

PROPERTY DEPARTMENT

LEASE AGREEMENT

DOCUMENT NO. 730192  
FILED DEC 2 1969  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

THIS LEASE AGREEMENT, executed this 13<sup>th</sup> day of November, 1969,  
by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of  
San Diego, State of California, and DENNIS L. LINDSHIELD, whose address is 1462  
Maye Place, Escondido, California 92025, hereinafter called respectfully "CITY"  
and "LESSEE" without regard to number or gender, WITNESSETH:

(A) DEMISE: Subject to all covenants and conditions hereinafter set out,  
CITY hereby leases to LESSEE and LESSEE leases from CITY, for the purpose of  
avocado production and such other general agricultural uses as are approved by  
CITY and for no other uses, those certain premises, together with appurtenances  
thereto situated in the County of San Diego, State of California, described  
as follows:

All that real property outlined in red  
consisting of approximately 130 acres  
as shown on "EXHIBIT A" attached hereto  
and made a part of this agreement.

(B) TERM: The term shall be thirty (30) years, beginning on the date of  
execution of this agreement, and ending on the 12<sup>th</sup> day of November, 1999.

(C) RENT: LESSEE shall pay to CITY, at the Office of the City Treasurer,  
City Administration Building, Community Concourse, San Diego, California 92101,  
the following rent:

1. For the first two years of said term, commencing on the effective  
date of this agreement, the rent shall be TEN DOLLARS (\$10.00)  
per acre per year, or THIRTEEN HUNDRED DOLLARS (\$1300.00) per year,  
payable annually in arrears within FORTY-FIVE (45) days.
2. For the third and fourth years of this agreement the annual rent  
shall be TWENTY-ONE PERCENT (21%) of LESSEE'S annual gross income,  
payable yearly in arrears within FORTY-FIVE (45) days of the last  
day of each year of the term hereof; PROVIDED, that the minimum  
annual rent shall be TEN DOLLARS (\$10.00) per acre or THIRTEEN  
HUNDRED DOLLARS (\$1300.00) per year, whichever amount is greater.

Beginning on the fifth year of this agreement and for the remainder  
of said term the annual rent shall be TWENTY-FIVE PERCENT (25%) of  
LESSEE'S annual gross income payable yearly in arrears within  
FORTY-FIVE (45) days of the last day of each year of the term  
hereof; PROVIDED, that the minimum annual rent shall be FORTY  
DOLLARS (\$40.00) per acre per year or FIFTY-TWO HUNDRED DOLLARS  
(\$5200.00) per year, whichever amount is greater, which shall be  
paid to CITY quarterly in advance, on or before the first day of  
each quarter, in equal instalments and shall be credited against  
the amount of annual rent due as determined according to this  
paragraph.

(D) COVENANTS AND CONDITIONS:

1. DELINQUENT RENT COMPENSATION. In the event LESSEE fails to pay the applicable rents WHEN DUE, LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent. In the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, LESSEE shall pay CITY, instead of said five percent, a sum of money equal to ten percent (10%) of said delinquent rent. Such additional sum or sums shall be deemed compensation to CITY for loss resulting from such delinquency including costs to CITY of servicing the delinquent account. The City Manager of CITY may for good cause waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period. Notwithstanding the foregoing provision for delinquent rent compensation, failure by LESSEE to pay rent when due shall constitute a default which, at the option of the City Manager, shall be grounds for termination by CITY under the provisions of Section (D) 19.

2. GROSS INCOME AND RECORDS. "Gross Income" as used herein shall mean all income received by LESSEE from the sale of crops produced on the premises, less any costs incurred by LESSEE to harvest, handle, transport, ship, pack, market or otherwise prepare said crops for sale after the harvesting thereof has been completed; also less any federal, state and municipal taxes which LESSEE is required by law to collect from purchasers of the crops and to remit periodically to a governmental agency, when accompanied by a tax return or statement. The amount of such taxes shall be shown in the accounting records maintained as required herein.

LESSEE shall maintain accurate and complete records and double entry books from which CITY can determine the nature and amounts of income subject to rental percentage from operation of said premises. Such records shall show all transactions and shall be supported by documents of original entry such as sales slips and purchase invoices. Said records shall be kept by LESSEE in the County of San Diego and shall be available for inspection by CITY at any reasonable time.

