

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CONSENT TO WAIVE 90-DAY ORDER FOR POSSESSION

November 4, 2003

11-SD-15
E.A.080922
R/W 32747

Evergreen Distributors Inc.
7150 Black Mountain Road
San Diego, CA 92130

Dear Mr. Collins,

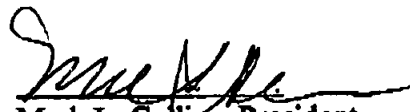
This letter concerns the Department (Caltrans) urgent need for possession of a portion of your leased area (right of way parcel no. 32747), that you have with the city of San Diego. Caltrans normally allows for a 90-day time frame for possession of property when it is occupied by a tenant, however, in this circumstance where we are involved in environmental work we do not have an adequate window to allow for the environmental work to occur after a 90-day time frame. We will need possession of parcel 32747 by January 15, 2004 in order to complete this work before the nesting season begins. We are requesting from you a waiver of the 90-day time frame and that the State be given possession of the property on January 15, 2004 or 30 days from the date that the service of an order of possession is received by you, whichever is the latest. By allowing the State a shorter time frame for possession we will be able to complete the environmental portion of the project and keep on schedule. Please consider this request to help the State move forward with the I-15 project.

Sincerely,



Elizabeth Robledo
Right of Way Agent
Office of Right of Way

The undersigned consents to the State's request for a waiver of the 90-day notification for possession and consents to possession of the property on January 15, 2004. The subject property is designated as parcel # 32374 as shown on the attached map.



Mark L. Collins, President
Evergreen Distributors Inc.

11/05/03
Date

ESCONDIDO AND RANCHO BERNARDO SUBLEASE NO.2
(RR 267334 and RR 269921)

This sublease ("Sublease") is executed to be effective as of November 1, 1992 (the "Effective Date"), by and between PINERY TREE FARMS, a California corporation ("Sublandlord") and C.E.O. GROUP, INC., a California corporation ("Subtenant"), as follows:

1. Recitals

1.01 This Sublease is made with reference to the following facts and objectives:

(a) The City of San Diego ("City") and Sublandlord, as Tenant, entered into a written lease dated December 15, 1986 and filed with the City as Document Number RR-267334. The lease was amended and filed with the City on December 7 1987 as Document No. 269921 ("Master Lease"). A true and correct copy of the Master Lease is attached hereto as Exhibit "A".

(b) Subtenant desires to sublet the premises from Sublandlord on the provisions contained in this Sublease.

(c) City shall consent to this Sublease on the provisions set forth in this Sublease. To the extent the Master Lease requires the consent of the City to this sublease, this sublease shall not be binding until the City consents to this sublease in writing.

2. Premises

Sublandlord leases to Subtenant and Subtenant leases from Sublandlord the real property located in the county of San Diego delineated on the plat maps attached hereto and marked Exhibit "B" and Exhibit "C" (the "Premises"). The Master Lease premises consist of three separate parcels as designated on Exhibit B. Parcel 3 designated on Exhibit B consists of approximately twelve acres (12) and is commonly known as the "Escondido Farm". The Premises also include a portion of parcel 1 designated on Exhibit B, which portion is more clearly designated on Exhibit C and consists of approximately thirteen (13) acres of the total forty (40) acres contained in parcel 1. Parcel 2 as designated on Exhibit B and consisting of approximately one hundred seventy (170) acres is not part of this Sublease.

3. Term

The term of this Sublease shall commence with City's consent and shall terminate on December 31, 2006. The "Effective Date" of this Agreement is designated as November 1, 1992 for the convenience of the parties and does not imply City's consent to this sublease.

4. Rent

4.01 Subtenant shall pay the Sublandlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, all sums due City by

Sublandlord pursuant to the Master Lease, except Subtenant shall not pay rent for that portion of parcel one designated on Exhibits B and C which is not included as part of the Premises. The parties agree the rent due pursuant to paragraph 3.2 of the Master Lease for parcel one shall be apportioned thirty three percent (33 %) to subtenant and sixty seven percent (67 %) to Sublandlord.

4.02 Subtenant shall pay all costs of living adjustments as required by the Master Lease and any other payments due City by Sublandlord pursuant to the Master Lease, including but not limited to all taxes, assessments, penalties, fees, utilities and additional rent incurred pursuant to the Master Lease or this Sublease.

5. Incorporation by Reference

5.01 All of the terms and conditions of the Master Lease are incorporated herein by reference and made a part of this Sublease. Subtenant shall assume and perform to Sublandlord's satisfaction the Tenant's obligations under the Master Lease provisions.

5.02 Sublandlord does not assume the obligations of City under the provisions of the Master Lease, but shall exercise due diligence in attempting to cause the City to perform its obligations under the Master Lease for the benefit of Subtenant.

5.03 Sublandlord reserves the rights of City under the provisions of the Master Lease, including but not limited to the right to terminate the Sublease and re-enter the premises upon default by Subtenant.

6. Tenant's Performance under the Master Lease

At any time and on prior notice to Subtenant, Sublandlord may elect to require Subtenant to perform its obligations under this Sublease directly to City, and Subtenant shall do so on Sublandlord's election, in which event Subtenant shall send to Sublandlord, copies of all notices and other communications it shall send to and receive from City.

7. Master Lease

7.01 This Sublease is subject to and subordinate to all the provisions of the Master Lease, and Subtenant shall not permit any act or omission to act that will violate any provision of the Master Lease. If any provision of this Sublease conflicts with the terms and conditions of the Master Lease, the Master Lease shall prevail.

7.02 If the Master Lease terminates, this Sublease shall terminate and the parties shall be relieved from all liabilities and obligations under this Sublease; except that if this Sublease terminates as a result of a default of one of the parties under this Sublease or the Master Lease, or both, the defaulting party shall be liable to the nondefaulting party for all damage suffered by the nondefaulting party as a result of termination.

8. Indemnity

8.01 Indemnification of Sublandlord and City. Subtenant shall protect, defend, indemnify and hold Sublandlord and City harmless from any and all actions, liabilities, demands and all expenses of any nature, including without limitation court costs and attorneys' fees resulting directly or indirectly, entirely or in part from:

(a) the active or passive operations, conducted on the premises and the maintenance and use of the Premises on and after the Effective Date; and

(b) the material breach of Subtenant's obligations under this Sublease or any of the Purchase Documents;

(c) the assertion at any time of any claim relating to the presence or removal of any Hazardous Substance or other contaminants placed in or on the Premises after the Effective Date; or

(d) the cost of compliance by Sublandlord with any federal, state or local laws, rules, regulations or orders relating thereto necessitated by Subtenant's breach of its obligations under this Agreement, including without limitation, compliance with any environmental law or any clean up of a Hazardous Substance necessitated by any local, state or federal regulatory agency action.

