

DUPLICATE

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ORIGINAL

THE CITY OF SAN DIEGO



**San Pasqual Christmas Tree Farm, Inc.
(S.P.C.T.F., Inc.)**

20 Acre

Flat Rate Lease

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Holdover</u>	3
2.3 <u>Quitclaim and Surrender of LESSEE'S Interest</u>	3
2.4 <u>LESSEE Right to Negotiate Renewal</u>	3
SECTION 3: RENT	4
3.1 <u>Time and Place of Payment</u>	4
3.2 <u>Rent</u>	4
3.3 <u>Delinquent Rent</u>	6
3.4 <u>Inspection of Records</u>	7
3.5 <u>Payment for Right to Use Water</u>	7
SECTION 4: ASSIGNMENT	7
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	7
4.2 <u>Assignment and Subletting</u>	7
4.3 <u>Encumbrance</u>	8
4.4 <u>Defaults and Remedies</u>	9
4.5 <u>Eminent Domain</u>	11
4.6 <u>MBE/WBE Assignment</u>	12
4.7 <u>Control by Specified Individuals or Entities</u>	12
SECTION 5: INSURANCE RISKS/SECURITY	13
5.1 <u>Indemnity</u>	13
5.2 <u>Insurance</u>	13
5.3 <u>Waste, Damage, or Destruction</u>	15
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	15
6.1 <u>Acceptance of Premises</u>	15
6.2 <u>Entry and Inspection</u>	16
6.3 <u>Maintenance</u>	16
6.4 <u>Improvements/Alterations</u>	16
6.5 <u>Utilities</u>	17
6.6 <u>Liens</u>	17
6.7 <u>Taxes</u>	17
6.8 <u>Signs</u>	17
6.9 <u>Ownership of Improvements and Personal Property</u>	18

6.10	<u>Unavoidable Delay</u>	18
SECTION 7: GENERAL PROVISIONS		19
7.1	<u>Notices</u>	19
7.2	<u>Compliance with Law</u>	19
7.3	<u>CITY Approval</u>	20
7.4	<u>Nondiscrimination</u>	20
7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	20
7.6	<u>Partial Invalidity</u>	21
7.7	<u>Legal Fees</u>	21
7.8	<u>Number and Gender</u>	21
7.9	<u>Captions</u>	21
7.10	<u>Entire Understanding</u>	21
7.11	<u>CITY Employee Participation Policy</u>	21
7.12	<u>Drug-free Workplace</u>	22
7.13	<u>Disabled Access Compliance</u>	22
7.14	<u>CITY Option to Purchase</u>	23
7.15	<u>Standard of Employees</u>	23
7.16	<u>Supersedure</u>	23
7.17	<u>Relocation Payments</u>	24
SECTION 8: AGRICULTURAL PROVISIONS		24
8.1	<u>Agricultural Practice</u>	24
8.2	<u>Best Management Practices</u>	24
8.3	<u>Reporting Requirements for Agricultural Practices</u>	25
8.4	<u>Noxious Weeds, Pests, and Erosion</u>	25
8.5	<u>No Warranty</u>	25
8.6	<u>Control of Livestock</u>	25
8.7	<u>Cutting of Trees</u>	25
8.8	<u>Hold Harmless, Flood Damage and Other Acts of God</u>	26
8.9	<u>Water Rights</u>	26
SECTION 9: SPECIAL PROVISIONS		27
9.1	<u>Potential Construction of Public Hiking, Biking and Riding Trails</u>	27
9.2	<u>LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites</u>	28
9.3	<u>Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites</u>	28
9.4	<u>Boundary Adjustments</u>	29
9.5	<u>Housing of Permanent Employees</u>	29
9.6	<u>City's Right to Buy Back Leasehold Interest</u>	29
9.7	<u>Hazardous/Toxic Waste</u>	31
SECTION 10: SIGNATURES		33
10.1	<u>Signature Page</u>	33

SECTION 11: EXHIBITS	32
11.1 <u>Parcel Map(s)</u>	32
11.2 <u>Description and Listing of LESSEE-Owned Improvements</u>	33
11.3 <u>Description of CITY-Owned Improvements</u>	34
11.4 <u>Corporate Name</u>	35

**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN PASQUAL CHRISTMAS TREE FARM INC., (S.P.C.T.F., Inc.), a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.1 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, described as consisting of approximately 20 acres and further described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." It is further agreed that the leasehold has not been surveyed however CITY and LESSEE agree to approximate acreage. This lease includes the right to use the water underneath the premises for the purposes of the lease only, subject to Section 8.9, Water Rights, hereof.

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of commercial agricultural and horticultural activities, including education, demonstration and exhibits for farming and agricultural practices in the region, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be 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 minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements, fixtures and personal property located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph,

"competent management" shall mean demonstrated ability in the management and operation of agricultural groves using sustainable agricultural practices whenever possible, and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be twenty-five (25) years commencing on the first day of January 2000. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of January of each lease year.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

- 2.4 LESSEE Right to Negotiate Renewal. Provided LESSEE is not then in default of any provision hereof upon expiration of this agreement, LESSEE shall have the right to negotiate a proposed renewal lease of said premises for a mutually agreeable term upon such conditions and rental as CITY shall then offer. Such right must be exercised by written notice thereof to CITY not less than six (6) months nor more than twelve (12) months prior to expiration of the lease term. Following such notice and not less than three (3) months prior to said expiration, CITY shall offer LESSEE a renewal lease containing such conditions and rental as CITY is then willing to accept from any other qualified party desiring to lease said premises. In the event such conditions and rental are not accepted by LESSEE and in the event CITY and LESSEE do not agree as to any other conditions for renewal prior to expiration of this lease, then LESSEE'S right to renew herein shall terminate upon said expiration.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due quarterly in advance on or before the first day of each calendar month. All quarterly rents will be prorated during the first and final quarter of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. Rent shall be paid quarterly. The initial rent is \$1000 per quarter or \$4000 per year. Annual adjustments shall be made at the beginning of each lease year following the effective date of the lease as follows:

\$5,000 2nd year
\$6,000 3rd year
\$7,000 4th year
\$8,000 5th year

Rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.

