

CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT [Permit] is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation [CITY], and PINERY CHRISTMAS TREES, INC (PERMITTEE), to be effective April 1, 2010 [Effective Date], having first been signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY is the owner of certain real property, located in the City of San Diego, San Pasqual Valley, consisting of an area of approximately 22.5 acres, as shown in EXHIBIT A [Permit Area], attached hereto.
- B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of the promotion of and sales in association with a seasonal pumpkin and Christmas tree farm, growing, selling, shipping, and storage of large specimen trees on the eastern portion of the Permit Area, and for other related agricultural activities specifically in support of this use. Tractor trailer and container storage is not permitted.
- C. Nothing in this Permit implies an intention by CITY to enter into a long-term agreement to continue the Permitted Use after the term of this Permit expires.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area solely for the purpose of promotion of and sales in association with a seasonal pumpkin and Christmas tree farm, large landscape tree storage on the eastern portion of the Permit Area, and other related agricultural activities specifically in support of this use [the Permit Use], and for no other purpose whatsoever. Tractor trailer and container storage is not permitted.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
- 3. Administrative Processing Fee. The administrative processing fee for this Permit is \$600.00, payable by the PERMITTEE and must be paid prior to the CITY'S execution of the Permit. Funds shall be made payable to the City Treasurer.
- 4. Permit Fee. The annual Permit Fee will be \$17,500.00 or \$875.00 per acre per year for the approximate 20 acres of the Permit Area, paid quarterly in advance at \$4,375.00 per

quarter. In addition to the Permit Fee, the PERMITTEE shall install and maintain appropriate perimeter fencing and gates at PERMITTEE's sole cost. PERMITTEE acknowledges and agrees that the acreage and per acre rental rate set forth in this Permit are approximations for reference only, that these approximations are reasonable and shall not be subject to revision or adjustments of the Permit Fee, except with an actual change in the Permit Area.

5. Delinquent Rent. If PERMITTEE fails to pay the rent when due, PERMITTEE 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, PERMITTEE 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).
6. Term. The term of this Permit [Term] shall commence on the Effective Date, and shall expire on March 31, 2013.
7. Permit Termination. Upon termination of this Permit the PERMITTEE shall remove from the Permit Area all farm related equipment, building improvements and additional water conveyance systems added as a result of this Permit, and grade the land to a natural smooth surface.
8. Revocable Permit. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked with a 60 days written notice by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
9. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee [Mayor], unless otherwise expressly provided.
10. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S use of the Permit Area.
11. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. 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 substances. "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 of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

10.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

10.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

10.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.

10.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal

recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefore.

12. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
13. Property Damage. PERMITTEE shall pay for all damage to the Permit Area, CITY'S personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from PERMITTEE'S exercise of the rights granted by this Permit, including without limitation soil erosion, subsidence, or damage resulting thereby. PERMITTEE shall promptly repair and restore to its original condition all such property.
14. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of the City and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs
15. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
16. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

18. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:

- a. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Three Million Dollars (\$3,000,000);
- b. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- c. Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

18.1 Additional Insured. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insured in all policies.

18.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.

18.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

18.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

18.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration

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18.6 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.

18.7 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

18.8 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE'S insurable property related to the Permit Use or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

20. Compliance with Law. PERMITTEE shall, at his sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area.

21. Competent Management. For the Term of this Permit, PERMITTEE shall provide competent management of the Permit Area to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of pasture grazing cattle lands, using sustainable agricultural and best management practices whenever possible, and related activities in a fiscally responsible manner.

