place of its choosing within the County of San Bernardino at the Tenant's expense or to the Tenant's account.

(c) Termination. Termination of this Lease, in which case the Tenant shall immediately surrender the Premises to the District, and if the Tenant fails to do so, the District may, without prejudice to any other remedy which it may have for possession or arrearages in rent or receipts, enter upon and take possession of the Premises and expel or remove the Tenant and any other person who may be occupying the Premises, or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and the Tenant agrees to pay to the District, on demand, the full amount of all loss and damage which the District may suffer by reason of such termination, whether through inability to subsequently sublease the Premises on satisfactory terms or otherwise.

Section 19. TENANT'S OPTION TO PURCHASE

For the sum of One Hundred Dollars and No Cents (\$100) as independent consideration for the rights under this Lease ("Independent Consideration"), and other good and valuable consideration, the receipt of all of which are hereby acknowledged, and subject to the terms of this Lease, Tenant shall have a one-time option to purchase the Property (except any and all water rights otherwise appurtenant thereto and/or associated therewith, and reservation of easements, which shall remain the ownership of the District) and all improvements located thereon ("Purchase Option") from the District, subject to the following conditions:

(a) Time to Exercise Tenant's Purchase Option. Tenant shall have the right to exercise its Purchase Option any time within three (3) years from the date of this Lease by giving the District written notice of its intent to exercise its Purchase Option. If during the Term, Tenant fails to exercise Tenant's Purchase Option within the time frame set forth herein, Tenant shall retain a right of first refusal to purchase the Property for so long as this Lease remains in effect.

(b) Price. For a period of sixty (60) days following Tenant's timely written notice of intent to exercise its Purchase Option, the District and Tenant shall negotiate in good faith in an effort to reach agreement on the terms and conditions of the purchase and sale of the Property, including but not limited to the market value of the Property (along with all improvements, easements, and encumbrances located thereon) (collectively, the "Price") as of the date in which Tenant tendered such notice of intent to exercise its Purchase Option (the "Exercise Date"). Notwithstanding the foregoing, the Parties agree that the determination of the Price shall be subject to the following: (i) The sales comparison approach (and not the income approach) shall be the sole method used for determining the fair market value ("FMV") of the land; (ii) the FMV of the land as of the Exercise Date shall not be lower than the FMV of the land as of June 30, 2018. With respect to the improvements located on the Premises, any improvements constructed on the Premises after June 30, 2018 shall not be included in the calculation of Price.

(c) Arbitration Procedure for Determining the Price. In the event that after the 60-day period the Parties cannot agree on the Price of the Property and improvements, the following procedure shall be used for determining the Price:

(1) The Parties shall immediately each appoint an appraiser of their choice to act as arbitrators. Both Parties, through their respective arbitrators, shall each immediately make a reasonable determination of the FMV of the Property and improvements subject to the conditions above and submit such determination to the other in writing, as part of this arbitration.

(2) The two arbitrators so appointed shall immediately select a third mutually acceptable appraiser to act as a third arbitrator. The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual FMV of the Property and the improvements is, and whether Tenant's or the District's submitted FMV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted FMV which is determined to be the closest to the actual FMV shall thereafter be used by the Parties as the Price.

(3) The entire cost of such arbitration shall be paid by the party whose submitted FMV is not selected as the Price (i.e. the one that is NOT the closest to the actual FMV determined by the arbitrators pursuant to the process above).

(d) Reservation of Rights. Nothing herein shall be construed as granting the Tenant a Purchase Option to acquire any water rights held by the District.

(e) Royalty Agreement to Remain in Effect. In the event Tenant purchases the Property from the District, the Royalty Agreement shall remain in effect per its own terms.

Section 20. EFFECT OF DISTRICT'S WAIVER

Any failure by the District to enforce any provision of this Lease, or any waiver thereof by the District, shall not constitute a waiver of its right to enforce subsequent violations of the same or any other terms or conditions herein.

Section 21. FORCE MAJEURE

The Tenant shall not be in default under this Lease in the event that the performance of its obligations hereunder are temporarily interrupted for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, and fires, and other labor disturbances or other catastrophic events which are beyond the reasonable control of the Tenant. Other catastrophic events do not include the financial inability of the Tenant to perform, or failure of the Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility.