- b. CPI Index Adjustments. At the end of the tenth year following the effective date of this lease, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI) and every five (5) years thereafter until the end of the lease term.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the

base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (1) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment 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 "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, ten percent (10%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.
- 3.5 Payment for Right to Use Water. It is understood and agreed by CITY and LESSEE that the amounts of rent charged to LESSEE pursuant to this Section 3.2, Rent, have been calculated to include the value of the water available for use by LESSEE pursuant to Section 8.9, Water Rights, hereof.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to 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.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, commencing on the effective date of such

proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved 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, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the

terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it 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 rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary 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 this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.
- 4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.6 MBE/WBE Assignment. LESSEE acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and leases and that a public purpose is served thereby. If LESSEE proposes to assign this lease to a non-MBE/WBE buyer, LESSEE agrees to first use due diligence in finding a qualified MBE/WBE assignee. LESSEE shall fulfill this requirement to use due diligence by doing all of the following:

- a. LESSEE, at its expense, shall advertise the proposed sale of the leasehold in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by

the City Manager, and City Manager shall provide a list of such publications to LESSEE upon request. The ads may be either display or classified and shall state that LESSEE desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.

- b. LESSEE shall allow no fewer than 20 calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with LESSEE'S reason(s) for accepting or rejecting the proposal.

- 4.7 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by the Lindshield family, least to the extent of fifty-one percent (51%) of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the premises. If any of the above-named persons becomes incapacitated, then the other(s) shall continue in such active administration and supervision. If all parties are incapacitated, then the stockholders shall select an experienced manager acceptable to CITY to so administer and supervise the lease operations.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- 5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by

authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of

property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY may obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY may declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) 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 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, at CITY'S option, 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 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 5.2, Insurance, hereof.

In the event of flood damage it becomes evident that agriculture will not be practicable, the LESSEE may opt to return that portion to the CITY and have the leasehold reduced accordingly.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) 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.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the 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. If such entry or inspection by CITY discloses that the premises are not in a decent, safe, healthy, and sanitary 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 keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time 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 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.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises including access roads, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises and access roads in a decent, safe, healthy, and sanitary condition satisfactory to CITY. LESSEE agrees to maintain the existing fencing around the perimeter of the leased premises. Excluded from the lease shall be the area as shown on Exhibit A, which contains cultural resources. LESSEE has the right to cross this area in a method acceptable to CITY and LESSEE. LESSEE is responsible for compliance with Federal and State regulations such as, but not limited to, Administrative Code, Title 14, Section 4307; and Penal Code, Title 14, Section 622.5 which deal with the protection of cultural resources.

6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the 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 or assume any expense for any improvements or alterations.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground if required.

6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found

on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE shall pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to

perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Manager
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

Lessee:
S.P.C.T.F., Inc.
Attn: Mark Lindshield
P.O. Box 3556
Escondido, CA 92033-3556

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability 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.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may

result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with Title 24 of the California Code of Regulations (Building Code) as defined in California Health and Safety Code (Title 24), the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment, to the extent required under the applicable law.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE, to the extent required under the applicable law.

- c. LESSEE shall post a statement addressing the requirements of subsections a. and b. above in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 19th day of February 1985 with San Pasqual Christmas Tree Farm, Inc., which is document R-262540, is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.17 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

SECTION 8: AGRICULTURAL PROVISIONS

- 8.1 Agricultural Practice. All husbandry and agricultural practices shall be subject to CITY'S approval. Said practices shall include, but are not limited to, the following requirements:
 - a. Installation of improvements and preparation of land shall conform to a time schedule acceptable to the City Manager. Provided, however, any

obligation of LESSEE under this provision shall explicitly be subject to the provisions of Section 5.3, Waste, Damage or Destruction, hereof.

- b. 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.
- c. LESSEE shall install a drag hose, rainbird-type sprinkler head or approved type of irrigation system of sufficient size to irrigate the acreage devoted to crop production. The main lines shall consist of either agricultural grade transite or City-approved plastic. The hoses and sprinklers shall be adequately sized so as to properly distribute the water over the usable acreage in the required time.
- d. Disagreements as to sound agricultural and/or husbandry practices 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 cure any unauthorized practice, then this lease shall be treated in accordance with Section 4.4, Defaults and Remedies, hereof. All permanent plantings, as well as all other improvements to the property, shall become the property of CITY at the expiration or sooner termination of this lease agreement.

- 8.2 Best Management Practices. LESSEE agrees to develop a Resource Management Plan for the purpose of maintaining the premises in a condition for sustainable agricultural production. A Resource Management Plan is a combination of best management practices that are determined by CITY and LESSEE to be applicable to the leased premises for cropland. It is further defined as a combination of conservation and management practices applied to land used for the production of row crops, orchards, vineyards and field crops alone or in association with other crops. Objectives are to protect the resource base while providing for the sustained, profitable production of agricultural crops. Adoption of a Resource Management System is the most effective and practical means to prevent or reduce the generation of pollutants to a level compatible with water quality goals. The Resource Management Plan shall be reviewed and approved by City Manager.

