

LICENSE AGREEMENT

This license agreement ("Agreement") is dated March 1, 2025, and is between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("District"), and BG Hay Barn, LLC, a Delaware limited liability company. ("Licensee").

RECITALS

- A. The District is the owner of the real property commonly identified as 47 Alamo Square Drive, in Alamo, identified as Assessor's Parcel Number 192-082-004 (the "Property").
- B. Licensee is the owner of 37 Alamo Square Drive, adjacent to the Property. Licensee desires to obtain the District's permission to use the Property for the limited purposes described in this Agreement. The District is willing to grant a license to use that portion of the Property shown on Exhibit A, the "Licensed Premises" upon the terms and conditions set forth in this Agreement.

The parties therefore agree as follows:

AGREEMENT

1. **Grant of License.** Subject to the terms and conditions of this Agreement, the District hereby grants to Licensee, a nonexclusive revocable license to enter the Licensed Premises for the purposes described in Section 2 below and for no other purpose without District's prior written consent.
2. **Use of Premises.** Licensee may use the Licensed Premises for the purpose of parking, seating, landscaping, and ingress and egress. Licensee acknowledges that the uses just described constitute the Secondary Use of the property and that the Primary Use is part of a corridor for flood control and drainage purposes. Licensee shall not, at any time, use or permit the public to use the Property in any manner that will materially interfere with or impair said Primary Use of the Property. All rights granted to Licensee hereunder are subject to all existing and future rights, right of way, reservations, franchises, and easements in the Property, regardless of who holds the same, including the District's right to use the Property for emergency vehicle access or any other purpose.

Under no circumstances shall District have any liability to Licensee or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits, or business opportunities arising from or in any way relating to, any damage, or destruction of any portion of the Licensee's facilities.

3. **Term.** The term of this Agreement commences on March 1, 2025, and it ends March 1, 2035. The District and Licensee each have the right to terminate this Agreement at any time, for any reason, or for no reason, with thirty (30) days advance written notice to the other party.

4. **Annual Licensee Fee and Administrator Fee.** Licensee shall pay the District an annual nonrefundable fee ("Annual Fee") for each year, or portion thereof, during the Term of this Agreement. Licensee shall pay the District the Annual Fee for the period from March 1, 2025, through March 1, 2026, upon the execution of this Agreement. Licensee shall pay the District each subsequent Annual Fee on or before March 1 of the one-year period for which the payment is to be made. The amount of each Annual Fee for each year, or portion thereof, during the Term is shown in Exhibit B, attached hereto and incorporated herein. Additionally, at the time the Licensee pays the District the Annual Fee for the first year, or portion thereof, of the Term of this Agreement, Licensee shall pay the District a one-time, nonrefundable Administrator Fee of \$3,000.00.

5. **Suspension or Limitation of Use.**

The District and its permittees shall have the right to suspend or to limit the use of the Property by Licensee and the general public for a reasonable amount of time for protection of public safety, or for the construction, instillation, operation, maintenance, or repair of other facilities on the Property. Should such suspension or limitation be necessary, the District shall provide Licensee thirty (30) days' prior notice in writing, except in the cases of emergency maintenance repairs.

The District shall not be held responsible or liable for unavoidable damage or removal of any landscaping necessary to accomplish work for the maintenance, construction, repair, reconstruction, or alteration of District property. However, the District will exercise reasonable care to minimize adverse impacts of such work upon Licensee's facilities.

6. **Improvements to the Premises.**

Licensee may not construct any improvements on the Licensed Premises without prior written consent from the District. For the purposes of this Agreement, any equipment Licensee is permitted to install on the Licensed Premises is not considered to be an improvement to the Property or the Licensed Premises.

Any improvements to the Licensed Premises by Licensee (with or without the consent of the District) must be removed by Licensee, at its sole cost, except those improvements that the District and Licensee agree are not required to be removed upon the termination of this Agreement. Licensee shall repair, at its sole cost, any damage caused by the removal of its improvements or equipment.

If Licensee fails to remove any improvements or equipment it is required to remove, the District may remove them at Licensee's expense, and Licensee shall immediately reimburse the District upon Licensee's receipt of an invoice from the District.

