

AGENDA ITEM REQUEST

Requests and backup **must** be in the Town Office by **Noon, Wednesday** of the week **preceding the Town Board meeting** you wish the item presented. Town Board meetings are held on the second and fourth Tuesday of each month at 7:00 p.m. in the Bob Ruud Community Center.

DATE AGENDA ITEM SUBMITTED	DATE OF DESIRED BOARD MEETING
11/15/2010	11/19/2010

CIRCLE ONE: Discussion, Action, Decision or Discussion Only

ITEM REQUESTED FOR CONSIDERATION:

Discussion and Possible Decision on Approving of a lease/option to purchase agreement between the Town of Pahrump and Growponics LLC, a Nevada Limited Liability Company, for up to 60 acres of property and appurtenant water rights (assessor's parcel numbers 045-191-15 and 045-191-16 commonly referred to as Kellogg Park Property) for the development of a series of hydroponic green houses and related facilities.

If request for funding is approved by the Town Board, an invoice or letter from the requestor to Town of Pahrump/Accounts Payable is required to receive funding.

BRIEF SUMMARY OF ITEM:

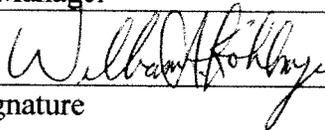
See attached Memo & Contract from staff as well as back up paperwork.

BACKUP ATTACHED: YES NO

SPONSORED BY: Town Manager

NAME OF PRESENTER(S) OF ITEM: Town Manager

William A. Kohbarger
Print Name

 11/15/10
Signature

Town Office
Mailing Address

(775) 727-5107 ext. 305
Telephone Number

#2

MEMO
TOWN OF PAHRUMP
TOWN BOARD MEETING AGENDA ITEM
MEETING DATE: 11-09-2010

TO: Town Board

FROM: William A. Kohbarger, Pahrump Town Manager

DATE: November 3, 2010

RE: **Discussion and Possible Decision:** on approving of a lease/option to purchase agreement between the Town of Pahrump and Growponics Nevada LLC, a Nevada limited-liability company, for up to 60 acres of property and appurtenant water rights (assessor's parcel numbers 045-191-15 and 045-191-16 commonly referred to as Kellogg Park Property) for the development of a series of hydroponic green houses and related facilities. (Action)

1.) BACKGROUND

The Staff is bringing this Lease/Option to Purchase for the following reason(s):

1. This project upon build out will create 120 to 150 jobs
2. This project upon build out will be valued at between \$70 to \$120 million
3. This project will create revenue for the Town of Pahrump through the lease agreement (Land & Water Rights) and Option to Purchase (Water Rights & Land sale).
4. This project will be the first of its kind in Nevada and the United States.
5. This project will create tax revenue for the Town of Pahrump and Nye County (See attached Lease/Option to Purchase Agreement).

Staff has been working with the developer (See attached Jack Kashani, BIO) on this development for approximately 5-months. The development is called Growponics Nevada LLC and will consist of building hydroponic greenhouses to grow fresh fruits and vegetables. (See attached Growponics Executive Summary + Power Point Presentation) As stated above this development will create between 120 to 150 jobs and is between a \$70 to \$120 million project based on build out. The developer wants to build 10 (4-single and 3-double) greenhouse units that will occupy 4.5 to 9 acres each and will be 130,000 sq ft (single unit) & 260,000 sq ft (double unit) in size.

The staff is respectfully requesting that this development be located on Town owned property located at E. Kellogg Road and S. Squaw Valley Road. The reason staff chose this location is because it is the only location owned by the Town large enough to accommodate this size of project. This property contains two contiguous parcels (45-191-15 & 45-191-16) owned by the Town and combined equal 74 acres. (See attached Town Owned Property List Dated: November 08, 2010) NOTE: Staff understands that the property in question was put aside to be a Park. For this reason staff is approaching the BLM about obtaining 40+ acres of BLM disposal property located at the SW corner of Homestead and Kellogg Roads in an attempt to build a 40+ acre Park at this location to replace the Kellogg property that the Town is utilizing for the Growponics development.

MEMO
TOWN OF PAHRUMP
TOWN BOARD MEETING AGENDA ITEM
MEETING DATE: 11-09-2010

The general terms of the deal is that Growponics Nevada can lease property and water rights for construction of greenhouse facilities in phases. After the completion of each phase, Growponics Nevada has the option to lease additional land and purchase the land where construction was completed. There are also constraints in the deal that mandate a timeline for construction, build out and operation. The purchase options will be at 75% of the appraised value, which is the incentive to attract this development. (See attached Appraisal Executive Summary)

The Town has worked in conjunction with Nye County staff (County Manager, Planning/Public Works) on this project and they are aware that this project is coming forth. Town staff does not anticipate any issues and/or roadblocks in seeing this project to completion.