Section 22. CONDEMNATION OF PROPERTY

Should all any part of the Premises be taken by any public or quasi-public agency or entity (other than the District) under the power of eminent domain during the Term and/or Renewal Term of this Lease, the following shall apply:

(a) Termination of Lease. Except as set forth in subparagraph (c) below, either party may terminate this Lease by giving the other party ninety (90) days written notice thereof.

(b) Allocation of Damages. Any and all damages and compensation awarded or paid because of the taking of any real property interests in the Premises shall belong to the District; any and all damages and compensation awarded or paid because of the taking of the leasehold interest of, and improvements constructed on the Premises by, the Tenant shall belong to the Tenant.

(c) Partial Taking. In the event of a partial taking of the Premises, Tenant shall have the right to terminate the Lease by giving the District ninety (90) days written notice thereof. In the event only a portion of the Premises be taken by eminent domain and Tenant elects not to terminate the Lease, the Rent thereafter payable under this Lease shall be abated proportionally as to the portion taken which is then not usable by the Tenant.

Section 23. ATTORNEYS' FEES

If either the District or the Tenant is the prevailing party in any legal dispute caused by the non-prevailing party, which said legal dispute arose out of, under, in connection with, or in relation to this Lease, and any amendments thereto, or the breach thereof, the prevailing party shall be entitled to receive from the non-prevailing party all attorneys' fees and costs actually incurred by the prevailing party in connection therewith. In any such action, arbitration,

mediation, or other proceeding, the entitlement to recover attorney's fees and costs will be considered an element of costs and not of damages.

Section 24. NOTICES

All notices, demands, or other writing in this Lease required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the District: Phelan Pinon Hills Community Services District
4176 Warbler Road
P.O. Box 294049
Phelan, CA 92329-4049
Attention: General Manager

To the Tenant: Circle Green, Inc.
8271 Chino Avenue
Ontario, CA 91761
Attention: Kevin Sutton

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

Section 25. SUCCESSORS AND ASSIGNS

The Tenant shall not sublet, assign, mortgage, pledge, hypothecate, or otherwise dispose of the Premises, or any part thereof, or any right or privilege connected therewith, or to allow any other person, except the Tenant's agents and employees, to occupy the Premises or any part thereof, without first obtaining the written consent of the District which shall not be unreasonably withheld, conditioned or delayed. Any such consent by the District shall not constitute consent to any subsequent assignment, sublease, or occupation by the Tenant or other persons. The Tenant's unauthorized assignment, sublease, or license to occupy shall be void, and shall terminate this Lease at the District's option.

Notwithstanding the foregoing to the contrary, the following shall apply:

(a) Subleases: With respect to anticipated subtenants of the Premises consistent with the terms and conditions of this Lease, all subleases shall require the District's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the issue of whether the District's consent, or lack thereof, is reasonable, may take into account whether the District is receiving any monetary benefit, or otherwise, through a separate agreement.

(b) Assignment: The Tenant's interest in this Lease is not assignable by operation of law, nor is any assignment of its interest herein, without the written consent of the District which shall not be unreasonably withheld. Further, any change in stock ownership of the Tenant which results in the current shareholders not owning a majority interest in Tenant, shall be deemed an assignment prohibited by this Section, unless the written consent of the District be obtained, such consent not to be unreasonably withheld, conditioned, or delayed.

Section 26. INUREMENT

This Lease and the covenants and conditions hereof apply to and are binding upon the heirs, successors, legal representatives, and assigns of the parties hereto.

Section 27. INTEGRATION AND AMENDMENT

This Lease constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, whether oral or written, between the parties in connection therewith. This Lease may not be amended unless in writing and signed by both parties hereto.

Section 28. CAPTIONS

The captions of sections and subsections of this Lease are for reference only and are not to be construed in any way as a part of this Lease.

Section 29. INTERPRETATION AND ENFORCEMENT

This Lease shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared this Lease and any uncertainty or ambiguity contained herein shall not be interpreted against any one party. This Lease shall be enforced and governed by and under the laws of the State of California, and venue for any action brought to interpret and/or enforce any provision of this Lease shall be in a state or federal court located in the State of California with in rem jurisdiction over Property in San Bernardino County.

