

STAFF REPORT*CITY OF OCEANSIDE*

DATE: January 20, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department

SUBJECT: **APPROVAL OF AMENDMENT 5 TO THE LEASE AGREEMENT WITH HARRY SINGH AND SONS FOR USE OF 9.2 ACRES OF CITY-OWNED PROPERTY FOR AGRICULTURAL TRUCK FARMING**

SYNOPSIS

Staff recommends that the City Council approve Amendment 5 to the Lease Agreement with Harry Singh and Sons, for use of 9.2 acres of City-owned property for agricultural truck farming, extending the term of the agreement through January 15, 2015, for a minimum total revenue of \$16,050, and authorize the City Manager to execute the amendment.

BACKGROUND

On October 26, 1988, the City and Harry Singh and Sons (Lessee) entered into a Property Lease Agreement, and subsequently approved Amendment 1 dated March 2, 1994, Amendment 2 dated February 15, 1995, Amendment 3 dated July 12, 2000, and Amendment 4 dated December 15, 2004, with Lessee for use of 9.2 acres of unimproved land for agricultural truck farming. The lease, if not extended, expires on January 15, 2010.

ANALYSIS

The City-owned 9.2 acre parcel is landlocked by a surrounding 69-acre County-owned parcel, which has been leased by the County of San Diego to Lessee for agricultural truck farming since 1982. Due to the landlocked location of the City-owned property, the parcel's best use is for farming in conjunction with the surrounding County-owned property. The amendment extends the term of the lease for five years. Both parties retain the ability to terminate the lease, after providing 365-day written notice.

FISCAL IMPACT

Currently the Lessee pays the fair market annual minimum rent of \$3,210. The minimum rent is adjusted annually based on the semi-annual Consumer Price Index (CPI).

The amendment will result in revenue for the premises over the five-year term in the minimum amount of \$16,050.

INSURANCE REQUIREMENTS

The Lessee will be required to maintain the City's standard insurance requirement over the term of the lease.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

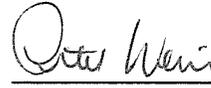
Staff recommends that the City Council approve Amendment 5 to the Lease Agreement with Harry Singh and Sons, for use of 9.2 acres of City-owned property for agricultural truck farming, extending the term of the agreement through January 15, 2015, for a minimum total revenue of \$16,050, and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:



Julie Cook
Program Specialist



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Douglas E. Eddow, Real Property Manager







AMENDMENT NO. 5 TO LEASE AGREEMENT

This Amendment No. 5 to Lease Agreement is made this _____ day of _____ 2010. By and between the City of Oceanside, hereinafter referred to as ("CITY") and Harry Singh and Sons, hereinafter referred to as ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE entered into that certain Lease Agreement dated October 26, 1988, Amendment No. 1 dated March 2, 1994, Amendment No. 2 dated February 15, 1995, Amendment No. 3 dated July 12, 2000, and Amendment No. 4 dated December 15, 2004, (hereinafter collectively referred to as "the "Agreement"), for the lease of real property generally described as being approximately 9.2 acres of vacant land within the City of Oceanside and a portion of Lot 3 of the Partition of Rancho Guajome, being more particularly described in said Agreement.

WHEREAS, LESSEE has provided CITY with the required written notice to request extension of the lease term for a period of five (5) years, with a further option for an additional five (5)-year extension.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

1. The Agreement shall be amended to read as follows:

Section 2. TERM AND OPTION is deleted in its entirety and replaced with the following language:

Section 2. TERM

a. Term. The term of this Agreement for the Premises is extended for five (5) years, commencing January 16, 2010 and terminating January 15, 2015.

b. Option to Extend Term.

The Lessee may request approval of an additional five (5)-year extension of the term of this Agreement, at the calculated fair market lease payment rate of similar businesses, which approval shall not be unreasonably withheld, provided that the Lessee is not in default or breach of any term, condition, covenant or provision of this Agreement.

The Lessee may request not more than one (1) five (5)-year extension of term by providing the City Manager with its written request no later than ninety (90) day prior to the expiration of the term of this Agreement. No later than thirty (30) days after receipt of such request, the City Manager or City Manager's designee shall notify Lessee whether such request

will be recommended to the City Council for approval, at which time the City Manager shall provide Lessee with the calculated fair market rent value and rental amount that the City is willing to accept for the use and occupation of the Premises during the extended term. In no event shall the rental rate be less than that required during the preceding annual term. City Manager's failure to provide the new rental amount within said timeframe shall not preclude the CITY from making adjustments to the rental rate. Recommendation by the City Manager does not constitute approval of the extension request. The City Manager in his capacity as the authorized representative shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent no later than thirty (30) days from receipt of the request for extension.