Not later than thirty (30) days following each year of the term, LESSEE shall provide CITY with a detailed statement of income and expenditures for the preceding year, the amount payable to CITY and a remittance of the amount due CITY, less any rents prepaid in accordance with Section (C) hereof. Such statements shall show all

crops harvested according to type, grade and quantity; the price received per unit (box, pound or other unit of measurement) for each type and grade; the total price for all units; all costs incurred by LESSEE toward the sale of crops after the harvest thereof; all other authorized deductions, except lease rental and LESSEE'S gross income before lease rental.

3. **MARKETING AGREEMENTS.** LESSEE shall market all crops produced on the premises in a manner consistent with the production of a reasonable gross income. All marketing arrangements for the sale of crops produced on the premises, whether with co-operative or independent agencies or by direct sale to retailers or wholesale distributors, shall be subject to CITY approval, which shall not be unreasonably withheld, throughout said term. All marketing agreements or transactions creating a financial interest in a party other than CITY or LESSEE to crops produced on the premises shall provide for review and audit by CITY of the accounting and financial records of such party as such records relate to such agreements or transactions.

4. **QUIET POSSESSION.** LESSEE, paying the said rent and performing the covenants and conditions hereof, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the purpose herein demised. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at commencement of said term as hereinbefore specified or, if LESSEE is dispossessed through action of a title superior to CITY'S then and in either of such events, this lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom; but there shall be determined and stated in writing by the City Manager of CITY a proportionate deduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of the demised premises. This provision shall not apply to any damages resulting from CITY'S action, which damages are compensable as hereinafter provided, or to LESSEE'S right to terminate under conditions hereinafter set out.

5. **INSURANCE RISKS.** LESSEE shall not use or permit the use of said premises for any purpose or purposes other than the purposes for which said premises are hereby leased. Unless included within said purposes or necessarily incidental thereto, no use of said premises shall be made or permitted, nor acts done, which would increase the existing rate of insurance upon any CITY buildings which may now or hereafter be located thereon, or which would cause a cancellation of any insurance policy covering said buildings, or any part thereof, nor shall any

article which may be prohibited by the standard form of fire insurance policy be, or be permitted to be, kept, used, or sold in or about said premises. LESSEE shall, at its sole cost and expense, comply and secure compliance with all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

6. IMPROVEMENTS, REPAIRS, ALTERATIONS. LESSEE shall not make any alterations or changes in the leased premises or cause to be made, built or installed thereupon, any improvements and shall not alter any existing improvements, except in accordance with plans and specifications previously submitted to the City Manager and approved in writing by him. LESSEE agrees to take good care of the leased premises, fixtures and appurtenances, and of all alterations, additions and improvements to any of them and make all repairs in and about the same that may be necessary to preserve them in good order and condition (which repairs shall be equal to the original work in respect to quality), and promptly pay the expense of such repairs. CITY shall not be required to make any improvements, repairs or alterations not herein specifically required. LESSEE hereby waives all right to make repairs at the expense of CITY as provided in Section 1942 of the Civil Code of the State of California and all rights provided for by Section 1941 of said Civil Code. By entry hereunder, LESSEE accepts the premises as being in good and sanitary order, condition and repair, and agrees on the last day of the term or at the end of any holding over as provided in Section (D) 21 hereof, or on sooner termination of this lease to surrender to CITY the premises with improvements in the same condition as when received or as they may have been put into; subject, however, to Section (D) 7 hereof.

7. REMOVAL OF IMPROVEMENTS. CITY agrees that all fixtures and improvements installed by LESSEE in accordance with the provisions herein, and not being a replacement or repair of any improvement or improvements existing and belonging to CITY shall be and remain the property of LESSEE. LESSEE shall have the right to remove said fixtures and improvements prior to expiration or any other termination at LESSEE'S own expense, provided that any damage to CITY'S property or improvements shall be repaired and the premises left in as good order and condition as when LESSEE took possession of the leased premises. In the event LESSEE does not

so remove said fixtures and improvements prior to the expiration or any other termination of this agreement, CITY may remove, or sell, or destroy same at LESSEE'S expense, and LESSEE agrees to pay to CITY the reasonable cost of any such removal, sale or destruction, together with the reasonable cost of repair of damages to CITY'S property or improvements resulting from such removal, sale, or destruction. Provided, however, any of LESSEE'S fixtures or improvements which, for any valid reason, cannot be removed prior to or upon expiration or other termination which, in the opinion of the City Manager, do not restrict or interfere with the use of said premises by CITY or by CITY'S assigns and which do not create a hazard on said premises, may, at CITY'S option, remain on said premises for any reasonable time, not to exceed ninety (90) days. At CITY'S option any property, real or personal, not removed by LESSEE may be deemed abandoned. This provision shall not apply to such improvements authorized under Section (D) 24 or to avocado trees planted pursuant to Section (D) 26 hereof.