Section 30. TIME OF THE ESSENCE

Time is of the essence in this Lease and each and every provision thereof.

Section 31. AUTHORITY

The persons executing this Lease hereby represent and warrant that they are fully and duly authorized and empowered to so execute on behalf of each of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers as of the date first above written.

PHELAN PINON HILLS COMMUNITY
SERVICES DISTRICT

By: _____
President, Board of Directors

ATTEST:

Secretary

CIRCLE GREEN, INC.

By: _____
Kevin P. Sutton, President

ATTEST:

Notary Public

AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2018, (the “**Effective Date**”) by and between PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT, a public agency (hereinafter the “**District**”), and CIRCLE GREEN, INC., a corporate corporation (hereinafter “**Circle Green**”).

RECITALS

A. The District is a Community Services District organized and operating pursuant to California Government Code Section 61000 et seq.

B. Circle Green currently leases from the District a portion of that certain real property consisting of approximately 157 acres of land located at 17900 Sheep Creek Road, in the unincorporated area of El Mirage, County of San Bernardino, State of California, which is more particularly described as Assessor Parcel Number 0457-161-10, and as further set forth in the legal description attached hereto as Exhibit “A” and incorporated herein by this reference (the “**Property**”).

C. On or about July 18, 2016, the District and the Circle Green entered into a lease agreement (the “**Original Lease**”) wherein Circle Green began leasing a portion of the Property consisting of approximately 132 acres as depicted on Exhibit “B” attached hereto and incorporated herein by this reference (the “**Premises**”) for the purpose of site management, composting, other related activities.

Deleted: Tenant
Deleted: new
Deleted: the Tenant

D. The District and Circle Green have negotiated a new lease for the Premises to be executed simultaneously with this Agreement (the “**New Lease**”) with the intent that this Agreement serves as part of the consideration for the District entering into the New Lease.

E. The New Lease contains an option for Circle Green to purchase the Property (the “**Option to Purchase**”) and the Parties envision that if Circle Green purchases the Property from the District, that this Agreement shall continue upon the terms and conditions set forth herein.

F. Circle Green is in the process of applying for CEQA approval and other required approvals from government agencies in order to permit a large-scale composting operation on the Premises (“**Composting Operations**”).

G. Circle Green also desires to obtain permits for the Premises, either itself or through subtenants, enabling the installation and operation of large-scale digesters (“**Digester(s)**”) and small-scale power generation facilities (3-5 MWh, or less) (“**Energy Facility(ies)**”), and possibly other types of emerging technologies that may require green and/or food waste as part of their operations.

H. The Parties intend that Circle Green pay the District a portion of every tip fee received by Circle Green at the Premises for incoming green and food waste, or as otherwise specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Payments

a. Royalty Payments. During the term of this Agreement, Circle Green shall pay the District \$1/ton (the "**Royalty Rate**") of incoming green and food waste biomass for Tip Fee Vehicles (defined below) as set forth in Section 2(a) below (the "**Royalty Payments**").

Deleted: Payment Period. Circle Green shall pay the District

Commented [AB1]: Since the formula is \$1/ton across the board, there is no longer a need for Exhibit C.

b. Payment Period. Circle Green shall pay the District monthly Royalty Payments (defined below) on or before the twentieth (20th) day of each calendar month for all payments owed under this Agreement for the period ending on the last day of the previous calendar month (each a "Payment Due Date").

Commented [AB2]: I moved this to Paragraph 3(a) where it belongs.

Deleted: . At or prior to the time of payment, Circle Green shall deliver to the District an accounting of the payments owed, which shall include the Tip Fee Vehicle Records (defined below) for the prior calendar month.

c. Commencement of Payments. The Parties acknowledge that Circle Green, as well as a potential subtenant, is in the process of submitting applications for their CEQA and other approvals, which may take several months and could take more than a year. As such, the Parties agree that although this Agreement shall commence as of the Effective Date, Circle Green shall not be responsible to make Royalty Payments to the District hereunder if and until such time that it (or any potential subtenant) obtains the required approvals for their intended uses and Circle Green delivers incoming loads to the Premises that trigger a fee to be paid pursuant to this Agreement.

Deleted: ¶ Amounts. Circle Green shall pay the District the amounts set forth in the schedule attached hereto as Exhibit "C."

