



THE CITY OF SAN DIEGO

January 11, 2010

The Pinery Attorney -

The Pinery LLC
Phil Guardia
13701 Highland Valley Road
Escondido, CA 92025

Dear Mr. Guardia:

Per Section 4.02 of the Bordier's Nursery, Inc. Flat Rate Lease, Document No. 267334, the City is to consent to assignments of the lease. To comply with this lease requirement and complete the City files for the leasehold, please sign and return the Consent to Assignment and Assumption Agreement. There is also a five hundred sixty (\$560.00) processing fee to be submitted with the signed document. Please make the check payable to the City Treasurer.

I can be reached at (619) 236-6066 with any questions. Thank you.

Sincerely,

Dave Martens
Property Agent

DCM/cb

cc: Mark Berchiolli, Bordier's Nursery, Inc.

I:\Support Staff Group\WPO\2010\MARTENS\L-GUARDIA.2docx



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



THE CITY OF SAN DIEGO

January 11, 2010

Bordier's Nursery, Inc.
Mark Berchiolli
7231 Irvine Blvd.
Irvine, CA 92618

Dear Mr. Berchiolli:

Per Section 4.02 of the Bordier's Nursery, Inc. Flat Rate Lease, Document No. 267334, the City is to consent to assignments of the lease. To comply with this lease requirement and complete the City files for the leasehold, please sign and return the Consent to Assignment and Assumption Agreement. There is also a five hundred sixty (\$560.00) processing fee to be submitted with the signed document. Please make the check payable to the City Treasurer.

I can be reached at (619) 236-6066 with any questions. Thank you.

Sincerely,

Dave Martens
Property Agent

DCM/cb

cc: Phil Guardia, The Pinery, LLC

I:\Support Staff Group\WPO\2010\MARTENS\L-BERCHIOLLI2.docx

**CITY OF SAN DIEGO
CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT [Consent] is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation [CITY], and BORDIER'S NURSERY, INC., a California corporation [Lessee/Assignor], to be effective upon execution by the parties and approval by the City Attorney [Effective Date], as follows:

RECITALS

- A. CITY owns the real property located at 13701 Highland Valley Road consisting of approximately 170 acres currently leased to Bordier's Nursery, Inc., a California Corporation.
- B. Lessee/Assignor voluntarily filed a Chapter 11 bankruptcy petition on December 23, 2008. Pursuant to the Bankruptcy Court order entered on April 7, 2009, Lessee/Assignor was authorized to enter into an Asset Purchase Agreement and Lease assignment with The Pinery, LLC., a California limited liability company [Assignee].
- C. The Lease requires CITY to consent to the assignment of any of Lessee/Assignor's leasehold.

NOW, THEREFORE, CITY hereby consents to an Assignment of Lessee/Assignor's interest in its leasehold to Assignee, with the following conditions:

- 1. CITY is merely consenting to the assignment requested by Lessee/Assignor and authorized by the Bankruptcy Court. That all terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any agreements executed between Lessee/Assignor and Assignee, except as otherwise set forth herein.
- 2. CITY does not release, discharge or modify Lessee/Assignor's obligations to CITY under the Lease. As set forth in applicable law, Lessee/Assignor's obligations under the Lease shall survive said assignment and shall continue through the termination date of the Lease set forth therein; and
- 3. Lessee/Assignor or Assignee shall pay CITY \$560.00, which represents all normal processing and/or administrative fees associated with this Consent, as set forth in the Lease, Administrative Regulation 95.25, and/or Council Policy 700-10.

FURTHER, the parties hereto agree as follows:

- 4. Assumption. Assignee agrees to assume, be bound by, and to conform and comply with, the terms and conditions of the Lease.

