

COPY

FIRST AMENDMENT TO LEASE AGREEMENT

This amendment is executed by and between the City of San Diego, a municipal corporation, as lessor (CITY), and Charles T. Jancic, hereinafter called LESSEE. Heretofore, CITY and LESSEE entered into a lease agreement dated December 15, 1986, a copy of which lease agreement is filed in the Office of the City Clerk as Document RR267334, the parties hereto now desire to amend said lease agreement in the manner hereafter set forth.

Now therefore, CITY and LESSEE agree as follows:

SECTION 1:

Paragraph 1.02, Uses, is deleted in its entirety and replaced by the following:

1.02 Uses. It is expressly agreed that the premises, consisting of approximately 222 acres, is leased exclusively for the purpose of growing and marketing fruits, vegetables, trees, shrubs and plants; operating and maintaining a commercial fruit and produce stand for retail sale of fruits and vegetables and/or products produced in the City's agricultural preserve, in accordance with a Conditional Use Permit issued by the City Zoning Administrator; and for such other related agricultural and horticultural uses as may be first approved in writing by the City Manager and for no other purposes whatsoever.

- a. Other than the existing structure presently being utilized as a fruit and produce stand, no additional temporary or permanent structures of any kind shall be erected on the premises for retail sales or related operations without the prior written approval of the City Manager.
- b. All applicable City zoning, permit, and licensing requirements related to the operation and maintenance of the commercial fruit stand shall be complied with by LESSEE.

LESSEE covenants and agrees to use the premises for the purposes outlined above 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.

RR- 269921
DOCUMENT NO. _____

FILED _____ DEC 07 1987

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

SECTION 3: RENT

Paragraph 3.01, Time and Place of Payment, remains unchanged.

Paragraph 3.02, Rent, Subparagraph a., Rent Amount, remains unchanged.

Subparagraph a.(1), Additional Rent, is added to read as follows:

- (1) Additional Rent. Beginning July 1, 1987, the CITY shall be paid an additional rent amounting to five percent (5%) of the annual gross income received from all sales at the commercial fruit and produce stand operated on the premises. However, for the purpose of calculating the additional rent, the annual gross income shall not include income received for Christmas trees grown on the 12-acre parcel where the fruit and produce stand is located. The additional rent shall be paid monthly in arrears on or before the last day of the month following the month in which revenue is earned. Said additional rent shall be reviewed by CITY at the end of the fourth year following execution of this amendment by the City Manager, and at the end of each subsequent three-year period thereafter, for the purpose of adjusting the rent. If, in the sole opinion of the City Manager, an adjustment is deemed warranted, the adjustment shall be effective July 1 of the year in which the adjustment is made. Provided, however, if LESSEE does not agree with said adjustment, LESSEE shall have the right to discontinue operating and maintaining the fruit and produce stand upon 30 days written notice to CITY.

Subparagraph b. remains unchanged.

Subparagraph c. remains unchanged.

SECTION 3: RENT

Paragraph 3.04, Inspection of Records, is amended by adding the following subparagraphs related to retail sales on the leasehold:

- a. Retail Sales Records. For all retail sales on the premises, LESSEE shall be required to keep true and complete books, records and accounts of all financial transactions resulting from the use of said premises. The records shall be supported by source documents such as sales slips, daily register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues 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.

- b. City's Right to Audit. All LESSEE'S books of account, records and supporting documentation related to retail sales, as outlined in Subparagraph a. above, shall be kept at least five years and made available to CITY in a location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not related to retail sales. The CITY, at its discretion, shall have the right to inspect and audit the retail business of LESSEE, its agents, subleases, concessionaires and licensees operating on and conducting retail sales from the premises, as necessary to enable CITY to determine the amounts of rent due CITY in compliance with the requirements of this amendment to the lease agreement.
- c. Audit Costs. The full cost of the CITY'S audits will be borne by CITY, unless one or both of the following conditions exists:
 - (1) The audit reveals an underpayment of more than five percent (5%) 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; or
 - (2) LESSEE fails to maintain complete and true books, records, accounts and supporting source documents in strict accordance with the Inspection of Records section.
 - (3) LESSEE shall pay any deficiency determined by the audit, plus interest or such amount as defined by Paragraph 3.03, Delinquent Rent, of this lease agreement, within 30 days of notice thereof by CITY. CITY will credit any over payment against incoming rents. Any over payment determined after the end of this lease will be refunded by CITY within 30 days of confirmation by the City Manager of the audit findings.

