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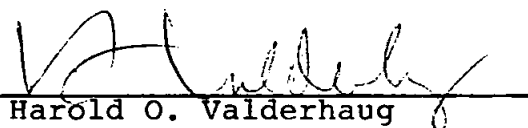
RESOLUTION NUMBER R- **262108**

ADOPTED ON DEC 10 1984

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a lease agreement with CHARLES JANCIC for approximately 25 acres of land in San Pasqual Valley, at a minimum annual rent the first year of \$2,100, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **262108**.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

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Index
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LEASE

CHARLES T. JANCIC

25 ACRES - SAN PASQUAL VALLEY

DUPLICATE ORIGINAL

DOCUMENT NO RR-262108
FILED DEC 10 1984
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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FLAT RATE LEASE
Approved by Council Resolution
No. _____ dated _____

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and CHARLES T. JANCIC, hereinafter called "LESSEE."

I. DEMISED PREMISES

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, set forth on Exhibit "A", attached hereto, and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

- A. PERMITTED USE. Said premises are leased to LESSEE for the purpose of growing and marketing fruits, vegetables, and trees and for such other related agricultural and horticultural activities as may first be approved in writing by the City Manager and for no other purpose.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals required.

II. TERM OF AGREEMENT

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be for twenty (20) years commencing on the first day of the calendar month following execution by the City Manager. 1/01/85
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable Quitclaim Deed covering all of the leasehold premises. The leasehold premises shall be delivered free and clear of all liens and encumbrances.

III. CONSIDERATION

- A. RENT. The rent during the entire term of this agreement is payable to the Office of the City Treasurer monthly in advance beginning on the effective date hereof. For the first three-year period of this agreement, the annual rent shall be either a minimum rent or a rent based on the number of planted or improved acres, whichever is greater.

First Year - A minimum rent of \$2,100 per year or \$300 per acre per year for all land that is planted or improved, whichever is greater. Lessee agrees that a minimum of six acres are to be planted or improved by the end of the first year.

Second Year - A minimum rent of \$3,000 per year or \$310 per acre per year for all land that is planted or improved, whichever is greater.

Third Year - A minimum rent of \$4,000 per year or \$320 per acre per year for all land that is planted or improved, whichever is greater.

Beginning with the fourth year of the term, the annual rent shall be \$330 per acre per year for the entire parcel (\$8,250).

- B. RENT ADJUSTMENT. At the end of the seventh year of the term of this agreement and at the end of each subsequent five-year period thereafter, the annual rent for the ensuing period shall be adjusted according to the method of computation as outlined in the following paragraphs. Provided, however, the initial rent adjustment which is to be made at the end of the seventh year shall be for a period of only ~~four~~ years commencing with the beginning of the fifth year of the term. An increase in rent for any adjustment period shall not exceed an average of six percent (6%) per year.
- 1/81/92 1st Adj
12/30/97 2nd Adj
12/30/02 3rd Adj

The rent for each rental period following the adjustment, until the next adjustment, shall be determined by multiplying the rent which is effective immediately prior to said adjustment by the "Adjustment Figure" established as follows:

The "Adjustment Figure" shall be established by dividing the following described "Current Index" by the "Base Figure." The "Current Index" shall be a three-month average of index figures published by the Bureau of Labor Statistics Consumer Price Index (CPI) for the Los Angeles/Long Beach area. The three months to be used to establish said average shall be the fourth, fifth and sixth calendar months preceding the adjustment date. When a similar CPI is available for the San Diego area, it may be substituted.

The "Base Figure" for the first such adjustment shall be a three-month average of index figures from the same source as established above and using the fourth, fifth and sixth calendar months preceding the date of execution of this agreement.

Example: Current Index 121
Base Figure $\frac{121}{110} = 1.10$ (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

The "Base Figure" for each successive adjustment shall be the "Current Index" figure used in the last preceding adjustment period.

