



Phelan Piñon Hills Community Services District

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

PROPERTY MANAGEMENT COMMITTEE MEETING

February 27, 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 is 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. **Approval of Minutes**
6. **Discussion Regarding Lease with Circle Green**
7. **Discussion Regarding Committee Budget Items for 2018/2019**
8. **Committee Comments**
9. **Review of Action Items**
 - a. Prior Meeting Action Items
 - b. Current Meeting Action Items
10. **Set Agenda for Next Meeting** – March 27, 2018 at 10:00 a.m.
11. **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>



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SPECIAL PROPERTY MANAGEMENT COMMITTEE MEETING

January 11, 2018 – 10:00 a.m.

PPHCSD Office

4176 Warbler Road, Phelan, CA

MINUTES

Committee Members Present: Vice President Brandon, Chair
Director Pace

Staff Present: None

1. Call to Order

Vice President Brandon called the meeting to order at 10.03 a.m.

2. Roll Call

All Committee members were present.

3. Approval of Agenda

Vice President Brandon moved to approve the Agenda. Director Pace seconded the motion.
The Agenda was approved as presented.

4. Public Comment – None

5. Discussion Regarding Lease with Circle Green

Legal counsel will revise wording on document and present to the Committee.

12 Adjournment

With no further business before the Committee, the meeting adjourned at 11:30 a.m.

Link to Agenda Materials and Handouts: <http://www.pphcsd.org>

LEASE

THIS AGREEMENT is made this ____ day of _____, 2018, 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 Assessors 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 an agreement (“the Agreement”) wherein the Tenant began leasing a portion of the Property as depicted on Exhibit “B” attached hereto and incorporated herein by this reference (“the Premises”) for the purpose of site management other related activities.

E. The District and the Tenant now wish to terminate the Agreement 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.

E. The purpose of this 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 Agreement. Pursuant to Sections 2(a) and 26 of the Agreement, the Agreement is hereby terminated by mutual consent of the District and the Tenant.

(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. The Tenant also acknowledges that the portions of the Property excluded from the Premises under this Lease may be adjusted by the District from time to time during the Term (as defined below) in the exercise of the District's reasonable discretion.

Section 2. TERM

(a) Term. The term of this Lease shall commence on _____, 2018, and shall expire _____ () years after said date ("the Term"), unless earlier terminated by the District on any of the followings grounds: (1) pursuant to the provisions of Sections 18 and/or 21 of this Lease; or (2) in the event the District determines in its reasonable discretion that the public health, safety, welfare, or convenience requires early termination of the Lease, in which case the District shall be entitled to exercise all of the remedies set forth in Sections 18(a)-(c) of this Lease, with or without the benefit of court order, in addition to the District's other rights and remedies under the law, upon ninety (90) calendar days written notice to the Tenant.

Commented [K1]: Three or five

(b) Extensions. Tenant shall have the option to extend this Lease for up to _____ () additional _____-year terms (each a "Renewal Term"). Other than Base Rent that 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.

Commented [K2]: Not to exceed a total lease term of 30 years

(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 Base Rent (as defined below) plus ten percent (10%) on a monthly basis during the period of holdover.

Section 3. LEASE PAYMENTS

(a) Base Rent. In consideration for leasing the Premises, the Tenant shall pay rent to the District in the amount of \$_____.00 per month on the first day of each month during the Term and any Renewal Term ("Base 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 Base Rent shall be subject to an automatic annual increase equal to three percent (3%) of the Base Rent for the prior year beginning on _____, 2019, and continuing on _____ of every year thereafter during the Term and any Renewal Term of this Lease. Such sum so calculated shall become the new Base 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) Revenue Percentage. The Tenant shall also pay a percentage of the gross revenue generated from the use of the Property as calculated at the rate of ____ percent (%) of any and all revenue collected from activities conducted and/or originating on the Premises during the Term and each Renewal Term (“Additional Rent”). All such Additional Rent payments shall be due on the first day of each month during the Term and any Renewal Term, which payments 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.

(c) Security Deposit. Concurrently with the Tenant’s execution of this Lease, the Tenant shall deposit with the District a cash sum in the amount of \$5,000.00 (“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 Base Rent, Additional 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 Base Rent and/or Additional 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 Base Rent and Additional 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 sole 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. 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.

Section 5. NO WASTE, NUISANCE, OR UNLAWFUL USE

The Tenant shall not commit, or allow to be committed, on the Property any waste thereon, nor the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial, or disposal 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, 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 Section 15 of this Lease. The Tenant shall also be solely responsible for all costs necessary to ensure that the Tenant's use 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 sole 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 all original plans that are prepared and permits that are issued.

