

LEASE  
36625

THIS LEASE is made and entered, in duplicate, as of April 13, 2023, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on April 11, 2023, by and between the CITY OF LONG BEACH, a municipal corporation ("Lessor") and JANET M. TODD, an individual, DBA TODDS CHRISTMAS TREES ("Lessee").

1. Lease. Lessor hereby leases to Lessee and Lessee hereby accepts and leases from Lessor the portion of the former Pacific Electric Right-of-Way located between 7th Street and Ximeno Avenue, more particularly described and shown in Exhibit "A" attached hereto and incorporated herein by this reference ("Premises").

2. Term. The term of this Lease shall commence at 12:01 a.m. on October 1, 2023 and shall terminate at midnight on December 31, 2023, unless sooner terminates as provided herein. Lessor shall have the option to extend the term of this Lease for two (2) additional one-year renewal options for the same three-month periods, from October 1st to December 31st, for the years 2024 and 2025, at the discretion of the City Manager of designee. Either party shall have the right to terminate this Lease for any reason or no reason by giving thirty (30) calendar days prior written notice to the other party no later than March 1 of each year.

3. Use. The Premises shall be used solely for the sales of fir, pine and artificial trees and related ancillary items during the Term of the Lease each year. Ancillary items may include tree stands, wreaths, ornaments, and forest products. "Forest products" as used in this Lease shall mean living trees, cut trees, dried or preserved flora, living flora, wreaths, boughs, mistletoe, pine cones, wood chips, vines, and moss but shall not include firewood. No other use of the Premises is authorized or permitted without the prior written consent of Lessor. Lessee shall not use the Premises nor conduct its business in any manner that will create a nuisance or unreasonable annoyance, or constitute waste. Lessee shall use the Premises in such a manner as to comply with all laws pertaining to

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Long Beach, CA 90802-4511

1 wages and hours of employment, occupational safety, and fire, health, and sanitation.

2 4. Rent. Lessee shall pay to Lessor the rent stated below:

3 A. Beginning on October 1, 2023, and in each subsequent  
4 renewal period, the Four Thousand Seven Hundred Twenty Three Dollars (\$4,723)  
5 in rent paid for 2023 shall be adjusted by the percent change in the Consumer Price  
6 Index for all Urban Consumers ("CPI") for the Los Angeles-Long Beach-Anaheim,  
7 CA area (June to June), as published by the United States Department of Labor,  
8 Bureau of Labor Statistics. Percent change shall not be less than three percent  
9 (3%) or exceed eight percent (8%).

10 B. Lessee shall pay to Lessor a One Thousand Dollar (\$1,000)  
11 rent deposit due by October 1 each year with the balance due by January 31 the  
12 following year.

13 C. Lessee acknowledges and agrees that there will be an adjusted  
14 rent based on the CPI each year.

15 5. Utilities. Lessee will be solely responsible for all costs related to the  
16 temporary installation and use of utilities at the Premises.

17 6. Nondiscrimination. Subject to applicable laws, rules, and regulations,  
18 Lessee shall not discriminate against any person or group on the basis of age, sex, sexual  
19 orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry,  
20 national origin, disability, handicap, or Vietnam Era veteran status.

21 7. Subsurface Use Restrictions. The parties agree that this Lease covers  
22 only the surface of the Premises and only so much of the subsurface as is reasonably  
23 necessary for Lessee's use of the Premises as permitted in this Lease.

24 8. Maintenance.

25 A. Lessee shall, at Lessee's sole cost and to the satisfaction of  
26 Lessor, maintain the Premises and all improvements thereon, and the public  
27 pathways on the Premises, in good condition, in substantial repair, in a safe, clean,  
28 and sanitary condition, and in compliance with applicable laws. Lessee's duty to