The Town Board upon approving the Lease/Option to Purchase Agreement must also have to make a significant finding under NRS 533.550 (See attached NRS) pursuant to the Water Rights lease/sale that:

- a) The sale or lease of the water right is consistent with the prudent, long-term management of the water resources within the jurisdiction of the public body;
- b) The sale or lease of the water right will not deprive residents and businesses within the jurisdiction of the public body of reasonable access to water resources for growth and development;
- c) The sale or lease of the water right is a reasonable means of promoting development and use of the water right; and
- d) The means by which the water right is sold or leased reasonably ensures that the public body will receive the actual value of the water right or comparable economic benefits."

2.) Fiscal Impact

There is no negative fiscal impact on the Town. The Town will see an increase in revenue from the lease of the land and lease/sale of water rights. Once the property is sold, the Town will see an increase in the Ad Valorem and CTX taxes. NOTE: A Community Economic Impact assessment will be completed upon execution of the Agreement and submittal of Master Plan.

3.) Town Manager Recommendation and Board Action Requested

Staff's recommendation is for the *Town Board to approve the Lease/Option to Purchase Agreement as written and make a significant finding that the Sale/Lease of the Water Rights contained within the agreement meets the standards as set forth in NRS 533.550.*

If you have any additional questions, I would be happy to answer them.

LEASE WITH OPTION TO PURCHASE

THIS LEASE ("Lease") is made as of this _____, by and between TOWN OF PAHRUMP ("Lessor"), and GROWPONICS NEVADA, LLC ("Lessee"), who hereby agree as follows:

1. **PREMISES.** Subject to the covenants and conditions of this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, the Premises (the "Premises"), which comprise approximately five (5) acres in the Town of Pahrump, County of Nye, State of Nevada, and legally described as set forth on **Exhibit "A"** hereto.

The Premises also include thirty (30) acre feet of water rights appurtenant to the land described in Exhibit "A", legally described as set forth on **Exhibit "B"** hereto.

The Premises may be enlarged in accordance with, and this paragraph is expressly made subject to, paragraphs 4 and 5 concerning Lessee's option to lease or lease and purchase additional land legally described as set forth on **Exhibit "C"** or any part thereof that is contiguous to the land described as set forth on Exhibit "A". Once enlarged, Lessee cannot reduce the size of the Premises.

2. **USE OF PREMISES.** The Premises shall be used for the operation of greenhouses for the production of fruits and vegetables (the "Permitted Use"). Lessee shall continuously operate the entire Premises for the duration of the Term.

3. **TERM.** The term of this Lease (the "Term") is for fifty (50) years, commencing immediately as of the date first set forth above.

Should Lessee elect to exercise its rights under paragraph 5 and lease additional land, the Term for the lease for the additional land is the same as the Term for the Premises leased upon execution of this Lease for the Premises. The exercise of the option in paragraph 5 shall not operate to extend the Term of the Lease.

Should Lessee fail to commence and/or complete construction according to the timetable in paragraph 5, this Lease may be terminated, including but not limited to the options set forth in paragraphs 4 and 5, at the sole discretion of Lessor. Notwithstanding the foregoing, Lessee may continue to lease that portion of the Premises upon which it completed construction.

4. **OPTION TO PURCHASE.**

(a) Option Granted. So long as Lessee is not in default under any provision of this Lease, Lessor/Seller hereby grants to Lessee/Purchaser an option (the "Purchase Option"), exercisable by Lessee, in Lessee's sole and absolute discretion, to purchase the Premises at anytime during the Term of this Lease, provided Lessor is able to convey clear and marketable title. Lessor/Seller shall use its best effort to convey clear title. The Purchase Option Price includes all land and improvements on the Premises, water rights appurtenant to the Premises, and other appurtenances, fixtures and equipment, at the time of Closing.

(b) Premises May be Enlarged by Option to Lease. If Lessee elects to exercise the Lease Option pursuant to paragraph 5, the Purchase Option shall extend to those lands and water rights leased by Lessee pursuant to the Lease Option.

(c) Notice of Exercise. In order to exercise the Purchase Option, Lessee shall give written notice to Lessor/Seller of Lessee's election to exercise the Option (the "Notice") by January 1, 2021.

(d) Option Price. Except for the four (4) acres described in subsection (e) below, the price to be paid by Lessee/Purchaser to acquire the Premises set forth on **Exhibit "A"**, **Exhibit "B"** and **Exhibit "C"** upon exercise of the Purchase Option ("Purchase Option Price") shall be five thousand five hundred sixty-three dollars (\$5,563) per acre for the land and four thousand five hundred dollars (\$4,500) per acre foot for the water rights.

The Purchase Option Price will be reduced by ninety percent (90%) of the rent payments made pursuant to this Lease. The reduction of the Purchase Option Price only applies to the purchase of the specific property—the phase—for which Lessee originally paid the rent.