All such obligations set forth in this Section shall survive the Closing. As used herein, "Hazardous Substance" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Substance" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter- Presly-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage and Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 and defined as hazardous or extremely hazardous pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the

8.01.1 Sublandlord shall notify Subtenant within 20 days after the discovery of any claim to which this Section applies. Subtenant, at Subtenant's expense, shall defend Sublandlord against any such claim and shall engage counsel satisfactory to Sublandlord to prosecute Sublandlord's defense. Subtenant may settle any such claim upon commercially reasonable terms and conditions with the prior written consent of Sublandlord, which consent shall not be unreasonably withheld.

8.01.2 If Subtenant fails or refuses to defend Sublandlord or engage counsel satisfactory to Sublandlord within 10 days after Sublandlord's notice of any claim to which this Section applies, Sublandlord may:

(a) defend such claim and add the cost thereof to any amount due from Subtenant under this Section; or

(b) settle such claims on such terms and conditions as Sublandlord may determine in its sole and absolute discretion.

9. Insurance

Subtenant shall obtain all insurance required by the Master Lease, including but not limited to the insurance requirements set forth at Clause IV-B-10 of the Master Lease. Sublandlord shall be named as an additional insured in the same manner as the City.

10. Default and Remedies

10.01 Default. Subtenant shall be in default of this Sublease if Subtenant breaches any of the terms, conditions, or covenants of the Master Lease, this Sublease, the Purchase Agreement or the Purchase Documents. Except for the failure to pay rent pursuant to the terms of this Sublease, if the Subtenant is in breach of this Sublease or any Purchase Document, Sublandlord shall notify Subtenant of the obligation breached. After said notice, the Subtenant shall either:

(a) cure the breach; or

(b) be deemed in default under this Sublease and the Purchase Documents if the Subtenant has failed to cure the breach within five days after the notice of breach.

In the event Subtenant fails to pay rent pursuant to the terms of this Sublease, Subtenant will be deemed in default and Sublandlord may immediately initiate unlawful detainer proceedings by giving statutory notice.

10.02 Remedies. If Subtenant is in default under this Sublease, the

Sublandlord may:

(a) seek in its own name, any remedy available to the City under the Master Lease;

(b) terminate its continuing obligations under this Agreement and immediately reenter the property and take possession of the premises; and/or

(c) seek recovery of damages.

11. Miscellaneous

11.01 Attorneys' Fees. If any party or City employs counsel to enforce or interpret this Sublease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include such reimbursement for attorneys' fees and costs.

11.02 Interpretation. Wherever the context of this Sublease requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and the use of any gender specific pronoun shall include any other appropriate gender. The term "person" shall refer to any individual, corporation or legal entity having standing to bring an action in its own name under California law.

11.03 Successors. Except as provided to the contrary herein, this Sublease shall be binding on and inure to the benefit of the parties and their successors and assigns.

11.04 Assignment. Subtenant shall not convey, assign, encumber or otherwise transfer its rights and obligations under this Sublease to any person without Sublandlord's and City's prior written consent, which consent may be unreasonably withheld. Any assignment by operation of law shall automatically terminate this Sublease.

11.05 Governing Law. This Sublease shall be construed and interpreted in accordance with the laws of the State of California. Any action brought to interpret or enforce this Sublease shall be tried in the County of San Diego, California, the state and county which is convenient to both Subtenant and Sublandlord.

11.06 Severability. The unenforceability, invalidity or illegality of any provision of this Sublease shall not render the other provisions unenforceable, invalid or illegal.

11.07 Notice. Any notice, disclosure, election, waiver, declaration, demand, request, consent, approval or other communication that any party desires or is required to give to another party or any other person shall be in writing.

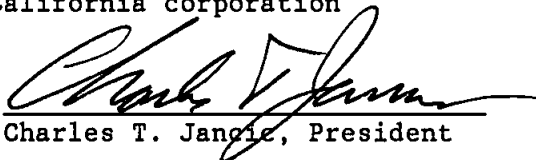
11.08 Time. Time is of the essence to the performance of each and every obligation of Subtenant hereunder.

11.09 Guarantors. This Sublease is guaranteed by Norman Osborne and McKenzie Cook pursuant to that certain Guarantee dated November 1, 1992.

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

SUBLANDLORD:

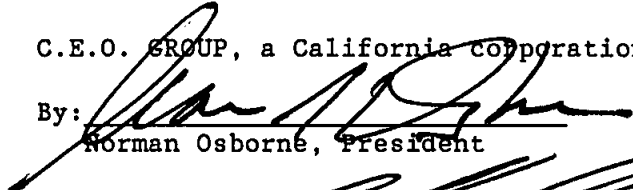
PINERY TREE FARMS,
a California corporation

By: 

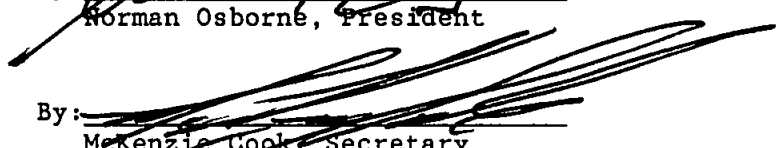
Charles T. Jancie, President

SUBTENANT:

C.E.O. GROUP, a California Corporation

By: 

Norman Osborne, President

By: 

McKenzie Cook, Secretary

CONSENT OF MASTER LESSOR

Master Lessor consents to the foregoing Sublease without waiver of the restriction concerning further subletting. The Sublease shall be subordinate to the Master Lease in all respects. The City is merely approving the Sublease and the proposed use, and all terms of the Master Lease shall control and supercede any inconsistent or contrary provisions of the Sublease. The City is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

CITY OF SAN DIEGO

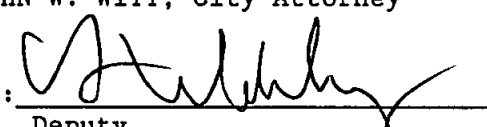
Dated _____

By: _____
City Manager

APPROVED AS TO FORM

JOHN W. WITT, City Attorney

Dated 5/11/93

By: 