LESSEE agrees to provide CITY a Resource Management Plan prior to the effective date of the lease. LESSEE agrees to use all available resources, including Federal, State, County and City in LESSEE'S Resource Management Plan. The LESSEE agrees to update the Resource Management Plan every five years. These updates shall be reviewed and approved by the City Manager.

The LESSEE shall comply with the Resources Management Plan (RMP) approved by the City of San Diego Water Department, dated January 8, 1999, and the Addendum dated March 2, 1999.

- 8.3 Reporting Requirements for Agricultural Practices. LESSEE agrees to provide to the Water Department regular reports about the agricultural activities conducted on the leased property. These reports will detail the usage of water, pesticides, herbicides, fertilizers, and soil amendments; as well as the crops grown. The required reports are specified in the Resource Management Plan.
- 8.4 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.
- 8.5 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.
- 8.6 Control of Livestock. Raising of livestock on the premises requires prior written approval of the City Manager, which approval will not be unreasonably withheld. The premises shall be adequately fenced to control livestock without cost to CITY and in a manner satisfactory to CITY. LESSEE shall be solely responsible for all damage of any kind resulting from livestock leaving said premises.
- 8.7 Cutting of Trees. No growing or mature trees are to be destroyed or removed without prior written consent of the City Manager; trees growing along roadways may be trimmed back as required by the LESSEE. Trees growing in manmade ditches may be removed by LESSEE. Trees growing in natural drainage channels may not be removed without written consent of the City Manager.
- 8.8 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes. LESSEE is authorized to minimize potential flood damage through improved drainage and other flood control improvements as agreed upon with CITY.

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Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard

to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this lease.

8.9 Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.5, Easements and Reservations, hereof, CITY shall have the right throughout said term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert by percolating through any of the leased premises. Nothing in this agreement shall result in the transfer of the CITY'S rights, title or interest in the water on the leased premises to any other person or entity.

- a. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased 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 shall install, at LESSEE'S sole cost, a metering device on all well(s) (including open wells) satisfactory to and approved by the Water Utilities Department to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering device(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.
- b. LESSEE agrees that upon termination of this agreement, it will leave any wells developed or used on the leased premises during the term of this lease in good order and condition and that the casing shall be left in place.
- c. CITY shall have the right to reasonable access for monitoring the level and quality of natural surface and groundwaters over and under the leased premises. Should the monitoring indicate surface and/or groundwater quality degradation, the CITY shall have the right to require reasonable alteration of any agricultural, irrigation or other practices by LESSEE which may cause such water quality degradation as determined by the City Manager.
- d. CITY shall have the right to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises. At such time as the CITY has constructed adequate facilities to provide water service to LESSEE, the CITY shall have the right to require LESSEE to connect, or to reconnect, to such CITY constructed water facilities. In that event, LESSEE shall be subject to the rules and regulations applicable to all other water customers receiving similar class and/or quality service from the CITY, including but not limited to payment of customary service charge and water rates. After receiving notice from the CITY that the CITY will be providing water service to LESSEE, LESSEE shall have the right to

cancel this agreement upon 30 days written notice to the CITY. In the event LESSEE elects to cancel this agreement, no compensation for permanent improvements of any kind installed or existing on the premises shall be due LESSEE by the CITY. Any and all permanent improvements existing, installed or constructed on the premises shall be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property.

SECTION 9: SPECIAL PROVISIONS

- 9.1 Potential Construction of Public Hiking, Biking and Riding Trails. LESSEE has been advised and acknowledges that the leased premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE has further been advised and acknowledges that a system of public hiking, biking and riding trails has been proposed for inclusion through the San Dieguito River Valley Park. LESSEE agrees that, in the event such trails are to be constructed through the leased premises that the property needed for such trails may be deleted from the leasehold area subject to 90 days prior written notice from the CITY. The notice of intent to delete the trail area shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any fruit trees, crops or leasehold improvements growing in the area taken for trails be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and City Manager. CITY further agrees that, in the event a portion of the leasehold is taken for such trails as described above, the trails shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of trails and security fencing installed on the leasehold shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.
- 9.2 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. LESSEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the leased premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible. Provided, however, if additional measures for protecting the site such as fencing are required, the installation and maintenance costs involved shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

In accordance with Section 9.2 and the MND completed for this lease, a Sensitive Resource Site has been identified. The measures to protect this site are as follows:

- a. Four hundred and fifty (450) square meters (15m x 30m) of archaeologically sensitive land shall be excluded from the lease.
- b. Signage shall be posted and maintained around the perimeter of the archaeologically sensitive land at 15 meter intervals.
- c. The sign shall read "Environmentally Sensitive Area: Do Not Enter."
- d. Any change to the perimeter of the archaeologically sensitive land shall required an amendment to the lease and additional environmental review.

9.3 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites. LESSEE has been advised and acknowledges that public access may be required through the leased premises to access hiking, biking, and riding trails constructed on the property. Also, such public access may be necessary for viewing environmental, historical, and/or cultural resources sites located on the leasehold. In this event the property needed for public access may be deleted from the leasehold area upon 90-days prior written notice from the CITY. Said notice of intent to delete the public access area shall include a plat clearly designating the property to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any fruit trees, crops or leasehold improvements in the area taken for public access be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and City Manager. CITY further agrees that, in the event a portion of the leasehold is taken for such public access as described above, said public access shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of the security fencing shall be the responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.4 Boundary Adjustments. LESSEE has been advised and acknowledge that the boundaries of the leased premises are subject to adjustments related to the Multiple Species Conservation Program (MSCP). LESSEE agrees that, in the event such boundary adjustments are made, the property needed for the MSCP may be deleted from the leasehold area, subject to 180 days prior written notice from CITY. The notice of intent to delete said property shall include a plat clearly designating the area to be deleted. In the event of such deletion of the leasehold area, CITY agrees that the rent shall be reduced accordingly.

