

RELEASE & WAIVER AGREEMENT

THIS RELEASE & WAIVER AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and CLOVERDALE STABLES, INC., a California corporation ("CLOVERDALE"), to be effective upon execution by the parties and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CLOVERDALE was the "LESSEE" by assignment under that certain CITY OF SAN DIEGO FLAT RATE LEASE ("1983 Lease") between CITY and JOHN W. AND BETTY D. WYATT dated August 29, 1983, and filed in the Office of the San Diego City Clerk as Document RR-259086, whereby CITY leased to CLOVERDALE and CLOVERDALE leased from CITY certain real property situated in the City of San Diego, County of San Diego, State of California, and particularly described in the 1983 Lease. The 1983 Lease had a term of 15 years.
- B. Upon expiration of the 1983 Lease, CLOVERDALE became a holdover, month-to-month tenant under the terms of the 1983 Lease.
- C. CITY and CLOVERDALE entered into that certain CITY OF SAN DIEGO PERCENTAGE RATE LEASE (the "New Lease") dated September 30, 2005, recorded in the Office of the San Diego City Clerk as Document RR-300852, whereby CITY leased to CLOVERDALE and CLOVERDALE leased from CITY that certain real property (the "San Pasqual Property") located at 2460 Cloverdale Road, in the community of San Pasqual Valley, City of San Diego, County of San Diego, State of California, and more particularly described in the New Lease.
- D. CLOVERDALE would like to sublease a portion of the San Pasqual Property that consists of more than twenty-five percent (25%) of the San Pasqual Property (i.e., a "major sublease" as defined by the New Lease) under a SUBLEASE AGREEMENT (the "Sindici Sublease") by and between CLOVERDALE and GREGG C. SINDICI, an individual, in the form and under the terms and conditions attached hereto as Exhibit A.
- E. Under Section 4.3 Equity Sharing of the New Lease, a "major sublease" requires CLOVERDALE to pay to CITY a portion of the "equity," as defined in the New Lease ("Equity"), consisting of any amount paid to CLOVERDALE as consideration for such a "major sublease."
- F. In a letter to CITY dated April 5, 2006, CLOVERDALE contends it is owed certain compensation from CITY related to its tenancy under the 1983 Lease.
- G. To settle any dispute between them and allow for CITY'S consent to the proposed sublease, CLOVERDALE is willing to drop all claims against CITY related to

CLOVERDALE'S tenancy under the 1983 Lease, and CITY is willing to waive any right it may have to a twenty-five percent (25%) share of the Equity, under the terms and conditions of this Agreement.

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

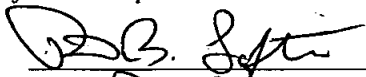
1. Release. CLOVERDALE, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which CLOVERDALE now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of the 1983 Lease, including, without limitation, any and all known or unknown claims which have resulted from the alleged acts or omissions of CITY, its elected officials, officers, representatives, agents or employees. This release shall be a fully binding and complete settlement between CLOVERDALE, CITY, and each of them, their successors and assigns.
2. Section 1542 Waiver. CLOVERDALE acknowledges and agrees that the release of liability provision set forth in Paragraph 1, above, is a general release, and further expressly waives and assumes the risk of any and all claims against CITY arising from the 1983 Lease and which exist as of this date but of which CLOVERDALE does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect CLOVERDALE'S decision to enter into this Agreement. CLOVERDALE further agrees to accept this Agreement as a complete compromise of matters involving disputed issues of law and fact, and assume the risk that the facts or law may be otherwise than they believe. It is understood and agreed by the parties

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that this Agreement is a compromise and nothing in this Agreement shall be construed as an admission of liability on the part of CITY, by whom liability is expressly denied. CLOVERDALE expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

"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."

WAIVED BY: CLOVERDALE STABLES, INC.,
A California corporation

BY: 
Name & Title: Peter B. Loftin, President

3. Waiver. CITY hereby waives, in this instance alone, any right it may have pursuant to a twenty-five percent (25%) share of the Equity related to the Sindici Sublease pursuant to Section 4.3 Equity Sharing of the New Lease. Such waiver shall not affect CITY'S rights to receive any additional rent payable as provided by such Section 4.3 of the New Lease and related to the Sindici Sublease or any other sublease of the San Pasqual Property. This waiver shall not be a continuing waiver, and CITY retains all rights under Section 4.3 of the New Lease related to any other sublease of the San Pasqual Property.
4. No Admission. This Agreement represents a compromise and does not constitute any admission of liability by any party to any other party. The parties to this Agreement expressly deny any liability to the other Party. The parties further acknowledge that they entered into this Agreement solely for the purpose of buying their peace with one another and terminating all potential litigation among them and future successors and assigns.
5. Further Assurances. The parties agree to execute such other documents and to take such other action as may be needed or required to effectuate the terms, conditions, covenants, and provisions of this Agreement.
6. Governing Law. This Agreement has been negotiated and entered into in the State of California, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California.
7. Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns.

8. Amendments. This Agreement may only be amended by a written agreement executed by the parties.
9. Independent Advice of Counsel. The parties represent and declare that in executing this Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel.
10. Voluntary Agreement. The parties represent and declare that they have carefully read this Agreement and they know the contents thereof, and that they signed this Agreement freely and voluntarily.
11. No Prior Assignments. CLOVERDALE represents and warrants that it has not previously assigned, transferred, or purported to have assigned or transferred, in any manner, any claim held by it against CITY, its elected officials, officers, representatives, agents, or employees. CLOVERDALE shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all such claims and pay CITY'S costs and attorney fees in the event any individual or entity asserts any such assignment.
12. Construction. The provisions of this Agreement, or this Agreement as a whole, shall not be construed against the drafting party.
13. Waiver. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision.
14. Captions and Interpretations. Titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.
15. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties.

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16. Authority. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement 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 Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement shall be effective upon execution by the parties and approval by the San Diego City Attorney, as follows:

Date: 5-10-06

CLOVERDALE STABLES, INC.,
A California corporation

BY: [Signature]
Name & Title: Pete B. Wesson, President

Date: 5/16/06

THE CITY OF SAN DIEGO,
A California municipal corporation

BY: [Signature]
Name & Title: Acting Director, REP.

APPROVED AS TO FORM AND LEGALITY:

Date: 5/17/06

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: [Signature]
BROCK LADEWIG, Deputy City Attorney