Deputy

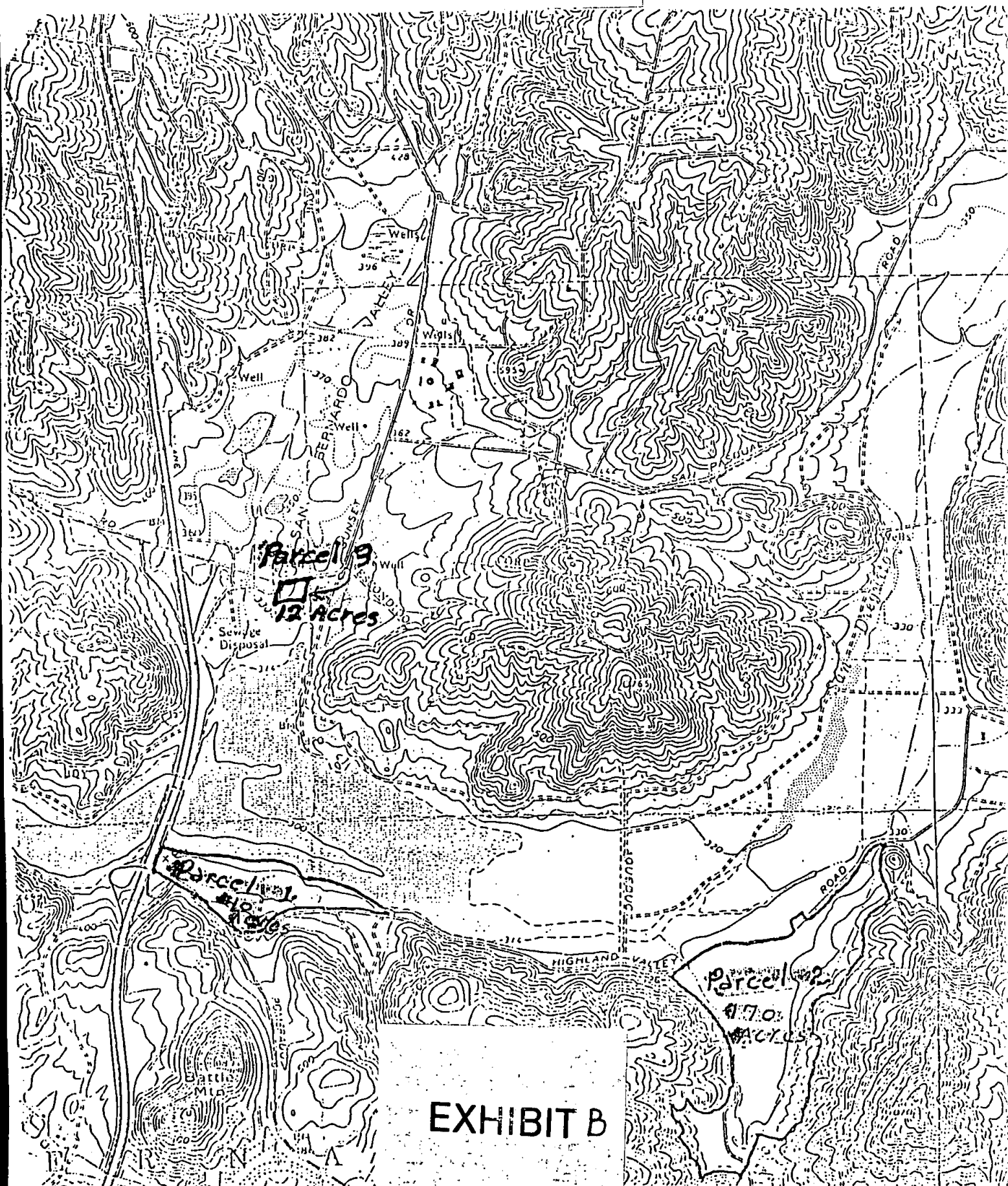
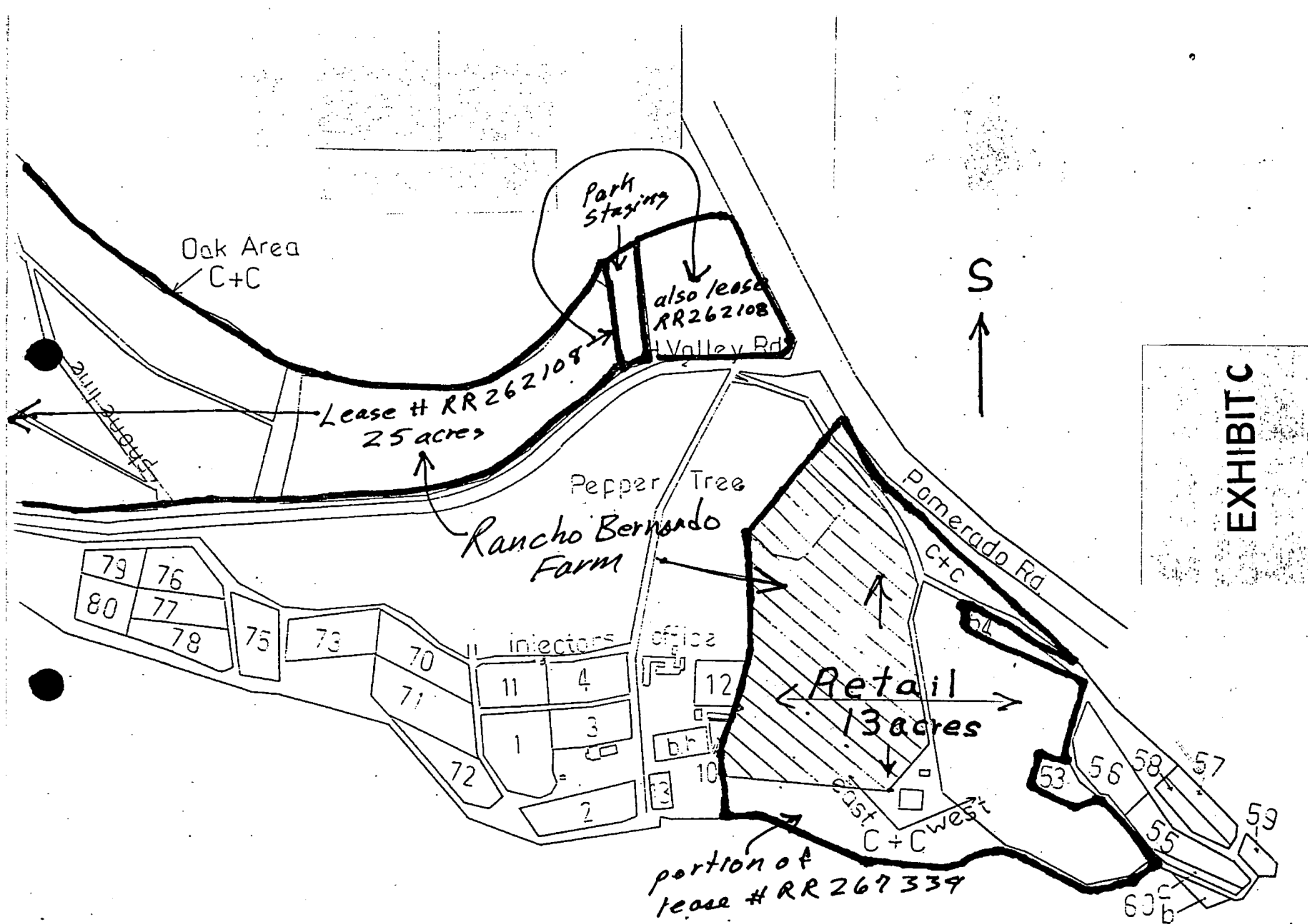


EXHIBIT B



FEB. 1991

RANCHO BERNARDO SUBLEASE
(RR 267334 and RR 269921)

This sublease ("Sublease") is executed to be effective as of January 1, 2002 (the "Effective Date"), by and between CHARLES T. JANCIC ("Sublandlord") and EVERGREEN DISTRIBUTORS, INC., a California corporation ("Subtenant"), as follows:

1. Recitals

1.01 This Sublease is made with reference to the following facts and objectives:

(a) The City of San Diego ("City") and Sublandlord, as Tenant, entered into a written lease dated December 15, 1986 and filed with the City as Document Number RR-267334. The lease was amended and filed with the City on December 7, 1987 as Document No. 269921 (the lease as amended is referred to herein as the "Master Lease"). A true and correct copy of the Master Lease is attached hereto as Exhibit A.