9.5 Housing of Permanent Employees. To the extent legally feasible, LESSEE shall provide adequate housing for permanent employees, i.e., those who work on the premises on a daily basis for a minimum of eleven (11) months during the calendar year. Housing provided by LESSEE shall be constructed and maintained on the premises in accordance with applicable City of San Diego Building and Zoning requirements.

9.6 City's Right to Buy Back Leasehold Interest. LESSEE agrees that CITY may, at its option, purchase LESSEE'S leasehold interest at any time following the first five (5) years of the term of this lease agreement. The CITY'S option shall be exercised by giving LESSEE at least six (6) months prior written notice of intent to purchase the leasehold.

Upon LESSEE'S receipt of such notice, LESSEE agrees to cooperate with CITY in designating an appraiser satisfactory to both CITY and LESSEE to conduct an appraisal of LESSEE'S remaining leasehold interest. The appraiser's determination of the leasehold value shall be binding on the CITY and LESSEE. If no concurrence upon an individual appraiser is reached within 15 days following LESSEE'S receipt of notice of CITY'S intent to repurchase, CITY and LESSEE agree that each shall immediately appoint and pay for the services of an individual appraiser both of whom shall be charged with determining the fair market value of the LESSEE'S remaining leasehold interest. If the appraisals are within 20 percent of one another (the larger appraiser being not more than 20 percent higher than the lower appraisal), the fair market value shall be the average of the two appraisal amounts.

If the two appraisals differ by more than 20 percent and the City Manager and LESSEE cannot agree to a fair market value and an impasse is thus reached, then the two appraisers shall be asked to mutually agree upon a third independent appraiser. If the two appraisers do not mutually agree upon a third appraiser within a reasonable time after such request, the CITY and LESSEE agree that the Presiding Judge of the Superior Court in San Diego shall be requested to appoint the third appraiser. If the Presiding Judge for any reason declines to make such appointment, the parties agree that such appointment shall be made expeditiously and in accordance with the standard rules of the American Arbitration Association.

The third appraiser shall review the results of the two appraisals and render an opinion as to the fair market value. The third appraiser's determination shall be binding on the CITY and LESSEE. The CITY and LESSEE shall equally bear the cost of the third appraiser.

Upon a determination of the leasehold value, CITY shall have ninety (90) days in which to determine whether or not to allocate funds and authorize the expenditure of such funds for the acquisition of the leasehold. In the event CITY determines not to acquire the leasehold, CITY agrees to reimburse LESSEE for its actual

costs for the appraisal and shall have no further obligations to LESSEE for any costs or damages incurred by LESSEE as a result of such determination not to proceed with acquisition.

In determining the fair market value of LESSEE'S leasehold interest, CITY and LESSEE agree that the appraiser or appraisers will be directed to establish the leasehold value based upon all the terms and conditions of the lease. LESSEE specifically agrees, however, that no "bonus" value shall be paid for LESSEE'S leasehold interest. The appraiser or appraisers shall be directed to assume that the lease requires the payment of full fair market rent on the leasehold property at all times during the remaining lease term. LESSEE further specifically agrees that any permanent capital improvements constructed by LESSEE on the leased premises shall be appraised by taking the initial construction cost of such improvements and depreciating such improvements on a straight-line basis over a twenty-five (25)-year period from the date of installation of such improvements, or over the remaining lease term, whichever time period is the lesser.

In the event there are City-approved loans or encumbrances against LESSEE'S leasehold interest, CITY agrees that the buy-out price shall in no event be less than the then remaining balance of any such loans or encumbrances.

Should the CITY determine to repurchase, LESSEE shall have up to one year in which to vacate the premises. During any such continued use by LESSEE, LESSEE shall continue to pay to CITY the rents provided for in the lease. The buy-out price shall be paid within 10 days after LESSEE vacates the premises.

- 9.7 Hazardous/Toxic Waste. Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited

to, costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the premises prior to the effective date of this lease agreement.

SECTION 10: SIGNATURES

10.1 Signature Page.

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

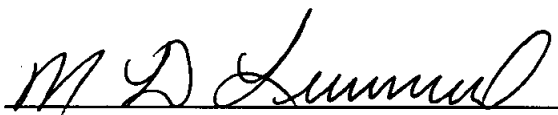
THE CITY OF SAN DIEGO

Date 3/13/00

By 
Real Estate Assets Director

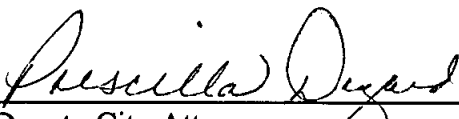
LESSEE: SAN PASQUAL CHRISTMAS
TREE FARM, INC.

Date 02-09-00


Marc Lindshield

APPROVED as to form and legality this 15th day of March, 2000.