8. MECHANIC'S LIEN BOND. LESSEE shall save CITY free and harmless, and indemnify CITY against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable Attorney's fees.

In the event that improvements, repairs, or alterations are constructed on the leased premises by other than CITY, LESSEE shall file with CITY a bond, conditioned for the payment in full of the claims of all persons performing labor, or furnishing materials to be used, upon said premises, in the amount of the estimated cost of the improvements, alteration, or repair as determined by the City Manager. The bond shall be acknowledged by LESSEE as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien-holder attempts to perfect such lien by a lawsuit and LESSEE has failed to comply with the requirements of this provision, this lease shall automatically terminate five (5) days after service of summons in such lawsuit upon CITY; provided, however, that the City Manager shall have the right to continue this lease in full force and effect by notifying LESSEE in writing of his election to do so.

9. ENTRY AND INSPECTION. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition thereof, or to protect CITY'S interests in said premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a safe, healthy and satisfactory condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to put said premises in a safe, healthy and satisfactory condition. Provided, however, CITY agrees not to initiate any such work at LESSEE'S expense, in the event that LESSEE causes such work to be commenced within ten (10) days of said notice, and diligently pursues completion thereof within a reasonable time to CITY'S satisfaction. The rights reserved herein and in Section (D) 10, following shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

10. RESERVATION FOR CITY USE. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath said leased premises. CITY shall have the right to enter said premises for the purpose of drilling, operating and maintaining such installations as are necessary or desirable for the development of said gas, oil, mineral and water rights or for making repairs to or developing the municipal services of CITY of a public utilities nature. CITY hereby reserves the right to grant and use such easements or establish and use such rights of over, under, along and across said premises for utilities, as it may deem advisable for the public good.

Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of said premises or invalidate the purpose for which this lease is granted and any physical damages to lease improvements, including avocado trees and agricultural crops, resulting from CITY'S exercising the rights reserved herein, shall be compensated by CITY. Provided, further, any reduction by CITY action of the net usable acreage of said premises for avocado production, shall automatically result in a proportional reduction of the minimum yearly rent due CITY.

In the event that CITY exercises its rights under this Paragraph and in doing so thereby reduces the water level on the leased premises to a point at which

LESSEE cannot reasonably and economically provide water to the leased premises from LESSEE'S own wells thereon, then CITY shall reduce the amount of the minimum annual rent by an amount equal to the difference between the cost of providing water from LESSEE'S wells and the lowest cost of obtaining water commercially, such reduction shall in no event exceed the amount of the rent payable.

11. ASSIGNMENT. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of the City Manager of CITY. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

12. COMPLIANCE WITH LAW. LESSEE shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all municipal ordinances, county, state and federal laws and regulations now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with said premises. The judgement of any court of competent jurisdiction, or the admission of LESSEE or any sub-lessee or permittee in any action or proceeding against them or any of them whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance, law or regulation in the use of said premises shall be conclusive of the fact as between CITY and LESSEE. This lease shall be deemed modified to the extent necessary to comply, throughout said term, with all state and federal laws having jurisdiction, and any order, regulation or license pursuant thereto and any marketing agreement or order under the authority of law.

Provided, however, in the event that any state or federal law or any order, regulation or license pursuant thereto shall substantially interfere with LESSEE'S right to use and enjoyment of the leased premises, then LESSEE may terminate this lease upon thirty (30) days prior to written notice thereof.

13. UTILITIES. Except as otherwise provided in Section (D) 28 hereof, LESSEE shall order and obtain all utilities and other services necessary or desirable for LESSEE'S use of said premises and all costs, including service and installation charges in connection therewith, shall be borne by LESSEE without expense to CITY therefor.

14. ASSIGNS. Time is of the essence of each and all of the terms and provisions of the lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of LESSEE as fully and to the extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.