1 maintain shall include the duty to repair and replace the improvements as needed  
2 Sprinklers on the Premises shall not dampen the public pathways. Lessee shall  
3 provide and use approved containers for trash and garbage and keep the Premises  
4 and public pathways free of trash, garbage and litter. Maintenance of the public  
5 pathways shall include but not be limited to trash removal, pothole repair, leveling,  
6 and weed removal. If Lessee fails to maintain the Premises and public pathways  
7 as required herein, Lessor may notify Lessee of said failure. If Lessee fails to correct  
8 the situation within thirty (30) days after notice or such longer period as may be  
9 established by Lessor, Lessor may make the necessary correction and the cost  
10 thereof, including but not limited to the cost of labor, materials, equipment and  
11 administration, shall be paid by Lessee within ten (10) days after receipt of a  
12 statement of said cost from Lessor. If said statement is not timely paid, the cost shall  
13 become additional rent. Lessor may, at its option, choose other remedies available  
14 herein or by law. Lessee hereby waives to the extent permitted by law any right to  
15 make repairs at the expense of Lessor or to vacate the Premises in lieu thereof as  
16 may be provided by law.

17 B. Lessee shall restore the Premises to its original unused state  
18 at the end of each term of the Lease, or sooner termination, as deemed satisfactory  
19 by the City Manager, or designee.

20 C. Notwithstanding a temporary or other closure approved  
21 pursuant to Section 26(B) of this Lease, Lessee shall inspect the fencing around the  
22 Premises, the irrigation system, lighting, security systems, and general conditions  
23 on the Premises on a weekly basis; shall maintain the Premises in accordance with  
24 this Section 8; shall repair any damage in, on, or to the Premises during a temporary  
25 or other closure as promptly as possible; and shall ensure that Hazardous Materials  
26 (including but not limited to fertilizers and pesticides) are properly stored or disposed  
27 of.

28 9. Taxes. Lessee acknowledges that this Lease may create a

1 possessory interest subject to property taxation and that Lessee may be liable for payment  
2 of taxes levied on such interest. Lessee shall promptly pay, prior to delinquency, all taxes,  
3 assessments and other governmental fees that may be levied against the Premises, and  
4 any improvements or personal property located on the Premises and on any possessory  
5 interest created by this Lease, and provide proof of payment to Lessor on demand.

6 10. Insurance. As a condition precedent to the effectiveness of this Lease  
7 Agreement, Lessee shall procure and maintain at Lessee's expense for the duration of this  
8 Lease Agreement from an insurance company that is admitted to write insurance in the  
9 State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and  
10 Company the following insurance:

11 A. Commercial general liability insurance equivalent in coverage  
12 scope to ISO CG 00 01 10 93 naming the City of Long Beach, and its officials,  
13 employees, and agents as additional insureds on a form equivalent in coverage  
14 scope to ISO CG 20 26 11 85 from and against claims, demands, causes of action,  
15 expenses, costs, or liability for injury to or death of persons, or damage to or loss of  
16 property arising out activities performed by or on behalf of the Lessee in an amount  
17 not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million  
18 Dollars (US \$2,000,000) in general aggregate.

19 B. If required by the Labor Code of the State of California, workers'  
20 compensation coverage and Employer's liability insurance with minimum limits of  
21 One Million Dollars (US \$1,000,000) per accident or occupational illness. The policy  
22 shall be endorsed with a waiver of the insurer's right of subrogation against the City  
23 of Long Beach, and its officials, employees, and agents.

24 C. If use of vehicles is part of the Lease Agreement's scope,  
25 commercial automobile liability insurance equivalent in coverage scope to ISO CA  
26 00 01 06 92 in an amount not less than Five Hundred Thousand Dollars (US  
27 \$500,000) combined single limit (CSL) covering Symbol 1 ("any auto").

28 Any self-insurance program or self-insurance retention must be approved

1 separately in writing by City and shall protect the City of Long Beach, and its officials,  
2 employees, and agents in the same manner and to the same extent as they would have  
3 been protected had the policy or policies not contained retention provisions. Each  
4 insurance policy shall be endorsed to state that coverage shall not be suspended, voided,  
5 or canceled by either party except after twenty (20) days prior written notice to City, and  
6 shall be primary and not contributing to any other insurance or self-insurance maintained  
7 by City.

8 Any subcontractors or sublessees which Lessee may use in the performance  
9 of this Lease Agreement shall be required to indemnify the City to the same extent as the  
10 Lessee and to maintain insurance in compliance with the provisions of this section.

