

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

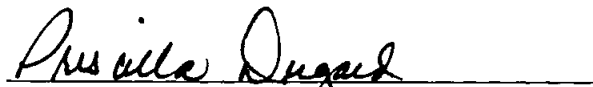
DATED: May 10, 2000

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

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DUPLICATE
DUPLICATE ORIGINAL

THE CITY OF SAN DIEGO



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

35 Acres

Percentage Rate Lease

DOCUMENT NO. RR-292825-3

FILED MAR 06 2000

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**CITY OF SAN DIEGO
PERCENTAGE 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., 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 35 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 the commercial growing of citrus and other fruit trees, and related agricultural and horticultural activity and 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.

1. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
2. 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.
3. 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 a farm 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. All rents required herein must 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 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. Minimum Rent. The annual minimum rent established for this lease is \$10,750, payable quarterly at \$2687.50. If the minimum rent is greater than the percentage rent on a calendar quarterly basis, then 1/4 of the annual minimum rent is required to be paid for that quarter. Minimum rents are to be paid in quarterly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and quarterly installments of the minimum rent during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying quarterly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, if in any lease year, minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the total rent owed shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay quarterly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Percentage Rents. Percentage rents will be calculated on a calendar year basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Year 1 - 4	12% of Gross Income
Years 5 - 9	16% of Gross Income
Years 10+	20% of Gross Income

The City Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by

the City Manager shall be subject to the requirements of Section 3.8, Unauthorized Use Charge, hereof.

3.3 Payment Procedure. On or before the last day of the calendar year LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. Total gross receipts for the subject year. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- b. The percentage rental due CITY, computed and totaled.
- c. The accumulated total of all rents previously paid for the current lease year.
- d. Payment in the greater of the two following amounts:

The annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.

3.4 Gross Income. "Gross income" or "gross receipts", as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee

or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

- 3.5 Harvesting Net Income. Harvesting Net Income shall include income resulting from agricultural operations where LESSEE has contracted with a agricultural harvesting company to harvest LESSEE'S crop and LESSEE is paid a percentage of the gross sales resulting from that harvest. The resulting net income shall be included in the LESSEE'S total gross income as reported under Section 3.2b, Percentage Rents. At not time shall both Sections 3.4, Gross Income, and 3.5, Harvesting Net Income, be used together to calculate percentage rents due.

3.6 Inspection of Records.

1. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

2. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said

statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

3. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

4. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
 - (1) The audit(s) reveal an underpayment of more than ten percent (10%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
 - (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

5. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.7 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties hereto 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 CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) 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. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts 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.

- 3.8 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.
- 3.9 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 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.

1. 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.

- 2. 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.

3. 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.
4. 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:

1. 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.
2. 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.
3. 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.

4. 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.
5. 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.
6. 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.

CITY shall notify LESSEE as soon as reasonably possible of any above-mentioned action.

- 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:

1. 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.
2. 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, at 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.
1. 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.

2. 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 and 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.
- 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:

1. take all actions necessary to record a valid release of lien, or
2. 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.

1. 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.

2. 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.
 3. 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.
 4. 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.
 5. 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.
 6. 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

1. 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 Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

Lessee:
S.P.C.T.F., Inc.
Attn: Marc 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.

2. 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.

1. 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.
2. 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.

3. 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:
1. 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.

2. 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.
3. 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. 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:

1. 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.
2. 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.
3. LESSEE shall post a statement addressing the requirements of subsections a. and b. above in a prominent place at the work site.
4. 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.

5. 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.

- 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 16th day of December 1972 with Dennis Lindshield, on file in the City Clerk's office as Document R-207001, which 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:
 1. 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.
 2. LESSEE shall prepare the land for planting in a manner consistent with good agricultural practice, taking maximum advantage of natural water sources. Such actions of LESSEE shall be performed in a manner satisfactory to the City Manager.

3. LESSEE shall install a drag hose, 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.
4. 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 other than orange trees or trees used in LESSEE'S business 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 agree upon with CITY.

INITIAL

MSD

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.

1. 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.
2. 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.
3. 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.
4. 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 request 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:

1. Six (6) square meters (3m x 2m) of archaeologically sensitive land shall be excluded from the lease.
2. Signage shall be posted and maintained around the perimeter of the archaeologically sensitive land at 5 meter intervals.

3. The sign shall read "Environmentally Sensitive Area: Do Not Enter."
 4. Any change to the perimeter of the archaeologically sensitive land shall require 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 acknowledged 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 MSCP may be deleted from the leasehold area, subject to 180 day's 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.

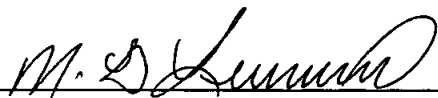
THE CITY OF SAN DIEGO

Date 3/13/00

By 
Real Estate Assets Director

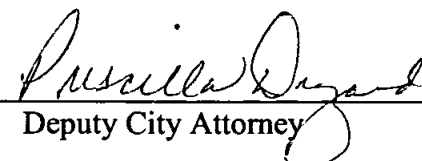
LESSEE: SAN PASQUAL CHRISTMAS
TREE FARM, INC. (S.P.C.T.F., INC.)