SECTION 7: AGRICULTURAL PROVISIONS

Paragraph 7.12, Water Rights, is deleted in its entirety and replaced by the following:

144-26
7.12 Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.05, 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 or 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 said leased premises.

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- a. LESSEE shall have the right at LESSEE'S sole cost to develop and use on the leased premises all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the leased premises. LESSEE agrees to compensate CITY for use of natural surface and/or ground water at the rate of \$12.50 per acre foot. Provided, however, if the quantity of said water used on the leased premises exceeds 4-acre feet per acre per lease year, LESSEE shall pay CITY for all water used in excess of this figure at ~~the San Diego County Water Authority's rate for interruptible untreated water in effect at the end of the lease year in which the excess water was used.~~ LESSEE shall install, at LESSEE'S sole cost, a metering device on all well(s) on the leased premises 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. CITY shall bill LESSEE at the beginning of each new quarter for water used during the previous quarter. Payment for said water shall be due the CITY on or before the last day of the month beginning each new quarter.

12/31/90; 93, 96, 99, 02, 05
At the end of the third year of the term of this agreement and at the end of each subsequent three-year period thereafter, the City Manager shall review the cost of water pumped from the well(s) on the leased premises and adjust the cost of said water upward if in his sole opinion an increase is warranted. Provided, however, any increase in the cost of water by the City Manager shall not exceed the then current charge for untreated water pumped from the Wild Animal Park well in accordance with its Right of Entry Permit to drill, operate and maintain a

well on City-owned land - San Pasqual Valley, Document RR 257798

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.

- b. CITY shall have the right to reasonable access for monitoring the level and quality of natural surface and ground waters over and under the leased premises. Should the monitoring indicate surface and/or ground water quality degradation, the CITY shall have the right to require alteration of any agricultural, irrigation or other practices by LESSEE which may cause such water quality degradation as determined by the City Manager.
- c. 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. CITY shall further have the right to require LESSEE to connect, or to reconnect, to such CITY-constructed water facilities, provided CITY shall furnish water to LESSEE subject to rules and regulations, including payment of customary charges and water rates, applicable to all other water customers receiving similar class and/or quality service from the City of San Diego.

All other terms and conditions of the lease agreement shall remain the same.

IN WITNESS WHEREOF, this First Amendment to Lease Agreement is executed by the CITY, acting by and through the City Manager, under and pursuant to Resolution R- 269921 authorizing such execution, and the LESSEE has caused this amendment to be executed this 7th day of Dec., 1987.

CITY OF SAN DIEGO

Date DEC 07 1987, 1987

By
ASSISTANT TO THE CITY MANAGER

LESSEE: CHARLES T. JANCIC

Date 10/26, 1987

Charles T. Jancic

APPROVED AS TO FORM AND LEGALITY THIS
22 DAY OF January, 1988

JOHN W. WITT, City Attorney

By
Deputy

WRK:jw(62-5)
9-30-87

Filner-yea, Mayor O'Connor-yea.