(e) After Phase IIB is completed pursuant to paragraph 5 and if Lessee exercised its Purchase Option for Phases I through IIB, the Town will deed four (4) additional, contiguous acres to Lessee/Purchaser at no cost. The location of the four (4) acres on the Premises will be at mutually agreed upon at the time that Lessee/Purchaser notifies Lessor/Seller that it exercises its right under this subsection. The four (4) acres must be used for community facilities and the deed for the four (4) acres will be subject to a restrictive covenant pursuant to the land's intended use as a site for community facilities. The cost of building the community facilities shall be borne by Lessee/Purchaser.

(f) Closing Costs & Closing Date. Lessee/Purchaser agrees that Lessee/Purchaser shall be responsible for and shall pay all costs for a title insurance policy and survey as hereafter required.

Lessor/Seller shall deliver to Lessee/Purchaser, at Lessee/Purchaser's expense, a preliminary title report on the Premises, together with copies of all exceptions in the report. Lessee/Purchaser shall have thirty (30) days after receipt of the report to notify Lessor/Seller of Lessee/Purchaser's reasonable disapproval of any such exceptions. Failure of Lessee/Purchaser to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the preliminary title report, including the conditions and exceptions identified therein. In the event that Lessee/Purchaser disapproves of any exemption(s) in the report, Lessor/Seller shall have until forty-five (45) days before the date of closing to eliminate any disapproved exceptions to the report. If such exceptions are not eliminated, the purchase agreement shall be null and void.

Closing shall be consummated on an agreed upon date, following satisfaction and waiver of all contingencies as contained in this paragraph 4, unless delayed by reason of Seller's failure to comply with this Lease.

(g) Conditions To Option Sales Contract. This Purchase Option is subject to Lessee/Purchaser obtaining at Lessee/Purchaser's expense, a title commitment for a current form

policy of title insurance insuring clear marketable title to the Premises, in the amount of the Purchase Option Price paid hereunder.

(h) Restrictive Covenant. This Purchase Option is subject to a restrictive covenant limiting the use of the property to the use identified in paragraph 2.

(i) Right of Entry. Lessee/Purchaser and his duly authorized consultants shall have the right to enter the Premises for purposes of investigation prior to close of escrow.

(j) Lessor/Seller's Deliveries at Closing. Lessor/Seller shall deliver to Lessee/Purchaser at closing a properly executed Grant Bargain Sale Deed, in recordable form, conveying marketable title to the Premises to Lessee/Purchaser. Lessee/Purchaser takes the Premises as is and where is.

(k) Lessee/Purchaser's Deliveries at Closing. Lessee/Purchaser shall deliver to Lessor/Seller at Closing:

(1) Such certificates, powers of attorney, resolutions and evidences of qualification as may be reasonably requested by title company to evidence that Lessee/Purchaser has the necessary power and authority to purchase the Premises.

(2) Lessee/Purchaser's closing statement as prepared by title company.

(3) Purchase Option Price, in certified funds, adjusted pursuant to the closing statement.

(l) Assignability. This Purchase Option is fully assignable by Lessee/Purchaser only with the written permission by Lessor/Seller to said assignment but Lessee/Purchaser shall remain liable for its performance. Said permission shall not be unreasonably withheld.

(m) Representations. As of the Closing Date, Seller shall make the following representations and warranties:

(1) As of the date first written above and to the best of Lessor/Seller's knowledge, there are no, nor has Lessor/Seller received by notice of violations of or deficiencies from the Environmental Protection Agency (or any similar state or local agency) applicable to the Premises.

(2) As of the date first written above and to the best of Lessor/Seller's knowledge, there is no current or threatened action, suit or proceeding pending against the Premises, or any portion thereof, or arising out of the condition, use or operation of the Premises, in any court or before any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality which affects the Premises or will prevent Lessor/Seller's performance of this Option. Should any liens or encumbrance of any type or nature, other than those caused by or under Lessee/Purchaser arise between the date of Lessee/Purchaser's approval of title to the Premises and date

of closing, then, in that event, Lessor/Seller does agree to cause the same to be either discharged of record by closing.

(n) Defaults and Remedies. In addition to any rights and remedies set forth in paragraph 18 of this Lease, in the event either party breaches any of the covenants, terms or conditions of this Purchase Option then they shall be entitled to seek any and all remedies available at law or in equity then available to them including, but not limited to specific performance of this Purchase Option.

5. **OPTION TO LEASE & PURCHASE ADDITIONAL LAND.**

(a) Option Granted. So long as Lessee is not in default under any provision of this Lease, Lessor hereby grants to Lessee an option (the "Lease Option"), exercisable by Lessee, in Lessee's sole and absolute discretion, to lease the land and water rights appurtenant thereto described in Exhibit "C" or any part thereof that is contiguous to the land described as set forth on Exhibit "A". Should Lessee elect to exercise its option for part, but not the whole, of the land set forth in Exhibit "C", Lessee must lease the property in one acre and one acre foot increments and locate the chosen land so as not to encircle the remainder of the land described in Exhibit "C" or interfere with immediate street access thereto. Should Lessee exercise its option, Lessee may purchase the additionally-leased land and water rights pursuant to paragraph 4.