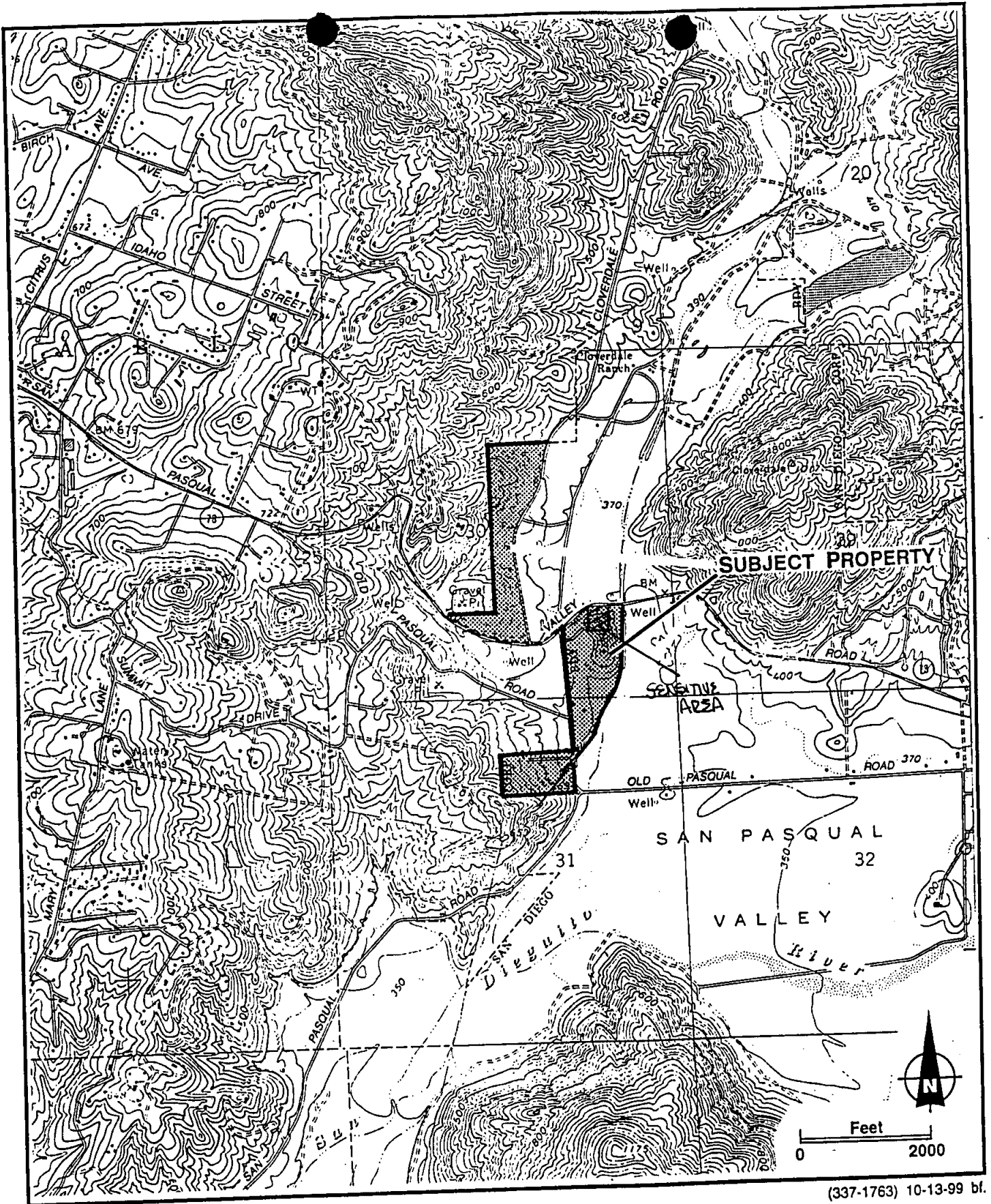
Casey Gwinn, City Attorney

By 
Deputy City Attorney

DWE:jmj
2/10/00
I:\WPO\1999\ESTES\LEASES\LS-SPCTF.20

SECTION 11: EXHIBITS

11.1 Parcel Map(s).



(337-1763) 10-13-99 bl.