11 Lessee shall deliver to City certificates of insurance and original  
12 endorsements for approval as to sufficiency and form prior to the start of performance  
13 hereunder. The certificates and endorsements for each insurance policy shall contain the  
14 original signature of a person authorized by that insurer to bind coverage on its behalf.  
15 "Claims-made" policies are not acceptable unless City Risk Manager determines that  
16 "Occurrence" policies are not available in the market for the risk being insured. In a "Claims-  
17 made" policy is accepted, it must provide for an extended reporting period of not less than  
18 three (3) years. Such insurance as required herein shall not be deemed to limit Lessee's  
19 liability relating to performance under this Lease Agreement. City reserves the right to  
20 require complete certified copies of all said policies at any time. Any modification or waiver  
21 of the insurance requirements herein shall be made only with the approval of City Risk  
22 Manager. The procuring of insurance shall not be construed as a limitation on liability or as  
23 full performance of the indemnification provisions of this Lease Agreement.

24 11. Relocation. Lessee agrees that nothing contained in this Lease shall  
25 create any right in Lessee for any relocation assistance or payment pursuant to the  
26 provisions of Title I, Division 7, Chapter 16 of the California Government Code from Lessor  
27 on the expiration or termination of this Lease.

28 12. Notice. Any notice required hereunder shall be in writing and

1 personally served or deposited in the U.S. Postal Service, first class, postage prepaid to  
2 Lessor at 2760 N. Studebaker Rd., Long Beach, California 90815, and to Lessee at 4542  
3 Petite Lane, Cypress, California 90630. Notice shall be deemed effective on the date of  
4 mailing or on the date personal service is obtained, whichever first occurs. Change of  
5 address shall be given as provided herein for notices.

6 13. Hazardous Materials.

7 A. "Environmental Damages" means all claims, judgments,  
8 damages, losses, penal ties, fines liabilities (including strict liability), encumbrances,  
9 liens, costs and expenses (including reasonable attorney's and consultants' fees) of  
10 investigation and defense of any claim, whether or not such claim is ultimately  
11 defeated, and of any good faith settlement, which are incurred as a result of the  
12 existence of Hazardous Material on, under or about the Premises including without  
13 limitation:

14 i. damages for personal injury or injury to property or  
15 natural resources occurring on the Premises, foreseeable or unforeseeable:

16 ii. fees incurred for attorneys, consultants, contractors,  
17 experts, laboratories and all other costs incurred in connection with the  
18 investigation or remediation of Hazardous Material including but not limited  
19 to the preparation of any feasibility studies or reports or any cleanup,  
20 remediation, removal, abatement, containment, closure, restoration, or  
21 monitoring required by any federal, state or local governmental agency.

22 B. "Hazardous Material" means any hazardous or toxic substance,  
23 material or waste which is or becomes regulated by any local governmental  
24 authority, the State of California, or the United States government. The term includes  
25 without limitation any material or substance which is (i) defined as a hazardous  
26 waste, extremely hazardous waste, or restricted hazardous waste under Section  
27 25115, 25117 or 25122.7, or is listed pursuant to Section 25140 of the California  
28 Health and Safety Code (Hazardous Waste Control Law), (ii) defined as a hazardous

1 substance under Section 25316 of the California Health and Safety Code  
2 (Carpenter-Presley- Tanner Hazardous Substance Account Act), (iii) defined as a  
3 Hazardous Material, hazardous substance, or hazardous waste under Section  
4 25501 of the California Health and Safety Code (Hazardous Materials Release  
5 Response Plans and Inventory), (iv) defined as a hazardous substance under  
6 Section 25281 of the California Health and Safety Code (Underground Storage of  
7 Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 or  
8 defined as hazardous or extremely hazardous pursuant to Title 22, Article 9 of the  
9 California Code of Regulations, (viii) designated as a hazardous substance pursuant  
10 to Section 300 of the Water Pollution Control Act (33 U.S.C. Sec. 1317 et seq.), (ix)  
11 defined as a hazardous waste pursuant to Section 1004 of the Resource  
12 conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or (x) defined as a  
13 hazardous substance pursuant to Section 101 of the Comprehensive Environmental  
14 Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq.

