

MONTH-TO-MONTH RENTAL AGREEMENT

THIS MONTH-TO-MONTH RENTAL AGREEMENT (Agreement) is entered into between THE CITY OF SAN DIEGO, a California municipal corporation (CITY), and Benji Quintero, an individual (TENANT), and shall become effective February 1, 2011 (Effective Date).

THE PARTIES AGREE AS FOLLOWS:

1. RENTAL UNIT AND PROPERTY. Subject to the terms and conditions of this Agreement, CITY rents to TENANT and TENANT rents from CITY the residence (Residence) located at: 17082 Bandy Canyon Road, Escondido, CA 92025.
2. RENT. The monthly rent shall be TWO HUNDRED FIFTY dollars (\$250) due and payable in advance on the first (1st) day of each month, commencing on the Effective Date of this Agreement. The rent for the first and last months will be prorated as necessary. The rental amount reflects the fair market value of the Residence at the time of the execution of this Agreement. The City may review the amount of rent paid and adjust rent accordingly with a minimum of 30 days written notice. TENANT shall also pay, in January of each year, annual percentage rent of TWENTY-FIVE PERCENT (25%) of net dollar proceeds from the growing, harvesting, sales of Avocados. Checks should be made payable to "City Treasurer" and mailed to:

Office of the City Treasurer
City of San Diego
P. O. Box 122289
San Diego, California, 92112-4165

or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The rent for the first and last months of the Agreement shall be prorated as necessary. Rent credits may be issued for the cost of maintenance items that would typically be the responsibility of the CITY.

3. LATE CHARGES. If TENANT fails to pay rent within five (5) days past due, then TENANT shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of the delinquent rent. However, if TENANT fails to pay rent within fifteen (15) days past due, then TENANT shall pay CITY a sum of money equal to ten percent (10%) of the delinquent rent. It is the intent of this provision to compensate CITY for losses resulting from rental delinquency, including costs to CITY for servicing the delinquent account. CITY may terminate this Agreement if TENANT fails to pay rent within seven (7) days past due.
4. SECURITY DEPOSIT. None.

5. TERM. The term of this Agreement ("Term") shall be month-to-month.
6. TERMINATION. Except as prohibited by law, this Agreement may be terminated by TENANT after service upon CITY of a written thirty (30) day notice of termination of tenancy. Except as prohibited by law, if TENANT has been in possession of the unit for less than one year, this Agreement may be terminated by CITY by service upon TENANT of a written 30-day notice of termination of tenancy; if TENANT has been in possession of the unit for one year or longer, this Agreement may be terminated by CITY by service upon TENANT of a written 60-day notice of termination of tenancy. Any holding over thereafter shall result in TENANT being liable to CITY for daily "rental damages" equal to the current monthly fair rental value of the unit, divided by 30 (i.e., such proration shall be based on a 30-day month).
7. USE OF RESIDENCE. The Residence shall be used and occupied by TENANT and the Occupants named below, exclusively as a private residence, and no part of the Residence shall be used at any time during the Term of this Agreement for the operation of any business, profession or trade, or for any purpose other than as a private residence.
8. OCCUPANTS. The Residence shall be used and occupied by the following named person(s):
- | | | | |
|-------------------------|-------------------|------------------------|-------------------|
| <u>Benjamin Quinten</u> | <u>06/05/1966</u> | <u>Adriana Quinten</u> | <u>01/07/1999</u> |
| Name | Birthdate | Name | Birthdate |
| <u>Maria Sanchez</u> | <u>01/26/1966</u> | | |
| Name | Birthdate | Name | Birthdate |
| <u>Benjamin Quinten</u> | <u>06/15/1988</u> | | |
| Name | Birthdate | Name | Birthdate |
9. PETS. Pets are allowed on the Residence with prior authorization from the CITY.
10. NOTICE. Any notice required or permitted by this Agreement or by state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as set forth below. Either party may change its address by notifying the other party of the change. Notice shall be deemed given 48 hours from the time of mailing if mailed as provided in this paragraph.