In no event shall the term of this Agreement be extended in excess of five (5) years beyond the expiration of the term of this Agreement without the mutual written agreement of the parties and the prior approval of the City Council.

c. **Termination.** This Agreement may be terminated by either party by first giving three hundred sixty-five (365) days prior written notice to the other party.

2. All other terms, conditions, covenants and provisions of the Agreement as amended shall remain in full force and effect. In the event of any conflict between the terms of the original Agreement as amended and this Amendment No. 5 to Lease Agreement, the terms of this Amendment No. 5 shall control.

CITY
The City of Oceanside,
a municipal corporation

Date: _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Carla D. Hamilton, ASST.*
City Attorney

LESSEE
Harry Singh and Sons

Date: *Jan. 6, 2010*

By: *Harry Singh*
Name: *Harry Singh Jr.*
Title: *President*

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego }
On Jan. 6, 2010 before me, Evelyn Molina, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Harry Singh Jr.
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Evelyn Molina
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

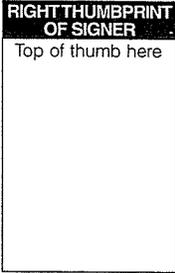
Description of Attached Document

Title or Type of Document: Amendment to property lease
Document Date: Jan. 6, 2010 Number of Pages: 2
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: _____



Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: _____



LEASE AGREEMENT

THIS LEASE, made this 26th day of October, 1988, at Oceanside, California, by and between the CITY OF OCEANSIDE, hereinafter called "LESSOR", and Harry Singh and Sons, hereinafter called "TENANT".

WITNESSETH

THAT IN CONSIDERATION of the terms, conditions and covenants herein contained, LESSOR does hereby lease to TENANT, and TENANT does hereby lease from LESSOR, the premises hereinafter described, consisting of approximately 3.70 acres of vacant lands within the City of Oceanside, County of San Diego, State of California, and more particularly described as being a portion of Lot 3 of the Partition of Rancho Guajome as designated on the Partition Map attached to and made a part of the report of the referees in partition of said Rancho Guajome and adjoining lands, in that certain action in the Superior Court of the County of San Diego, State of California, wherein Susie G. Coutts was Plaintiff and Richard O'Neil, Sr., et.al., were Defendants, which Report and Map are on file in the Office of the Clerk of Superior Court (Case No. 10201) in said County, as shown on a sketch thereof marked EXHIBIT "A" attached hereto and made a part hereof by reference.

1. DEFINITION OF TERMS. The following words have in this Lease the significance attached to them in this paragraph unless otherwise apparent from the context.

a) CITY COUNCIL or COUNCIL means the legislative body of the City of Oceanside.

b) CITY MANAGER means the City Manager of the City of Oceanside.

c) CITY means the City of Oceanside, California.

d) FINANCE DIRECTOR means the Finance Director of the City of Oceanside.

The words "shall" and "will" are mandatory, and the word "may" is permissive.

Words and phrases contained herein shall be construed according to the context and the approved usage of the American language, and technical words and phrases, and such others as have acquired a particular and appropriate meaning by law, or are defined in the preceding paragraphs of this section are to be construed according to such technical, peculiar and appropriate meaning or definition.

Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

2. TERM AND OPTION. The term of this Lease shall be for a period of two (2) years commencing November 1, 1988 and terminating on October 31, 1990. TENANT has the option to renew this Lease for an additional period of ten (10) years provided that TENANT is not in default of any terms,

conditions or provisions of this Lease, and shall exercise said option by giving written notice thereof to LESSOR at least Ninety (90) days prior to the end of the lease term. Provided however, this Lease may be terminated any time after the first Twenty-four months of the term of this Lease by either party by first giving Three Hundred Sixty-five (365) days prior written notice to the other party.

3. USE OF PREMISES. The leased premises shall be used only and exclusively for the following specific purposes and such other directly related incidental purposes as are specifically approved by the City Manager (or his authorized representative):

Agricultural Truck Farm.

4. RENT.

a) For rental of the leased premises, TENANT shall pay to LESSOR an annual rental of One Hundred Eighty and $\frac{48}{100}$ Dollars (\$180.48) per acre.

b) The annual rental shall be paid in advance on the first day of each accounting year during the term of this Lease.

c) In the event that rental payments as required herein are not made timely as specified, LESSOR shall have the right to cancel this Lease upon giving ten (10) days written notice.

d) On execution of this Lease, TENANT shall pay LESSOR Six Hundred Sixty-seven and $\frac{78}{100}$ Dollars (\$667.78).