(b) Subsequent Phases. Lessee may exercise its Lease Option in phases.

(c) Time, Construction & Activity Constraints.

(i) In no case shall Lessee have the right to exercise the Lease Option after January 1, 2021.

(ii) Lessee must commence construction of the greenhouse system, complete construction, and begin operations and employment according to the following schedule:

(1) Phase IA. Construction must commence on or before June 1, 2011. Phase IA is the greenhouse system on the Premises defined in Exhibit "A." Lessee must complete construction and begin operations by December 1, 2011. At completion of construction and thereafter, Lessee must continuously employ at least twelve (12) full-time employees for the greenhouse unit(s) on this phase.

(2) Phase IB. Construction must commence on or before January 1, 2012. Phase IB must include at least four (4) but no more than seven (7) additional acres that are contiguous to the land in Phase I for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by December 1, 2012. At completion of construction and thereafter, Lessee must continuously employ at least twelve (12) full-time employees for the greenhouse unit(s) on this phase.

- (3) Phase IIA. Construction must commence on or before June 1, 2013. Phase IIA must include at least four (4) but no more than seven (7) additional acres that are contiguous to the land in any previous phase for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by July 1, 2013. At completion of construction and thereafter, Lessee must continuously employ at least twelve (12) full-time employees for the greenhouse unit(s) on this phase.
- (4) Phase IIB. Construction must commence on or before September 1, 2013. Phase IIB must include at least five (5) but no more than eight (8) additional acres that are contiguous to the land in any previous phase for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by October 1, 2014. At completion of construction and thereafter, Lessee must continuously employ at least fifteen (15) full-time employees for the greenhouse unit(s) on this phase.
- (5) Phase IIIA. Construction must commence on or before December 1, 2016. Phase IIIA must include at least four (4) but no more than seven (7) additional acres that are contiguous to the land in any previous phase for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by December 1, 2017. At completion of construction and thereafter, Lessee must continuously employ at least twelve (12) full-time employees for the greenhouse unit(s) on this phase.
- (6) Phase IIIB. Construction must commence on or before November 1, 2018. Phase IIIB must include at least five (5) but no more than eight (8) additional acres that are contiguous to the land in any previous phase for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by March 1, 2019. At completion of construction and thereafter, Lessee must continuously employ at least thirty (30) full-time employees for the greenhouse unit(s) on this phase.
- (7) Phase IV. Construction must commence on or before January 1, 2021. Phase IV must include the remainder of the real property identified on Exhibit "C" for the construction of an additional greenhouse system. Lessee must complete construction and begin operations by July 1, 2021. At completion of construction and thereafter, Lessee must continuously employ at least thirty (30) full-time employees for the greenhouse unit(s) on this phase.

(d) Exercise Subject to Lease Agreement. By exercising this Lease Option, Lessee agrees that the Lease's provisions govern all of the Premises, including the additional land leased pursuant to this paragraph.

6. **RENT PAYMENTS.** Lessee shall pay to Lessor monthly installments of thirty-seven dollars (\$37) per acre for the land and thirty dollars (\$30) per acre foot for the water rights as rent for the Premises described in Exhibit "A", Exhibit "B" and Exhibit "C". Rent is due and payable in advance without notice or demand at Lessor's address or at any other place Lessor designates in writing. The first monthly rent installment shall be paid on July 1, 2011, and all subsequent monthly rent installments shall be due and payable on the 1st day of each succeeding month during the Term. Beginning on January 1, 2021, and then every five years thereafter, the rent payments shall be adjusted according to the Consumer Price Index of the United States Department of Labor, Bureau of Labor Statistics, using the average Consumer Price Index for a given calendar year, but the adjustment may not exceed ten and forty-one hundredths percent (10.41%), which limits the increase to two percent (2%) per year for five (5) years compounded annually.

7. **PROPERTY INSURANCE.** Lessee shall keep any improvement which Lessee constructs on the Premises insured at its expense with property insurance in the full replacement cost thereof with the customary coverages and not less than the coverages required by Lessee's lenders, if any.

8. **INDEMNITY AND LIABILITY INSURANCE.** Lessee shall at all times indemnify, defend and hold Lessor harmless from all loss, liability, costs, damages and expenses that may occur or be claimed with respect to any person or persons, or property on or about the Premises or to the Premises resulting from any negligent or intentionally wrongful act or omission by or through Lessee, its agents, employees, invitees or any person on the Premises by reason of Lessee's use or occupancy or resulting from Lessee's non-use or possession of said property and any and all loss, cost, liability or expense resulting therefrom. Lessee shall maintain, at all times during the Term, comprehensive general liability insurance in a responsible insurance company, licensed to do business in Nevada and satisfactory to Lessor, properly protecting and indemnifying Lessor with single-limit coverage of not less than one million dollars (\$1,000,000) for injury to or death of persons and for property damage, adjusted every ten years based upon the Consumer Price Index of the United States Department of Labor, Bureau of Labor Statistics, using the average Consumer Price Index for a given calendar year. Upon request, Lessee shall furnish Lessor with a certificate or certificates of insurance, in a form acceptable to Lessor, covering such insurance so maintained by Lessee and naming Lessor as an additional insured.