In the event the CPI for the Los Angeles/Long Beach or San Diego area, "All Items," is no longer published, the index for the adjustment date shall be the one reported in the U.S. Department of Labor's Comprehensive Official Index most nearly answering the foregoing description of an Index for the San Diego area. If an index is calculated from a base different from the base period 1967 = 100, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

If the above-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If the parties hereto are unable to agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Notwithstanding the publication dates of the index, the effective date of the rent adjustment is at the expiration date of each adjustment period. Until said rent adjustment can be reasonably determined by index publication, LESSEE shall continue to make rental payments pursuant to this lease at the same rent in effect during the preceding rental period. Upon determination of the rental adjustment, under payments of rent shall be immediately paid to the CITY.

In addition to the above-stated adjustment, upon the first day of the eleventh year of this agreement and upon the first day of each five-year period thereafter, the rent for the ensuing five years shall be determined by multiplying an appropriate capitalization rate, as determined by a market survey, by the Fair Market Value of the demised premises as of the adjustment date. The Fair Market Value of the demised premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the

1/1/97
1/1/02
1/1/07

City Council of CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the Fair Market Value of the demised premises and which value will be utilized to determine the adjusted rent described previously in this paragraph. In the event that the two selected appraisers fail to mutually select a third appraiser within sixty (60) days, then the selected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser is selected to complete the assignment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually appointed first and third appraiser and CITY and LESSEE agree to accept and be bound by the valuation determined by the third selected appraiser.

In establishing the Fair Market Value of the demised premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for its highest and best use or if this lease has a restricted purpose, then for uses consistent with the authorized purposes of this lease at the commencement of the rental period under arbitration.

The date of value of the appraisal shall be on the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within 60 days after determination of the new rental rate.

However, in no event shall the adjusted rent, as established by Consumer Price Index and by periodic appraisals as provided for above, be less than the rent in existence at the time of each adjustment.

- C. GROSS INCOME.- Gross income, as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

- D. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after 15 days of becoming delinquent, then LESSEE shall pay CITY, instead of said FIVE PERCENT (5%), a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon advance written application of LESSEE.
- E. INSPECTION OF RECORDS. Whenever CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE'S compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE'S place of business the City of San Diego.
- F. DEVELOPMENT AS ADDITIONAL CONSIDERATION. LESSEE agrees as additional consideration to develop the leased premises in accordance with the City-approved Development Plan described in Section IV.B.8., Development of this agreement.

IV. COVENANTS AND CONDITIONS

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the 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 reduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the demised premises.
2. Right to Assign and Sublet. When in the opinion of the City Manager, and if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions are not permitted activities under this contract and will be considered as contrary to the CITY'S best interests:
 - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.

If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon. Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security-type instrument to assure the payment of a promissory note or notes of the LESSEE. CITY further agrees that in the event said deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed, or transferred in lieu of foreclosure the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a state- or federal-regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE COVENANTS.

4. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.
5. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and 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 the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due the CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee 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 or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

6. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.
7. Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100 percent of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive this requirement to file a bond in lieu of other security satisfactory to CITY. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.

8. Development. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and shown as Exhibit B (attached), which is incorporated herein as part of this Lease Agreement. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk.
9. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees 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 agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.
10. Insurance Coverage. During the entire term of this agreement LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY, or LESSEE or under its 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 CITY, or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. Such property damage and public liability insurance shall also provide for and protect CITY against incurring any legal cost in defending

claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional Loss Payee and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 100 percent of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section IV, 16, Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE

and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided, further however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.

- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

11. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it 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 the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
12. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in

connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

13. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services, or to assume any expense not specifically assumed herein in connection with said premises.
14. Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, or national origin in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the

premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose, the insurance proceeds as set forth in Section IV. B. 10., Insurance Coverage thereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

C. GENERAL CONDITIONS

17. Administration and 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 registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101-4155. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them 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 upon personal service or forty-eight hours after mailing in the manner required herein.
18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
19. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:

- a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.
- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
- c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned. Provided, however, LESSEE retains the right to any other entitlements allowed under condemnation law.
- e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE

shall retain whatever rights it may have to recover from the said authority the Fair Market Value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.

20. Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the 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 decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days' written notice to LESSEE, to have any necessary maintenance work done for and 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 keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
21. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month-to-month, and all other terms and conditions of this agreement shall continue in full force and effect.
22. 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 subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
23. Oral Representation. 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, either expressed orally or 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.

24. Ownership of Improvements. All improvements, except such fixtures as are hereinafter described on the attached addendum, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only those fixtures described on the attached addendum at any time prior to the expiration or earlier termination of the agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE'S removal of any of said fixtures shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said fixtures prior to the expiration of this agreement, CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any such property, real or personal, not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively. Said addendum may be changed from time to time upon approval of the City Manager, without further resolution by the City Council.

25. Remedies of City.

a. Default by Lessee. In the event that:

- (1) 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 said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) 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 terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

(1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.

(2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY or CITY may call on the bonding or to pay the agent to

correct said default or defaults costs of such correction performed by or at the direction of CITY.

- (3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

- c. Abandonment by Lessee. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

- d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
26. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said lease premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.
27. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same 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.
28. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained 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 contained. 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, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with

any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

29. Signs. All exterior signs to be installed on the premises shall be subject to the prior written approval of the City Manager.

V. SPECIAL CONDITIONS

A. AGRICULTURAL REQUIREMENTS.

1. Water Rights. There is hereby reserved to the CITY, and LESSEE herein expressly agrees that, in addition to the reservations made in Paragraph 26 of this Agreement, CITY shall have throughout said term, the right to divert, impound, store, and transport by means of dams, reservoirs, or by pumping any or all water, both surface and underground, which flow over, under or across the leased premises, together with the right to divert by percolating through any of said leased premises. Provided, however, if City in exercising its right to develop water, damages LESSEE'S improvements, including trees and/or crops, then CITY shall reimburse LESSEE for such damages. Also, if in developing water, City affects the premises in such a manner that in the opinion of the LESSEE the leasehold is no longer viable, then LESSEE shall have the option to terminate the lease agreement.

LESSEE shall have the right, without charge by CITY, but at LESSEE'S sole cost, to develop and use on the lease premises all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the leased premises. LESSEE agrees that upon termination of this agreement, he will leave any wells developed or used on the lease premises during the term of this lease in good order and condition and that the casing shall be left in place.

LESSEE agrees to cooperate in, and not to protest, the formation of a water district, or similar government agency, organized for the purpose of and with power to allocate and/ or distribute water in San Pasqual Valley. LESSEE reserves the right to protest the allocation and/or distribution of water and/or the amount of any assessment levied against LESSEE or LESSEE'S of the formation or operation of any such district or agency. In the event such a district or agency is formed, LESSEE agrees that notwithstanding the provision of the foregoing paragraph LESSEE'S rights granted therein shall be subordinate to the needs and requirements as well as allocation and distribution authority of such district, or agency.

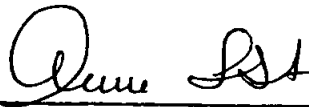
LESSEE recognizes and understands that a dam is proposed for construction at the southerly end of the Pamo Valley which will affect the amount of water runoff which comes into the San Pasqual Valley. LESSEE specifically agrees that this lease was entered into with full knowledge of said dam proposal and LESSEE further specifically agrees to hold CITY harmless from any damages or adverse impacts which may result relating to the water supply in the San Pasqual Valley as a result of the construction and operation of the dam and the reservoir to be created.