5. COST OF LIVING ADJUSTMENT. Beginning with the thirteenth (13th) month of this Lease and for each succeeding twelve (12) month period, the annual rental provided for above shall be

adjusted to reflect any increase in the purchasing power of the dollar following the commencement of this Lease by the use of the following formula:

$$R = A \times B/C$$

WHEREIN,

R equals the adjusted annual rental for each twelve (12) month period;

A equals the base rent for the particular period as set forth in Clause 4 (RENT) above;

B equals the average monthly consumer price index as hereinafter defined for the first full quarter immediately preceding the commencement of the twelve (12) month period for which the adjustment is being computed; and

C equals the average monthly consumer price index as herein defined for the first full calendar quarter immediately preceding the commencement of the term of this Lease.

The consumer price index which shall be used as the source for such index numbers shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Los Angeles-Long Beach Area, all items of the index entitled "Consumer Price Index for All Urban Consumers" for the Los Angeles-Long Beach Area (1967=100). In the event that such index is not published for the Los Angeles-Long Beach Area, then another comparable index or source of such information generally recognized as authoritative shall be substituted by agreement of

the parties of this Lease. If the Parties of this Lease should not agree, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure.

6. SECURITY DEPOSIT. In addition to the rental received in accordance with Clause 4 (RENT) herein, LESSOR hereby acknowledges receipt of the sum of Three Hundred Thirty Dollars (\$330.00), representing a security deposit which may be applied by LESSOR toward reimbursement of any cost(s) incurred because of TENANT's violation of this Lease, including but not limited to, surrender of said Premises, by TENANT to LESSOR in an unclean and unsanitary condition upon termination, damage to Premises, or nonpayment of rent. LESSOR's City Manager shall be the sole judge determining the amount of refund, if any.

7. IMPROVEMENTS.

a) Improvements by TENANT. TENANT, at its sole cost and expense, may construct or cause to be constructed certain improvements to the Leased Premises. Said improvements shall consist of a minimum of one (1) water well six inches (6") in diameter. TENANT shall have the right to construct additional wells as approved by LESSOR. Said water well(s) shall be drilled with the well casing remaining on the property and reverting to the ownership of the LESSOR at the expiration or termination of this Lease. TENANT may be required to make said improvements provided water quality is acceptable. All improvements made to the Leased Premises shall remain on and be surrendered with the

Leased Premises on the expiration or termination of the term of this Lease, except as provided otherwise for herein.

All plans for said work and improvements shall be submitted to and approved by the authorities of proper jurisdiction, all costs associated with obtaining any and all required approvals are the sole responsibility of TENANT.

8. ACCEPTANCE AND MAINTENANCE OF PREMISES. No representation as to the condition of the Leased Premises has been made to TENANT by LESSOR. TENANT has made a thorough inspection of the Leased Premises, relies wholly on said inspection and accepts said Premises in the condition existing on the commencement date of this Lease. TENANT shall return said Premises in as good condition as received, reasonable wear and tear and damage by the elements excepted.

TENANT agrees to maintain the Leased Premises in as good a condition as said premises were when first occupied by TENANT, subject only to ordinary wear and usage. TENANT shall give prompt notice to LESSOR of any fire or damage that may occur from any cause whatsoever. TENANT shall, to the satisfaction of the LESSOR, keep and maintain the Leased Premises and all improvements of any kind which may be erected, installed or made thereon by TENANT in good and substantial repair and condition.

LESSOR shall not at any time be required to make any improvements or repairs whatsoever except that LESSOR at its sole discretion may do any necessary filling, grading, trenching, or repair of water system, sewer facilities, roads, or other City

facilities, or construction of other City facilities in order to protect the Leased Premises or the adjoining premises.

TENANT expressly agrees to maintain the Leasehold in a safe, clean, wholesome and sanitary condition, to the complete satisfaction of the LESSOR and in compliance with all applicable law. TENANT further agrees to keep the Leased Premises free and clear of rubbish and litter. LESSOR shall have the right to enter upon and inspect the Leased Premises at any time for cleanliness and safety.

9. MAINTENANCE OF ADJACENT AREA. TENANT shall at TENANT'S own cost and expense and to the satisfaction of the LESSOR maintain the area immediately adjacent to said Leased Premises within a twenty (20) foot radius of TENANT'S improvements, and the Leased Premises, in a general pleasing condition and one which will be of benefit to the City of Oceanside.