Location Map - Lindshield Leases

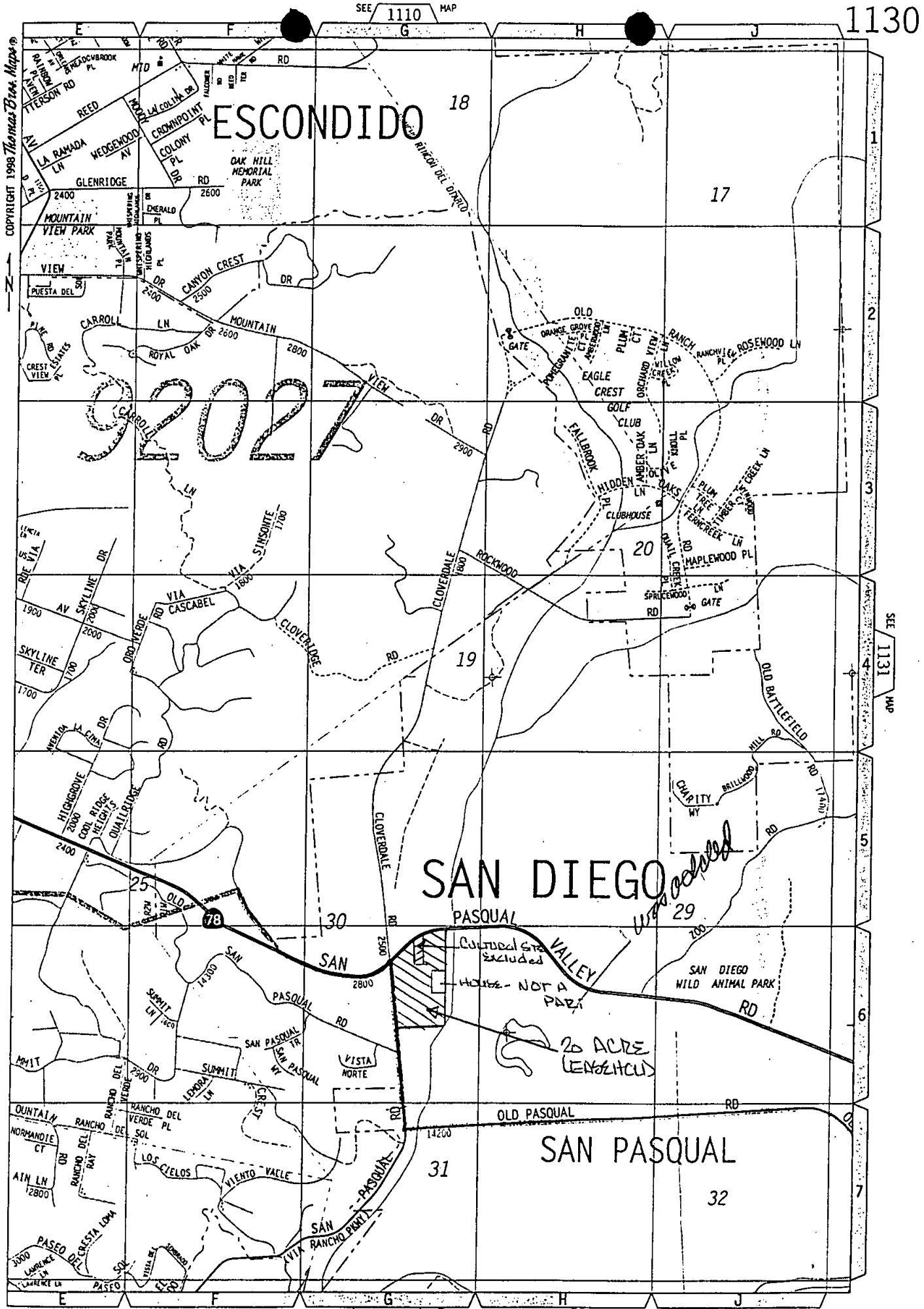
Environmental Analysis Section

CITY OF SAN DIEGO • PLANNING & DEVELOPMENT REVIEW

32-A

Figure

1



COPYRIGHT 1998 Thomas Bros. Maps

SEE 1110 MAP

1130

SEE 1131 MAP

SEE 1150 MAP

11.2 Description and Listing of LESSEE-Owned Improvements.

- a. Mobile Homes - 2
- b. 10 ft. x 20 ft. Metal Storage Container
- c. 3 Water Tanks

11.3 Description of CITY-Owned Improvements.

1. One House
2. One garage/storage building

LESSEE assumes responsibility for maintenance and upkeep of the dwelling, garage/storage buildings and surrounding grounds, exterior walls and walkways, except roof, foundations, and plumbing and electrical inside the interior walls.

Rent is to be \$575.00 per month. Rent is effective 07-01-2000. Rent will be adjusted each two and one half years according to CPI adjustments as per Section 3.2(b)(1), Index Adjustment Computation.

11.3 Corporate Name.

(S.P.C.T.F.Inc.) SAN PASQUAL CHRISTMAS TREE FARM Inc.
CORPORATE NAME

I, MARC DENNIS LINDSHIELD, certify that I am the
VICE PRESIDENT/CFO of the corporation named in the attached agreement;
that MARC D. LINDSHIELD, who signed this agreement on behalf of the
corporation, was then VICE PRESIDENT CFO of said corporation; that said agreement
was duly signed for and on behalf of said corporation by authority of its governing body,
pursuant to a resolution duly adopted by its Board of Directors on JANUARY 3, 2000,
19XX, and is within the scope of its corporate powers; and that set out below are the names of
the officers and directors of said corporation.

By M. D. Lindshield

CORPORATE SEAL

Name DENNIS L. LINDSHIELD President
Title

Name MARC D. LINDSHIELD VICEPRESIDENT / CHIEF FINANCIAL OFFICER
Title

Name ARLITA A. LINDSHIELD SECRETARY
Title

Name _____
Title

RESOLUTION NUMBER R- 292825

(R-2000-962)

ADOPTED ON MAR 06 2000

WHEREAS, the City and San Pasqual Christmas Tree Farms have negotiated three 25-year leases at the initial rental rates of \$720, \$4,000, and \$10,750 per year, the fair market rates as determined by City valuation staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, three 25-year lease agreements with San Pasqual Christmas Tree Farms, a California corporation, as follows:

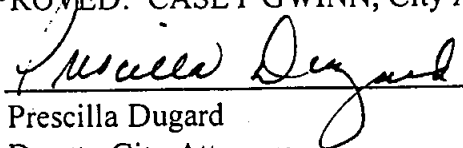
1. For 21250 San Pasqual Road (14 acres) at an initial annual rent of \$720, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 292825.

2. For 24330 San Pasqual Road (20 acres) at an initial annual rent of \$4,000, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 292825.

3. For 2185 Cloverdale Road (35 acres) at an initial annual rent of \$10,750, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 292825.

APPROVED: CASEY GWINN, City Attorney

By


Prescilla Dugard
Deputy City Attorney

PD:cdk
02/22/00
Or.Dept:REA
R-2000-962

Passed and adopted by the Council of San Diego on MAR 0 6 2000 by the following vote:

YEAS: WEAR, KEHOE, STEVENS, WARDEN, STALLINGS, McCARTY, VARGAS, MAYOR GOLDING.