15 C. Lessor and Lessee acknowledge the existence of two oil  
16 pipeline easements containing oil pipelines on the Premises. Texaco Trading and  
17 Transportation Co. ("Texaco") holds one easement and the standard Oil Co.  
18 ("Standard Oil") holds the other easement. Lessee shall seek recovery from Texaco  
19 and Standard Oil for and hereby releases Lessor from and against any and all  
20 Environmental Damages relating to these oil pipelines on the Premises provided  
21 that the Environmental Damages with respect to these oil pipelines were not caused  
22 by Lessee, including but not limited to damage to these oil pipelines caused by  
23 Lessee. (Lessee hereby waives the provisions of the California civil Code Section  
24 1542.) This release and waiver shall survive the expiration or termination of this  
25 Lease.

26 The parties acknowledge that Lessor may be primarily liable for  
27 Environmental Damages due to Lessor's status as owner of the Premises. In no  
28 event shall Lessor be liable for incidental, special, exemplary, or consequential

1 damages including but not limited to loss of profits or products, interference with  
2 business operations or relationships, or inability to use the Premises. Lessee shall  
3 be primarily liable for Environmental Damages due to any act or omission of Lessee  
4 with respect to the use, storage, or disposal of any Hazardous Material (including  
5 but not limited to fertilizers and pesticides) or with respect to damage to the oil  
6 pipelines on the Premises caused by Lessee.

7 D. Lessee shall not cause or permit any Hazardous Material to be  
8 brought on, treated, kept, used, stored, disposed of, discharged, released,  
9 produced, or generated in, on, under or about the Premises by Lessee, their agents,  
10 employees, contractors, sublessees, assignees, or invitees without the prior written  
11 consent of Lessor (which Lessor shall not unreasonably withhold as long as Lessee  
12 demonstrates to Lessor's satisfaction that such Hazardous Material is necessary to  
13 Lessee's business and will be brought on, treated, kept, used, stored, disposed of,  
14 discharged, released, produced, or generated in a manner that complies with all  
15 laws regulating such Hazardous Material). However, Lessee may spray pesticides  
16 or other Hazardous Materials between 7:00 a.m. and 5:00 p.m. on days when the  
17 wind velocity is five miles per hour (5 m.p.h.) or less. Lessee shall apply pesticides  
18 and other Hazardous Materials necessary to Lessee's business in accordance with  
19 the rules and regulations issued by the Office of the Los Angeles county Agricultural  
20 Commissioner.

21 E. Lessee shall defend, indemnify and hold Lessor harmless from  
22 any and all Environmental Damages relating to any a Hazardous Material brought  
23 on, treated, kept, used, stored, disposed of, discharged, released, produced, or  
24 generated by Lessee, their employees, agents, contractors, assignees, sublessees,  
25 or invitees during Lessee's tenancy even if done with Lessor's consent, and in  
26 addition from any and all Environmental Damages arising from Hazardous Material  
27 in, on, under or about the Premises as a result of Lessee's occupancy or use of the  
28 Premises.



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F. Notwithstanding Lessee's obligation to indemnify Lessor pursuant to subsection (E) above, Lessee shall on demand of Lessor and at Lessee's sole cost and expense promptly take all action to remediate the Premises necessitated by the presence of Hazardous Material in, on, under or about the Premises and caused by Lessee's occupancy or use of the Premises. Such action shall include but not be limited to the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup or remediation. Lessee shall proceed continuously and diligently with such investigatory and remedial action. All action shall be performed in a good, safe and workmanlike manner. Lessee shall promptly provide to Lessor copies of testing results and reports in connection with Lessee's action hereunder.

G. Lessee shall comply with California Health and Safety Code Section 25359.7 or its successor statute regarding notice to Lessor on discovery by Lessee of the presence or suspected presence of any Hazardous Materials on the Premises.

14. Indemnity.

A. Lessee shall indemnify, protect and hold harmless Lessor, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Lessee's breach or failure to comply with any of its obligations contained in this Lease, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Lessee, its officers, employees, agents,

1 subcontractors, or anyone under Lessee's control, in the performance of work or  
2 services under this Lease Agreement (collectively "Claims" or individually "Claim").