10. ACCOUNTING YEAR. The term "accounting year" means a period of twelve consecutive calendar months, commencing on the first day of July, 1988, and ending on the 30th day of June, 1989. Accounting year shall also apply for each respective consecutive twelve month period following said June 30, 1989, throughout the term of this lease and any period of holding over.

11. MONTH TO MONTH TENANCY. If TENANT holds over after the expiration of this Lease for any cause, such holding over shall be deemed to be a tenancy from month to month only, at the same rental per month and upon the same terms, conditions, restrictions and provisions as herein contained. Such holding

over shall include any time employed by TENANT to remove machines, appliances and other equipment during the thirty (30) day period hereinafter provided for such removal.

12. PLACE OF PAYMENT AND FILING. All rentals shall be paid to and all statements and reports herein required shall be filed with the LESSOR. Checks, drafts and money orders shall be made payable to the City of Oceanside, and delivered to the attention of the Finance Director, 704 Third Street, Oceanside, California 92054.

13. SERVICE OF WRITTEN NOTICE OR PROCESS. If TENANT is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, TENANT shall file with the LESSOR, a designation of a natural person residing in the County of San Diego, State of California, giving his name, residence or business address, as the agent of TENANT for the service of written notice or for service of process in any court action between TENANT and the LESSOR, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon TENANT.

If for any reason service of such written notice or of such process upon such agent is not possible, then TENANT may be personally served with such written notice or process outside of the State of California and such service shall constitute valid service upon TENANT; and it is further expressly agreed that the

TENANT is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid, addressed to TENANT at P.O. Box 1850 Oceanside, CA 92054 or to such other address that TENANT may in writing file with the City Manager; provided, however, that nothing herein contained shall preclude or render inoperative service of such notice upon the TENANT in the manner prescribed by law.

14. DEFAULT. This Lease is made upon the condition that if the rents or other sums which TENANT herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if other default be made in any of the terms, agreements, conditions or covenants herein contained on the part of the TENANT, or should TENANT abandon or cease to use the Leased Premises for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, strikes or other calamity beyond TENANT'S control, then and in such event at the option of the City as evidenced by resolution of the City Council, this Lease shall be forfeited, and the City may exercise all rights of entry and re-entry upon the Leased Premises and all improvements thereon.

No default shall be declared by the City, as to any breach which may be cured or obviated by TENANT, until written notice by LESSOR to TENANT of such default; provided that not more than ten.

(10) days of written notice and the time to cure shall be required and allowed in the case of failure to pay rent or other sums herein provided to be paid by TENANT.

15. SUBLEASING, ASSIGNMENTS AND SUCCESSORS. TENANT shall have no right to assign or encumber its interest in this Lease or in the premises, or sublease all or any part of the premises, or allow any other person or entity (except TENANT'S authorized representatives) to occupy or use any part of the premises, without first obtaining the express approval of the City Council of LESSOR. Any assignment, encumbrance, or sublease without LESSOR'S consent shall be voidable and, at LESSOR'S election, shall constitute a default hereunder. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this section.

16. WAIVER OF CONDITIONS OR COVENANTS. Any waiver by LESSOR of any breach of any one or more of the covenants, conditions, terms and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement of this Lease, nor shall failure on the part of the LESSOR to require or exact full and complete compliance with any of the covenants, conditions, terms or agreement of this Lease be construed as in any manner changing the terms hereof or estopping the LESSOR from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written bilateral agreement of LESSOR and TENANT. No delay, failure or

omission of the LESSOR to re-enter the Leased Premises or to exercise any right, power, privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or to be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to TENANT shall be required to restore or revive time as of the essence after the waiver by the LESSOR of any default. No option, right, power, remedy or privilege of the LESSOR shall be construed as being exhausted by the exercise thereof in one or more instances.

The rights, powers, options and remedies given the LESSOR by this agreement shall be cumulative.

17. INDEMNITY CLAUSE AND CASUALTY INSURANCE. TENANT shall at all times relieve, indemnify, protect and save harmless City and its Council, Boards, Committees, Commissions, officers, agents and employees from any and all claims and liability, including attorney's fees and any other expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of the City, any of its officers, agents or employees, that may in whole or in part arise from or be caused by (a) the operation, maintenance, use or occupation of the Leased Premises by TENANT, (b) the acts, omissions or negligence of TENANT, its agents, officers, agents, employees or permittees or (c) the failure of TENANT to observe and abide by any of the terms or conditions of this Lease or any applicable law,

ordinance, rule or regulations of the City of Oceanside. The obligation of TENANT to so relieve, indemnify, protect and save harmless the City, and each of its Boards, Committees, Commissions, officers, agents and employees shall continue during any periods of occupancy or of holding over by TENANT, its agents, officers, employees or permittees beyond the expiration or other termination of this Lease.

