

**CITY OF OCEANSIDE  
PROPERTY USE AGREEMENT  
WITH WEST COAST TOMATO GROWERS, LLC**

This Property Use Agreement, hereinafter called ("Agreement"), dated as of 9/16/15 is entered between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called ("CITY") and **WEST COAST TOMATO GROWERS, LLC.**, hereinafter referred to as ("PERMITTEE").

**RECITALS**

WHEREAS, CITY is owner of the real property described hereinbelow; and

WHEREAS, PERMITTEE desires to lease 9.2 acres of vacant land, located in the City of Oceanside, from CITY for agricultural farming; and

WHEREAS, CITY, for the consideration hereinafter set forth, is also desirous of entering into a new property use agreement pursuant to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of above recitals and other valuable consideration, receipt of which is hereby acknowledged, CITY and PERMITTEE do mutually agree as follows:

**AGREEMENT**

**SECTION 1: USES**

**1.01 Premises.** CITY hereby authorizes PERMITTEE, in accordance with the terms of this Agreement, the non-exclusive use of that certain real property situated in the City of Oceanside, County of San Diego, State of California commonly known as 9.2 acres of vacant land and more particularly described as being a portion of Lot 3 of the partition of Rancho Guajome, as shown in Exhibit "A" attached hereto and by this reference made part of this Agreement. Said real property is hereinafter called the "PREMISES".

In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

**1.01 Uses.** It is expressly agreed that the PREMISES is used by PERMITTEE solely and exclusively for the purpose of **agricultural farming** at the PREMISES, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

PERMITTEE covenants and agrees to use the PREMISES for the above specified purposes

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and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

**SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of **Five (5) Years** commencing retroactive to **July 1, 2015**, and terminating **June 30, 2020**.

**2.02 Extension of Term.**

The PERMITTEE may request an extension of the term of this Agreement for one (1) additional term of five (5) years, under the terms and conditions of this Agreement at the CITY's calculated fair market property use payment rate of similar businesses and or services, provided that the PERMITTEE is not in default or breach of any term, condition, or covenant of this Agreement. Any extension must be approved by the City Council.

The PERMITTEE may request extensions of the term of this Agreement provided that written notice from PERMITTEE is received by the Real Estate Manager no later than ninety (90) days prior to the expiration of the term of this Agreement. The option to extend is not automatic and will be decided by the CITY. The City Manager or Real Estate Manager shall notify the PERMITTEE not later than sixty (60) days after receipt of such request whether such request will be recommended to the City Council for approval, at which time the Real Estate Manager shall provide PERMITTEE with CITY's calculated fair market rent property use payment rate value and rental amount which the CITY is willing to accept for PERMITTEE'S use and occupation of the PREMISES during the extension term. In no event shall the property use payment rate be less than that required during the preceding annual term. The Real Estate Manager's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the property use payment rate. Recommendation by the Real Estate Manager does not constitute CITY approval of the extension request. The Real Estate Manager in his capacity as the CITY's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to PERMITTEE not later than sixty (60) days from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the renewal request in sufficient time as to provide PERMITTEE with thirty (30) days notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed thirty (30) days, to allow for such thirty (30) day notice of termination.

**2.03 Termination.** Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least thirty (30) days prior

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written notice of such termination.

**2.04 Business License.** PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for PERMITTEE's operations under this Agreement.

**SECTION 3: PROPERTY USE PAYMENT**

**3.01 Time and Place of Payment.** The PERMITTEE shall make payments on or before the first (1<sup>st</sup>) day of July annually. Checks shall be made payable to the City of Oceanside and delivered to the City of Oceanside, Central Cashiering, 300 N. Coast Highway, Oceanside, CA 92054. The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

**3.02 Initial Minimum Annual Property Use Payment.** The minimum annual property use payment for the first (1<sup>st</sup>) year of this Agreement shall be **Three Thousand Five Hundred Twelve Dollars and Seventy-One Cents (\$3,512.71)** which shall be payable annually on or before the first (1<sup>st</sup>) day of July. For the convenience of this Agreement, minimum annual property use payment may be referred to as "Rent".

**3.03 Minimum Annual Property Use Payment Adjustment Date.** The minimum annual property use adjustment date shall be the first (1<sup>st</sup>) day of July of each year following the first anniversary of the Commencement Date (as defined in Subsection 2.01) of this Agreement. The minimum annual property use payment amount shall be adjusted on each property use payment adjustment date as set forth below.

**a. Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California ("CPI"). If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by the City. Any reference in this agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.03a.

Regardless of the index publication dates, the minimum annual property use payment adjustment dates shall be on the dates defined by Subsection 3.03 above. Until the minimum annual property use payment adjustment can be actually calculated in accordance with this Agreement, Permittee shall continue to make payments at the existing property use payment rate. When the adjustment is calculated, the balance of property use payments due at the adjusted rate, from the property use payment adjustment date through the date of calculation, will be paid to City within

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thirty (30) days of written notice by the City. In no event shall the adjusted property use payment, as established by the CPI, be less than the property use payment in existence immediately prior to the adjustment date.