Notices shall be sent as follows:

If to CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

If to TENANT: Benji Quintero
17082 Bandy Canyon Road
Escondido, CA 92025

11. PROHIBITIONS. Without CITY'S prior written consent as an addendum to this Agreement, no water beds or liquid-filled furniture or heating stove or fireplace shall be installed in or about the Residence.
12. COMPLIANCE WITH ALL LAWS. TENANT shall not violate any criminal or civil law, ordinance or statute in the use or occupancy of the Residence, commit waste or nuisance, annoy, molest or interfere with any other tenant or neighbor. Any such action may result in the immediate termination of this Agreement as provided herein and by law. TENANT shall comply with all applicable laws and regulations in the cleanliness, use, occupancy, and preservation of the Residence.
13. QUIET ENJOYMENT. TENANT, upon payment of all the sums referred to in this Agreement as being payable by TENANT, and TENANT'S performance of all its other obligations under this Agreement, and TENANT'S observance of all rules and regulations, shall and may peacefully and quietly have, hold, and enjoy the Residence during the Term of this Agreement.
14. REPAIRS AND ALTERATIONS. No improvements, structures, or installations shall be constructed on the Residence, and the Residence may not be altered or repaired by TENANT without prior written approval of CITY. This provision shall not relieve TENANT of any obligation under this Agreement to maintain the Residence 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 Agreement to make or assume any expense for any improvements or alterations.
15. ACCEPTANCE OF RESIDENCE. TENANT acknowledges that the Residence needs work and shall take possession of the Residence "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Residence for TENANT'S intended use, and assumes no obligation to alter or improve the Residence. TENANT has relied solely on his/her own independent investigations of the condition and suitability of the Residence, and is satisfied with the condition thereof, including but not limited to electrical and fire sprinkler systems, security, asbestos, air quality, and other environmental aspects, seismic and earthquake requirements, and compliance with applicable zoning, municipal, county, state and federal laws, ordinances and regulations, and any covenants or restrictions of record. TENANT shall maintain the Residence in good repair, and in a decent, safe, healthy and sanitary condition. TENANT shall not make any alterations or additions to the Residence without CITY'S prior written consent. At the expiration or earlier termination of this Agreement, TENANT shall surrender the Residence in as good condition and repair as when TENANT received the Residence, normal wear and tear excepted.

16. CARE, CLEANING, AND MAINTENANCE. TENANT shall maintain and preserve the Residence in a decent, safe, healthy, and sanitary condition to CITY'S satisfaction. TENANT shall be responsible for all replacement, maintenance and repair of the Residence to include the structure, plumbing, electrical, heat, septic, and water conveyance systems servicing the Residence. Upon lease termination TENANT shall leave the Residence in good clean condition, subject to normal wear and tear, and remove all personal belongings. TENANT shall be responsible for the upkeep of the yard, including maintaining a proper fire break around the Residence structure. TENANT shall pay CITY all costs to repair, replace or rebuild any portion of the Residence damaged by TENANT or TENANT'S guests or invitees, normal wear and tear excepted. TENANT shall paint out any building graffiti and keep the surrounding building areas clean from weeds and debris. TENANT shall also report any unauthorized activity to the CITY'S, Real Estate Assets Department.
17. INSURANCE. CITY does not provide insurance coverage for loss or damage to TENANT'S personal property or public liability for the Residence. TENANT shall obtain his/her own Renter's Insurance Policy covering loss of personal property as a result of fire, theft, or vandalism, and shall obtain public liability coverage in the minimum amount of \$300,000 per occurrence.
- a. Conditions. All insurance policies shall, by separate endorsement, name CITY, its elected officials, officers, agents and employees as additional insureds, protect CITY against any legal costs in defending claims, and shall 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 shall be in effect on or before the Effective Date. A copy of the insurance policy shall remain on file with CITY during the Term of this Agreement. At least thirty (30) days prior to the expiration of each policy, TENANT shall furnish to CITY a certificate showing that a new or extended policy has been obtained which meets the terms of this Agreement.
- b. Modification. CITY, at its discretion, may require additional insurance coverage at any time during the Term by giving TENANT sixty (60) days prior written notice. Such requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Residence. TENANT shall obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
- c. Accident Reports. TENANT shall report to CITY any accident causing more than five hundred dollars (\$500.00) worth of property damage, or any serious injury to persons on the Residence. The 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.