MAILED FOR SIGNATURE 1/11/10

5. Assignments; Recapture. This Consent does not constitute a consent to any existing or subsequent subletting or assignment not approved by CITY in writing under the terms of the Lease, and does not relieve Lessee/Assignor, Assignee, or any person claiming under or through Lessee/Assignor or Assignee, of the obligation to obtain the consent of the CITY pursuant to Section 4.2 of the Lease.
6. Default Under the Lease. In the event of any default of Assignee under the Lease, CITY may proceed directly against Assignee, Lessee/Assignor, any guarantors, or anyone else liable under the Lease, without first exhausting CITY's remedies against any other person or entity liable under the Lease, pursuant to Section 4.4 of the Lease.
7. General Provisions.
 - 7.1 Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and governed by, the laws of the State of California.
 - 7.2 Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.
 - 7.3 Entire Agreement; Waiver. This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of the CITY'S Consent, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. This Consent may be amended only in writing if mutually agreed to and signed by CITY, Lessee/Assignor and Assignee.
 - 7.4 Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
 - 7.5 Waiver. Except as explicitly stated in this Consent, nothing contained herein will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Lease. In addition, the acceptance of rents by CITY from Assignee or anyone else liable under the Lease will not be deemed a waiver by the CITY of any provisions of the Lease.
 - 7.6 Notice. Any notice required or permitted to be given shall be done so in writing and may be served personally or by United States mail, postage prepaid, addressed to Assignee, or other address designated in writing by Lessee, as follows:

The Pinery, LLC
13701 Highland Valley Road
Escondido, CA 92025

IN WITNESS WHEREOF, this consent is executed by CITY acting by and through its Mayor, or his designee, and by Lessee/Assignor and Assignee acting by and through their lawfully authorized designees.

THE CITY OF SAN DIEGO, a California
Municipal Corporation

Date: _____

By: _____
James F. Barwick, Director
Real Estate Assets Department

LESSEE/ASSIGNOR:
BORDIER'S NURSERY, INC
a California Corporation

Date: _____

By: _____
Name: _____
Title: _____

ASSIGNEE:
THE PINERY, LLC.
a California limited liability company

Date: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY this _____ day of _____, 2010.

Date: _____

JAN I. GOLDSMITH, City Attorney

By: _____
Debra J. Bevier, Deputy City Attorney

DCM/cb
1-7-09
I:\Support Staff Group\WPO\2010\MARTENS\CONSENT TO ASSIGNMENT-BORDIERS NURSERY.docx

READ No. _____
(Original Request) (Resubmitted) (Resubmitted)

City Atty LE No. _____

OFFICE OF THE CITY ATTORNEY
Legal Services Request Form

To: City Attorney (MS-59) Attention: D. Beaver, Deputy City Attorney

From: [Signature] 12/18/09
Signature of Supervising Agent Authorizing Legal Request Date of Original Request

Re: San Pasqual Valley [SPA] _____
Location/Identification of Property Initials Req. for Followup Action

Pinery _____
Name of Lessee, Permittee or Third Party [] Date

Consent To Assignment _____
Type of Legal Document (e.g., Lease Amendment, ROE Permit, Easement, etc...) [] Date

This is a request for legal services. Please establish an assignment based upon the following information:

- A. Property Agent (please print): DAVE MATTEWS Telephone: 66066
B. Requested Response Date: 12/28 (If response needed in less than 10 working days from the date of your request, please state specific reasons, including reference to any legal deadlines)

Requested response for Followup Action(s): _____

- C. Requested form of response (please check one): [] Written [] Oral [] Attend Mtg/Hearing
[] Edit Document [X] Sign as to Form and Legality [] Other: _____
D. Subject Matter of Legal Request: Review / Advise
[] Please provide an e-mail response acknowledging receipt of this Request for Legal Services.
[] Follow-up action required: [] Review second draft [] Execute document [] Other

(PLEASE SEE PAGE 2 FOR DESCRIPTION OF LEGAL REQUEST)

ATTORNEY TRANSMISSION RECORD

Date Received: _____ [] Sent Acknowledgment Email on _____
[] Returned for additional information on _____ Information needed: _____
[] Returned for further drafting on _____ [] PLEASE RETURN FOR FURTHER REVIEW
[] Assignment completed and returned on _____
[] Signed as to form and legality on _____

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Information provided by the City Attorney is for internal use only. This form and any other accompanying documents are CONFIDENTIAL and not to be distributed to anyone outside of the City. If you are unsure as to whether a document can be provided to anyone other than the person to whom it was addressed, please check with the City Attorney first.

Description of Legal Request (Please provide a detailed statement of the question or issue, including all necessary background information. Copies of background documents should be attached.):

H.1' Deb - THIS IS The Chapter 11 Assignment
V.A Court. You Are Familiar. Section 3 - Will NOT
collect; Do We Leave? Can We Still Hold Assignor
Responsible For Lease If Through Bankruptcy?
Will email Document - word. THX - D.