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Commented [AB4]: Clarifications added.

Deleted: however,

d. Rate Increases. After 5 years from the Effective Date, the Royalty Rate shall be subject to annual CPI increases based upon data from the most recent prior calendar year. Notwithstanding the foregoing to the contrary, if at the beginning of year 6, Circle Green can reasonably show that tip rates have either gone down or remained the same from the date of this Agreement, no CPI adjustment shall occur for that year. For subsequent years of this Agreement (i.e. year 7 and beyond), CPI increases will go into effect unless Circle Green can reasonably show that tip rates have either gone down or remained the same compared to the prior year.

Commented [AB5]: Provision re PI increases after 5 years per our discussion in the last committee meeting.

2. Loads Subject to Payments.

a. Tip Fee Vehicles for Incoming Green and Food Waste Biomass. Royalty payments will be owed for all incoming vehicles with loads of green and food waste biomass that are weighed and subject to a tip fee, including minimum load charges at one ton ("**Tip Fee Vehicles**"). Minimum load charges are loads less than one ton but are charged at a one-ton minimum charge. Tip Fees Vehicles are identified by any incoming materials entering the facility and paying a dump fee ("**Tip Fee**") according to the identified waste and the certified net weight. Circle Green shall repair and operate the current on-site truck scales ("**Onsite Scale**") to meet California scale requirements (pursuant to Department of Food and Agriculture Division of Measurement Standards) to operate a commercial public scale and keep daily records of all Tip

Fee Vehicles (“**Tip Fee Vehicle Records**”). Notwithstanding anything in this Agreement to the contrary, any incoming vehicle consisting of green waste used as fuel for Energy Facilities shall constitute a Tip Fee Vehicle. Notwithstanding anything in this Agreement to the contrary, the following incoming loads to the site shall be excluded from the definition of Tip Fee Vehicles and shall be not be subject to a Tip Fee: (i) supplies, (ii) equipment, (iii) materials used for farming operations on the Premises (iv), various additives, soil amendments or other green waste or organic material that has already been handled or processed.

Commented [AB6]: Since we eliminated the reference in Exhibit C, we need to add it here so that the District gets \$1/ton for green waste used for energy. If other Energy Facilities are added, the \$1/ton would apply to the green waste that fuels them.

b. Term. The Term of this Agreement shall commence on the Effective Date and shall continue for a period of 20 years.

Deleted: ¶
Energy Uses on the Premises. Notwithstanding anything in this Agreement to the contrary, all incoming loads of green waste biomass that feed one or more of the proposed Energy Facilities on the Premises, shall be subject to the agreed upon payment amount in Exhibit C. Notwithstanding the foregoing, any additional future Energy Facilities or related operations shall be submitted to the District for approval which may include additional negotiated royalty payments or revenues to the District.

3. Monthly Reporting Requirement and District Right to Audit.

Deleted: ¶

a. Monthly Reporting. On or before each Payment Due Date, Circle Green shall deliver to the District an accounting for each Royalty Payment, which shall include the Tip Fee Vehicle Records for the prior calendar month. Said report shall list date, time, certified weight ticket number and type of material delivered.

Commented [AB8]: This paragraph was moved here from paragraph 1(b)... it belongs here.

b. District’s Right to Audit. Upon ten (10) days written notice, the District shall have the right to inspect, review, and/or audit Circle Green’s records and accounting documents, which shall be supported by Circle Green’s reporting and or record keeping that is required by the County of San Bernardino and the California Department of Food and Agriculture (CDFA). If the District’s review and/or audit reveals overpayment of Royalty Payments by Circle Green, the District shall offset the amount of such overpayment, without interest, against Circle Green’s future Royalty Payments. If the District’s review and/or audit reveals underpayment of Royalty Payments by Circle Green, Circle Green shall pay to the District the amount of such underpayment, plus interest at the legal rate, within thirty (30) days of the date of written notice thereof from the District. If the District’s review and/or audit reveals that Circle Green has understated the amount of Royalty Payments by more than ten percent (10%), Circle Green shall also pay to the District a ten percent (10%) penalty calculated on the amount of the underpayment, as well as reimburse the District for all costs incurred by the District in connection with its audit inspection.