9. **ASSIGNMENT.** This Lease is fully assignable by Lessee only with the written permission by Lessor/Seller to said assignment after a reasonable amount of time for Lessor to conduct due diligence on the assignee. Said permission shall not be unreasonably withheld.

10. **CONDITION OF PREMISES.** Lessee acknowledges that it has inspected the Premises and except as may be provided otherwise in this Lease, Lessee accepts the Premises in its present condition. Currently there are no buildings or improvements on the Premises (or if there are any, Lessor hereby consents to Lessee's removal thereof). It is Lessee's intent to construct buildings and improvements on the Premises for commercial purposes. At the end of the Term, except for damage caused by fire or other perils, Lessee, at its expense, shall, at Lessor's option, either: (a) surrender the Premises in the same or similar condition as existed at the time the Premises were accepted and possession taken by Lessee, and have removed all of

Lessee's property (including buildings and improvements placed on the Premises by Lessee), from the Premises; or (b) have removed from the Premises all of Lessee's personal property and have repaired any damage to the Premises, buildings and improvements caused by the removal of Lessee's personal property and leave the Premises, buildings and improvements, free of trash and debris.

11. **CONSTRUCTION, AND ALL MAINTENANCE AND REPAIR BY LESSEE.** At Lessee's sole cost and expense during the Term, Lessee may remove any buildings and improvements existing on the Premises at the date hereof and may construct any new buildings and improvements on the Premises. Furthermore, Lessee shall maintain and keep in good order, repair and condition the Premises and all buildings and improvements hereafter constructed thereon. Lessee shall police and keep the driveways, approaches, sidewalks, parking areas, and adjacent alleys that are a part of the Premises clean, orderly, sightly, and unobstructed.

12. **LESSOR'S RIGHT OF ENTRY.** Lessor or Lessor's agent may enter at reasonable hours to inspect the Premises and to do anything Lessor may be required to do hereunder or which Lessor may deem necessary for the good of the Premises. Lessee or Lessee's agent may accompany Lessor or Lessor's agent on the Premises.

13. **IMPROVEMENTS, UTILITIES AND SERVICES.** Lessee shall be responsible for making all necessary improvements to the Premises, including but not limited to those improvements necessary for on-site utilities and access, and shall furnish and pay for all electricity, gas, water, fuel, trash removal, and any services or utilities used in or assessed against the Premises.

14. **LEGAL REQUIREMENTS.** Lessee agrees to comply with all Laws during the Term.

15. **TAXES, ZONING & NECESSARY IMPROVEMENTS.** Lessee is responsible for paying all taxes related to the Lease; Lessor makes no representations about the taxing scheme applied to the Premises by Nye County. Lessee is responsible for zoning issues related its intended use of the Premises; Lessor makes no representations about the zoning of the Premises. Lessee is responsible for making any necessary improvements to the Premises for its intended use, including on-site and off-site improvements and improvements necessary to obtain access.

16. **EMINENT DOMAIN.** Should all of the Premises be taken under the power of eminent domain or a conveyance in lieu thereof by any authority having the right of condemnation, or if a portion thereof is taken so that the Premises are unsuitable, in Lessee's reasonable opinion, for Lessee's use, then the parties shall be entitled to their respective interests in the land from the proceeds of the condemnation award made to Lessor for taking of the land.

17. **WAIVER OF SUBROGATION.** As part of the consideration for this Lease, each of the parties hereby releases the other party from all liability for damage due to any act or neglect of the other party occasioned to property owned by said parties which is or might be incident to or the result of a fire or other casualty against loss for which either of the parties is now carrying or hereafter may carry insurance; provided, however, that the releases herein

contained shall not apply to any loss or damage occasioned by intentional acts of either of the parties, and the parties further covenant that any insurance they obtain on their respective properties shall contain an appropriate provision whereby the insurance company, or companies, consent to the mutual release of liability contained in this paragraph.