3 B. In addition to Lessee's duty to indemnify, Lessee shall have a  
4 separate and wholly independent duty to defend Indemnified Parties at Lessee's  
5 expense by legal counsel approved by Lessor, from and against all Claims, and  
6 shall continue this defense until the Claims are resolved, whether by settlement,  
7 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the  
8 like on the part of Lessee shall be required for the duty to defend to arise. Lessor  
9 shall notify Lessee of any Claim, shall tender the defense of the Claim to Lessee,  
10 and shall assist Lessee, as may be reasonably requested, in the defense.

11 C. If a court of competent jurisdiction determines that a Claim was  
12 caused by the sole negligence or willful misconduct of Indemnified Parties, Lessee's  
13 costs of defense and indemnity shall be (1) reimbursed in full if the court determines  
14 sole negligence by the Indemnified Parties, or (2) reduced by the percentage of  
15 willful misconduct attributed by the court to the Indemnified Parties.

16 D. The provisions of this Section shall survive the expiration or  
17 termination of this Lease Agreement.

18 15. Exculpation. Lessor shall not be liable to Lessee for any damages to  
19 Lessee or Lessee's property from any cause. To the extent permitted by law, Lessee  
20 waives all claims against Lessor for damage or injury to person or property arising or  
21 alleged to have arisen from any cause whatsoever, except Lessor's gross negligence or  
22 willful misconduct.

23 16. Assignment. Lessee shall not assign or transfer this Lease or any  
24 interest herein, nor sublease the Premises or any part thereof (collectively referred to as  
25 "transfer") without the prior written consent of Lessor which shall not be unreasonably  
26 withheld. To obtain Lessor's consent to a proposed transfer, Lessee shall meet the  
27 following requirements:

28 A. Lessee shall notify Lessor at least sixty (60) days prior to the

1 date when Lessee desires the transfer to take effect ("Transfer Date") which notice  
2 shall contain the name, address and telephone number of the proposed transferee:  
3 the nature of the proposed transferee's business and details of its business  
4 experience; the terms of the proposed transfer, including a copy of any agreement  
5 between Lessee and the proposed transferee; a statement whether the proposed  
6 transferee is an individual, partnership, or corporation and, if a partnership, the  
7 names and addresses of the general partners and, if a corporation, the names and  
8 addresses of the officers and directors and the State of incorporation: and the  
9 Transfer Date.

10 B. Lessee shall demonstrate that the proposed transferee is  
11 financially responsible and experienced in operating a business similar to that  
12 permitted hereunder.

13 C. Lessor and Lessee agree (by way of example and without  
14 limitation) that it shall be reasonable for Lessor to withhold its consent if any of the  
15 following exist or may exist: (1) the proposed transferee's use of the Premises  
16 conflicts with or is inconsistent with the use of the Premises stated in Section 3  
17 hereof: (2) in Lessor's reasonable business judgment, the proposed transferee lacks  
18 sufficient business or management experience to operate a similar business on the  
19 Premises; (3) Lessee is in default under this Lease; or (4) the business of the  
20 proposed transferee will result in a material increase in the demands on available  
21 parking.

22 D. Lessor shall notify Lessee at least fifteen (15) business days  
23 prior to the Transfer Date whether Lessor approves or disapproves the proposed  
24 transfer.

25 E. Any approved transferee shall assume and be deemed to have  
26 assumed this Lease and shall be jointly and severally liable with Lessee for the  
27 payment of rent and performance of the terms, covenants, and conditions of this  
28 Lease. No approved transfer shall be binding on Lessor until such transferee shall

1 deliver to Lessor a counterpart of such transfer which contains a covenant of  
2 assumption by transferee but the failure or refusal to execute or deliver such  
3 instrument shall not release transferee from its liability as stated herein.