2. Noxious Weeds and Pests. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds and pests throughout the entire lease premises.
3. Warranty. The CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.
4. Fencing of Property. LESSEE agrees to fence the entire premises within one year after taking possession of the property. The cost of installation of the fence shall be LESSEE'S sole responsibility.
5. Agriculture Practices. LESSEE agrees to employ and maintain CITY approved agricultural practices upon said premises. Failure of LESSEE to cease or cure any unauthorized practice within ninety (90) days after written notice thereof shall be grounds for immediate termination of the lease.
6. Use of Pesticides. In connection with the use of pesticides and/or fertilizer on the leased premises, it is agreed as follows:
 - (a) No fixed wing aerial spraying shall be used;
 - (b) Helicopter spraying will be used only when necessary;
7. Prevention and Control of Soil Erosion. To prevent and to control soil erosion on the property, LESSEE shall construct a berm along the southern boundary of the leasehold in a manner and with a design acceptable to the City Manager to divert runoff water from Pomerado Road and adjacent land from the premises. City agrees to give LESSEE a rent credit not to exceed \$4,000 for the cost of constructing the berm. Said rent credit shall be applied to the annual rent over a period of two years. LESSEE shall furnish CITY with copies of invoices and other documentation as required by City Manager to show actual amounts expended by LESSEE for said berm. Any costs involving the construction of the berm over and above \$4,000 shall be the sole responsibility of LESSEE.
8. Deletion of Portion of the Leased Premises. In the event any portion of the leased premises is not used by LESSEE for its highest and best permitted use, then CITY may, at CITY'S option delete that portion of the leased premises not used by LESSEE from Section 1A, Demised Premises, hereof. Provided, however, Section III, Consideration, hereof, shall be adjusted downward by the City Manager on an equitable basis.

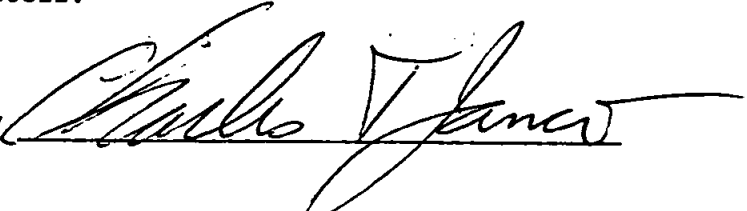
IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date DEC 19, 1984

By 
City Manager
ASSISTANT TO THE

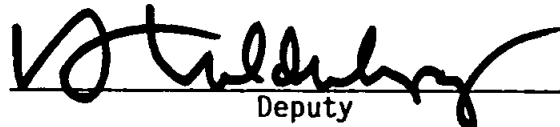
LESSEE:

By 

By _____

APPROVED as to form and legality this 19 day of December, 1984.

JOHN W. WITT, City Attorney

By 
Deputy

WRK:jw(3)D10
8-8-84

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THAT CERTAIN LEASE BY AND
BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND _____

CHARLES T. JANCIC , LESSEE, DATE December 19, 1984 .

SECTION IV PARAGRAPH C , OWNERSHIP OF IMPROVEMENTS (continued)

The Lessee, in accordance with this section hereof, has the right to remove
from the demised premises only those fixtures as described below: (if none,
write none)

NONE. _____



LESSEE'S Initials



ASSISTANT TO THE City Manager's Initials

WRK:jw(3)D10
8-8-84

PINERY TREE FARM
DEVELOPMENT PLAN
30-ACRE PARCEL
SAN PASQUAL VALLEY

The following improvements are to be installed at the cost and within the time frame indicated:

1. Drip Irrigation System

Six acres installed per year

Approximate cost - \$15,000 per year

All work on the system to be completed by the end of 1988

2. Fencing

Perimeter to be fenced

Approximate cost - \$5,000

All work to be completed in 1985

3. Roads and Gravel-Surfaced Parking

Approximate cost - \$5,000

Work to be completed by the end of 1988

4. Electrical Service and Phone Installation

Approximate cost - \$2,000

To be completed in 1985

5. Portable Wood Sales Shed - 10 x 12

Approximate cost - \$3,000

To be installed by the end of 1987

6. Erosion Control: Ditches, Culverts and Grading

Approximate cost - \$8,000

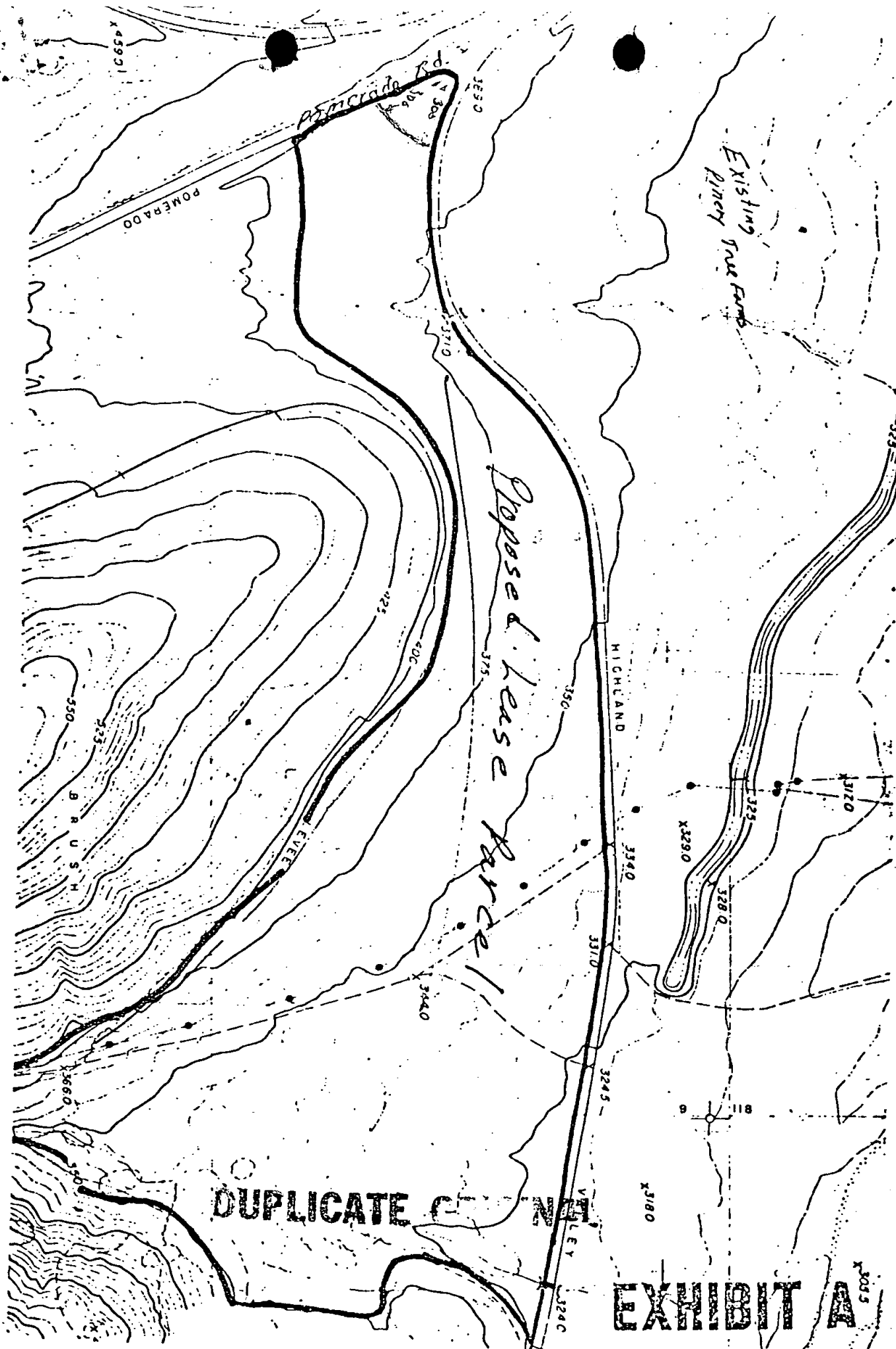
To be completed by the end of 1987

Total Cost of Improvements - \$83,000 (Approximate)

WRK:jw(1)K10(LS-Jancic)
7-25-84

DUPLICATE ORIGINAL

DUPLICATE ORIGINAL



July 2, 1984

File: Property - Pinery Tree Farms,
Inc.