18. **DEFAULT AND REMEDIES.** If: (a) Lessee fails to comply with any term, provision, condition or covenant of this Lease for over ten (10) days following Lessor's written notice to Lessee thereof, except for failure to pay rent in which case no notice is required; (b) Lessee abandons, deserts or vacates the Premises; (c) any petition is filed by or against Lessee under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; (d) Lessee becomes insolvent or makes a transfer in fraud of creditors; (e) Lessee makes an assignment for benefit of creditors; or (f) a receiver is appointed for Lessee or any of the assets of Lessee, then in any of such events, Lessee shall be in default and Lessor shall have the option to do any one or more of the following: upon ten (10) days prior written notice, except for failure to pay rent in which case no notice is required and in addition to and not in limitation of any other remedy permitted by law, to peacefully and lawfully enter upon the Premises either with or without process of law, and to expel, remove and put out Lessee or any other persons thereon, together with all personal property; and, Lessor may terminate this Lease or it may from time to time, without terminating this Lease, rent said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change said Premises. At the option of Lessor, rents received by Lessor from such reletting shall be applied first to the payment of any indebtedness from Lessee to Lessor other than rent and additional rent due hereunder; second, to payment of any costs and expenses of such reletting, including, but not limited, attorney's fees, advertising fees and brokerage fees, and to the payment of any repairs, renovation, remodeling, redecorations, alterations and changes in the Premises; third, to the payment of rent and additional rent due and payable hereunder and interest thereon; and, if after applying said rentals there is any deficiency in the rent and additional rent and interest to be paid by Lessee under this Lease, Lessee shall pay any such deficiency to Lessor and such deficiency shall be calculated and collected by Lessor monthly. No such re-entry or taking possession of said Premises shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such reletting without termination, Lessor may at any time terminate this Lease by reason of any default, in addition to any other remedy it may have, it may recover from Lessee the worth at the time of such termination of the excess of the amount of rent and additional rent reserved in this Lease for the balance of the Term over the then reasonable rental value of the Premises for the same period. Either Lessor or Lessee shall have the right and remedy to seek redress in the courts at any time to correct or remedy any default of the other party by injunction or otherwise, without such resulting or being deemed a termination of this Lease. If either party shall bring any action under this Lease, for the enforcement of any of its rights, then the losing party agrees in each and any such case to pay the prevailing party's reasonable attorney's fees.

19. **WATER RIGHTS.** Lessor makes no representations that the water rights appurtenant to the Premises and described in the exhibits to the Lease are either sufficient or

suitable for Lessee's intended use, but Lessor will actively participate in any proceeding before the State Engineer to assist in any necessary filings or proceedings if required.

20. **METERED WATER USE.** The water rights described in Exhibit "B" shall be delivered to Lessee from Lessor's existing well on Lessor's adjacent property. At Lessor's sole discretion, the water may be provided on a metered basis for purposes of determining the amount of water used by Lessee. Should Lessee use water in excess of its leased amount, Lessee shall be responsible to Lessor on January 1 and July 1 of each year for additional rent on a pro rata basis at the rate as set forth in paragraph 6. If Lessor provides water on a metered basis and Lessee uses less than its leased amount, Lessee shall be entitled to a pro rata reduction on January 1 and July 1 of each year at the rate as set forth in paragraph 6. Changes for water use will commence upon obtaining a certificate of occupancy for the first greenhouse.

21. **WAIVER.** The rights and remedies of the parties under this Lease, as well as those provided by law, shall be cumulative, and none shall be exclusive of any other rights or remedies. A waiver by either party of any breach or default of the other shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.

22. **TOXIC OR HAZARDOUS MATERIALS.** Lessee shall not store, use or dispose of any toxic or hazardous materials in, on or about the Premises, except in compliance with applicable laws. Lessee shall be solely responsible for and shall defend, indemnify and hold Lessor, its agents and employees, harmless from and against all claims, costs and liabilities, including attorney's fees and costs, arising out of or in connection with the Lessee's storage, use or disposal of any toxic or hazardous material in, on or about the Premises including, but not limited to, removal, clean-up and restoration work and materials necessary to return the Premises, and any other property of whatever nature located on the Premises, to their condition existing prior to the date hereof. Lessee's obligations under this paragraph shall survive the termination of this Lease. If Lessee fails to comply with this paragraph, Lessee shall be in immediate default and Lessor shall have the option, without notice and without delay, to exercise its available remedies.

23. **REAL ESTATE COMMISSION.** Lessor and Lessee covenant and agree with one another that no brokers, finders or other persons were involved in procuring this Lease. Each party hereby indemnifies the other party from and against any claims for a broker's or finder's fee by, through or under such party.

24. **NOTICES.** Any notice hereunder shall be sufficient if sent by certified mail, addressed to Lessee at the Premises, and to Lessor where rent is payable, or as either party may otherwise designate in writing to the other party.

25. **SUBORDINATION.** This Lease shall be subordinate and inferior at all times to the lien of any mortgage and to the lien of any deed of trust or other method of financing or refinancing now or hereafter existing against all or a part of the real property upon which the premises are located, and to all renewals, modifications, replacements, consolidations and extensions thereof. Upon receipt of a reasonable non-disturbance agreement from such lender acceptable in form to Lessee, Lessee shall execute and deliver all documents requested by any

mortgagee or security holder to effect such subordination. In the event of a sale or assignment of this Lease, or of Lessor's interest in the Premises, or the building in which the Premises are a part are transferred to any other person because of a mortgage foreclosure, exercise of a power of sale under a mortgage or otherwise, Lessee shall attorn to the purchaser or such mortgagee or other person and recognize the same as Lessor hereunder.