TENANT shall maintain in full force and effect during the term of this Lease, comprehensive general liability insurance with bodily injury and property damage liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limit; and TENANT agrees that LESSOR (the City of Oceanside), its Council, Boards, Committees, Commissions, officers, agents and employees shall be named as additional insured under such liability insurance policy or policies.

A duplicate policy evidencing such insurance coverage shall be filed with the LESSOR'S City Clerk within ten (10) days of the execution of this Lease by the LESSOR, and prior to any entry upon the premises herein demised, and said policy shall provide that such insurance coverage shall not be cancelled or reduced without at least thirty (30) days prior written notice to the LESSOR'S City Clerk. At least thirty (30) days prior to the expiration of any such policy, a policy showing that such insurance coverage has been renewed or extended shall be filed with LESSOR'S City Clerk.

The amounts of casualty insurance by this section required

shall be subject to re-negotiation at the same time and in the same manner as the amounts of rents hereunder.

18. WORKERS' COMPENSATION INSURANCE. TENANT shall maintain in full force and effect during the term of this Lease in an amount and with coverage satisfactory to LESSOR, Workers' Compensation Insurance, said coverage shall be at least equal to statutory limits. A certificate evidencing such insurance coverage shall be filed with LESSOR'S City Clerk prior to entry upon the premises herein demised.

19. FAILURE TO PROCURE INSURANCE. In case of failure on the part of TENANT to procure or renew the herein required insurance, LESSOR may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith and all monies so paid by LESSOR shall be repaid, by TENANT, to LESSOR upon demand.

20. POSSESSORY INTEREST. The TENANT or any private party to this Lease, is hereby notified that this Lease may create a possessory interest vested in TENANT or other private party to this Lease, and that said TENANT or private party may be subject to the payment of property taxes levied on such interest. Revenue and Taxation Code Section 107.6

"Possessory Interest" means the following:

- a) Possession of, claim to, or right to the possession of land or improvements, except when occupied with ownership of the land or improvements in the same person.

b) Taxable improvements on tax-exempt land.

"Improvement" means the following:

a) All buildings, structures, fixtures, and fences erected on or affixed to the land.

b) All fruit, nut bearing, or ornamental trees and vines, not of natural growth, except date palms under eight years of age.

21. TAXES AND ASSESSMENTS. TENANT agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment levying body upon any interest in this Lease or any possessory right which TENANT may have in or to the premises covered hereby or to the improvements thereon by any reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in, or on or about said premises.

22. ENTRY BY LESSOR. LESSOR or its duly authorized representatives or agents may enter upon said Leased Premises at any and all reasonable times during the term of this Lease for the purpose of determining whether or not TENANT is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of LESSOR.

23. RIGHT OF ENTRY AS AGENT. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by LESSOR of right of entry or re-entry upon the Leased

Premises, or in the case of abandonment or vacation of the premises by TENANT, TENANT hereby irrevocably appoints LESSOR the agent of TENANT to enter upon the Leased Premises and remove any and all persons and property whatsoever situated upon the Leased Premises and place all or any portion of said property, except such property as may be forfeited to the LESSOR, in storage for the account of and at the expense of the TENANT.

In such case LESSOR may relet the premises upon such terms as the LESSOR may deem fit, and if a sufficient sum shall not be thus realized, after paying the expenses of such reletting and collecting, to satisfy the rent and other sums herein reserved to be paid, TENANT agrees to pay any deficiency, and to pay the expenses of such reletting and collecting. TENANT hereby exempts and agrees to save harmless LESSOR from any cost, loss or damage arising out of or caused by such entry or re-entry upon the Leased Premises and the removal of persons and property and storage of such property by LESSOR and its agents.

24. IMPROVEMENTS OR ALTERATIONS. TENANT shall not make any improvements or alterations to the premises without LESSOR'S consent. Any improvements or alterations made shall remain on and be surrendered with the premises on the expiration or termination of the term of this Lease, except that LESSOR can elect within thirty (30) days before the expiration of the term, or within five (5) days after expiration of the term, to require TENANT to remove any improvements or alterations that TENANT has made to the premises. If LESSOR so elects, TENANT at its own

cost and expenses shall restore the premises to the condition designated by LESSOR at its election, before the last day of the term, or within thirty (30) days after notice of election is given, whichever is later.