15. WAIVER. The waiver by CITY of any breach of any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant, or condition of this lease, other than failure of LESSEE to pay the particular rent so accepted, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent, nor shall any failure on the part of CITY to require or exact full and complete compliance with any of the covenants or conditions of this lease be construed as changing such covenant or condition in any manner or to prevent CITY from enforcing the full provisions hereof.

16. MERGER. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger, and shall at the option of CITY, terminate all or any existing subleases, or may, at the option of CITY, operate as an assignment to it of any or all such sub-leases or subtenancies.

17. CONTROL AND ADMINISTRATION OF LEASE; NOTICES. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by letter

deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, Community Concourse, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to LESSEE at the address stated in the commencement hereof, or may be personally served upon LESSEE (or any one of them), or any person hereafter authorized by LESSEE to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

18. APPROVAL. Upon receipt by CITY of written notice requesting approval by CITY of any act by LESSEE where such approval is required by the provisions of this lease, failure of CITY to give written notice of disapproval thereof within thirty (30) days, or within such lesser time required by reasonable necessity of LESSEE, shall be deemed automatic approval. CITY agrees not to submit such disapproval without reasonable cause. This provision shall not invalidate, or be construed to invalidate in any manner, the provisions of Section (D) 15 hereof.

19. REMEDIES OF CITY. Except as otherwise provided in Sections (D) 26 and 29, in the event (a) that LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure such default within sixty (60) days following the service on LESSEE of a written notice from City Manager specifying the default complained of and the date on which LESSEE'S rights hereunder will be terminated as hereinafter provided, or (b) that LESSEE shall file a voluntary petition in bankruptcy, or (c) that LESSEE shall be adjudicated a bankrupt, or (d) that LESSEE shall make a general assignment for the benefit of creditors, then CITY may at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately cancel and terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE or by reason of LESSEE in or to said premises or in or to further possession thereof and may thereupon enter upon and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, if more than one party is named as LESSEE herein, any named LESSEE who has not filed a voluntary petition in bankruptcy, and has not been adjudicated a bankrupt, and has not made a general assignment for benefit of creditors, upon during all existing

defaults and releasing all aforesaid claims to said premises and continuing to pay said rent and to perform under this lease to CITY'S satisfaction, may continue this lease in full force. The rights and remedies of CITY as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this lease or otherwise to deny to CITY any right or remedy at law or in equity which CITY may have or assert against LESSEE under any law in effect at the date hereof or which may hereafter become effective, it being the intent hereof that the rights and remedies of CITY, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this lease and of any right or remedy at law or in equity which CITY may have against LESSEE.

20. INSURANCE. LESSEE agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to CITY to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of LESSEE or any person acting for LESSEE or under LESSEE'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSEE or any person acting for LESSEE or under LESSEE'S control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amounts of not less than TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) for one person injured in one accident, and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for more than one person injured in one accident, and not less than FIFTY THOUSAND DOLLARS (\$50,000.00) with respect to any property damage. If LESSEE does not keep such insurance in full force and effect, CITY may take out the necessary insurance and pay the premium, and the repayment thereof shall be added to the rents due CITY by LESSEE and shall be paid as such on the next day upon which rent becomes due. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which LESSEE may be held responsible for the payment of damages to persons or property resulting from his activities or the activities of any person or persons for which he is otherwise responsible.

During the term of this lease, LESSEE agrees to defend in the name of, and on behalf of, CITY, all claims or suits for damages and all fixed costs and interest

on all such legal proceedings and pay all sums which CITY may become liable to pay as damages imposed upon CITY by law arising out of accidental bodily injury or death suffered, or alleged to have been suffered by any person while or upon the premises described in this lease or upon the sidewalks or other ways or premises adjacent thereto. LESSEE further agrees to pay all sums which CITY may become liable to pay as damages imposed upon CITY by law resulting from accidental injury to, or destruction of, property not owned, leased, occupied or used by, or in the care, custody or control of, LESSEE or of CITY or of any employee of LESSEE or CITY, subject to the following conditions:

- (a) This agreement shall not apply to any injury or death caused by an employee of CITY:
- (b) CITY shall not voluntarily assume any liability or incur any expenses or settle any claims without the prior written consent of LESSEE:
- (c) LESSEE shall, on or before the effective date of this lease, deliver to the City Manager of CITY, a certificate of bodily injury and property damage liability insurance issued by a company licensed in the State of California to transact such business, indicating that LESSEE has bodily injury and property damage liability insurance as required in this provision, and indicating that the policy has been endorsed or does otherwise cover the contractual liability imposed by this agreement, and that the insurance company shall notify the City Manager if said policy be terminated or limited in any manner prior to the termination date specified in the certificate.