(b) Subtenant desires to sublet two parcels of the Master Lease premises from Sublandlord on the provisions contained in this Sublease.

(c) To the extent the Master Lease requires the consent of the City to this Sublease, this Sublease shall not be binding until the City consents to this Sublease in writing.

2. Premises

Sublandlord leases to Subtenant and Subtenant leases from Sublandlord the real property located in the County of San Diego delineated on the plat map attached hereto and marked Exhibit B consisting of: (i) Parcel A as designated on Exhibit B and consisting of approximately eleven (11) acres; and (ii) Parcel B as designated on Exhibit B and consisting of approximately nineteen (19) acres (the "Premises").

3. Term

The term of this Sublease shall commence with City's consent and shall terminate on December 31, 2006. The "Effective Date" of this Sublease is designated as January 1, 2002 for the convenience of the parties and does not imply City's consent to this Sublease.

4. Rent

4.01 Subtenant shall pay the Sublandlord as a minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of One Thousand Dollars (\$1,000.00). (Subtenant shall not pay rent for Parcels Two (2), Three (3) or the balance of Parcel One (1) as designated on Exhibit A of the Master Lease.)

4.02 Subtenant shall pay all costs of living adjustments as required by the Master Lease and any other payments due City by Sublandlord pursuant to the Master Lease, including but not limited to all taxes, assessments, penalties, fees, utilities and additional rent incurred pursuant to the Master Lease or this Sublease.

5. Incorporation by Reference

5.01 All of the terms and conditions of the Master Lease are incorporated herein by reference and made a part of this Sublease. Subtenant shall assume and perform to Sublandlord's satisfaction the Tenant's obligations under the Master Lease provisions.

5.02 Sublandlord does not assume the obligations of City under the provisions of the Master Lease, but shall exercise due diligence in attempting to cause the City to perform its obligations under the Master Lease for the benefit of Subtenant.

5.03 Sublandlord reserves the rights of City under the provisions of the Master Lease, including but not limited to the right to terminate the Sublease and re-enter the premises upon default by Subtenant.

6. Use/Tenant Performance Under the Master Lease

6.01 Use. Subtenant shall use the Premises for operating a wholesale and retail nursery to the extent allowed by regulations and for no other use without Landlord's consent.

6.02 Performance Under Master Lease. At any time and on prior notice to Subtenant, Sublandlord may elect to require Subtenant to perform its obligations under this Sublease directly to City, and Subtenant shall do so on Sublandlord's election, in which event Subtenant shall send to Sublandlord, copies of all notices and other communications it shall send to and receive from City.

7. Master Lease

7.01 This Sublease is subject to and subordinate to all the provisions of the Master Lease, and Subtenant shall not permit any act or omission to act that will violate any provision of the Master Lease. If any provision of this Sublease conflicts with the terms and conditions of the Master Lease, the Master Lease shall prevail.

7.02 If the Master Lease terminates, this Sublease shall terminate and the parties shall be relieved from all liabilities and obligations under this Sublease; except that if this Sublease terminates as a result of a default of one of the parties under this Sublease or the Master Lease, or both, the defaulting party shall be liable to the nondefaulting party for all damage suffered by the nondefaulting party as a result of termination.

8. Indemnity

8.01 Indemnification of Sublandlord and City. Subtenant shall protect, defend, indemnify and hold Sublandlord and City harmless from any and all actions, liabilities, demands

and all expenses of any nature, including without limitation court costs and attorneys' fees resulting directly or indirectly, entirely or in part from:

- (a) the active or passive operations, conducted on the premises and the maintenance and use of the Premises by Subtenant, its agents and invitees on and after the Effective Date; and
- (b) the material breach of Subtenant's obligations under this Sublease;
- (c) the assertion at any time of any claim relating to the presence or removal of any Hazardous Substance or other contaminants placed in or on the Premises after the Effective Date; or
- (d) the cost of compliance by Sublandlord with any federal, state or local laws, rules, regulations or orders relating thereto necessitated by Subtenant's use of the premises or Subtenant's breach of its obligations under this Sublease, including without limitation, compliance with any environmental law or any clean up of a Hazardous Substance necessitated by any local, state or federal regulatory agency action.

All such obligations set forth in this Section shall survive the Closing. As used herein, "Hazardous Substance" shall mean any hazardous, toxic or corrosive substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government.

8.01.1 Sublandlord shall notify Subtenant within twenty (20) days after the discovery of any claim to which this Section applies. Subtenant, at Subtenant's expense, shall defend Sublandlord against any such claim and shall engage counsel satisfactory to Sublandlord to prosecute Sublandlord's defense. Subtenant may settle any such claim upon commercially reasonable terms and conditions with the prior written consent of Sublandlord, which consent shall not be unreasonably withheld.

8.01.2 If Subtenant fails or refuses to defend Sublandlord or engage counsel satisfactory to Sublandlord within ten (10) days after Sublandlord's notice of any claim to which this Section applies, Sublandlord may:

- (a) defend such claim and add the cost thereof to any amount due from Subtenant under this Section; or
- (b) settle such claims on such terms and conditions as Sublandlord may determine in its sole and absolute discretion.

9. Insurance

Subtenant shall obtain all insurance required by the Master Lease, including but not limited to compliance with all the insurance requirements set forth at Section 5.02 of the Master Lease. Sublandlord shall be named as an additional insured in the same manner as the City.

10. Joint Use

10.01 Reservation of Rights. Sublandlord reserves the right to utilize the main North-South road as well as a portion of Parcel B in connection with Sublandlord's business, Big Trees Nursery, Inc. The parties shall cooperate in good faith to jointly use the property without unduly interfering with the other's business.

10.2 Signage. The parties shall each have the right to equal signage at the entrance driveway and existing pole sign. Sublandlord and Subtenant shall cooperate and not interfere with the other party erecting and placing signs at the appropriate locations.

10.3 Erosion Control. Subtenant shall maintain the Premises and utilize appropriate procedures to prevent erosion and comply with all runoff regulations applicable to the Premises, if any.