Attorney Notes/Response:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Information provided by the City Attorney is for internal use only. This form and any other accompanying documents are **CONFIDENTIAL** and not to be distributed to anyone outside of the City. If you are unsure as to whether a document can be provided to anyone other than the person to whom it was addressed, please check with the City Attorney first.

ASSIGNMENT OF LEASE

This Assignment of Lease (this "**Assignment of Lease**") is duly made, executed and delivered effective as of April 9, 2009 (the "**Closing Date**"), by and between:

Bordier's Nursery, Inc., a California corporation, as the debtor and debtor-in-possession ("**Seller**") in that certain Chapter 11 bankruptcy case entitled *In Re Bordier's Nursery, Inc., a California corporation*, which was commenced on December 23, 2008, pursuant to the filing of a voluntary petition pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et. seq. (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "**Bankruptcy Court**"), as Case No. 8:08-bk-18501 RK (the "**Bankruptcy Case**");

and:

The Pinery, LLC, a California corporation ("**Buyer**");

(each, individually, a "**Party**", and both, collectively, the "**Parties**"), with regard to the following facts, circumstances, understandings and beliefs (collectively, "**Recitals**");

RECITALS:

- A. Buyer and Seller entered into an Asset Purchase Agreement (the "**APA**") bearing an Execution Date of March 30, 2009, pursuant to which Seller agreed to assign to Buyer, and Buyer agreed to accept from Buyer, an assignment of that certain "Flat Rate Lease" (the "**Lease**") dated as of December 15, 1986, made and executed by and between the City of San Diego, a municipal corporation, as the original and current lessor thereunder, and Charles T. Jancic, as the original lessee thereunder, said original lessee's interest thereunder having been subsequently assigned to Seller, as the current lessee thereunder, pursuant to a Lease Assignment, Assumption and Consent dated as of February 16, 1996.
- B. The APA and the assignment of the Lease by Seller to Buyer (the "**Lease Assignment**") were approved and authorized by the Bankruptcy Court pursuant to an order entered in the Bankruptcy Case on April 7, 2009 (the "**Sale Approval Order**").
- C. Buyer's closing obligations, as set forth in Section 3.7 of the APA, Seller's closing obligations, as set forth in Section 3.8 of the APA, and all other conditions precedent to the closing of the sale ("**Closing**"), were duly satisfied or waived pursuant to the APA, and the Sale was consummated, transacted and closed as of the Closing Date set forth above.
- D. The APA contemplates that Seller will deliver to Buyer upon the closing ("**Closing**") of the Sale a duly executed original assignment of lease evidencing the assignment of the Lease by Seller to Buyer, and the acceptance and assumption of the Lease by Buyer from Seller. This Assignment of Lease is the assignment of lease contemplated in the APA.

PURSUANT TO THE FOREGOING RECITALS, and in consideration of the obligations, covenants, warranties, representations and declarations contained in the APA, and the payment by Buyer to Seller of the Purchase Price set forth in the APA, the receipt of which is hereby acknowledged, Buyer and Seller, each intending to be legally bound by this Assignment of Lease, each hereby covenants, agrees, promises, warrants, represents and declares as follows:

1. **Definitions.** Capitalized words and phrases that are defined in this Assignment of Lease will have the meaning assigned to them in this Assignment of Lease when capitalized and used in this Assignment of Lease. Capitalized words and phrases that are defined in the APA but not otherwise defined in this Assignment of Lease will have the meaning assigned to them in the APA when capitalized and used in this Assignment of Lease unless the context in which such word or phrase is used reasonably prohibits such meaning.

2. **Assignment and Assumption of Lease.** Pursuant to and in accordance with the APA and the Sale Approval Order, Seller, as assignor, hereby transfers and assigns to Buyer, as assignee, all of Seller's right, title and interest in and to the Lease, Buyer hereby accepts such assignment, and Buyer hereby assumes all obligations, responsibilities and liabilities of the lessee under the Lease that arise on or after the Closing Date.

3. **Conflicting Documents.** In the event of a conflict between the Sale Approval Order and this Assignment of Lease, the Sale Approval Order will govern and control.

4. **Inurement.** This Assignment of Lease will inure to the benefit of Seller, as assignee, and Buyer, as assignor, and each of their respective successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, Buyer and the Estate, and their respective successors, assigns, grantees, administrators, receivers and trustees, including without limitation any trustee appointed in the Bankruptcy Case.