During the term of this lease, CITY shall have the right to increase the minimum insurance coverage requirements herein set out if, in the reasonable opinion of the City Manager of CITY, the existing insurance becomes inadequate, due to any cause; LESSEE agrees to take out and maintain such increased coverages within sixty (60) days following written notice thereof by CITY.

21. HOLDING OVER. Any holding over after the expiration or other termination of said term for any cause shall be deemed a tenancy from month to month, at the rental then in existence under this lease immediately preceding said expiration or termination, and shall otherwise be on the terms and conditions hereof

as far as applicable. Such holding over shall include any time employed by LESSEE in removing fixtures and improvements as herein provided, subject to the exceptions provided in Section (D) 7, together with any time employed by LESSEE to remove growing crops maturing within six (6) months, but not longer.

22. HOLD HARMLESS. CITY, its agents, officers and employees, shall not be, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties, or effects of LESSEE or any of LESSEE'S representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any act or omission of LESSEE in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

23. WASTE, DAMAGE OR DESTRUCTION OF PREMISES. LESSEE shall give prompt notice to CITY of any fire, damage, flood, disease, catastrophe or any other detrimental occurrence that may arise from any reason whatsoever, affecting the leased premises or the improvements, avocado trees and crops thereon. LESSEE shall not commit or suffer to be committed any waste or injury, ordinary wear and tear excepted, or conduct any public or private nuisance on the leased premises; LESSEE shall keep the premises reasonably clean and clear of refuse and obstructions and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

If the leased premises are damaged by any cause whatever, and the damage, in the opinion of the City Manager, can be repaired within a reasonable period of time, not exceeding ninety (90) days, LESSEE shall be obligated to forthwith make all repairs and clear all debris in order to restore the leased premises to the conditions which existed prior to the damage or destruction. If the leased premises shall be partially damaged by any cause whatever, including flood, freeze or any catastrophe either to the land, to the avocado trees or improvements thereon, such as to render a portion of the leased premises untenable or unfit for avocado production and such damage is not reparable, in the opinion of the City Manager, within a reasonable period of time, not exceeding ninety (90) days, LESSEE shall have the right to partially cancel

this lease as to the land affected by such occurrence and upon clearing and removing from the leased premises all debris resulting from said damages, may continue lease operations on a limited scale. In such event, minimum yearly rental hereunder shall be reduced on an equitable basis. In the event the leased premises are substantially damaged or destroyed by any cause whatever, including disease, flood, disaster to the land or to any of the improvements thereon, including the avocado trees, and such damage, in the opinion of the City Manager, cannot be repaired within ninety (90) days, then LESSEE, at its option, may elect to terminate this lease entirely upon giving CITY thirty (30) days prior written notice thereof. Nothing herein shall be construed to permit cancellation or termination of this lease by LESSEE if the damage or destruction contemplated above is the result of LESSEE'S negligence or intentional act. In the event of conflicting opinions between CITY and LESSEE with respect to this provision, the decision of the City Manager shall be final.

The performance of any specific obligation to be performed by either the CITY or the LESSEE shall be executed during such period as the performance thereof is not prohibited by the elements, act of God, public catastrophe, war or law or regulation of a governmental body which would render performance of such obligation a violation of such law or regulation, or any other cause beyond the reasonable control of either party hereto provided, however, in the event that such cause is removed to the extent that such performance thereof shall not be excused. In the event any of the foregoing causes delay LESSEE in preparing the leased premises during the initial three (3) years of the term of this lease, then said term shall be extended by an amount of time equal to such delay and, in such event, the parties hereto agree to execute amendment to this lease for the purpose of so extending said term.

24. IMPROVEMENTS TO PREMISES. During the first three years of the term of this agreement, LESSEE shall complete the following improvements to the lease premises:

- (a) Installation of main irrigation supply line to said premises at an approximate cost of \$6,000.00.

- (b) Drilling and equipping one irrigation well at an approximate cost of \$6,500.00, or installation of portable irrigation pipe to upper portion of premises whichever is most feasible and economical.
- (c) Renovation of residence and outbuilding at an approximate cost of \$3,500.00.
- (d) Grading and planting 3/4 mile of Santa Ysabel Creek Channel at an approximate cost of \$1,500.00.