NAYS: NONE

NOT PRESENT: MATHIS

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-292825, passed and adopted by the Council of The City of San
Diego, California on MAR 0 6 2000.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

(R-2000-963)

RESOLUTION NUMBER R- 292824

ADOPTED ON MAR 06 2000

WHEREAS, on December 2, 1998, the Real Estate Assets Department submitted an application to the Planning and Development Review Department for environmental review of three proposed lease agreements between the City and San Pasqual Christmas Tree Farms, proposing the lease of City property for commercial agricultural and horticultural uses [the Project]; and

WHEREAS, the Project was set for a public hearing to be conducted by the City Council of The City of San Diego; and

WHEREAS, in considering the Project for approval, the City Council of The City of San Diego considered the issues discussed in Mitigated Negative Declaration No. 98-1172; NOW, THEREFORE,

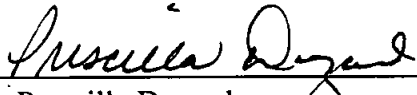
BE IT RESOLVED, by the Council of The City of San Diego, that it is certified that Mitigated Negative Declaration No. 98-1172, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the report reflects the independent judgment of The City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Project.

BE IT FURTHER RESOLVED, that the City council finds that project revisions now

mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration is hereby approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
02/25/00
Or.Dept:REA
R-2000-963
Form=eirl.frm

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

LDR NO. 98-1172

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration (LDR No. 98-1172) shall be made conditions of as may be further described below.

A. Cultural Resources

1. The lease renewal shall contain language and graphics that excludes 450 square meters (15m x 30m) of archaeologically sensitive lands from the 20 acre lease located at 24330 San Pasqual Road.
2. The lease renewal shall contain language that excludes 6 square meters (3m x 2m) of archaeologically sensitive lands from the 35 acre site located at 2185 Cloverdale Road.
3. The lease renewal shall contain language that states "signage shall be posed and maintained around the perimeter of the archaeologically sensitive lands located at 24330 San Pasqual Road at 15 meter intervals."
4. The lease renewal shall contain language that states "signage shall be posted an maintained around the perimeter of the archaeologically sensitive lands located at 2185 Cloverdale Road at 5 meter intervals."
5. The lease renewal shall contain language that states the sign shall read "Environmentally Sensitive Area: Do No Enter."
6. The lease renewal shall contain language that states "any change to the perimeter of the archaeologically sensitive lands shall require an amendment to the lease and additional environmental review."

B. Hydrology/Water Quality

The lease renewals shall contain language to require compliance with the Resource Management Plan (RMP) dated January 8, 1999, and the Addendum dated March 2, 1999, and approved by the City of San Diego Water Department.

NOTICE OF DETERMINATION

TO: X Recorder/County Clerk
P.O. Box 1750, MS A33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Planning and Development Review Department
1222 First Avenue, MS 501
San Diego, CA 92101

LDR Number: 98-1172

State Clearinghouse Number: N/A

Permit Number: N/A

Project Title: Christmas Tree Farm Lease

Project Location: 2185 Cloverdale Road, 21250 San Pasqual Road and 24330 San Pasqual Road

Project Description:

This is to advise that the City of San Diego City Council on March 6, 2000, approved the above described project and made the following determinations:

1. The project in its approved form ____ will, X will not, have a significant effect on the environment.
2. ____ An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
- X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA. R-292824
- ____ An addendum was prepared for this project pursuant to the provisions of CEQA.

Record of project approval may be examined at the address above.

3. Mitigation measures X were, ____ were not, made a condition of the approval of the project.
4. Findings ____ were, X were not, made pursuant to CEQA Guidelines Section 15091.
5. A Statement of Overriding Considerations ____ was, X was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Land Development Review Division, Fifth Floor, City Operations Building, 1222 First Avenue, San Diego, CA 92101.

Analyst: Teasley

Telephone: (619) 446-5390

Filed by:

Esther Ramos
Signature

Esther Ramos, Deputy City Clerk
Title

Reference: California Public Resources Code, Sections 21108 and 21152.

**CALIFORNIA DEPARTMENT OF FISH AND GAME
CERTIFICATE OF FEE EXEMPTION**

*De Minimis Impact Finding or
One Fee Per Project Provision*

Project Title/Location: Christmas Tree Farm Lease, 2185 Cloverdale Road, 21250 San Pasqual Road and 24330 San Pasqual Road, City of San Diego, County of San Diego.

LDR NO. 98-1172

SCH NO. N/A

Project Applicant: Real Estate Assets Department

Project Description: Renewal of three agricultural leases for 25 years.

Findings of Exemption:

A Mitigated Negative Declaration and Initial Study have been prepared for the project. The report concludes that the project would result in a de minimis impact to wildlife resources as all of the following apply:

1. No significant biological resources exist on the project site.
2. The project would have no adverse impacts on biological resources located off-site.
3. No biological studies were requested for the project.
4. No mitigation measures are proposed to address impacts to biological resources.
5. No conditions in any discretionary actions associated with the project address biological resource issues.
6. No broader impacts on a habitat (for example - urban runoff effects on wetland) were identified.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that based upon the initial study and hearing record, the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Tina Christiansen, Manager
Planning and Development Review Department

By: Ken Teasley for Chris Zirkle
Title: Senior Planner
Lead Agency: City of San Diego
Date: February 29, 2000

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Release [Agreement] is made and entered into by and between Marc Lindshield, San Pasqual Christmas Tree Farms, Inc. [Lindshield] and the CITY OF SAN DIEGO [City], and is made with respect to the following facts:

- A. Lindshield is lessee of three city-owned parcels in San Pasqual Valley for the growing of citrus and Christmas trees, pursuant to lease agreements on file in the Office of the City Clerk as Documents RR-263570 filed July 1, 1985; RR-262540 filed February 19, 1985; and RR-264690 filed December 16, 1985 (collective the Leases).
- B. In or about 1989-90, negotiations were completed between City and the California Department of Transportation [CalTrans] and Lindshield regarding the widening of Highway 78 at Cloverdale Road and the realignment of Cloverdale Road. CalTrans compensated both City and Lindshield for the taking.
- C. The proposed alignment of Cloverdale Road was subsequently revised. Lindshield alleges that City did not inform of the changes in the proposed alignment and he therefore continued to plant new trees in the proposed right-of-way. Lindshield alleges that as a result of the ultimate alignment constructed, he has suffered crop and equipment losses in the amount of \$180,930 [the Claim].
- D. It is the desire of each of the undersigned parties to resolve and settle their disputes and claims as between them arising out of or relating to the Claim and for the release of all claims Lindshield may have against the City arising out of or relating to the Claim on the terms and conditions set forth below.

The parties agree as follows:

1. **Release.** Lindshield, on behalf of himself, and his successors, assigns, agents, directors, stockholders, partners and representatives, fully, finally and forever releases, acquits and discharges The City of San Diego, and all other elected and administrative officers of this municipal corporation from all claims and demands, rights, and causes of action of any kind the undersigned now has or hereafter may have on account of or in any way growing out of damages or injuries known or unknown at the present time resulting or to result from the Claim.
2. **Waiver of Statutory Rights.** In connection with the above release, Lindshield waives all rights which may exist under Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is understood and agreed that the release provision in Section 1 above is a full and final release of all liability, claims, demands, actions, causes of action, and rights of every nature and kind whatsoever and that it extinguishes claims that are known, unknown, foreseen, or unforeseen. Lindshield understands and acknowledges the significance and consequence of this specific waiver of Section 1542 and assumes full responsibility for any injuries, damages, losses, or liability that he may hereafter incur. This waiver only applies to damages as outlined in Sections B and C above.

3. **Terms of Settlement.**

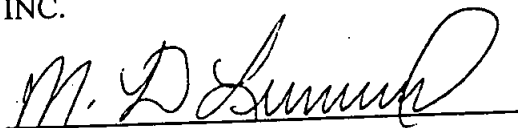
- a. City will waive all rent under the Leases for the period January 1, 1995 through December 31, 1999.
 - b. City staff will negotiate and bring forward for City Council approval, replacement leases each with a term of 25 years and proposed total minimum rent of \$15,470 for the first year. The 35 and 14 acre leases are percentage rent leases and the 20 acre is a flat rent lease. The two percentage rent leases include percentage increases at year 5 and year 10. The flat rent lease has increases during the first five years and then CPI adjustments each 5 years starting with the 10th year.
 - c. The release provided for in Section 1 above will be effective upon City Council approval of the replacement leases, consistent with Section 3b.
4. **Further Assurance.** Each of the parties shall hereafter execute all documents and do all acts necessary, convenient or desirable, in the reasonable opinion of any party, to effect the provisions of this Agreement.
5. **Complete Terms of Settlement Contained in this Agreement.** This Agreement memorializes and constitutes the entire Agreement and understanding between the parties, and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or unwritten. Each of the parties acknowledges that no other party nor any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, whether expressed, implied, or statutory, not contained herein concerning the subject matter of the Agreement, to induce the parties to execute the Agreement, and acknowledges that it has not executed this release in reliance on any such promise, representation, or warranty not contained herein. This Agreement may be modified or amended only by a writing signed by all parties to this Agreement which specifically states that it is an amendment to this Agreement.
6. **Successors.** The provisions of this Agreement shall be deemed to obligate, extend to, and inure to the benefit of, the successors, assignees, transferees, grantees, and indemnitees of each of the parties.
7. **Independent Counsel.** Each of the parties to this Agreement acknowledges and represents that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, and that it has freely and voluntarily executed this Agreement with the consent and upon the advice of counsel. Each of the parties to this Agreement further represents that it has read this Agreement and has had the terms used herein and the consequences thereof explained by counsel.
8. **Agreement Not Admission Of Liability.** It is expressly understood, acknowledged, and agreed to by the parties that by reason of entering into this Agreement, no party admits, expressly or impliedly, any fact or liability of any type with respect to any matter, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions of any party. No party has made any such admissions, and this Agreement is entered into solely by way of compromise and settlement only.

9. **California Law.** This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced, and governed by the laws of the State of California.
10. **Attorney's Fees.** In the event litigation is commenced to interpret or enforce any of the provisions of this Agreement, to recover damages for the breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover its actual attorney's fees and costs in addition to any other relief granted.
11. **Settlement Expenses.** Each party hereto shall bear the cost of its own attorney's fees and costs in connection with the mediation and negotiation of settlement related to the instant CONTRACT, and in connection with the preparation of this Agreement.

This Agreement is executed by the parties on the date below, at San Diego, California.

DATED: February 9th, 2000

SAN PASQUAL CHRISTMAS TREE FARM,
INC.


Marc Lindshield

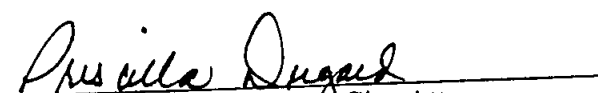
DATED: May 10, 2000

THE CITY OF SAN DIEGO


By:

APPROVED AS TO FORM AND LEGALITY
this 10th day of May, 2000

CASEY GWINN, CITY ATTORNEY


Prescilla Dugard, Deputy City Attorney

DWE/jmj
02/02/00
I:\WPO\2000\Estey\AGREEMENT-LINDSHIELD.wpd