18. UTILITIES. TENANT shall be responsible for obtaining, accessing, arranging for and paying for all utility services required on the premises. At the commencement of this Agreement, the CITY is not charging TENANT for use of well water to the premises. However, the CITY may, at its sole option, start charging TENANT for future use of well water, based on CITY'S standard water fees for well water, by serving TENANT with a prior two year written notice.
19. WAIVER OF BREACH. The waiver by either party of any breach of this Agreement shall not be construed to be a continuing waiver of any subsequent breach. CITY'S acceptance of rent with knowledge of any uncured breach of this Agreement by TENANT shall not be deemed a waiver of such breach. No waiver by either party shall be valid unless expressed in writing and signed by the waiving party.
20. INDEMNIFICATION, JOINT AND SEVERAL LIABILITY. TENANT and, if TENANT is comprised of more than one person, each such person, jointly and severally, whether or not in actual possession of the Residence, shall be liable for each and every obligation of TENANT under this Agreement, and shall protect, defend, indemnify, and hold CITY harmless from and against any claim or liability related to TENANT'S use or occupancy of the Residence, or resulting from the acts or omissions of any guest or invitee of TENANT on or about the Residence. This provision shall not be construed as a waiver of CITY'S duty of care to prevent personal injury or property damage where that duty is imposed by law.
21. ENTRY AND INSPECTION. CITY may, as allowed by California law, enter the Residence to inspect and repair the Residence, to make additions or alterations to the Residence as CITY deems appropriate to preserve the Residence, and to remove improvements that do not conform to this Agreement. CITY shall provide written notice to TENANT prior to entering the Residence whenever required by law (California Civil Code Section 1954). TENANT'S non-compliance with CITY'S lawful request for entry shall be a default of this Agreement and cause for immediate termination as provided herein and by law. CITY may exhibit the Residence and display the usual "for sale," "for rent" or "vacancy" signs on the Residence immediately upon any notice of termination or within forty-five (45) days of the expiration of this Agreement.
22. ABANDONMENT. If at any time during the Term TENANT abandons the Residence or any part thereof, CITY may, at CITY'S option, obtain possession of the Residence in the manner provided by law and without becoming liable to TENANT for damages or for any payment of any kind whatsoever. CITY may then, at CITY'S discretion, and as agent for TENANT, re-let the Residence, or any part thereof, for the whole or any part of the then unexpired Term, and may receive and collect all rent payable by virtue of such re-letting, and, at CITY'S option, hold TENANT liable for any difference between the rent receivable under this Agreement and the net realized rent received by CITY from such re-letting. If CITY'S right of re-entry is exercised following TENANT'S abandonment of the Residence, then any personal

property belonging to TENANT and left on the Residence shall be deemed also to have been abandoned, in which case CITY may dispose of all such personal property in any manner CITY shall deem proper, and TENANT hereby waives any right or claim against CITY thereof.