THE UNDERSIGNED SELLER made, executed and delivered this Assignment of Lease effective as of the Closing Date set forth in the introductory paragraph of this document.

Bordier's Nursery, Inc.,
a California corporation

By: _____
Mark Berchiolli

Its: President

The Pinery, LLC,
a California corporation

By: _____
Philip C. Guardia

Its: President

1 **WEILAND, GOLDEN**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 esmiley@wglp.com
5 Lei Lei Wang Ekvall, State Bar No. 163047
6 lekval@wglp.com
7 Robert S. Marticello, State Bar No. 244256
8 rmarticello@wglp.com
9 650 Town Center Drive, Suite 950
10 Costa Mesa, California 92626
11 Telephone: 714-966-1000
12 Facsimile: 714-966-1002
13
14 Attorneys for Debtor and Debtor-in-Possession
15 Bordier's Nursery, Inc.

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SANTA ANA DIVISION**

12 In re

13 **BORDIER'S NURSERY, INC.**, a California
14 corporation,

Case No. 8:08-bk-18501-RK

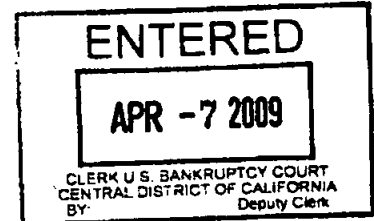
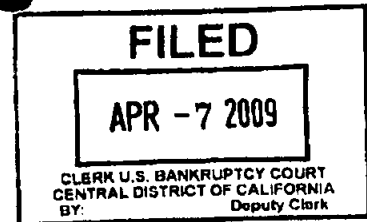
Chapter 11 Case

ORDER

1. **AUTHORIZING SALE OF THE
ASSETS RELATED TO THE PINERY
TREE FARMS FREE AND CLEAR OF
LIENS, CLAIMS, AND INTERESTS
PURSUANT TO 11 U.S.C. § 363(b)
AND (f);**
2. **AUTHORIZING ASSUMPTION AND
ASSIGNMENT TO BUYER OF LEASE
WITH THE CITY OF SAN DIEGO
PURSUANT TO 11 U.S.C. § 365; AND**
3. **APPROVING BUYER AS GOOD-
FAITH PURCHASER PURSUANT TO
11 U.S.C. § 363(m)**

DATE: April 7, 2009
TIME: 4:30 p.m.
CTRM: 5D

25 Debtor and
26 Debtor-in-Possession.



1 On April 7, 2009, at 4:30 p.m. in Courtroom 5D of the United States Bankruptcy
2 Court located at 411 West Fourth Street, Santa Ana, California, the Motion for Order
3 (1) Authorizing Sale of the Assets Related to the Pinery Tree Farms Free and Clear of
4 Liens, Claims, and Interests Pursuant To 11 U.S.C. §§ 363(b) and (f); (2) Authorizing
5 Assumption and Assignment to Buyer of Lease with the City of San Diego Pursuant to
6 11 U.S.C. § 365; and (3) Approving Buyer as Good-Faith Purchaser Pursuant to
7 11 U.S.C. § 363(m) ("the Motion") filed by Bordier's Nursery, Inc., the debtor and debtor in
8 possession in the above-captioned case ("the Debtor") came on for hearing. Lei Lei Wang
9 Ekvall of Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP, appeared on behalf of the
10 Debtor. All other appearances are as noted in the record.

11 Having considered the Motion, all papers filed in connection with the Motion, and
12 oral arguments made at the hearing, and good cause appearing therefrom,

13 **IT IS ORDERED** that the Motion is granted as follows

14 1. Pursuant to the terms and conditions of the Asset Purchase Agreement, the
15 Debtor is authorized to sell its rights, title, interest, and claims in and to the assets
16 associated with the operations of the Debtor's Pinery Tree Farms ("the Assets") to T & R
17 Lumber Company, a California corporation, or its assignee ("Buyer"), as specifically set
18 forth in the Asset Purchase Agreement, as is, where is, without representations or
19 warranties, free and clear of any and all liens, claims, and interests pursuant to 11 U.S.C.
20 § 363(b), (f), and (h); with the lien of Union Bank of California, N.A., as agent for Union
21 Bank of California, N.A., and Bank of the West, attaching to such proceeds from the sale
22 in the same priority, validity, and scope as such lien currently exists against the assets
23 that are the subject of sale, and the proceeds shall be segregated until further order of the
24 Court or further agreement between the Debtor and Union Bank;