If TENANT makes any improvements or alterations to the premises as provided in this section, the improvements or alterations shall not be commenced until ten (10) days after LESSOR has received notice from TENANT stating the date the installation of the improvements or alterations is to commence so that LESSOR can post and record an appropriate notice of non-responsibility.

25. REPAIRS BY CITY. TENANT shall from time to time make any and all necessary repairs to or replacement of any equipment, structure, structures, or other physical improvements, upon the Leased Premises, in order to comply with any and all regulations, laws, or ordinances of the Federal Government, State of California, County of San Diego, City of Oceanside or any other governmental body, which may be applicable.

If TENANT fails to make any such repairs or replacement as required, LESSOR may notify TENANT of said default in writing, and should TENANT fail to cure said default and make said repairs or replacements within a reasonable time as established by LESSOR, LESSOR may make such repairs or replacements, and the cost thereof, including, but not limited to, the cost of labor, materials and equipment, shall be charged against TENANT and shall become a part of the rental for the period next following

the period of default, or the same may be prorated over a period of time to be determined by the City.

26. MECHANICS LIENS. TENANT shall pay all costs for construction done by it or caused to be done by it on the premises as permitted by this Lease. TENANT shall keep the premises free and clear of all mechanics liens resulting from construction done by or for TENANT.

TENANT shall have the right to contest the correctness or validity of any such lien if, immediately on demand by LESSOR, TENANT procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half ($1\frac{1}{2}$) times the amount of the claim of lien. The bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

27. SPECIAL SERVICES (UTILITIES). In addition to the rental charges as herein provided, TENANT shall pay all charges for furnishing water, sewer disposal, gas, power, light, telephone service, and any modifications to such utilities required or deemed necessary to better serve the Leased Premises. TENANT acknowledges that LESSOR is in no way responsible for any interruption in any special service provided to the Leased Premises.

28. SIGNS, AWNINGS, AERIALS AND ANTENNAE. No signs or awnings shall be erected or maintained upon the Leased Premises.

TENANT agrees that TENANT will not suffer or permit to be maintained upon the Leased Premises any billboards or advertising signs without the prior written approval of LESSOR. Nothing contained herein prevents TENANT from erecting and maintaining safety, warning or directional signs, of reasonable dimensions, which are not used for advertising of goods and services, provided, however, that all signs permitted in this clause must conform to City sign ordinances. Aerials and antennae shall not be permitted on or about the Leased Premises without the express approval of LESSOR first obtained.

29. HAZARDOUS SUBSTANCES. Hazardous substances and materials are those substances listed in Division 4, Chapter 30, Article 9 of Title 22, California Administrative Code, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of the above Code, as well as any other substance which poses a hazard to health or environment.

Except as other wise permitted in this Lease, no goods, merchandise, or material shall be used, created, kept, stored, or sold in or on said Leased Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon. Excepted from this prohibition is the application of chemicals and materials normally used in the farming operations,

including fertilizers, insecticides and pesticides, provided that where permits and/or approvals from the County Department of Weights and Measures are required for the application of any regulated chemicals and materials that said permits and/or approvals are first obtained. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

However, household products necessary for routine cleaning and maintenance of the property may be kept on the Leased Premises in quantities reasonable for current needs.

No machinery or apparatus shall be used or operated on said Leased Premises which will in any way injure said premises or improvements thereon, or adjacent or other premises, or improvements thereon; provided, however, that nothing in this section contained shall preclude TENANT from bringing, keeping or using on or about said premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects. Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of LESSOR.

LESSOR or its agents or contractors shall at all times have the right to enter upon and inspect the Leased Premises and the operations conducted thereon to assure compliance with the requirements of this section. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the premises.

Breach of any of these covenants, terms and conditions shall give LESSOR authority to immediately terminate this Lease. It is the intent of the parties hereto that the TENANT shall be responsible for and bear the entire cost of removal and disposal of hazardous substances, materials or waste introduced to the Leased Premises during TENANT'S period of use, occupation and possession of the premises. The TENANT shall also be responsible for any cleanup and decontamination on or off the Leased Premises necessitated by such substances, materials or waste.

TENANT shall further hold LESSOR, its Boards, Council, Committees, Commissions, offices, agents or employees, harmless from all responsibility, liability and claim for damages resulting from the presence of or use of hazardous substances, material or waste on the Leased Premises during TENANT'S period of use and possession of said premises.

30. NUISANCE. TENANT shall not permit the property hereby demised to be used for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about said property or any buildings or construction thereon which would result in a nuisance or a violation of the laws of and ordinances of the United States, State of California, or the City of Oceanside, as the same may now or hereafter be in effect.