(b) Relocation. If the District or any other duly-empowered entity 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 required by the District, approved by the District, and subject to Section 21 hereof and the protections otherwise afforded to the District under this Lease. In the event the District desires to redevelop, modify, remodel, or in any way alter the Premises and any improvements thereon ("Redevelopment"), the District and the Tenant shall cooperate in good faith and use its best efforts to fully accommodate both the Redevelopment and Tenant's continuing use of the Premises.

(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 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.

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 AND REPORTING

(a) Access to 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.

(b) Access to Records. The Tenant shall maintain an office in California (the current address of which shall at all times be provided to the District) during the Term and any Renewal Term and for four (4) years thereafter, which office shall house true and accurate books and records reflecting the identity and capacity of all officers, directors, and other persons having managerial responsibility of and for the Tenant, as well as all persons having any beneficial

interest (direct or indirect) in the Tenant, and which shall also report and provide an accounting of all business transactions of the Tenant on and in connection with the Premises and the Tenant's use thereof.

(c) Audit. Upon five (5) days written notice, the District shall have the right to inspect, review, and/or audit the Tenant's records and accounting documents. If the District's review and/or audit reveals overpayment of Additional Rent by the Tenant, the District shall offset the amount of such overpayment, without interest, against the Tenant's future Additional Rent payments. If the District's review and/or audit reveals underpayment of Additional Rent by the Tenant, the Tenant 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 the Tenant has understated the amount of gross revenues by more than five percent (5%), the Tenant 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. If any successive review and/or audit by the District reveals that the Tenant has again understated the amount of gross revenues by more than five percent (5%), the District shall be entitled to increase the amount of the Base Rent and/or the Additional Rent owed by the Tenant to the District by the same percentage as the percentage of the Tenant's understatement of gross revenues, or immediately exercise any of its rights under Section 18 of this Lease, all without being obligated to provide the Tenant with an opportunity to cure said underpayment, and all in addition to the other remedies afforded the District herein.

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. The District further reserves the right to grant additional easements, licenses, and/or rights of way to other parties as may be deemed necessary by the District in its reasonable discretion, in which case the District and the Tenant shall cooperate in good faith and use its best efforts to agree on a mutually acceptable location for such easements, licenses, and/or rights of way.

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 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. Notwithstanding the provisions of California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor did not know or suspect to exist in his or her favor at the time of the executed release which if known by him or her must have materially affected his or her settlement with the debtor"

the Tenant expressly waives and relinquishes all rights and benefits afforded to the Tenant thereunder and under any and all similar laws of any state or territory of the United States with respect to the claims, actions, and/or losses referenced in this section. This Lease shall act as a release of future claims that may arise from the aforementioned whether such claims are currently known, unknown, foreseen, or unforeseen. The Tenant understands and acknowledges the significance and consequences of such specific waiver of Civil Code Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that may result from the claims identified above.

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 Agreement 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 Agreement. 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 sole 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 Base Rent and/or Additional Rent when due, 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. 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. EFFECT OF DISTRICT'S WAIVER

Any failure by the District to enforce any provision of this Agreement, 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 20. 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 21. CONDEMNATION OF PROPERTY

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

(a) Termination of Lease. 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 the real property interests shall belong to the District; any and all

damages and compensation awarded or paid because of the taking of the improvements constructed on the Premises by the Tenant shall belong to the Tenant.

(c) Partial Taking. Should only a portion of the Premises be taken by eminent domain and this Lease is not terminated by the District, the Base Rent and Additional Rent thereafter payable under this Lease shall be abated proportionally as to the portion taken which is then not usable by the Tenant.

Section 22. 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 attorneys fees and costs will be considered an element of costs and not of damages.

Section 23. NOTICE

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: Bill Irwin

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 24. 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. 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. 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 a transferee, who is other than a stockholder of the Tenant at the time of executing this Lease, receiving a beneficial ownership of, or interest in, any outstanding stock of the Tenant, shall be deemed an assignment prohibited by this Section, unless the written consent of the District be obtained.

Section 25. 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 26. INTEGRATION AND AMENDMENT

This Agreement 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 Agreement may not be amended unless in writing and signed by both parties hereto.

Section 27. CAPTIONS

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

Section 28. INTERPRETATION AND ENFORCEMENT

This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared this Agreement and any uncertainty or ambiguity contained herein shall not be interpreted against any one party. This Agreement 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 Agreement 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 29. TIME OF THE ESSENCE

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

Section 30. AUTHORITY

The persons executing this Agreement 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 Agreement 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