Date 02-09-00

By 
Marc Lindshield

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

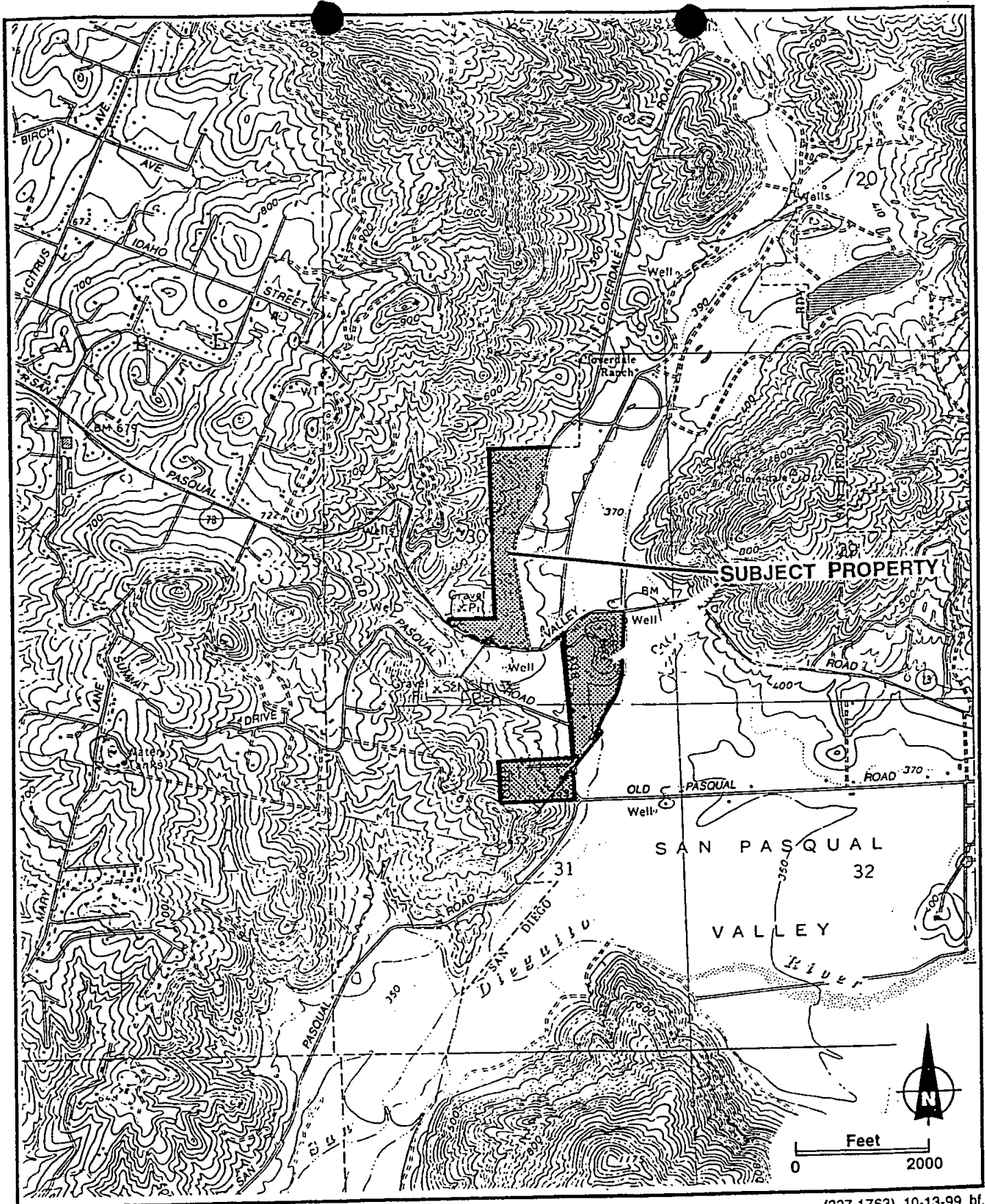
CASEY GWINN, City Attorney

By 
Deputy City Attorney

DWE:jmj
02/09/00
I:\WPO\1999\ESTES\LEASES\LS-SPCTF.35

SECTION 11: EXHIBITS

11.1 Parcel Map(s).



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



Location Map - Lindshield Leases

Environmental Analysis Section

CITY OF SAN DIEGO • PLANNING & DEVELOPMENT REVIEW

Figure

1

17

9202

SAN DIEGO

PASQUA/

VALLEY

SAN PASQUAL

32

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 VICE PRESIDENT / 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:

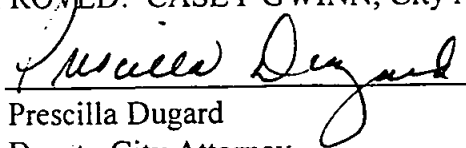
1. For 21250 San Pasqual Road (14 acres) at an initial annual rent of \$720, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 292825.