31. RULES AND REGULATIONS. TENANT shall abide by all applicable rules, regulations, resolutions, ordinances and statutes of the State of California, County of San Diego, City of Oceanside, or other governmental body, where applicable

respecting the use, operation, maintenance, repair or improvement of the Leased Premises and equipment, and shall pay for any and all licenses required in connection with the use, operation, maintenance, repair or improvement of the Leased Premises.

32. QUIET ENJOYMENT. TENANT, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Leased Premises throughout the term of this Lease.

33. EASEMENT RESERVATION. LESSOR hereby reserves the right to establish, to grant or to use such easements or rights-of-way, over under, along and across said premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit said Premises; provided, that any such grant or rights shall require that the Premises be restored to its preexisting condition.

LESSOR further reserves the right of access at any reasonable times to any and all water wells constructed on the Leased Premises by TENANT for the purposes of obtaining water samples and related purposes.

34. TIME. Time is of the essence of this Lease and applies to all times, restrictions, conditions and limitations contained herein; this Lease shall bind TENANT and its sublessees, assignees, successors, heirs, administrators or legal representative, as the case may be.

35. RESERVATIONS. TENANT expressly agrees that this Lease and all rights hereunder shall be subject to all prior exceptions, reservations, leases, licenses, easements, and rights-of-way of record now existing in, to, over or affecting the Leased Premises for any purpose whatsoever.

36. RELOCATION PAYMENT. No relocation payment will be made to TENANT by LESSOR except as provided by law.

37. NONDISCRIMINATION. TENANT, its sublessees, assignees, successors, heirs, administrators or legal representative, as the case may be, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the premises herein demised for a purpose for which a City of Oceanside program or activity is extended or for another purpose involving the provision of similar services or benefits, TENANT shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, LESSOR shall have the right to terminate this Lease

.
.

and to re-enter upon and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

IN WITNESS WHEREOF, LESSOR has, by authorization of its City Council, caused this Lease to be subscribed by the City Manager of the City of Oceanside and the TENANT has executed the same the day and year first hereinabove written.

TENANT:
HARRY SINGH AND SONS

Harry Singh
Gene Singh

LESSOR:
CITY OF OCEANSIDE

Ronald E Bradley
City Manager

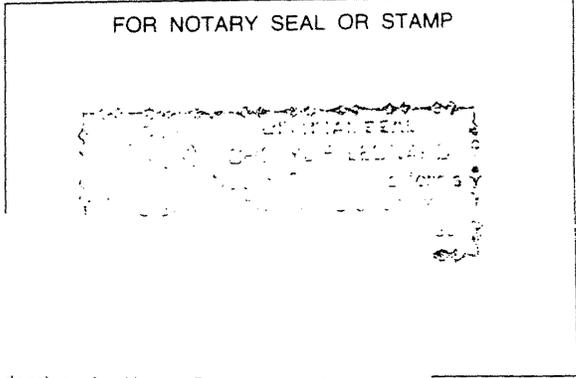
ATTEST:

STATE OF CALIFORNIA

COUNTY OF San Diego | SS.

On this the 15th day of December 1988 before me, the undersigned Notary Public, in and for said County and State personally appeared Harry Singh Jr.

proved to me on the basis of satisfactory evidence to be the President, and Chief Financial Officer and _____



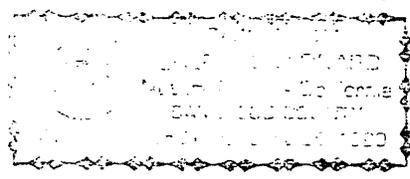
STATE OF CALIFORNIA San Diego | ss.

On February 2, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared Gene Singh and _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and _____ Secretary, on behalf of _____

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.
Signature Cheryl E. Leonard