25 2. Pursuant to 11 U.S.C. § 365(b)(1), the Debtor is authorized to assume the
26 lease with the City of San Diego of 222 acres on which the Pinery's business operated
27 ("the Lease") and, pursuant to 11 U.S.C. § 365(f), the Debtor is authorized to assign the
28 Lease to Buyer;

1 3. The Debtor is not in default under the Lease, monetary or otherwise, and
2 has otherwise met all requirements of 11 U.S.C. § 365(b)(1);

3 4. In accordance with the provisions of 11 U.S.C. § 365(f), Buyer has provided
4 adequate assurance of future performance under the Lease satisfying the provisions of 11
5 U.S.C. § 365(f)(2);

6 5. Buyer is a "good faith purchaser" pursuant to 11 U.S.C. § 363(m);

7 6. The terms of the Agreement are approved;

8 7. The Debtor's right to object to the validity, scope, and priority of all disputed
9 liens, claims, and/or interests are reserved;

10 8. The Debtor is authorized to execute any and all documents and take any
11 and all necessary action to consummate the sale of the Assets;

12 9. Any requirements for lodging periods imposed by Local Bankruptcy Rule
13 9021-1 and any other applicable bankruptcy rules are waived; and

14 10. The stay imposed by Federal Rule of Bankruptcy Procedure 6004(h) and
15 any other applicable bankruptcy rules are waived.

16
17 DATED: 4/7/09



THE HON. ROBERT KWAN
United States Bankruptcy Judge

In re: BORDIER'S NURSERY, INC., a California corporation,

CHAPTER 11 Case

Debtor(s).

CASE NUMBER 8:08-bk-18501-RK

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

A true and correct copy of the foregoing document described **ORDER (1) AUTHORIZING SALE OF THE ASSETS RELATED TO THE PINERY TREE FARMS FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS PURSUANT TO 11 U.S.C. § 363(b) AND (f); (2) AUTHORIZING ASSUMPTION AND ASSIGNMENT TO BUYER OF LEASE WITH THE CITY OF SAN DIEGO PURSUANT TO 11 U.S.C. § 365; AND (3) APPROVING BUYER AS GOOD-FAITH PURCHASER PURSUANT TO 11 U.S.C. § 363(m)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☐ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On _____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 7, 2009** I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

The Hon. Robert Kwan, Ctrm. 5D – Suite 5165
United States Bankruptcy Court
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, CA 92701-4593 SEE ATTACHED

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date

Type Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

January 2009

F 9013-3.1

In re: BORDIER'S NURSERY, INC., a California corporation,

CHAPTER: 11 Case

Debtor(s).

CASE NUMBER: 8:08-bk-18501-RK

NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) Category I. below: The United States trustee and case trustee (if any) will always be in this category.
- 4) Category II. below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (specify) **ORDER (1) AUTHORIZING SALE OF THE ASSETS RELATED TO THE PINERY TREE FARMS FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS PURSUANT TO 11 U.S.C. § 363(b) AND (f); (2) AUTHORIZING ASSUMPTION AND ASSIGNMENT TO BUYER OF LEASE WITH THE CITY OF SAN DIEGO PURSUANT TO 11 U.S.C. § 365; AND (3) APPROVING BUYER AS GOOD-FAITH PURCHASER PURSUANT TO 11 U.S.C. § 363(m)** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **April 7, 2009**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

- William S Brody tpearsall@buchalter.com
- Frank Cadigan frank.cadigan@usdoj.gov
- Lei Lei Wang Ekvall lekvall@wglp.com
- Michael S Greger mgreger@allenmatkins.com
- Lewis R Landau lew@landaunet.com
- John T Madden jmadden@wglp.com
- Margaret M Mann mmann@sheppardmullin.com, michelemcconnell@sheppardmullin.com
- Robert S Marticello Rmarticello@wglp.com
- Anthony J Napolitano IFS_filing@buchalter.com
- David J Richardson djrichardson@winston.com
- Randy Rogers rrogers@winston.com
- Victor A Sahn vsahn@sulmeyerlaw.com
- Evan D Smiley esmiley@wglp.com

In re: BORDIER'S NURSERY, INC., a California corporation,

Debtor(s).