7. **Permits and Approvals.** Licensee is responsible for obtaining any permits or approvals from any agency having jurisdiction. This Agreement does not constitute

governmental approval by Contra Costa County Flood Control and Water Conservation District of this use.

8. **Nonexclusive Right of Use.** This Agreement is nonexclusive. The District reserves the right to issue licenses, easements and permits to others that could affect the Property or the Licensed Premises.
9. **Entry and Inspection.** Licensee understands that District, its agents, and employees may enter and conduct activities on the Property at any time.
10. **Access to the Property and Premises.** Licensee shall deliver to the District keys to all gates located on the Property and each party shall have keys to all gates. Licensee shall deliver to the District all keys required to always provide access to the Premises.
11. **Existing Facilities.** It is understood and agreed that the District has leases, licenses, and/or easements with others for all or a portion of the Property. The holders of the leases, licenses, and/or easements granted by the District have the right to enter on the Property and maintain their facilities. Licensee will not be compensated for damage resulting from such maintenance.
12. **Maintenance:** During the term of this Agreement, Licensee hereby agrees to maintain Licensee's improvements and the Licensed Premises in a safe and attractive condition at its sole cost and expense and as determined by the District in its sole discretion. Licensee's maintenance shall include initial and ongoing pruning of vegetation extending west over the fence along the top of the western bank of San Ramon Creek.
13. **Surface Rights Only; Damage.** The rights granted under this Agreement are surface rights only and no excavation is allowed. It is the responsibility of Licensee to contact property owners and holders of easements, leases, and licenses to determine if any real property over which Licensee wishes to use a vehicle is able to support the vehicle without damage to subsurface or surface facilities. If Licensee's use of real property pursuant to this Agreement causes damage to that real property, the Property, the Licensed Premises, or their vegetation, subsurface or surface facilities, Licensee shall repair the damage and return the affected property to a neat and safe condition satisfactory to the District and the affected users.
14. **Damage.** The rights granted herein are surface rights only and no excavation shall be allowed. It is the responsibility of Licensee to contact easement, lease, and license holders to determine that the property is able to support any vehicle brought onto it by Licensee without damage to subsurface or surface facilities. It is understood and agreed by and between the parties hereto that the Property is subject to sliding, erosion, subsidence, and flooding, and that Licensee shall be solely responsible for damages to their parking improvements which result from sliding, erosion, subsidence, or flooding, and shall repair all damage and return the Property to a neat and safe condition satisfactory to District and such other users.
15. **No Waste.** Licensee, its agents, contractors, employees, guests, and invitees shall not cause any waste, damage, or destruction to the Property. Upon termination or

expiration of this Agreement, Licensee at its sole cost and expense, shall repair any such waste, damage or destruction and restore the Property to its original condition, unless District agrees otherwise in writing.

16. **Pollution.** Licensee, at its expense, shall comply with all applicable laws, regulations, and rules with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and shall furnish satisfactory evidence of such compliance upon request by the District.

Licensee may not permit hazardous materials to be handled at any time on the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property due to Licensee's use and occupancy of the Property, Licensee, at its expense, shall clean all the property affected thereby, whether owned or controlled by the District or any third person, to the satisfaction of the District (insofar as the property owned or controlled by the District is concerned) and any governmental body having jurisdiction.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend the District and the holders of rights to use the Property (each, an "Indemnitee") against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by any Indemnitee as a result of any discharge, leakage, spillage, emission or pollution, regardless of whether the liability, cost or expense arises during or after the term of this Agreement, unless such liability, cost or expense is proximately caused solely by the active negligence of the District.

Licensee shall pay all amounts due to the District under this section within ten (10) days after any demand therefor. This Section shall survive and remain enforceable following the termination or expiration of this Agreement.