ITEM-150: (R-89-2183) ADOPTED AS RESOLUTION R-273522

Authorizing the execution of an amendment to the sublease agreement with Evergreen Distributors, Inc. deleting 35 acres from the leased premises, to be used by the Water Utilities Department as the site of the San Pasqual Water Reclamation Facility, and adding 39 acres of adjacent land to the leasehold for the relocation of the nursery stock removed from the proposed water reclamation site; authorizing the expenditure of amounts not to exceed \$198,675 from Water Revenue Fund 41502, and \$198,676 from Sewerage Utility Revenue Fund 41506, for a total expenditure of \$397,351 for the Capital Improvements Program Project, San Pasqual Water Reclamation Facility (CIP-73-290.0 and CIP-46-151.0); for the purpose of reimbursing Evergreen Distributors, Inc. \$361,351 for costs relating to relocation from the water reclamation site to adjacent land previously subleased to Mr. Froehlich and Mr. Dickson; \$24,000 to Mr. Froehlich, and \$12,000 to Mr. Dickson for the loss of their improvements; terminating the Evergreen Distributors, Inc. lease agreement for the 100-acre parcel in San Pasqual Valley effective March 31, 1989.

(See City Manager Report CMR-89-219. San Pasqual Valley Community Area. District-1.)

COMMITTEE ACTION: Reviewed by PFR on 5/10/89. No action taken. Forwarded to the full Council with direction to the City Manager to provide information on the chronology of events related to the relevant parcels. Districts 5, 6 and 7 voted yea. Districts 1 and 8 voted nay.
Aud. Cert. 8900937.

FILE LOCATION: LEAS - Evergreen Distributors, Inc.
LEASFY89-1

COUNCIL ACTION: (Tape location: B453-C370.)

MOTION BY HENDERSON TO ADOPT STAFF'S RECOMMENDATION. Second by Struiksma. Passed by the following vote: Wolfsheimer-nay, Roberts-yea, McColl-yea, Pratt-yea, Struiksma-yea, Henderson-yea, McCarty-yea, Filner-nay, Mayor O'Connor-yea.

ITEM-200:

(Continued from the meetings of March 20, 1989, Item 54, April 11, 1989, Item 336 and May 8, 1989, Item 200; last continued at Council Member McColl's request, to allow the

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A322-367.)

CONSENT MOTION BY McCOLL TO ADOPT. Second by Struiksmā. Passed by the following vote: Wolfsheimer-yea, Roberts-yea, McColl-yea, Pratt-not present, Struiksmā-yea, Henderson-yea, McCarty-yea, Filner-yea, Mayor O'Connor-yea.

* ITEM-122: (R-90-3) ADOPTED AS RESOLUTION R-274195

Authorizing the expenditure of an amount not to exceed \$6,500 from Water Revenue Fund 41502, and an amount not to exceed \$6,500 from Sewer Revenue Fund 41506, for a total expenditure of \$13,000 for the Capital Improvement Project, San Pasqual Water Reclamation Facility (CIP-73-290.0 and CIP-46-151.0), for the purpose of reimbursing Mr. Dickson for the loss of his improvements due to the relocation of Evergreen Nursery; authorizing \$13,000 to supplement the amounts previously authorized by Resolution R-273522. (See City Manager Report CMR-89-352. San Pasqual Valley Community Area. District-1.)

COMMITTEE ACTION: Reviewed by PFR on 7/26/89.

Recommendation to approve the City Manager's recommendation to authorize the additional expenditure of \$13,000 to supplement the \$12,000 previously authorized by Resolution R-273522, for the purpose of reimbursing Mr. Dickson for the loss of his improvements due to the relocation of Evergreen Nursery. Districts 6, 7, and 8 voted yea. District 1 voted nay. District 5 not present. Aud. Cert. 8901111. WU-P-89-194.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A322-367.)

CONSENT MOTION BY McCOLL TO ADOPT. Second by Struiksmā. Passed by the following vote: Wolfsheimer-nay, Roberts-yea, McColl-yea, Pratt-not present, Struiksmā-yea, Henderson-yea, McCarty-yea, Filner-yea, Mayor O'Connor-yea.

ITEM-123: (R-89-2578) ADOPTED AS RESOLUTION R-274196

Authorizing the City Manager to negotiate a joint use