4 F. The consent of Lessor to any transfer shall not relieve Lessee  
5 of the obligation to obtain such consent to any further transfer. Further, neither this  
6 Lease nor any interest herein shall be subject to transfer by attachment, execution,  
7 proceedings in insolvency or bankruptcy (either voluntary or involuntary), or  
8 receivership. In the event of transfer without the prior written consent of Lessor, such  
9 transfer shall be voidable at Lessor's election and, if avoided by Lessor, shall convey  
10 no interest. Any transfer without Lessor's consent shall constitute a default of this  
11 Lease.

12 17. Captions and Organization. The various headings and numbers  
13 herein and the grouping of the provisions of this Lease into separate sections, paragraphs  
14 and clauses are for convenience only and shall not be considered a part hereof, and shall  
15 have no effect on the construction or interpretation of this Lease.

16 18. Joint Effort. This Lease is created as a joint effort between the parties,  
17 is fully negotiated as to its terms and conditions, and no provision hereof shall be  
18 interpreted against one party as the drafter thereof.

19 19. Waiver of Rights. The failure or delay of Lessor to insist on strict  
20 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of  
21 any right or remedy that Lessor may have and shall not be deemed a waiver of any  
22 subsequent or other breach of any term, covenant, or condition herein. The receipt and  
23 acceptance by Lessor of delinquent rent shall not constitute a waiver of any other default  
24 but shall only constitute a waiver of timely payment for the particular rent payment involved.  
25 Any waiver by Lessor of any default or breach shall be in writing. Lessor's consent to or  
26 approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed  
27 to waive Lessor's consent or approval of any subsequent act of Lessee.

28 20. Partial Invalidity. If any term, covenant, or condition of this Lease is

1 held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder  
2 of the provisions hereof shall remain in full force and effect and shall in no way be affected,  
3 impaired or invalidated thereby.

4           21. Successors in Interest. This Lease shall be binding on and inure to  
5 the benefit of the parties and their successors, heirs, personal representatives, transferees,  
6 and assignees except as provided in Section 16 hereof, and all of the parties hereto shall  
7 be jointly and severally liable hereunder.

8           22. Lessor's Right to Re-Enter. Lessee shall peaceably deliver  
9 possession of the Premises to Lessor on the effective date of termination of this Lease. on  
10 giving notice of termination to Lessee, Lessor shall have the right to re-enter and take  
11 possession of the Premises on the effective date of termination without further notice of  
12 any kind and without institution of summary or regular legal proceedings. Termination of  
13 the Lease and re-entry of the Premises by Lessor shall in no way alter or diminish any  
14 obligation of Lessee under the Lease and shall not constitute an acceptance or surrender.  
15 Lessee waives any and all right of redemption under any existing or future law in the event  
16 of eviction from the Premises and in the event Lessor re-enters and takes possession.  
17 Lessee agrees that should the manner or method used by Lessor in re- entering or taking  
18 possession give Lessee a cause of action for damages or in forcible entry and detainer,  
19 the total amount of damages to which Lessee shall be entitled in any such action shall be  
20 one Dollar (\$1.00). Lessee agrees that this Section may be filed in any such action and  
21 that when filed it shall be a stipulation by Lessee fixing the total damages to which Lessee  
22 is entitled in such action.

23           23. Holding Over. If Lessee holds over and remains in possession of the  
24 Premises after the expiration of the Lease, such holding over shall be construed as a  
25 tenancy from month to month at one hundred twenty-five percent (125%) of the rent then  
26 in effect and on the same terms, covenants, and conditions herein.

27           24. Attorney's Fees. In any action or proceeding relating to this Lease,  
28 the prevailing party shall be entitled to its reasonable costs, including a reasonable

1 attorney's fee.

2           25. Waiver of Claims. Lessor shall not be liable for and Lessee hereby  
3 waives all claims against Lessor, its officials, employees and agents for loss, theft, or  
4 damage to equipment, furniture, trade fixtures, records, plants, and other property on or  
5 about the Premises, for loss or damage to Lessee's business, or injury to or death of  
6 persons on or about the Premises from any cause except to the extent caused by the gross  
7 negligence or willful misconduct of Lessor, its officials, employees, or agents.