17. **Hold Harmless.** Licensee shall defend, indemnify, save, and keep harmless the District, its officer, employees, contractors, agents, and representatives ("District Parties") from and against all liabilities, judgments, costs, fees, penalties, damages, and expenses ("Liabilities") that arise from, are connected to, or are attributable to the granting of the license, or the the negligence or willful misconduct of Licensee, its officers, employees, contractors, agents, representatives, invitees, or customers while occupying or using the Licensed Premises. However, Licensee shall have no obligation to defend, indemnify, save, and keep harmless the District from any Liabilities that arise from the sole negligence or sole willful misconduct of any District. This Section shall survive and remain enforceable following the termination or expiration of this Agreement

18. **Insurance.** Licensee agrees, at no cost to the District, to obtain and maintain during term of this Agreement, commercial general liability insurance with a minimum limit coverage of \$1,000,000 for each occurrence and \$2,000,000 aggregate for all claims or loses due to bodily injury, including death, or damage to property, including loss of use, and to **name Contra Costa County Flood Control and Water Conservation**

District, its officers, agents, and employees as additional insured thereunder. The coverage must provide for a thirty-day written notice to the District of cancellation or lapse. Licensee shall provide evidence of the coverage to the District prior to execution of this Agreement. Any required endorsement shall either be attached to the Certificate or certified as issued on the Certificate.

Licensee further agrees, at no costs to the District, to obtain and maintain during the term of this Agreement Automobile Liability Insurance with respect to any vehicles owned, non-owned, leased or hired by or on behalf of the Licensee with a combined single limit of not less than \$1,000,000 for bodily injury or death to any person and damages to the property, including the loss of use thereof arising out of each accident or occurrence and as above to name the **Contra Costa County Flood Control and Water Conservation District, its officers, agents, and employees as additional insured thereunder.**

Licensee further agrees, at no cost to the District, to obtain and maintain during the term of this Agreement Worker's Compensation and Employer's Liability Insurance for all of its employees. Licensee shall require any subcontractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance pursuant to California State Law.

19. **Assignment.** Licensee may not assign its rights under this Agreement without the prior written consent of the District, which shall be within District's sole discretion to provide.
20. **District's Title.** Licensee hereby acknowledges District's fee title in and to the Property and agrees never to assail or to resist the District's title. Licensee agrees that it has not, and never will, acquire any rights or interest in the Property as a result of this Agreement, and that Licensee has not, and will not, obtain any right or claim to the use of the Property beyond that specifically granted in this Agreement. Construction of any improvements by Licensee on or about the Property does not give rise to an agreement coupled with an interest. The foregoing does not preclude Licensee from purchasing the Property under a separate agreement with the District.
21. **Notices.** Notices under this Agreement must be in writing and will be effective either when delivered in person or deposited as certified mail, postage prepaid, return receipt requested, or sent by a recognized overnight courier service, and directed to the other party at its address as stated below, or to such other address as the party may designate by written notice.

LICENSEE: BG Hay Barn LLC.
 Attn: Nir E. Margalit
 Manager
 454 Las Gallinas Ave #3004,
 San Rafael, California 94903
 Phone (415) 706-1419

DISTRICT: Contra Costa County Flood Control and Water
Conservation District
Attn: Real Property Division
255 Glacier Drive
Martinez, CA 94553
Phone (925) 313-2000
Fax (925) 646-0288

22. **Governing Law.** This Agreement is governed by and shall be enforced and interpreted in accordance with the laws of the State of California without regard to its choice of law provisions. Any litigation to interpret or enforce this Agreement shall be filed in a state or federal court in California with jurisdiction over the parties and subject matter, and where venue is proper.
23. **Registration.** Within 60 days after the effective date of this Agreement, if not already registered, Licensee shall register with the California Secretary of State and shall designate an agent for service of process located in California. Licensee shall provide notice to the District confirming when registration is complete. If Licensee is already registered with the Secretary of State, within 10 days after the Effective Date Licensee shall provide the District proof of registration. During the Term of this Agreement, Licensee shall maintain its registration with the California Secretary of State and shall maintain a designated agent for service of process located in California.

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- 24. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. No alteration or variation of this Agreement is valid or binding unless made in writing and signed by both parties.

The parties are signing this Agreement as of the date set forth in the introductory paragraph.

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
Warren Lai , Chief Engineer

**BG HAY BARN, LLC.
By BlackGem Real Estate, LLC, its Member**

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By *Mr E. Margalit* _____
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Nir E. Margalit, Manager

DocuSigned by:
By **NICHOLAS OTT** _____
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Nicholas Ott, Manager

RECOMMENDED TO THE BOARD OF SUPERVISORS FOR APPROVAL:

By _____
Jessica L. Dillingham
Principal Real Property Agent

By _____
Marc-Anthony Guzman
Assistant Real Property Agent

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Rev. & Approved by District Counsel 3/2021