Mr. Charles T. Jancic, President
Pinery Tree Farms, Inc.
12450 Highland Valley Road
Escondido, CA 92055

Dear Mr. Jancic:

Re: Right of Entry Permit - 30-Acre City-Owned Parcel, San Pasqual Valley,
Shown on Attached Exhibit A

Permission is hereby granted to Mr. Charles L. Jancic, hereinafter referred to as "Permittee," to enter upon the above-referenced City-owned property, as shown in red on the attached Exhibit A, upon the following terms and conditions:

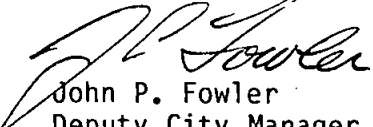
1. Permittee's use of the above-referenced property shall be limited to the installation of a drip irrigation system, fencing the premises, grading and constructing ditches and culverts to prevent soil erosion and growing and marketing vegetables, fruits and trees.
2. Consideration for the granting of this permit shall be One Hundred Seventy-Five Dollars (\$175) per month, payable to the City Treasurer monthly in advance on or before the 20th of each month.
3. Regardless of the date of execution of this permit, it shall commence on August 1, 1984 and terminate immediately upon the execution of a long-term lease agreement between Permittee and the City of San Diego for the 30-acre parcel. Provided, however, in the event a lease agreement between the two parties is not executed prior to January 31, 1985, then this permit shall terminate on that date unless sooner terminated in accordance with the provisions of Paragraph 8.
4. Permittee certifies that a policy of public liability and property damage insurance in which "The City of San Diego" is named as an additional insured has been secured in an amount of not less than \$1 million combined single limit liability, and said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Property Department upon execution of this permit.

5. Permittee shall assume the defense of and indemnify and save the City of San Diego harmless from all claims, expenses, and liabilities of every kind, nature, and description resulting in any manner from the use or condition of said property and any and all operations conducted thereon.
6. All risks in connection with Permittee's use of said property and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
7. Permittee shall not use the premises in any manner which in the opinion of the City Manager creates a nuisance or disturbs the peace of persons in the surrounding area.
8. This permit is revocable at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and further that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
9. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that the Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by the Permittee before becoming delinquent.
10. Permittee shall at its sole cost and expense comply with all the requirements of all Municipal, State, and Federal authorities now in effect or which may hereinafter be in effect, which pertain to the above-referenced City-owned property.
11. Permittee shall not assign any rights granted by this permit nor any interest therein. Any assignment by operation of law shall automatically terminate this permit.
12. No signs shall be displayed on the premises without the prior written consent of the City Manager.
13. Maintenance of the premises shall be the sole responsibility of the Permittee during the entire term of this permit.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to this office, together with your insurance certificate and check for One Hundred Seventy-Five Dollars (\$175) for the rent for the period August 1, 1984 through August 31, 1984, made payable to the City Treasurer within 10 days from receipt hereof.

If you should require additional information or have any questions, please call William R. Knowles, Agricultural Lease Manager, at 236-5548.

Very truly yours,

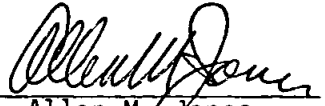

John P. Fowler
Deputy City Manager

JLS:WRK:mh(2)D3

Attachments -

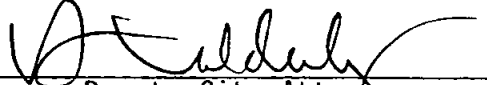
cc: Auditor
Financial Management
County Assessor

VERIFIED FOR EXEMPTION


Allen M. Jones
EQD Deputy Director

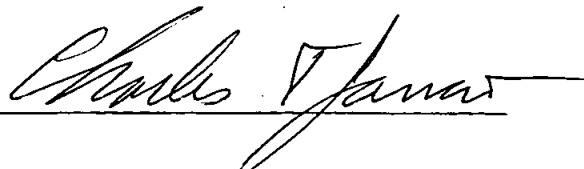
APPROVED AS TO FORM AND LEGALITY BY:

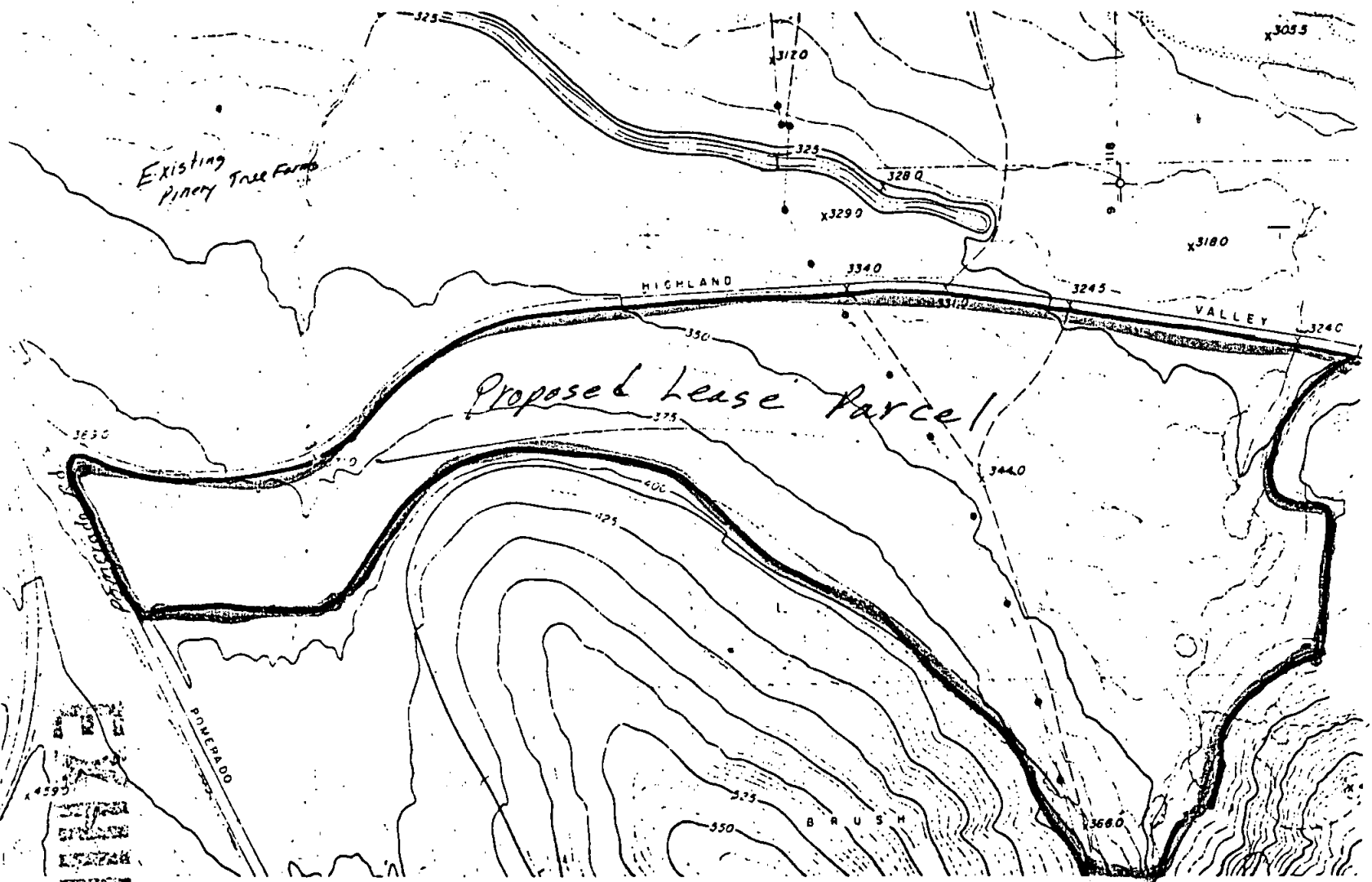
JOHN W. WITT, City Attorney

By 
Deputy City Attorney

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 21st DAY OF July, 1984.

CHARLES T. JANCIC, President
PINERY TREE FARMS, INC.

By 



RECEIVED
FEB 11 1964
U.S. GEOLOGICAL SURVEY
WASHINGTON, D.C.