8           26. Default. The occurrence of any of the following acts shall constitute a  
9 default by Lessee:

- 10           A. Failure to pay rent when due after ten (10) days' notice;
- 11           B. Abandonment and vacation of the Premises, provided that  
12 failure to occupy or operate the Premises for ten (10) consecutive days shall be  
13 deemed an abandonment and vacation, except for closures due to conditions  
14 beyond Lessee's reasonable control or temporary closures for specified dates with  
15 the prior written approval of Lessor. Temporary or other closures shall not relieve  
16 Lessee of Lessee's duty to maintain the Premises at all times in accordance with  
17 Section 8 of this Lease;
- 18           C. Failure to perform any .of the terms, covenants, or conditions  
19 of this Lease if said failure is not cured within thirty (30) days after Lessor notifies  
20 Lessee of said failure. If the default cannot reasonably be cured in thirty (30) days,  
21 Lessee shall not be in default if Lessee begins to cure within the thirty-day period  
22 and diligently proceeds to cure to completion. Lessor's notice shall describe the  
23 default and shall demand that Lessor perform or quit the Premises. No such notice  
24 shall be deemed a forfeiture or termination of the Lease unless Lessor so elects in  
25 the notice;
- 26           D. Any attempted assignment, transfer, or sublease except as  
27 approved by Lessor pursuant to Section 16.

28           These remedies are not exclusive but cumulative to other remedies provided

1 by law in the event of Lessee's default, and the exercise by Lessor of one or more rights  
2 and remedies shall not preclude the Lessor's exercise of additional or different remedies  
3 for the same or any other default by Lessee.

4           27. Right of Entry. Lessor shall have the right of access to the Premises  
5 at all reasonable times to inspect the Premises, to determine whether or not Lessee is  
6 complying with the terms, covenants, and conditions of this Lease, and to serve, post, or  
7 keep posted .any notice.

8           28. Integration and Amendments. This Lease represents and constitutes  
9 the entire understanding between the parties and supersedes all other agreements and  
10 communications between the parties, oral or written, concerning the subject matter herein.  
11 This Lease shall not be modified except in writing duly signed by the parties and referring  
12 to this Lease.

13           29. Recordation. This Lease shall not be recorded.

14           30. Signs. Lessee shall not place, affix, maintain, or permit any sign,  
15 advertisement, name, insignia, logo, descriptive material, or similar item (collectively "sign")  
16 on the Premises without the prior written approval of Lessor. Any sign so approved shall  
17 be maintained by Lessee, at its cost, in good condition. Any sign not approved by Lessor  
18 may be removed by Lessor at Lessee's cost. The cost of removal shall be additional rent.

19           31. Force Majeure. If any party fails to perform its obligations because of  
20 strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or  
21 materials or reasonable substitutes for labor materials, governmental restrictions,  
22 governmental regulations, governmental controls, judicial orders, enemy or hostile  
23 governmental action, civil commotion, fire or other casualty, or other causes beyond the  
24 reasonable control of the party obligated to perform, then that party's performance will be  
25 excused for a period equal to the period of such cause for failure to perform. Financial  
26 inability to perform shall not be considered cause beyond the reasonable control of the  
27 party.

28           32. Governing Law. The Lease shall be governed by and construed in

1 accordance with the laws of the State of California (except those provisions of California  
2 law pertaining to conflicts of law).

3           33. Continuous Use. Lessee shall continuously use the Premises for the  
4 stated uses during the term of this Lease. If the Premises are partially destroyed or  
5 damaged and the Lease remains in full force and effect, Lessee shall continue its business  
6 operations to the extent reasonably practical in the exercise of Lessee's good business  
7 judgment.

8           34. Restoration. Lessee shall promptly notify Lessor of damage or  
9 destruction to the Premises and the date of same. Lessee shall promptly make proof of  
10 loss and proceed to collect all valid claims that Lessee may have against insurers or others  
11 based on such damage or destruction. All amounts recovered as a result of said claims  
12 shall be used first for the restoration of the Premises, which Lessee shall promptly begin  
13 and diligently pursue so that the Premises are restored to substantially the same condition  
14 as they were in immediately before such damage or destruction. If existing laws do not  
15 permit restoration, then Lessee may terminate this Lease by notice to Lessor. Restoration  
16 shall proceed in accordance with the provisions of this Lease.