Physical locations of all such improvements shall be designated on "EXHIBIT B" attached hereto as part of this agreement. All improvements completed pursuant to this provision shall be subject to the approval of the City Manager and shall be and remain the property of the CITY.

25. TAXES. LESSEE shall pay and discharge before delinquency, all taxes and assessments which may be levied against personal property of LESSEE and against LESSEE'S possessory interest in said premises.

26. AGRICULTURAL PRACTICE. LESSEE agrees to use only CITY-approved agricultural practices upon said premises. All husbandry and agriculture methods shall be subject to CITY'S approval. Such methods shall include, but are not limited to, the following requirements:

- (1) All preparation of land and plantings under this provision shall conform to a time schedule acceptable to CITY. Provided, however, any obligation of LESSEE under this provision shall explicitly be subject to the provisions of Section (D) 23.
- (2) LESSEE shall prepare the land for planting in a manner consistent with good agricultural practice, taking maximum advantage of natural water sources. Such actions of LESSEE shall be performed in a manner satisfactory to the City Manager.
- (3) LESSEE shall install a drag hose, Rain Bird sprinkler head or other approved type irrigation system of sufficient size to irrigate the acreage devoted to crop production at least once every 28 days. The main lines shall consist of either agricultural grade transite or CITY-approved plastic. The hoses and sprinklers, which shall remain the property of LESSEE, shall be adequately sized so as to properly distribute the water over said net usable acreage in the required time.
- (4) The avocado trees planted on said premises shall be inspected and certified by the State Nursery Service. Said trees shall come from nurseries planted on new ground or ground fumigated in accordance with State Nursery Service requirements and shall be of types approved by CITY.

*Submitted* (5) The approximate number, location and type (permanent and interplant) of trees to be planted by LESSEE shall be as designated on the planting sketch attached hereto as "EXHIBIT C".

- (6) Disagreements as to sound husbandry and avocado culture practice shall be submitted to a mutually acceptable governmental agricultural authority located in the County of San Diego. CITY and LESSEE agree to accept the decisions of such authority as final.

In the event that LESSEE fails to cease or to cure any unauthorized practice within ninety (90) days after written notice thereof CITY may immediately terminate this lease.

27. WATER. LESSEE may, without cost to CITY unless otherwise provided, herein, develop and use natural water for irrigation and domestic purposes upon the premises. Upon expiration or other termination hereof, LESSEE agrees to leave any wells developed or used on said premises during said term in good order and condition with the casing in place and the well capped. Upon written notification to CITY of LESSEE'S desire to use CITY imported water, CITY agrees to import adequate irrigation water to said premises within one (1) year of such notification. In such event, CITY shall pay the cost of delivery facilities to the property line of the premises at a point thereon selected by CITY; LESSEE shall pay the then prevailing rate for such imported water.

28. LEASE ENCUMBRANCE. LESSEE may with the written consent of the City Manager encumber this lease, the leasehold estate, and the improvements thereon to financial obligations approved by CITY for the sole purpose of development of the leased premises.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by CITY and any approved assignee of a beneficial interest shall have the same rights and obligations under this lease as the assignor. CITY agrees not to unreasonably withhold consent to assignments of the beneficial interest. CITY further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, CITY will accept the mortgagee or beneficiary thereof previously approved by it as its new tenant under this lease with all the rights and privileges of the original

LESSEE, and that in the event that said mortgagee or beneficiary desires to assign this lease to its nominee, and said nominee is a reputable, qualified and financially responsible operator in the opinion of the CITY, CITY hereby agrees that upon the filing of an application for the consent to such assignment, it will give its consent thereto.

Anything in this lease to the contrary, notwithstanding, CITY shall not exercise any remedy available to it for default hereof by LESSEE, unless and until CITY, as a condition precedent to such exercise, shall have given notice to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct CITY (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this lease to remain in full force and effect.