10.04 Arbitration of Disputes. Any claim or controversy of whatever nature arising out of or relating to the joint use of the Premises as set forth in this Section 10 shall be decided by final and binding arbitration under the Commercial Rules ("Commercial Rules") of the American Arbitration Association, in accordance with its Rules of Practice and Procedure then in existence. Hearing on arbitration shall be held in the County of San Diego, State of California. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction and said award shall be final and non-appealable. Filing of a judicial action to obtain a preliminary injunction or other preliminary judicial relief if such action is necessary to avoid irreparable damage shall not constitute a waiver of the right to arbitrate under this provision. This provision for arbitration is not applicable to any action for unlawful detainer, collection of rent, bodily injury or wrongful death. A party that fails or refuses to participate in arbitration shall not be entitled to an award of attorney's fees in any subsequent litigation.

10.5 Renewal. In the event that: (i) Subtenant is able to negotiate and consummate a direct lease of the Premises with the City of San Diego; or (ii) Subtenant rather than Sublandlord enters into a new Master Lease with the City of San Diego upon expiration of the Master Lease, then in either such event Sublandlord shall have the right to continue to jointly use the roads, signs and Premises identified in Exhibit B. Upon termination or expiration of this Sublease, if Subtenant (or any affiliate of Subtenant) enters into a new lease with the City of San Diego, the parties shall execute any and all documents necessary to terminate this Sublease (in the case of early termination), to effectuate a direct lease of the Premises between Subtenant and the City of San Diego, and to memorialize Sublandlord's continuing rights and the parties' respective obligations with respect to the joint use of the Premises as set forth in this Section 10.

11. Sublease Conditional

This Sublease is conditioned upon approval by the City of San Diego.

12. Default and Remedies

12.01 Default. Subtenant shall be in default of this Sublease if Subtenant breaches any of the terms, conditions, or covenants of the Master Lease or this Sublease. Except for the failure to pay rent pursuant to the terms of this Sublease, if the Subtenant is in breach of this Sublease, Sublandlord shall notify Subtenant of the obligation breached. After said notice, the Subtenant shall either:

- (a) cure the breach; or
- (b) be deemed in default under this Sublease if the Subtenant has failed to cure the breach within five (5) days after the notice of breach.

In the event Subtenant fails to pay rent pursuant to the terms of this Sublease, Subtenant will be deemed in default and Sublandlord may immediately initiate unlawful detainer proceedings by giving statutory notice.

12.02 Remedies. If Subtenant is in default under this Sublease, the Sublandlord may:

- (a) seek in its own name, any remedy available to the City under the Master Lease;
- (b) terminate its continuing obligations under this Sublease and immediately re-enter the property and take possession of the premises; and/or
- (c) seek recovery of damages.

13. Miscellaneous

11.01 Attorneys' Fees. If any party or City employs counsel to enforce or interpret this Sublease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include such reimbursement for attorneys' fees and costs.

11.02 Interpretation. Wherever the context of this Sublease requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and the use of any gender specific pronoun shall include any other appropriate gender. The term "person" shall refer to any individual, corporation or legal entity having standing to bring an action in its own name under California law.

11.03 Successors. Except as provided to the contrary herein, this Sublease shall be binding on and inure to the benefit of the parties and their successors and assigns.

11.04 Assignment. Subtenant shall not convey, assign, encumber or otherwise transfer its rights and obligations under this Sublease to any person without Sublandlord's and City's prior written consent, which consent will not be unreasonably withheld. Any assignment by operation of law shall automatically terminate this Sublease.

11.05 Governing Law. This Sublease shall be construed and interpreted in accordance with the laws of the State of California. Any action brought to interpret or enforce this Sublease shall be tried in the County of San Diego, California, the state and county which is convenient to both Subtenant and Sublandlord.

11.06 Severability. The unenforceability, invalidity or illegality of any provision of this Sublease shall not render the other provisions unenforceable, invalid or illegal.

11.07 Notice. Any notice, disclosure, election, waiver, declaration, demand, request, consent, approval or other communication that any party desires or is required to give to another party or any other person shall be in writing and delivered to the parties as follows:

Charles T. Jancic
18950 Starvation Mountain Road
Escondido, CA 92025

Evergreen Distributors, Inc.
7150 Black Mountain Road
San Diego, CA 92130

11.08 Time. Time is of the essence to the performance of each and every obligation of Subtenant hereunder.

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

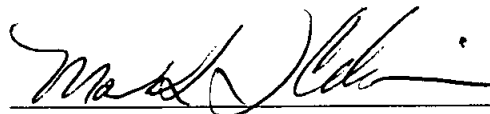
SUBLANDLORD:


CHARLES T. JANCIC

SUBTENANT:

EVERGREEN DISTRIBUTORS, INC.,
a California corporation

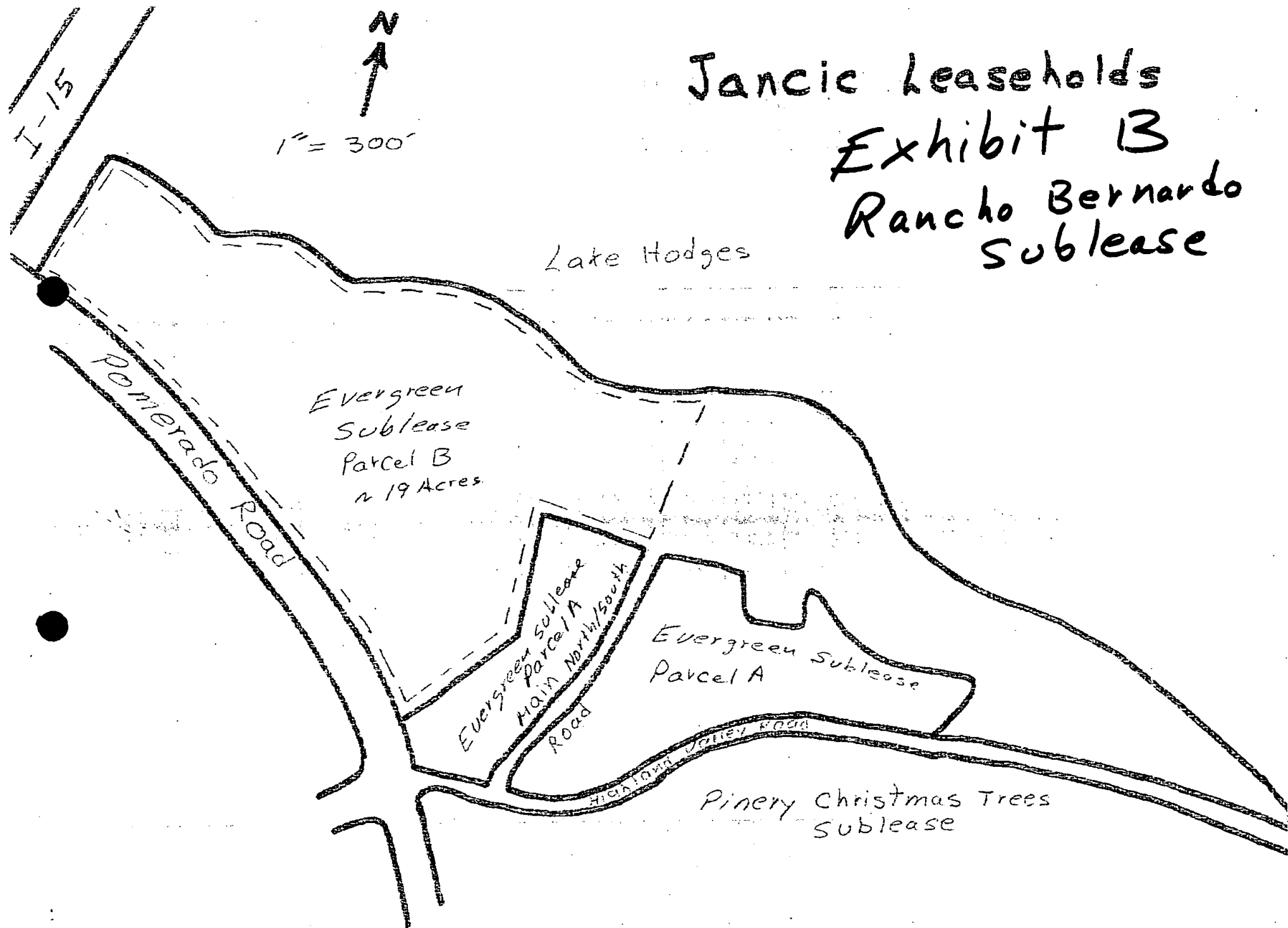
By:


Mark L. Collins, President

Jancie Leaseholds

Exhibit B

Rancho Bernardo Sublease



Legal

CITY OF SAN DIEGO

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement entered into with

CHARLES T. JANCIC

("LESSEE") originally filed in the Office of the City Clerk as Document RR-267334 dated December 15, 1986, and later amended as Document RR-269921 dated December 7, 1987, ("Master Lease") hereby consents to that certain Sublease Agreement effective and dated January 1, 2002 ("Agreement") between the above LESSEE ("SUBLESSOR") and

EVERGREEN DISTRIBUTORS, INC.,
a California corporation

("SUBLESSEE"). Said Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLEASE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Agreement. The CITY is not bound by any term or condition in the Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, City's consent is subject to the following:

1. **ASSIGNMENT AND SUBLETTING**: SUBLESSEE shall not assign the sublease or subleased premises or any part thereof without the prior written consent of CITY. An assignment by operation of law shall automatically terminate this consent.
2. **HOLD HARMLESS**: SUBLESSEE shall assume the defense of, indemnify and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
3. **INSURANCE**: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability, fire, extended coverage and vandalism arising from the use or condition of or operation conducted on the leased premises. Insurance coverage and other related conditions shall be those specified in the Master Lease. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.
4. **LEGAL PROCEEDINGS**: Should it become necessary for SUBLESSOR or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Consent to Sublease Agreement, the Master Lease, or the Agreement, the prevailing party

shall be entitled to an award of reasonable legal costs, including court and attorneys' fees and costs.

5. SUBORDINATION: City's consent permits the sublease of approximately 30 acres of the premises covered by the MASTER LEASE, as assigned and amended between the SUBLESSOR and the CITY.

6. DELINQUENT PAYMENTS: Upon execution of this Consent to Sublease Agreement by City, SUBLESSOR shall have paid to CITY any delinquent rent and late fees, water fees and audit deficiencies, if any, associated with the Master Lease through calendar year 2001. In the event that SUBLESSOR'S check or other negotiable instrument is not honored by the bank said check or negotiable instrument is drawn upon, CITY'S consent to sublet is void.

This Consent to Sublease Agreement is executed by the CITY acting by and through the City Manager and by LESSEE/SUBLESSOR and SUBLESSEE acting by and through their lawfully authorized officers. This Consent is effective upon the date signed by the City Manager or his designee.

THE CITY OF SAN DIEGO

Dated 12-28-01

By T.C.
Deputy Director, Real Estate Assets Dept.
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 12/31/01

By [Signature]
Deputy City Attorney

CHARLES T. JANCIC

Dated 12/28/01

By [Signature]
Its: _____

EVERGREEN DISTRIBUTORS, INC.,
a California corporation

Dated 12/31/2001

By [Signature]
Its: PRESIDENT

CITY OF SAN DIEGO

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement entered into with

CHARLES T. JANCIC

("LESSEE") originally filed in the Office of the City Clerk as Document RR-267334 dated December 15, 1986, and later amended as Document RR-269921 dated December 7, 1987, ("Master Lease") hereby consents to that certain Sublease Agreement effective and dated January 1, 2002 ("Agreement") between the above LESSEE ("SUBLESSOR") and

EVERGREEN DISTRIBUTORS, INC.,
a California corporation

("SUBLESSEE"). Said Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLEASE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Agreement. The CITY is not bound by any term or condition in the Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, City's consent is subject to the following:

1. **ASSIGNMENT AND SUBLETTING:** SUBLESSEE shall not assign the sublease or subleased premises or any part thereof without the prior written consent of CITY. An assignment by operation of law shall automatically terminate this consent.
2. **HOLD HARMLESS:** SUBLESSEE shall assume the defense of, indemnify and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
3. **INSURANCE:** SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability, fire, extended coverage and vandalism arising from the use or condition of or operation conducted on the leased premises. Insurance coverage and other related conditions shall be those specified in the Master Lease. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.
4. **LEGAL PROCEEDINGS:** Should it become necessary for SUBLESSOR or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Consent to Sublease Agreement, the Master Lease, or the Agreement, the prevailing party

shall be entitled to an award of reasonable legal costs, including court and attorneys' fees and costs.

5. SUBORDINATION: City's consent permits the sublease of approximately 30 acres of the premises covered by the MASTER LEASE, as assigned and amended between the SUBLESSOR and the CITY.

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This Consent to Sublease Agreement is executed by the CITY acting by and through the City Manager and by LESSEE/SUBLESSOR and SUBLESSEE acting by and through their lawfully authorized officers. This Consent is effective upon the date signed by the City Manager or his designee.