Commented [AB9]: This language, with minor changes, is from Steve Kennedy’s previous lease draft. I added the references to the reporting to the SB county and CDFA.

The Parties acknowledge that the operation of a commercial public scale may result in Circle Green being required to weigh various vehicles, including, but not limited to, potential customers or members of the public requesting to be weighed on the Onsite Scale, in which case Circle Green would be required to weigh said vehicle and record the weight, despite the customer not dumping the load and not paying a tip fee. Such vehicles shall be excluded from the definition of Tip Fee Vehicle.

Commented [AB10]: This paragraph is added for clarification, as it covers a potential scenario.

4. Effect of Sale of the Property to Circle Green. This Contract shall remain in full force and effect if Circle Green purchases the Property from the District and shall continue to remain in effect in the event that Circle Green were to subsequently sell the Property to a third party.

5. NOTICES

All notices, demands, or other writing in this Agreement required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the District: Phelan Pinon Hills Community Services District
4176 Warbler Road
P.O. Box 294049
Phelan, CA 92329-4049
Attention: General Manager

To Circle Green: Circle Green, Inc.
8271 Chino Avenue
Ontario, CA 91761
Attention: Kevin Sutton

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

6. Effect of Termination of the New Lease. In the event that the New Lease were to terminate for any reason other than the sale of the Property to Circle Green, then this Agreement shall automatically terminate upon such termination of the New Lease.

7. General Provisions.

a. Entire Agreement. This Agreement and any exhibits attached hereto shall constitute the entire agreement between the Parties and shall supersede all contemporaneous and previous agreements between them, whether oral or written. There are no representations or understandings, oral or written, between the Parties as of the date hereof other than as set forth herein.

b. Amendments. No waiver, alteration, modification, or termination of this Agreement or any of the provisions hereof shall be binding unless in writing and duly executed by the Party to be bound thereby. The terms of this Agreement may not be amended, supplemented, modified or revised by any invoices or purchase order issued by Supplier.

c. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed under the laws of the state of California without regard to conflict of laws provisions.

d. Waiver. No waiver by a Party of any of its rights with respect to the other Party or with respect to this Agreement or any matter or default arising in connection with this Agreement, shall be construed as a waiver of any other right, matter or default. Any waiver shall be in writing signed by the waiving Party. The failure of either Party at any time or from time to

time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such Party's right to thereafter enforce each and every provision hereof.

e. Remedies Cumulative. Remedies provided under this Agreement shall be cumulative and in addition to other remedies provided by law.

f. Severability. If any provision of this Agreement is found contrary to law or unenforceable by any court of law, the remaining provisions shall be severable and enforceable.

g. Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including the reasonable attorneys' fees, expended or incurred in connection therewith.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT

By: _____
President, Board of Directors

ATTEST:

Secretary

CIRCLE GREEN, INC., a California corporation

By: _____
Kevin P. Sutton, President

ATTEST:

Notary Public

EXHIBIT "A"

Description of the Property

EXHIBIT “B”

Description of the Premises

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¶

¶ **“EXHIBIT C”**

¶

¶ **Payment Details¶**

¶

¶ **Payments¶**

¶ **Incoming green waste biomass¶**

¶

¶ 101-400 tons per day \$ 1.00 per ton¶

¶ 400 – 1000 plus tons per day \$0.75 per ton¶

¶

¶ **Incoming Food waste biomass¶**

¶

¶ 100-300 tons per day \$1.00 per ton¶

¶

¶ **Energy Payment¶**

¶

¶ \$1.00 per ton on biomass fuel intake¶

AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2018, (the “**Effective Date**”) by and between PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT, a public agency (hereinafter the “**District**”), and CIRCLE GREEN, INC., a corporate corporation (hereinafter “**Circle Green**”).

RECITALS

A. The District is a Community Services District organized and operating pursuant to California Government Code Section 61000 et seq.

B. Circle Green currently leases from the District a portion of that certain real property consisting of approximately 157 acres of land located at 17900 Sheep Creek Road, in the unincorporated area of El Mirage, County of San Bernardino, State of California, which is more particularly described as Assessor Parcel Number 0457-161-10, and as further set forth in the legal description attached hereto as **Exhibit “A”** and incorporated herein by this reference (the “**Property**”).