- (a) If said default be in the payment of rental, taxes, insurance, premiums, amount claimed under mechanics lien on the leased premises or any other sum of money required to be paid by LESSEE, said beneficiary or mortgagee may pay the same to CITY, or other proper payee within ninety (90) days after the mailing aforesaid; if so paid, said default shall be cured and this lease shall remain in full force and effect. If, after any such payment to CITY, LESSEE pays the same to CITY, or in the event CITY waives default, CITY shall promptly refund said payment to said beneficiary or mortgagee.
- (b) If said default be other than specified in subparagraph (a) above, CITY shall not exercise any such remedy if:
  - (1) Within ninety (90) days after mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust;  
and
  - (2) Such foreclosure be prosecuted with reasonable diligence;  
and
  - (3) Prior thereto, said beneficiary or mortgagee shall first have obtained.

in writing, the approval of CITY, of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval CITY agrees not unreasonably to withhold; and

- (4) Within a reasonable time after foreclosure sale, the purchaser cures such default, if said default is curable from both a feasible and practical standpoint; or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

29. IMPROVEMENT OF CHANNEL. LESSEE shall maintain the drainage of Santa Ysabel Creek through said premises to confine the waters of said Creek and to regulate the flow thereof within a channel of 150 feet width (measured at valley floor elevation) and 10 feet depth (below the valley floor). LESSEE shall maintain the sideslopes within said channel at a minimum of four (4) feet horizontal to each foot vertical. LESSEE shall remove all excess material from said premises and shall maintain the working channel clear of stockpiles and other obstruction. LESSEE shall have the right to sell excess material excavated and removed from said channel and to retain any proceeds therefrom. All improvements, excavation and general maintenance of said channel shall be subject to CITY specifications and control throughout said term.

30. ANTI-DISCRIMINATION. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin in LESSEE'S use of said premises including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

31. CONTROL BY LESSEE. Notwithstanding the provisions of Paragraph (D) (11) of this agreement regulating assignment of interest, the LESSEE shall have the right without further permission to assign his interest in this agreement once, to a corporation upon written notification to CITY. The consent to the one assignment does not waive the requirement of approval of the City Manager of CITY for any subsequent assignment. It is mutually agreed that a part of the consideration

for the granting of this agreement is the personal qualifications of the party named herein as LESSEE and he hereby agrees to maintain active control and supervision of the operations conducted upon the leased premises. Therefore, the corporation named as assignee shall remain owned and controlled by said party at least to the extent of fifty-one percent (51%) of the issued voting stock of said corporation. Sale or transfer of any of said controlling stock in any manner so as to limit or remove control of the operations conducted on the leased premises from said party shall be considered an assignment and be subject to the provisions of Paragraph (D) (9) of this agreement. Sale or transfer of non-controlling stock shall be reported to CITY, giving the names and addresses of the purchasers together with the number of shares purchased. CITY shall have the right at any time to require a report of the existing stockholders. The acquisition of any of the issued voting stock of said corporation by an heir or beneficiary in a will of any of the parties hereto, through or pursuant to probate proceedings of the court of competent jurisdiction may be transferred without further approval of CITY upon written notification. Provided, however, that if such transfer removes active management from the party named herein as LESSEE, CITY shall have the right to approve or disapprove the manager appointed to actively manage the operations conducted on the leased premises or said transfer shall be subject to the provisions of Paragraph (D) (9) of this agreement. The provisions of this paragraph shall not preclude a management contract for the purpose of operation of any or all of the facilities on the leased premises, providing that LESSEE shall retain supervision of the operations.

32. FIRST OPPORTUNITY TO LEASE. For a period of one year following the expiration of this lease agreement, CITY shall not lease the premises to any person or persons for the purposes set forth in Section A hereinabove without first offering to lease said premises to LESSEE for such purposes upon such terms and conditions as CITY shall decide in its absolute discretion to offer LESSEE. In the event LESSEE rejects any such offer made by CITY any and all of LESSEE'S rights under this Paragraph 32 shall be terminated. Acceptance of such offer by LESSEE shall be made in writing and delivered to CITY not later than 30 days from the date of receipt by LESSEE of CITY'S offer and in the event that LESSEE does not so accept CITY'S offer within such 30 day period LESSEE shall be deemed to have rejected such offer and any and all of LESSEE'S rights under this Paragraph 32 shall be terminated. Nothing

herein shall be construed to grant nor shall it grant to LESSEE any right to renew or extend the term of this lease.

33. ORAL REPRESENTATIONS. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, neither expressed orally nor implied by the said parties, except as are fully set forth herein and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

THE CITY OF SAN DIEGO

Date Nov. 13, 1969

By Maas Wilhelms  
asst City Manager

LESSEE:

By Dennis L. Lindshield

APPROVED as to form and legality this 20 day of Nov,  
1969.

JOHN W. WITT, City Attorney

By R K Foy  
Deputy