**b. Minimum Annual Property Use Payment Adjustment Computation.** The minimum annual property use payment adjustment shall be computed in accordance with the following definitions and formulas:

**Definitions:**

**Initial Minimum Annual Property Use Payment:** The minimum annual property use payment as of the Commencement Date of this Agreement as listed in Subsection 3.02 above.

**Existing Minimum Annual Property Use Payment:** The existing minimum annual property use payment shall be the minimum annual property use payment amount in effect on the date preceding the property use payment adjustment date.

**Percent change in the CPI:** The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding twelve (12)-month period covered by the most recent publication of the Index.

**Property Use Payment Adjustment Formulas:**

**First Adjustment:** initial minimum annual property use payment + (initial minimum annual property use payment x the percent change in the CPI) = existing minimum annual property use payment.

For example:  $\$3,512.71 + (\$3,512.71 \times 5\% \text{ CPI}) = \$3,688.35$

**Subsequent Adjustments:** The existing minimum annual property use payment + (existing minimum annual property use payment x the percent change in the CPI) = new existing minimum annual property use payment.

For example:  $\$3,688.35 + (\$3,688.35 \times 5\% \text{ CPI}) = \$3,872.77$

**3.03 Delinquent Payment.** If PERMITTEE fails to pay the payment when due, PERMITTEE shall pay in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which hereby is mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

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**SECTION 4: RECORDS**

**4.01 Inspection of Records.** PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE's compliance with this Agreement. PERMITTEE's failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.

**SECTION 5: INSURANCE**

**5.01 Indemnity.** PERMITTEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of or related to the conduct of the PERMITTEE or its employees, agents or others in connection with or related to its use and occupation of the PREMISES under this Agreement, except those claims arising from the sole negligence or sole willful misconduct of the CITY, its officers, agents, or employees. PERMITTEE'S indemnification shall include any and all costs, expenses, attorney's fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

**5.02 Insurance.** PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits:

**General Liability**

<b>Combined Single Limit Per Occurrence</b>	<b>\$1,000,000</b>
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<b>General Aggregate</b>	<b>\$2,000,000</b>
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b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **thirty (30) days** written notice

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to the CITY of Oceanside should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. PERMITTEE shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement.

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

h. If PERMITTEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within 30 days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the first (1<sup>st</sup>) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE **sixty (60) days** prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES.

5.03 Workers' Compensation Insurance. PERMITTEE shall also maintain in full force and effect during the full term of this Agreement and any extension thereof, workers' compensation insurance in such amount and with such coverage as is required by law.

## **SECTION 6: GENERAL PROVISIONS**

**6.01 Maintenance.** With respects to PERMITTEE's operations at or on the PREMISES, PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the

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PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. PERMITTEE shall make payment no later than thirty (30) days after written notice from the CITY. Further, if at any time CITY determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

**6.02 Utilities.** PERMITTEE agrees to order, obtain, and pay for all utilities and service, if any, and installation charges in connection with its, occupation and operations on the PREMISES.

**6.03 Signs.** PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its expense within twenty-four (24) hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE's cost.

**6.04 Taxes.** PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the PREMISES, including, any structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the PREMISES, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

**6.05 Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

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**To CITY:**

**City of Oceanside  
Property Management  
300 North Coast Highway  
Oceanside, CA 92054**

**To PERMITTEE:**

**West Coast Tomato Growers LLC  
Attention: Harry Singh Jr.  
5780 Mission Avenue  
Oceanside, CA 92057**

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

**6.06 CITY Approval.** The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the Real Estate Manager.

**6.07 Entire Agreement.** This Agreement comprises the entire integrated understanding between CITY and PERMITTEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The PERMITTEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall



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remain in full force and effect, to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**6.08 Agreement Modification.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

**6.09 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE's duties be delegated, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. A consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**6.10 Defaults and Termination.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- ☐ PERMITTEE has previously been notified by CITY of PERMITTEE's default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or
- ☐ PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- ☐ PERMITTEE shall be adjudicated a bankruptcy, or
- ☐ PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the PREMISES.

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**6.11 Other Regulations.** All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicative rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

**SECTION 7: SPECIAL PROVISIONS**

**7.01 Ancillary Uses and Services.** No additional uses or services, other than those provided for under Section 1.01 of this Agreement, shall be provided by PERMITTEE from or at the demised PREMISES.

**7.02 Hazardous Substances.** No goods, merchandise or material shall be kept stored or sold in or on the PREMISES which are in any way explosive or hazardous, except that ordinary business material that may be classified as hazardous may be kept in or on the PREMISES if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said PREMISES, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised PREMISES or other premises and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the PREMISES. PERMITTEE may at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the PREMISES which will in any way injure the PREMISES or improvements thereon, or adjacent or other PREMISES, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or fuel storage is expressly prohibited without prior written consent of the CITY.

**7.03 Continued Occupancy.** PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the PREMISES for the purposes hereinabove specified except while PREMISES are untenable by reason of fire, flood, or other unavoidable casualty, and in that event, CITY shall be promptly notified by PERMITTEE.