17           35. Compliance with Laws. Lessee, at its sole cost, shall comply with all  
18 laws, ordinances, rules and regulations of and obtain such permits, licenses, and  
19 certificates required by all federal, state and local governmental authorities having  
20 jurisdiction over the Premises and business thereon.

21           36. Condemnation.

22           A. If the whole of the Premises or improvements is taken by right  
23 of eminent domain or otherwise for any public or quasi public use, then when  
24 possession is taken thereunder by the condemner or when Lessee is deprived of  
25 practical use of the Premises or improvements, whichever date is earlier, this Lease  
26 shall terminate. If there is a partial taking so that the remaining portion of the  
27 Premises or improvements cannot be restored to an economically feasible operation  
28 of a comparable kind to that which existed prior to the taking, then this Lease shall,



1 at Lessee's option, terminate as of the time when possession was taken by the  
2 condemner or when Lessee was deprived of practical use of the Premises,  
3 whichever date is earlier.

4 B. If there is a taking by right of eminent domain, the rights and  
5 obligations of the parties with reference to the award and the distribution thereof  
6 shall be determined in accordance with this Section. The award shall belong to and  
7 be paid to Lessor, except that Lessee shall receive from the award the following:

8 i. A sum attributable to the value of Lessee's leasehold  
9 estate including improvements, which sum shall be first applied to any  
10 outstanding balance due to Lessee's lender, if any;

11 ii. A sum attributable to severance damages to be used  
12 solely for the restoration of improvements on the Premises;

13 iii. A sum attributable to loss of good will.

14 37. Abandoned Property. If Lessee abandons the Premises or is  
15 dispossessed by operation of law or otherwise, title to any personal property belonging to  
16 Lessee and left on the Premises forty-five (45) days after such abandonment or  
17 dispossession shall be deemed to have been transferred to Lessor. Lessor shall thereafter  
18 have the right to remove and to dispose of said property without liability to Lessee or to any  
19 person claiming under Lessee, and shall have no duty to account therefor. Lessee hereby  
20 names Lessor's City Manager as Lessee's attorney in fact to execute and deliver such  
21 documents or instruments as may be reasonably required to dispose of such abandoned  
22 property and transfer title thereto.

23 38. Encumbrances. Lessee may encumber its leasehold estate, by deeds  
24 of trust or mortgages as security for the payment of money loaned to Lessee for the sole  
25 purpose of construction and work relating to the permitted uses hereunder. The  
26 encumbrances shall be subject to the terms, covenants, and conditions of this Lease. If the  
27 Lender is a person or entity other than a savings bank, savings and loan association,  
28 commercial bank, trust company, insurance company, or other similar lending institution,

OFFICE OF THE CITY ATTORNEY  
DAWN MCINTOSH, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4611

1 the lender shall be subject to the approval of Lessor. Immediately after recording a deed  
2 of trust or mortgage on the leasehold, Lessee shall record a Request for Notice, as  
3 provided in Section 2924b of the California Civil Code, requiring service on Lessor of any  
4 notice of default and notice of sale.

5 39. Americans with Disabilities Act. Lessee shall have and be allocated  
6 the sole responsibility to comply with the Americans with Disabilities Act ("ADA") with  
7 respect to the Premises and Lessee shall defend, indemnify and hold Lessor, its officials  
8 and employees harmless from and against any and all claims of failure to comply with or  
9 violation of the ADA.

10 IN WITNESS WHEREOF, the parties have executed this Lease as of the  
11 date first above written.

12  
13  
14 April 21, 2023, 2023

JANET M. TODD, an individual, DBA TODDS  
CHRISTMAS TREES  
By Janet M. Todd  
Name Janet M. Todd  
Title owner

15  
16  
17  
18  
19 July 6, 2023

"Lessee"  
CITY OF LONG BEACH, a municipal  
corporation  
By [Signature]  
City Manager

20  
21 "Lessor"  
22 This Lease Agreement is approved as to form on May 3rd, 2023.

23  
24 DAWN MCINTOSH, City Attorney  
25 [Signature]  
26 By: \_\_\_\_\_  
27 Deputy  
28