22. Water Rights. CITY reserves all of its right, title and interest in and to the water on the Permit Area. There is hereby reserved to CITY and PERMITTEE herein expressly agrees CITY shall have the right throughout the Permit Term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the Permit Area, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the Permit Area. Nothing in this Permit shall result in the transfer of the CITY'S rights, title or interest in the water on the Permit Area to any other person or entity.
23. Payment for Right to Use Water. It is understood and agreed by CITY and PERMITTEE that the Permit Fee includes and covers PERMITTEE'S right to pump and use water from any wells servicing the Permit Area, for the uses set forth in Section 1, Right to Enter. However, if in the opinion of the Mayor an additional water charge is deemed warranted for underground water pumped from wells, the CITY shall so notice PERMITTEE one year prior to implementation of the additional water charge. The additional water charge shall be a percentage of the cost of untreated water and will be determined solely by the Mayor who shall have the right to periodically adjust the charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY'S Public Utilities Department. The Permit Fee may be adjusted to reflect an additional water charge. All costs associated with the use of ground water shall be at PERMITTEE expense.
24. Water Payment Formula. The cost for ground water shall be reviewed and adjusted, if necessary, each year on January 1. The cost for water will be the San Diego County Water Authority (CWA) raw water cost to the CITY, and take into consideration credit for water pumping cost, infrastructure costs related to the well, water returned to groundwater, and water quality. Pumping cost shall be the utility cost to bring the water to the well head at 40-60 pounds per square inch (PSI). Infrastructure cost is the cost of maintaining the pump and well. Water quality relates to the quality of water, location in the valley, and approved Permit Use.
25. Water Quality – Resource Management Plan, Best Management Practices, and Storm Water Pollution Prevention Plan. CITY and PERMITTEE are committed to the implementation of programs to manage activities on the Permit Area in a manner which aids in the protection of the City of San Diego's valuable water resources. PERMITTEE shall comply with the Resource Management Plan ("RMP"), Best Management Practices ("BMP") including the Storm Water Pollution Prevention Plan ("SWPPP") approved by CITY'S Storm Water Management Program as it applies to the rural Permit Area. If requested, PERMITTEE shall submit for review and approval by the CITY, prior to the execution of this Lease, RMP, BMP, and SWPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Permit Area. The RMP, BMP, and SWPPP will be approved and periodically reviewed by the CITY. Upon written notice from the Mayor requesting an update, PERMITTEE shall submit updated plans for CITY review and approval within ninety (90) days of receipt of notice. PERMITTEE shall implement any necessary changes to the RMP, BMP, and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the RMP, BMP, and SWPPP have been developed and implemented, specific to the Permit Area and Permit Use, it is crucial that the practices be enforced and maintained. It is PERMITTEE'S responsibility to inform employees, contractors, subcontractors, agents and vendors of the RMP, BMP, and SWPPP.

26. Reporting Requirements. Upon written request from CITY, PERMITTEE agrees to provide to the CITY reports about all activities conducted on the Permit Area. These reports will detail the usage of water, and all agricultural practices including but not limited to use of pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the RMP. In addition, PERMITTEE shall provide to CITY, upon written request from CITY, the following information as applicable: map showing location of well(s), well installation permit(s), well condition (operating, non-operating, abandon), annual pumping volumes, drilling/geologic or hydrologic data, well construction details, well modifications or rehabilitation, all pump test data and analysis, electrical efficiency tests of well pump, all groundwater-level analyses, annual pumping volumes (acre feet), annual cropping patterns (acres), and upon request provide cooperation as the Groundwater Management Plan is implemented. Failure to provide the information requested under this section shall constitute a default under the terms of this Permit.
27. PERMITTEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. PERMITTEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park trail system, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the Permit Area. PERMITTEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible and, if required by CITY, would include Permit Area boundary fencing. However, if additional measures for protecting the site are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park trail system.
28. Signs. No signs other than customary notice signs are allowed unless pre-approved in writing by the Mayor.
29. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition. PERMITTEE is responsible for excluding unauthorized and unwanted activities from the Permit Area, including but not limited to off-highway vehicles, trespass, encroachment, and trash dumping. In addition to the Permit Use, the PERMITTEE shall provide appropriate perimeter fencing, gates, and monitoring of the Permit Area for protection from unauthorized access and unwanted activity.
30. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
31. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of

any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

32. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
33. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the parties.
34. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs.
35. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY:

The City of San Diego
Real Estate Assets Department
Attention: Department Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE:

Pinery Christmas Trees, Inc.
Attention: Norm Osborne
P.O. Box 26070
San Diego, California 92196

36. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date, if executed by the parties and approved by the City Attorney prior to said date.

Date: 3/30/10

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David A. Sandoval

Name: David A. Sandoval, CCIM
Title: Deputy Director, Real Estate Assets

Date: 3/30/10

PINERY CHRISTMAS TREES, INC.

BY: Norman S. Osborne

Name: Norman S. Osborne
Title: Pres.

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301, Class 1, Existing Facilities.

Date: March 30, 2010

BY: Nicole A. McGinnis

Name: NICOLE A. MCGINNIS
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY

This 5th day of April, 2010.

JAN I. GOLDSMITH, City Attorney

BY: Debra J. Butler

Name: Debra J. Butler

Title: Deputy City Attorney

DCM/cb
3/30/10

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Exhibit A

PCT Inc.

22.5 acres
(approx.)



Every reasonable effort has been made to assure the accuracy of this map. However, the user of this map assumes all responsibility for its use. This map is provided as a reference only and should not be used for any other purpose. The map is provided as a reference only and should not be used for any other purpose. The map is provided as a reference only and should not be used for any other purpose.

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READ 03-29-10