23. SUBLETTING AND ASSIGNMENT. TENANT shall not sublet any portion of the Residence. TENANT shall not assign this Agreement or any right or obligation under this Agreement. Any such attempted subletting or assignment shall be a default of this Agreement, and CITY may immediately terminate this Agreement as provided herein and by law.
24. DEFAULT. Except for the payment of rent, if TENANT fails to timely perform any of its obligations under this Agreement, including without limitation failure to comply with CITY'S then-current rules and regulations for the Residence, or fails to comply with any duties imposed on TENANT by statute, then within seven (7) days after delivery of written notice by CITY specifying such breach or non-compliance and indicating the intention of CITY to terminate this Agreement by reason thereof, CITY may terminate this Agreement. If TENANT fails to pay rent when due and the breach continues for seven (7) days thereafter, TENANT shall be in default and CITY may declare the entire balance of rent payable hereunder to be immediately due and payable and may enforce any and all rights and remedies available to CITY at law or in equity, including without limitation immediately terminating this Agreement.
25. SALE OF PROPERTY. In the event of the sale of property, if CITY presents to TENANT a "Tenant's Certification of Terms – Estoppel Certification" or other similar estoppel certification form, TENANT shall execute and deliver the certificate within ten (10) days of such written notice acknowledging that this Agreement is unmodified and in full force and effect or in full force and effect as modified with the consent of CITY, and stating the modifications. TENANT'S failure to timely execute and deliver such certification shall be deemed to be TENANT'S acknowledgment that the certificate as submitted by CITY is true and correct and may be relied upon by any lender or purchaser.
26. SMOKE DETECTION DEVICE. The TENANT shall equip the Residence with a functioning smoke detection device(s), and TENANT shall be responsible for testing the device(s) weekly. TENANT shall immediately replace any non-functioning smoke detection device(s). If battery operated, TENANT shall change the detector's battery as necessary. CITY may enter the Residence to check the smoke detection device(s), as provided by law.
27. HAZARDOUS MATERIALS. TENANT shall not keep on the Residence any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Residence or that might be considered hazardous or extra hazardous by any responsible insurance company. TENANT shall not dump motor oil, paint or other hazardous material on the Residence.

28. CRIMINAL NOTICE. The California Department of Justice, sheriff departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and is a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.
29. GOVERNING LAW. This Agreement shall be governed, construed, and interpreted by, through, and under the laws of the State of California.
30. VENUE. At the option of either party, the venue of any action involving this Agreement may be in or changed to the County of San Diego. Personal services either within or without the State of California shall be sufficient to give personal jurisdiction to any Court in which an action is filed for litigation of rights under this Agreement.
31. POSSESSORY INTEREST TAX. TENANT shall pay, before delinquency, all taxes, assessments, and fees levied upon TENANT or the Residence, including the land and buildings, levied by reason of TENANT'S activities related to the Residence. TENANT acknowledges that this Agreement may create a possessory interest subject to taxation, and that TENANT may be subject to the payment of taxes levied on such interest. TENANT shall pay all such possessory interest taxes. TENANT'S payment of such taxes, fees, and assessments shall not reduce any obligation of TENANT under this Agreement.
32. ADDENDUM. By signing this Agreement, TENANT acknowledges receipt of a "Lead Paint Disclosure Addendum", which is attached hereto, and is incorporated as part of this Agreement.
33. ASBESTOS DISCLOSURE. CITY discloses to TENANT that portions of the structural components of the Residence may contain asbestos. TENANT acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. TENANT shall disclose the existence of asbestos on the Residence, as required by Health and Safety Code Section 25915. TENANT shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Residence.
34. ENTIRE AGREEMENT. This Agreement, which includes all attachments referred to above, constitutes the entire Agreement between the parties and shall not be modified except in writing and signed by all parties. The CITY has not made any representations or promises other than those set forth herein. If any part of this

Agreement is found to be legally unenforceable, the remainder of this Agreement shall remain in full force and effect. The descriptive headings used in this Agreement are for the convenience of reference only and shall not affect the parties' rights or obligations. Pronouns used herein shall, as appropriate, include either or both genders, singular or plural.

35. ATTORNEY FEES. If any legal action or proceeding is brought by either party to enforce any part of this Agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorney fees and costs.

THIS IS A BINDING LEGAL DOCUMENT. IF ANY PROVISION IS NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING. TENANT ACKNOWLEDGES RECEIPT OF A SIGNED COPY OF THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 01/17/11

Benjamin Quintero
Benji Quintero, an individual

THE CITY OF SAN DIEGO,
A municipal corporation

Date: 2/2/11

BY: David A. Sandoval
Real Estate Assets Department
David A. Sandoval, C.I.M.
Deputy Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

JAN L. GOLDSMITH, City Attorney

BY: [Signature]
Deputy City Attorney

Date: 2/05/11