CHAPTER: 11 Case

CASE NUMBER: 8:08-bk-18501-RK

- United States Trustee (SA) ustregion16.sa.ecf@usdoj.gov
- Joseph M Welch
kenneth.burgess@bbklaw.com;bknotices@bbklaw.com;joseph.welch@bbklaw.com;arthur.johnston@bbklaw.com

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Via U.S. Mail

Office of United States Trustee
411 W. Fourth St
Santa Ana, Ca 92701

Continued on attached

☒ Service information continued on attached page

In re: BORDIER'S NURSERY, INC., a California corporation.

CHAPTER: 11 Case

Debtor(s).

CASE NUMBER: 8:08-bk-18501-RK

ADDITIONAL SERVICE INFORMATION (if needed):

William S. Brody, Esq.
Buchalter Nemer
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
Attorneys for Union Bank

Union Bank of California
445 South Figueroa, 15th Floor
Los Angeles, CA 90071

IOS Capital
1738 Bass Road
Macon, GA 31210

CIT Communications Finance
One CIT Drive
Livingston, NJ 07039

Bank of the West
Attn: Bruce W. MacBeth, Vice president
32605 U.S. Highway 79 South
Temecula, CA 92592

American AGCredit FLCA
1910 S. Archibald Ave, Suite U-101
Ontario, CA 91761

Randy R. Rogers, Esq.
Winston & Strawn
101 California St., #3900
San Francisco, CA 94111

Sean S. Varner, Esq.
Varner & Brandt LLP
3750 University Ave, Suite 610
Riverside, CA 92501

In re: BORDIER'S NURSERY, INC., a California corporation,

Debtor(s).

CHAPTER: 11 Case

CASE NUMBER: 8:08-bk-18501-RK

City Manager
Attn: Property Director
City of San Diego Administration Building
202 "C" St. MS. 9B
San Diego, CA 92101

R. Clayton Welch
Deputy City Attorney
Office of the San Diego City Attorney
1200 3rd Ave., #1100
San Diego, CA 92101

Charles T. Jancic
12450 Highland Valley Road
Escondido, CA 92025



THE CITY OF SAN DIEGO

March 11, 2010

Cori Butler
District Conservationist
USDA-NRCS
322 S. Juniper Street, Suite 110
Escondido, CA 92025

Reference: Pinery, LLC., 13701 Highland Valley Road, San Pasqual Valley

Dear Ms. Butler:

The City of San Diego is the landowner (APN: 272-132-22, 272-150-04 and 272-140-01) and lessor to the Pinery, LLC. The long-term lease for the nursery expired on December 31, 2006 and the nursery operation continues on a month-to-month tenancy. At this time, the City does not foresee any plan to terminate occupancy of the Pinery, LLC. prior to December 31, 2014. The City approves the installation of the structural practice through the Natural Resources Conservation Service's EQIP program.

Please contact me at (619) 236-6066 with any questions.

Sincerely,

Dave Martens
Property Agent

DCM/cb

cc: David A. Sandoval, Deputy Director
Nicole McGinnis, Senior Planner
Phil Guardia, Pinery, LLC.

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Real Estate Assets

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Martens, David

From: Martens, David
Sent: Monday, September 28, 2009 2:04 PM
To: 'Phil Guardia'
Cc: 'Lindshield'; Matt Witman
Subject: Planning Group Meeting

Hello Phil.

There is a San Pasqual Planning Group meeting this Thurs, 10/1 @ 7 pm, Wild Animal Park. I would like The Pinery to be on the agenda for the groups endorsement of a new lease w/ you. This meeting is very casual and I think Mat would be able to tell the group about the operation and future plans for the site along w/ my input. Please contact Marc Lindshield, Chairperson, of your attendance or not (760-802-0544).

Also, the Land Use Task force for San Pasqual Valley will meet 10/14/09 @ 9 am and you should be there to meet w/ the committee for their support of a new lease agreement. Please notify Matt Witman, Chairperson, of your attendance or not (760-747-3632).

Both of these committees should be supportive and this will need to be completed prior to scheduling with the City Land, Use, and Housing Committee for exclusive negotiations w/ The Pinery. I believe we have a window of opportunity to move forward relatively easily and I am not too sure how long it may last. Please contact me w/ any questions or comments.

Thanks

Dave Martens
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