26. **SUCCESSORS.** The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, heirs, successors and assigns of each of the parties hereto.

27. **GROWPONICS NEVADA, LLC IS A LIMITED-LIABILITY COMPANY IN GOOD STANDING.** Lessee represents and warrants that now and for the entire Term, Growponics Nevada, LLC is a limited-liability company duly formed, validly existing and in good standing under the laws of the State of Nevada, its jurisdiction of formation and organization and the only jurisdiction in which the nature of its business or character of its properties require such qualification.

28. **QUIET POSSESSION.** Lessor agrees, so long as Lessee fully complies with all of the terms, covenants and conditions herein contained on Lessee's part to be kept and performed, Lessee shall and may peaceably and quietly have, hold and enjoy the Premises for the Term aforesaid, it being expressly understood and agreed that the aforesaid covenant of quiet enjoyment shall be binding upon Lessor, its heirs, successors or assigns, but only during such party's ownership of the Premises. Lessor and Lessee further covenant and represent that each has full right, title, power and authority to make, execute and deliver this Lease.

Title in the leasehold is subject to all exceptions, easements, and rights of way that exist as of the date first set forth above.

29. **BANKRUPTCY.** Neither this Lease nor any interest therein nor any estate hereby created shall pass to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors by operation of law or otherwise during the Term or any renewal thereof.

30. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, and no modification of this Lease shall be binding upon the parties unless evidenced by an agreement in writing signed by Lessor and Lessee after the date hereof. If there be more than one Lessee named herein, the provisions of this Lease shall be applicable to and binding upon such Lessees, jointly and severally.

31. **ESTOPPEL CERTIFICATES.** Either Lessor or Lessee shall at any time upon not less than ten (10) days' prior written notice from the other, execute, acknowledge and deliver to the requesting party or to any lender of such party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification) and the date to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of either party or specifying such defaults if any are claimed. Any such statement may be

conclusively relied upon by any prospective encumbrancer of the Premises or of the business of Lessee.

(a) IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names. Executed in _____ originals.

LESSOR:
TOWN OF PAHRUMP

LESSEE:
GROWPONICS NEVADA, LLC

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

STATE OF NEVADA)
) ss.
COUNTY OF NYE)

This instrument was acknowledged before me on _____,
2010, by _____ as _____,
TOWN OF PAHRUMP, an unincorporated town.

Notary Public

STATE OF NEVADA)
) ss
COUNTY OF NYE)

This instrument was acknowledged before me on _____,
2010, by _____, as _____,
GROWPONICS NEVADA, a limited liability corporation.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

Phase 1

A tract of land situated in the Southeast Quarter (SE¼) of Section 18, Township 21 South, Range 54 East, M.D.M., Nye County, Nevada, being a portion of Parcels 1 and 2 as shown on Parcel Map File Number 184859 recorded July 7, 1987 in the records of said Nye County, Nevada recorder's office, more particularly described as follows:

