

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”), is made and entered into, to be effective this ____ day of _____, 2019, by and between:

ORANGE COUNTY SANITATION DISTRICT, a public agency (“DISTRICT”);

AND

MEGDAL GREEN, LLC, a California limited liability company (“MEGDAL”)

RECITALS

A. DISTRICT owns a parcel of land approximately fifty (50) feet wide (hereinafter, the “Property”), which abuts the easterly property line of those certain premises located at 21532 South Brookhurst Street, Huntington Beach, California (hereinafter, the “Brookhurst Premises”), and the westerly right-of-way line of the Santa Ana River Channel.

B. The Brookhurst Premises are owned by MEGDAL and leased to Starbucks Coffee Company.

C. DISTRICT owns certain utility improvements, including an Outfall Sewer, which is presently located in the subsurface of the Property. DISTRICT previously constructed additional improvements on the Property, including a permanent retaining wall. There remains a strip of the Property, approximately four (4) feet wide, that lies between the retaining wall and the Brookhurst Premises (hereinafter referred to as “Parcel A”). Parcel A is more particularly described and shown on Exhibits “A” and “B,” attached hereto and incorporated herein by this reference.

D. The Parties now desire to enter into an agreement wherein the DISTRICT would lease Parcel A to MEGDAL to allow MEGDAL to install and maintain paving, striping, parking, and related improvements within Parcel A pursuant to the terms and conditions stated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the terms and conditions contained herein, the Parties hereby agree as follows:

Section 1 – Recitals: The Recitals set forth above are incorporated herein as part of this Agreement.

Section 2 – Rent: DISTRICT hereby leases Parcel A to MEGDAL for an annual sum of two hundred and fifty dollars (\$250.00). MEGDAL shall pay the first year's rent within five (5) business days following execution of this Agreement, and shall make all subsequent annual rent payments on or before November 1st of each year.

Section 3 – Term: This Agreement shall have a term of five (5) years beginning on the date this Agreement is executed by the Parties.

Section 4 – Early Termination: Notwithstanding Section 3 of this Agreement, either Party may terminate this Agreement for any reason by providing at least sixty (60) days advance written notice to the other Party.

Section 5 – Maintenance: MEGDAL agrees to maintain Parcel A in good and fair condition, free of trash, and generally in a manner consistent with cleanliness standards for similar commercial properties in the area.

Section 6 – Authorized Uses: MEGDAL shall make use of Parcel A only for vehicular traffic, parking, outdoor seating, and any related activities, or for the use of MEGDAL and its employees, invitees, and customers. MEGDAL shall not use Parcel A

for any other use or purpose. MEGDAL agrees, during the term of its leasehold interest, to pave, maintain, and keep in good condition and repair the paving and improvements to be installed by MEGDAL within Parcel A. Such maintenance shall include, but is not limited to, repairs, resurfacing, restriping, cleaning, and sweeping.

Section 7 – DISTRICT Access: In consideration of this Lease, MEGDAL hereby grants to DISTRICT a license to enter Parcel A at any time during the term of this Agreement. Further, upon prior written notice to MEGDAL, DISTRICT may remove the retaining wall or any paving or parking area improvements for the purpose of accessing, maintaining, altering, or relocating DISTRICT’s Outfall Sewer, which is located on DISTRICT’s land and beneath the surface of Parcel A.

Section 8 – DISTRICT Work: If DISTRICT exercises its license to enter and remove any improvements to the lease area, it agrees to act expeditiously to undertake and conclude all work affecting Parcel A. MEGDAL shall have the option to terminate this Lease (in accordance with Section 4 above) in the event of DISTRICT’s removal of improvements, but shall replace the improvements at its own expense if MEGDAL chooses to continue the Lease.

Section 9 – Indemnity & Duty to Defend: MEGDAL shall indemnify, assume the defense of, and hold free and harmless, DISTRICT, its agents, employees, successors, and assigns, from any and all obligations, liabilities, liens, claims, demands, losses, damages, costs, or causes of action (hereinafter “liability”) arising out of or in any way connected to MEGDAL’s use of Parcel A, or any act or omission to act by MEGDAL, including its agents, servants, employees, invitees, or guests, including but not limited to any liability arising from bodily injury (including death), personal property damage, damage to any of DISTRICT’s property, and reasonable attorneys’ fees, sustained at any

time by any person or persons arising out of or in consequence of MEGDAL's use of Parcel A, whether or not such bodily injury or property damage is claimed to be due to the negligence, gross negligence, or willful misconduct of MEGDAL, its agents, servants, employees, invitees, or guests, excepting only liability arising from the sole negligence or willful misconduct of DISTRICT.

Section 10 – No Assignment: No assignment or sublease of MEGDAL's interest hereunder may be made without the written consent of DISTRICT, which may be withheld in its sole discretion.

Section 11 – Insurance: MEGDAL agrees that it will, at its sole expense, maintain a policy or policies of insurance, written by one or more qualified and rated insurance carriers, and insuring DISTRICT and its employees against liability for injury, death of persons, or loss or damage to property in or about the lease area. This insurance requirement may be met by the naming of DISTRICT, its employees, officers and directors, as additional insureds to MEGDAL's general liability insurance policy. The general liability coverage shall not be less than \$1,000,000 per occurrence for bodily injury, including death, and \$500,000 for property damage.

Section 12 – Arbitration: Any controversy or claim between the Parties to this Agreement, including but not limited to, any claims, disputes, demands, differences, controversies, or misunderstandings arising under, out of, or in relation to this Lease, or any alleged breach thereof, shall be submitted to and determined by arbitration. The Rules of the American Arbitration Association shall apply. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as fixed by the Arbitrator.

Section 13 – Entire Agreement: This instrument contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed.

Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification in writing, signed by the Party to be charged.

Section 14 – Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, DISTRICT and MEGDAL have executed this Lease Agreement on the day and year first above written.

“DISTRICT”

ORANGE COUNTY SANITATION DISTRICT,
a public agency

By _____
David John Shawver, Chair, Board of Directors

ATTEST:

Kelly A. Lore, Clerk of the Board

APPROVED AS TO FORM:

Bradley R. Hogin, General Counsel

“MEGDAL”

MEGDAL GREEN, LLC,
a California Limited Liability Company

By _____

Its: _____

By _____

Its: _____