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 06 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 06 2000.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO:

CITY ATTORNEY

2. FROM: (Originating Department)

REAL ESTATE ASSETS DEPARTMENT

3. DATE

February 16, 2000

4. SUBJECT:

Three Leases - San Pasqual Christmas Tree Farms - San Pasqual

5. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

GOODMAN/Estey

51A

6. TELEPHONE NO.

66720/66264

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2: ☒

8.

COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT				
ORGANIZATION				
OBJECT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:()

Cost: None

Job: 222437

cc: Dept. Docket Clerk

Thomas Guide Map Page: 1130 G-5,6&7

10.

ROUTING AND APPROVALS

ROUTE	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
☒ X	Department Director			X	CITY MANAGER CULBRETH-GRAFT		
☒ X	P&DR/EAS				AUDITOR		
☒ X	EOCP			X	CITY ATTORNEY		
☒ X	FINANCIAL MGMT.			X	ORIGINATING DEPARTMENT		
☒ X	WATER DEPT.			MGR. DOCKET COORD. _____ COUNCIL REP. _____			
				RULES COMMITTEE ☐ CONSENT ☐ ADOPTION ☐ Refer to _____ ☐ Date _____			

11. PREPARATION OF:



RESOLUTION(S)



ORDINANCES(S)



AGREEMENT(S)



DEED(S)

1. Authorizing the City Manager to execute three (3) 25-year leases with San Pasqual Christmas Tree Farms (SPCTF) for 14, 20 and 35 acre parcels respectively, in San Pasqual Valley.
2. Certifying that the information contained in LDR File No. 98-1172 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines and that said Mitigated Negative Declaration (MND) reflects the independent judgment of the City of San Diego, as Lead Agency. Stating for the record that the MND has been reviewed and considered prior to approving the project. Adopting the Mitigation Monitoring and Reporting program.

11a. MANAGER'S RECOMMENDATION:

Adopt the resolution.

COUNCIL DISTRICT: 5

COMMUNITY AREA: SAN PASQUAL VALLEY

ACTION REQUESTED BY: Real Estate Assets Department Director and Water Department Director

DOCUMENTS SUBMITTED: Three Lease Agreements in triplicate for execution by the City Manager.

DESCRIPTIVE LOCATION: 21250 San Pasqual Road (14 acres); 24330 San Pasqual Road (20 acres); and 2185 Cloverdale Road in San Pasqual Valley (35 acres).

ENVIRONMENTAL ASSESSMENT: The City as Lead Agency under CEQA, has prepared considered and completed MND LDR File No. 98-1172 dated December 1, 1999 and Mitigation Monitoring and Reporting Program covering these activities.

VALUE: The market value of the property is estimated at \$483,000 based on comparable land values in San Pasqual Valley.

HANDLING: DO NOT RECORD. Return documents to Real Estate Assets Department, Attention: David W. Estey, CPM, SRWA, M.S. 51A, for further handling.

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

February 16, 2000

SUBJECT

Three Leases - San Pasqual Christmas Tree Farms - San Pasqual

BACKGROUND:

On February 2, 1999, City Council, in closed session, authorized exclusive lease negotiations with Marc Lindshield, President of San Pasqual Christmas Tree Farms, Inc. (SPCTF) for the operation of the three leases in San Pasqual Valley. The San Pasqual Lake Hodges Planning Group and the Agricultural Advisory Board have recommended approval. The basic terms of the three leases are:

	<u>LEASE 1</u>	<u>LEASE 2</u>	<u>LEASE 3</u>
ACREAGE	14	20	35
USE	Orange Grove	Row crops	Orange Grove
TERM	25 years	25 years	25 years
MINIMUM ANNUAL RENT	\$ 720.00	\$ 4,000.00	\$10,750.00
	<u>YEARS</u>		<u>YEARS</u>
PERCENTAGE OF GROSS INCOME	1 - 4 - 12%	N/A	1 - 4 - 12%
	5 - 9 - 16%	(See Below)	5 - 9 - 16%
	10+ - 20%		10+ - 20%
FLAT RATE	_____	<u>YEAR</u>	_____
		2 - \$5,000	
		3 - \$6,000	
		4 - \$7,000	
		5-10 - \$8,000	

The proposed leases reflect the City's updated lease provisions including Multiple Species Conservation Program, Best Management Practices, cultural and biological issues and the San Dieguito River Valley Park Trail Systems. The Water Department has reviewed and approved these leases.

FISCAL IMPACT: Minimum annual rents totaling \$15,420 will be deposited to the Water Department Fund 41500.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/Author Initials)

CULBRETH-GRAFT:Griffith:DWE

Job: 222437

SIGNATURES:_____
ORIGINATING DEPT. HEAD_____
CITY MANAGER:(FOR MANAGERIAL
DEPARTMENTS ONLY)