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**SECTION 8: SIGNATURES**

**8.01 SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PERMITTEE and the CITY.


IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

CITY:  
**CITY OCEANSIDE**  
a municipal corporation

Date \_\_\_\_\_

By   
City Manager

APPROVED AS TO FORM:

By  1987.  
City Attorney

PERMITTEE:  
**WEST COAST TOMATO GROWERS, LLC**  
a CA limited liability company

Date 9-1-15

By 

Date \_\_\_\_\_

By \_\_\_\_\_

**Notary acknowledgments and proof of authorization to sign for PERMITTEE must be attached.**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On September 1, 2015 before me, Helen P. Salas, Notary Public  
(insert name and title of the officer)

personally appeared Harry Singh, Jr.  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

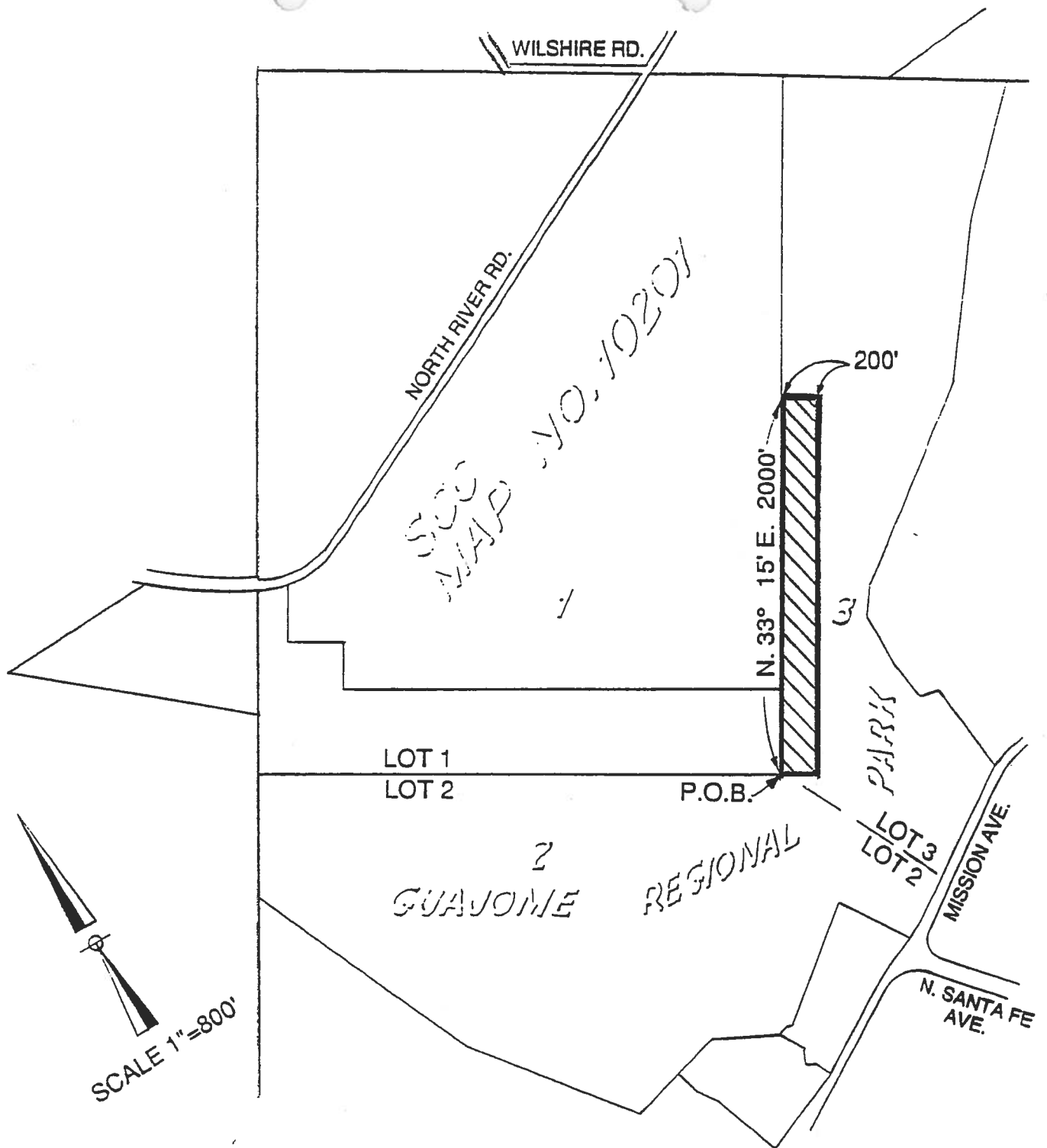
WITNESS my hand and official seal.

Signature

Helen P. Salas

(Seal)





LEGEND

 LEASED PREMISES

**CITY OF OCEANSIDE**

SKETCH SHOWING LEASED PREMISES  
WITH WEST COAST TOMATO GROWERS, LLC  
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**EXHIBIT "A"**