C. On or about July 18, 2016, the District and the Circle Green entered into a lease agreement (the “**Original Lease**”) wherein Circle Green began leasing a portion of the Property consisting of approximately 132 acres as depicted on **Exhibit “B”** attached hereto and incorporated herein by this reference (the “**Premises**”) for the purpose of site management, composting, other related activities.

D. The District and Circle Green have negotiated a new lease for the Premises to be executed simultaneously with this Agreement (the “**New Lease**”) with the intent that this Agreement serves as part of the consideration for the District entering into the New Lease.

E. The New Lease contains an option for Circle Green to purchase the Property (the “**Option to Purchase**”) and the Parties envision that if Circle Green purchases the Property from the District, that this Agreement shall continue upon the terms and conditions set forth herein.

F. Circle Green is in the process of applying for CEQA approval and other required approvals from government agencies in order to permit a large-scale composting operation on the Premises (“**Composting Operations**”).

G. Circle Green also desires to obtain permits for the Premises, either itself or through subtenants, enabling the installation and operation of large-scale digesters (“**Digester(s)**”) and small-scale power generation facilities (3-5 MWh, or less) (“**Energy Facility(ies)**”), and possibly other types of emerging technologies that may require green and/or food waste as part of their operations.

H. The Parties intend that Circle Green pay the District a portion of every tip fee received by Circle Green at the Premises for incoming green and food waste, or as otherwise specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Payments

a. Royalty Payments. During the term of this Agreement, Circle Green shall pay the District \$1/ton (the “**Royalty Rate**”) of incoming green and food waste biomass for Tip Fee Vehicles (defined below) as set forth in Section 2(a) below (the “**Royalty Payments**”).

b. Payment Period. Circle Green shall pay the District monthly Royalty Payments (defined below) on or before the twentieth (20th) day of each calendar month for all payments owed under this Agreement for the period ending on the last day of the previous calendar month (each a “Payment Due Date”).

c. Commencement of Payments. The Parties acknowledge that Circle Green, as well as a potential subtenant, is in the process of submitting applications for their CEQA and other approvals, which may take several months and could take more than a year. As such, the Parties agree that although this Agreement shall commence as of the Effective Date, Circle Green shall not be responsible to make Royalty Payments to the District hereunder if and until such time that it (or any potential subtenant) obtains the required approvals for their intended uses and Circle Green delivers incoming loads to the Premises that trigger a fee to be paid pursuant to this Agreement.

d. Rate Increases. After 5 years from the Effective Date, the Royalty Rate shall be subject to annual CPI increases based upon data from the most recent prior calendar year. Notwithstanding the foregoing to the contrary, if at the beginning of year 6, Circle Green can reasonably show that tip rates have either gone down or remained the same from the date of this Agreement, no CPI adjustment shall occur for that year. For subsequent years of this Agreement (i.e. year 7 and beyond), CPI increases will go into effect unless Circle Green can reasonably show that tip rates have either gone down or remained the same compared to the prior year.

2. Loads Subject to Payments.

a. Tip Fee Vehicles for Incoming Green and Food Waste Biomass. Royalty payments will be owed for all incoming vehicles with loads of green and food waste biomass that are weighed and subject to a tip fee, including minimum load charges at one ton (“**Tip Fee Vehicles**”). Minimum load charges are loads less than one ton but are charged at a one-ton minimum charge. Tip Fees Vehicles are identified by any incoming materials entering the facility and paying a dump fee (“**Tip Fee**”) according to the identified waste and the certified net weight. Circle Green shall repair and operate the current on-site truck scales (“**Onsite Scale**”) to meet California scale requirements (pursuant to Department of Food and Agriculture Division of Measurement Standards) to operate a commercial public scale and keep daily records of all Tip

Fee Vehicles (“**Tip Fee Vehicle Records**”). Notwithstanding anything in this Agreement to the contrary, any incoming vehicle consisting of green waste used as fuel for Energy Facilities shall constitute a Tip Fee Vehicle. Notwithstanding anything in this Agreement to the contrary, the following incoming loads to the site shall be excluded from the definition of Tip Fee Vehicles and shall be not be subject to a Tip Fee: (i) supplies, (ii) equipment, (iii) materials used for farming operations on the Premises (iv), various additives, soil amendments or other green waste or organic material that has already been handled or processed.

b. Term. The Term of this Agreement shall commence on the Effective Date and shall continue for a period of 20 years.