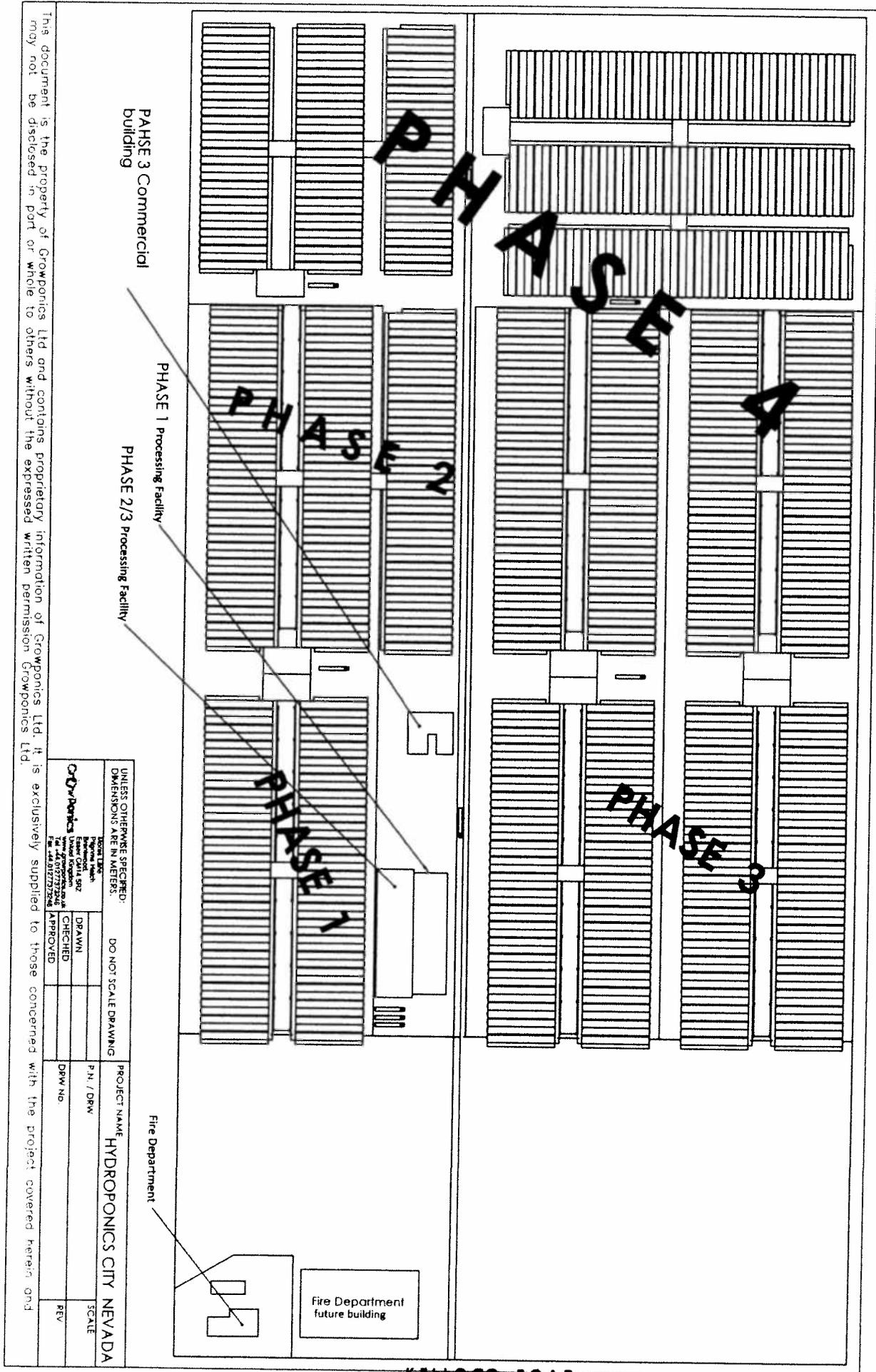
Commencing at the South Quarter Corner of said Section 18; Thence S88°50'00"E along the South line thereof, 40.03 feet; Thence N01°06'01"W along the East Right-of-Way line of Squaw Valley Road, 673.10 feet to the Point of Beginning of the tract of land described herein; Thence continuing N01°06'01"W along said East Right-of-Way line of Squaw Valley Road, 795.93 feet; Thence departing said Right-of-Way line, N88°53'59"E, 421.91 feet; Thence S01°06'01"E, 795.93 feet; Thence S88°53'59"W, 421.91 feet to the Point of Beginning, containing 335,811 Square Feet, or 7.709 acres of land, more or less.

WATER RIGHTS
KELLOGG PROPERTY

Exhibit "B"

New Permit #	Old Permit #	Purchased From	Location	Acre Feet	Cert #	Cert Date	Permit Date	Proof of Completion	Proof of Beneficial Use	Cultural Map	Point of Diversion Filed	Extension Filed Date	Due Date
54852	66616		Kellogg	4	ABR		12/10/1990	2/9/1993	1/10/2008		Wally Boundy	1/30/2005	1/10/2007
72171	54852		Kellogg	2.3			9/12/2007	6/30/2009	9/12/2010				
75281	48221	Mapes L2P	Kellogg	5			10/24/2007	10/24/2009	10/24/2010				
76355	43478	Investments	Kellogg	8			3/12/2008	3/12/2010	3/12/2011			4/3/2009	3/12/2010
76588	56277	Couch	Kellogg	33.5			5/29/2008	5/29/2009	5/29/2013				
77078	68891	Gardea	Kellogg	2			10/30/2008	5/29/2009	5/29/2013				
77659	63653	McCoy	Kellogg	2			4/20/2009	4/20/2010	4/20/2012				
78096	29208	Pahrump Valley Real Estate	Kellogg	3			11/12/2009		11/12/2020				
78097	29471	Pahrump Valley Real Estate	Kellogg	7.88			11/12/2009		11/12/2014				

EXHIBIT "C"



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UNLESS OTHERWISE SPECIFIED: DIMENSIONS ARE IN METERS.		DO NOT SCALE DRAWING	
PROJECT NAME	HYDROPONICS CITY NEVADA	P.N. / DRW	SCALE
RECORD NAME	Project Name	DRAWN	CHECKED
Project No.	1410772048	CHECKED	APPROVED
Author	1410772048	APPROVED	
Drawn			
Checked			
Approved			
Scale			
Rev			

Fire Department

Fire Department
future building

KELLOGG ROAD