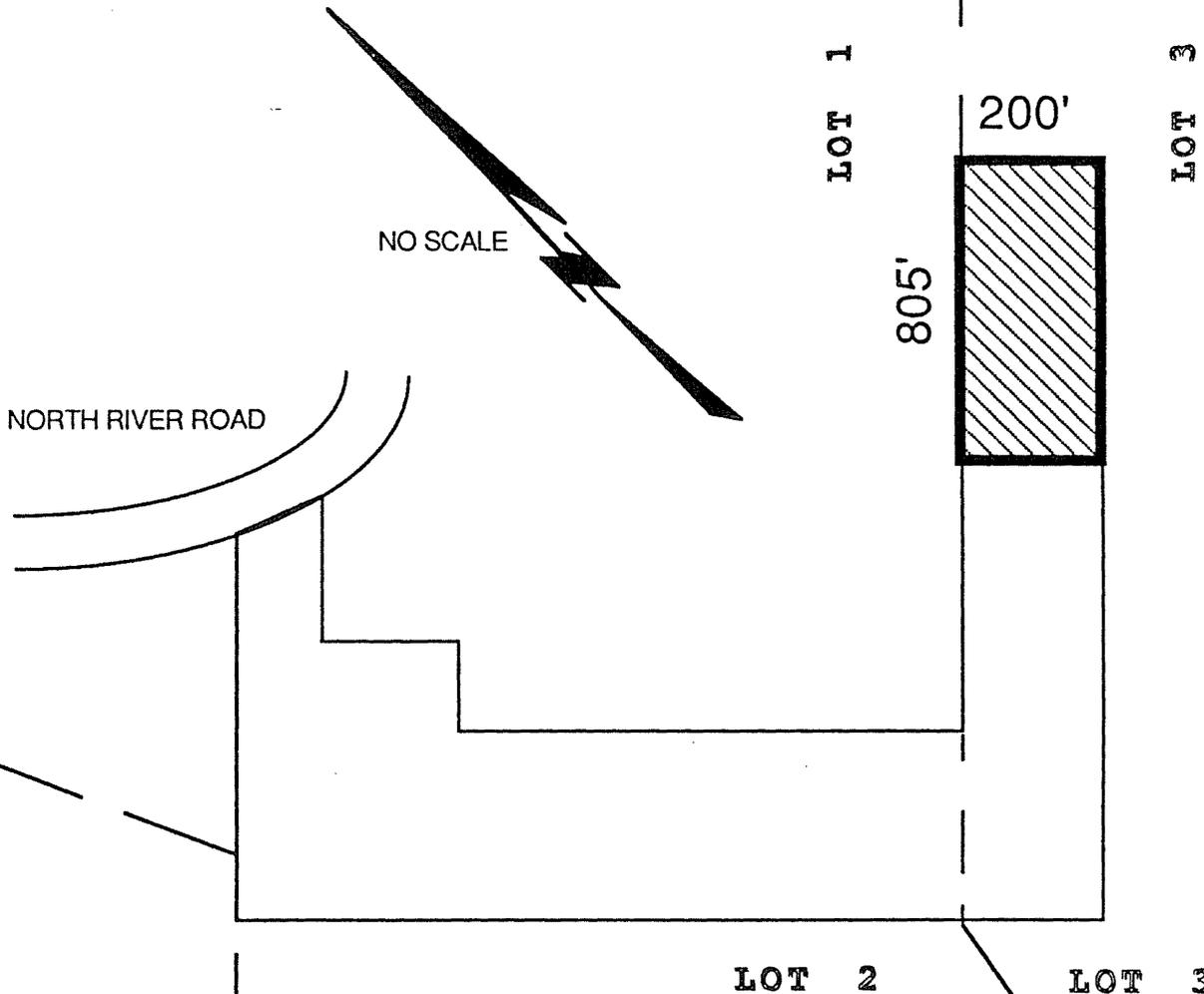


(This area for official notarial seal)

3002 (6) - (Corporation) First American Title Insurance Company
Staple
tion (Rev. 6-82)

ASSESSORS MAP
BOOK 157 PAGE 100 PARCEL 43

EXHIBIT "A"



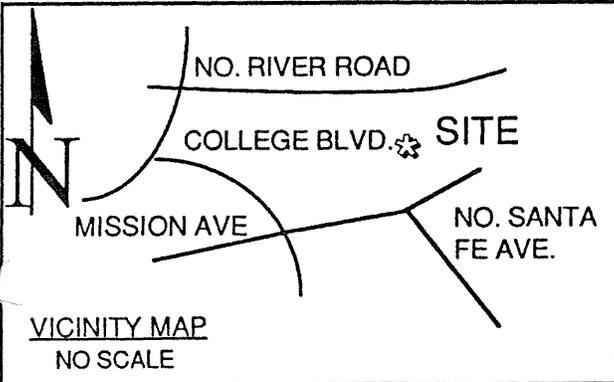
LEGEND



LEASED PREMISES
161,000 square feet

PORTION OF LOT 3 OF THE PARTITION OF RANCHO GUAJOME

WFM 10/88



SKETCH SHOWING LEASED PRIMESES
AGRICULTURAL LEASE
TENANTS: HARRY SINGH AND SONS

CITY OF OCEANSIDE
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DEPARTMENT