3. Monthly Reporting Requirement and District Right to Audit.

a. Monthly Reporting. On or before each Payment Due Date, Circle Green shall deliver to the District an accounting for each Royalty Payment, which shall include the Tip Fee Vehicle Records for the prior calendar month. Said report shall list date, time, certified weight ticket number and type of material delivered.

b. District’s Right to Audit. Upon ten (10) days written notice, the District shall have the right to inspect, review, and/or audit Circle Green’s records and accounting documents, which shall be supported by Circle Green’s reporting and or record keeping that is required by the County of San Bernardino and the California Department of Food and Agriculture (CDFA). If the District’s review and/or audit reveals overpayment of Royalty Payments by Circle Green, the District shall offset the amount of such overpayment, without interest, against Circle Green’s future Royalty Payments. If the District’s review and/or audit reveals underpayment of Royalty Payments by Circle Green, Circle Green shall pay to the District the amount of such underpayment, plus interest at the legal rate, within thirty (30) days of the date of written notice thereof from the District. If the District’s review and/or audit reveals that Circle Green has understated the amount of Royalty Payments by more than ten percent (10%), Circle Green shall also pay to the District a ten percent (10%) penalty calculated on the amount of the underpayment, as well as reimburse the District for all costs incurred by the District in connection with its audit inspection.

The Parties acknowledge that the operation of a commercial public scale may result in Circle Green being required to weigh various vehicles, including, but not limited to, potential customers or members of the public requesting to be weighed on the Onsite Scale, in which case Circle Green would be required to weigh said vehicle and record the weight, despite the customer not dumping the load and not paying a tip fee. Such vehicles shall be excluded from the definition of Tip Fee Vehicle.

4. Effect of Sale of the Property to Circle Green. This Contract shall remain in full force and effect if Circle Green purchases the Property from the District and shall continue to remain in effect in the event that Circle Green were to subsequently sell the Property to a third party.

5. NOTICES

All notices, demands, or other writing in this Agreement required to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the District: Phelan Pinon Hills Community Services District
4176 Warbler Road
P.O. Box 294049
Phelan, CA 92329-4049
Attention: General Manager

To Circle Green: Circle Green, Inc.
8271 Chino Avenue
Ontario, CA 91761
Attention: Kevin Sutton

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

6. Effect of Termination of the New Lease. In the event that the New Lease were to terminate for any reason other than the sale of the Property to Circle Green, then this Agreement shall automatically terminate upon such termination of the New Lease.

7. General Provisions.

a. Entire Agreement. This Agreement and any exhibits attached hereto shall constitute the entire agreement between the Parties and shall supersede all contemporaneous and previous agreements between them, whether oral or written. There are no representations or understandings, oral or written, between the Parties as of the date hereof other than as set forth herein.

b. Amendments. No waiver, alteration, modification, or termination of this Agreement or any of the provisions hereof shall be binding unless in writing and duly executed by the Party to be bound thereby. The terms of this Agreement may not be amended, supplemented, modified or revised by any invoices or purchase order issued by Supplier.

c. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed under the laws of the state of California without regard to conflict of laws provisions.

d. Waiver. No waiver by a Party of any of its rights with respect to the other Party or with respect to this Agreement or any matter or default arising in connection with this Agreement, shall be construed as a waiver of any other right, matter or default. Any waiver shall be in writing signed by the waving Party. The failure of either Party at any time or from time to

time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such Party's right to thereafter enforce each and every provision hereof.

e. Remedies Cumulative. Remedies provided under this Agreement shall be cumulative and in addition to other remedies provided by law.

f. Severability. If any provision of this Agreement is found contrary to law or unenforceable by any court of law, the remaining provisions shall be severable and enforceable.

g. Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including the reasonable attorneys' fees, expended or incurred in connection therewith.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT

By: _____
President, Board of Directors

ATTEST:

Secretary

CIRCLE GREEN, INC., a California corporation

By: _____
Kevin P. Sutton, President

ATTEST:

Notary Public

EXHIBIT "A"

Description of the Property

EXHIBIT "B"

Description of the Premises