THE CITY OF SAN DIEGO

Dated 12-28-01

By T.C.
Deputy Director, Real Estate Assets Dept.
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 12/31/01

By [Signature]
Deputy City Attorney

CHARLES T. JANCIC

Dated 12/28/01

By [Signature]
Its: _____

EVERGREEN DISTRIBUTORS, INC.,
a California corporation

Dated 12/31/2001

By [Signature]
Its: PRESIDENT

EXHIBIT A

MASTER LEASE

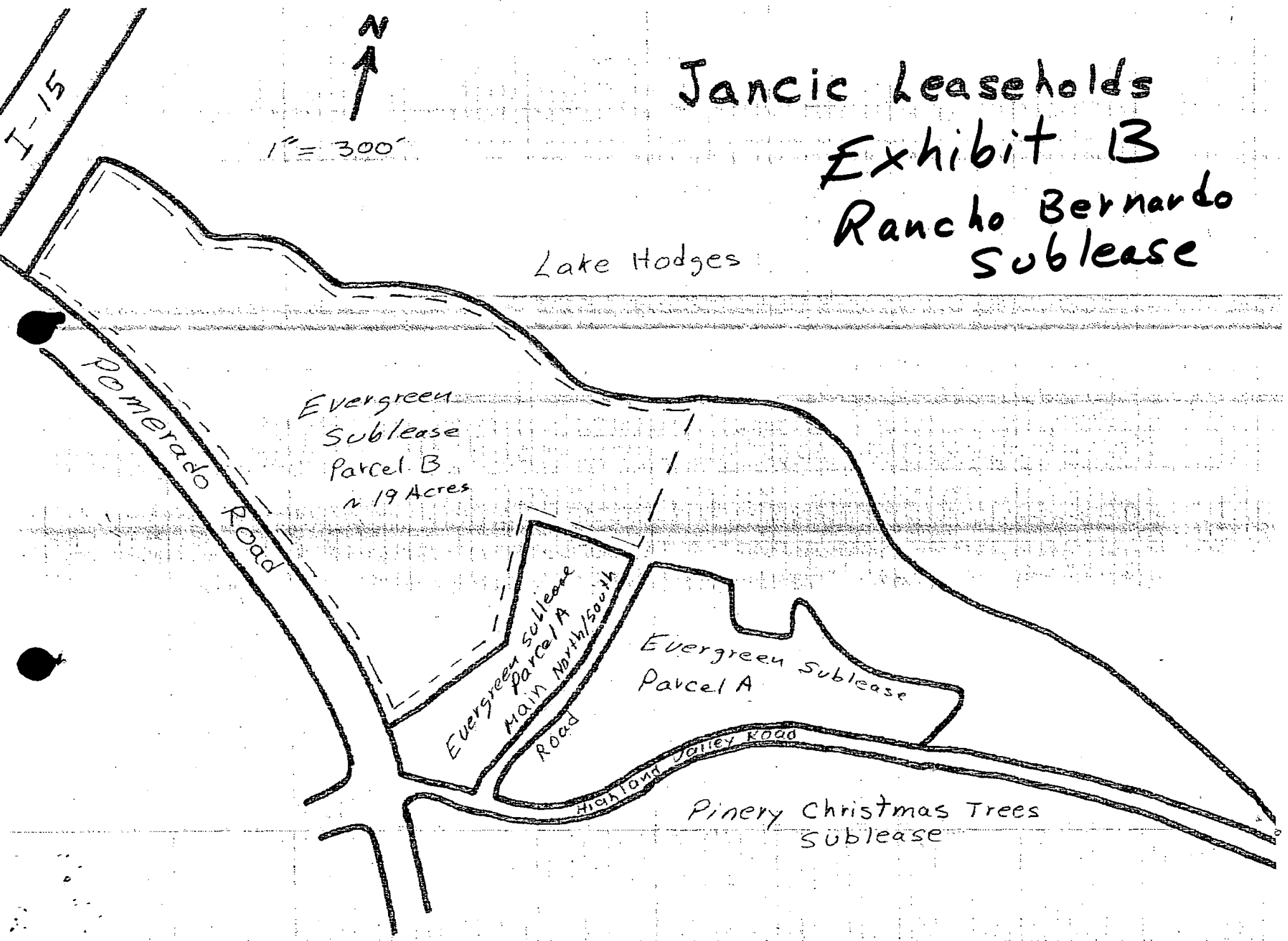
Jancie Leaseholds

Exhibit 13

Rancho Bernardo Sublease

Lake Hodges

1" = 300'



1-1-87

9/10/87
re to Francis
again on 10/30/87

CONSENT OF LESSOR

THE UNDERSIGNED is the Lessor in the Master Lease described in the foregoing Sublease, and hereby consents to the sublease of the premises described in the Sublease to PEPPER TREE NURSERY, a Limited Partnership, waiving none of its rights under the Master Lease as to the Lessee or under the Sublease as to the Sublessee.

CITY OF SAN DIEGO

By



By

SUBLEASE

THIS SUBLEASE is effective as of January 1, 1987, by and between CHARLES T. JANCIC, hereinafter called "Sublessor," and PEPPER TREE NURSERY, a Limited Partnership, hereinafter called "Sublessee."

I.

RECITALS

1.1 The City of San Diego, a Municipal Corporation, as Lessor, and CHARLES T. JANCIC, as Lessee, executed a Lease on or about _____, 1986, a copy of which is attached hereto as Exhibit "A", and incorporated herein by this reference (hereinafter referred to as the "Master Lease"). By the terms of the Master Lease, the real property described in Exhibit "B", attached hereto and incorporated herein by this reference, was leased to CHARLES T. JANCIC for a term of twenty (20) years commencing January 1, 1987, and terminating December 31, 2006.

1.2 Sublessor desires to sublease to Sublessee a portion of the above-described real property as described in Exhibit "C", attached hereto and incorporated herein by this reference (hereinafter referred to as the "Subleased Premises"), and Sublessee desires to lease the Subleased Premises from Sublessor.

Wherefore, Sublessor and Sublessee agree as follows:

II.

DEMISE AND DESCRIPTION OF PROPERTY

2.1 Sublessor hereby leases to Sublessee, and Sublessee hereby hires from Sublessor, on and subject to the terms, conditions and covenants set forth herein, and subject to the easements and reservations in the Master Lease, the Subleased Premises, provided; however, that Sublessor hereby reserves the right to use jointly with Sublessee the roads and parking lot identified in Exhibit "D", attached hereto and incorporated herein by this reference. The Subleased Premises consists of approximately 11.5 acres.

2.2 The term of this Sublease shall be for a period of twenty (20) years commencing on January 1, 1987, and terminating December 31, 2006; provided, however, this Sublease shall sooner terminate on the earlier termination of the Master Lease for any cause whatsoever.

III.

RENT

3.1 Sublessee shall pay to Sublessor as rent for the Subleased Premises the annual rent of Three Hundred Sixty-Eight Dollars (\$368.00) per acre, for a total annual rental of _____, (\$ _____), which shall be paid in advance, without abatement, deduction or offset, in twelve (12) equal installments on the first day of each month, commencing January 1, 1987, and payable on the same day of each month thereafter, and any and all other costs and expenses payable by Sublessor under the Master Lease as they

relate to the Subleased Premises, including but not limited to the costs of taxes, maintenance, insurance, utilities, and improvements, all as specified in the Master Lease. In addition, Sublessee shall pay fifty percent (50%) of the costs of maintaining the roads and parking lot identified on Exhibit "D" hereto, as from time to time mutually agreed by Sublessor and Sublessee.

3.2 In the event Sublessee fails to pay any installment of rent or any other payment when due, Sublessee shall pay Sublessor a late charge in the amount and in the manner specified in Section 3.03 of the Master Lease. Sublessee shall also pay an unauthorized use charge as specified in Section 3.05 of the Master Lease if Sublessee is engaged in conduct or activities which would warrant the imposition of such charge, and if such charge is actually imposed by Master Lessor. Nothing provided for herein shall constitute a waiver by Sublessee to contest the imposition of any such charge.

3.3 The rental obligations provided for herein shall be subject to CPI Index adjustment on the same terms and conditions as provided in the Master Lease.

IV.

USE OF PREMISES

The Subleased Premises shall be utilized by Sublessee for the growing and marketing of fruits, vegetables, trees, shrubs and plants, and for related agricultural and horticultural uses which are approved by the City Manager and for no other purposes. Sublessor and Sublessee acknowledge that Sublessee operates a

nursery facility pursuant to a Conditional Use Permit granted by the City of San Diego, and Sublessor will not object to any uses undertaken by Sublessee on the Subleased Premises consistent with that Conditional Use Permit, or amendments thereto, provided that the City of San Diego consents to such use under the Master Lease.

V.

OBLIGATIONS OF PARTIES

5.1 Sublessor hereby expressly assumes all of the obligations of Sublessor under, and agrees to comply with all the terms and provisions of, the Master Lease insofar as they pertain to the Subleased Premises, including but not limited to the nondiscrimination and agricultural provisions in Section 7 of the Master Lease.

5.2 Sublessor hereby agrees to comply with all laws, statutes, ordinances, governmental rules and regulations, conditional use permits and the like, now in force or which may hereafter be enacted or imposed, affecting Sublessee's use of the Subleased Premises, including but not limited to these relating to the use, storage and handling of pesticides, fertilizers and other chemicals .

5.3 Sublessee hereby agrees to defend, indemnify and hold Sublessor free and harmless from any and all claims, actions, proceedings, demands, penalties, fines, liabilities, losses, costs, and expenses (including reasonable attorney's fees) arising out of or in any way connected with Sublessee's use of the Subleased Premises, including but not limited to any damages

or losses suffered by Sublessor by reason of any termination of the Master Lease attributable to Sublessee's failure to fulfill its obligations hereunder or to comply with the Master Lease, or as a result of the negligent acts or conduct of any of Sublessee's employees or agents.

5.4 Sublessor hereby agrees to defend, indemnify and hold Sublessee free and harmless from any and all claims, actions, proceedings, demands, penalties, fines, liabilities, losses, costs, and expenses (including reasonable attorney's fees) arising out of or in any way connected with Sublessor's use of the real property adjacent to the Subleased Premises, including but not limited to any damages or losses suffered by Sublessee by reason of any termination of the Master Lease attributable to Sublessor's failure to fulfill its obligations under the Master Lease, or as a result of the negligent acts or conduct of any of Sublessor's employees or agents.

5.5 Sublessee covenants and agrees to pay the rent herein reserved, use the premises for the purpose hereinbefore stated, and to surrender the Subleased Premises on the expiration or earlier termination of the term hereof.

5.6 Sublessee shall not assign, sublet or encumber this Sublease, or any interest therein, except as approved by Sublessor, which approval shall not be unreasonably withheld, and, in addition, by the City Manager in accordance with Sections 4.02 and 4.03 of the Master Lease. Without prejudicing Sublessor's right to disapprove a proposed assignee or sublessee,

in the event of a proposed assignment or sublease, Sublessor may at its option, elect to terminate this Sublease.

5.7 Sublessor shall not amend the Master Lease if such amendment would have any material or significant impact on Sublessee's rights hereunder, without obtaining the prior written consent of Sublessee, which consent shall not be unreasonably withheld.

VI.

SUBLEASE CONDITIONAL

6.1 The effectiveness of this Sublease is conditional upon the consent of the City of San Diego as required under the Master Lease .

6.2 This Sublease may be terminated by Sublessee in the event that Sublessee is able to negotiate and consummate a direct lease of the Subleased Premises with the City of San Diego; provided, however, in such event Sublessor shall have the right to continue to use jointly with Sublessee the roads and parking lot identified in Exhibit "D", and the parties shall continue to share the costs of maintaining such roads and parking lot as provided in Section 3.1 hereof. Upon termination of this Sublease pursuant to this Section 6.2, the parties shall execute any and all documents necessary to terminate this Sublease, to effectuate a direct lease of the Subleased Premises between Subleasee and the City of San Diego, and to memorialize Sublessor's continuing rights and the parties' respective obligations with respect to the roads and parking lot described in Exhibit "D".

VII.

SUBLESSOR'S RIGHTS

Sublessor shall have with respect to Sublessee all of the rights of the Lessor under the Master Lease. In the event of a default hereunder, Sublessor shall have all of the rights and remedies available to the Lessor under the Master Lease in addition to any other rights and remedies available at law or in equity.

VIII.

NOTICES

Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, certified return-receipt-requested, addressed as follows, unless otherwise designated in writing by the recipient party:

TO SUBLESSOR: Charles T. Jancic
c/o Pinery Tree Farms, Inc.
12450 Highland Valley Road
Escondido, CA 92025

TO SUBLESSEE: Pepper Tree Nursery
1019 San Marcos Boulevard
San Marcos, CA 92069

IX.

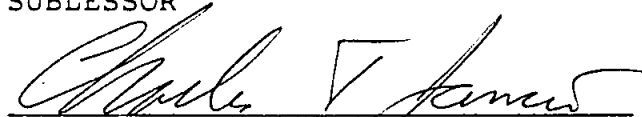
ATTORNEYS' FEES

In the event of any action or proceeding arising in connection with this Sublease, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorneys. In the event Sublessor incurs any attorneys' fees and

costs in enforcing this Sublease, whether or not action be instituted, Sublessee shall reimburse Sublessor for such attorneys' fees and costs on demand.

Executed at San Marcos, California, effective as of the day and year first above written.

SUBLESSOR

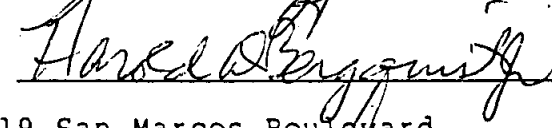


CHARLES T. JANCIC
c/o Pinery Tree Farms, Inc.
12450 Highland Valley Road
Escondido, CA 92025

SUBLESSEE

PEPPER TREE NURSERY, a Limited
Partnership

By 

By 

1019 San Marcos Boulevard
San Marcos, CA 92069

283A0051
043087



NORTH

PINERY TREE FARM

PARKING
LOT

PINERY

PEPPER TREE NURSERY

PEPPER TREE

HIGHLAND VALLEY ROAD

POMERADO ROAD

SCALE 1" = 200'

HIGHLIGHTED ROADS - PARKING TO HAVE
MUTUAL ACCESS - MAINTENANCE