

PUBLIC UTILITIES COMMISSION

GAVIN NEWSOM, MAYOR

GRAZING CATTLE LEASE

between

**CITY AND COUNTY OF SAN FRANCISCO,
as Landlord**

and

_____,
as Tenant

**For the lease of
_____ Acres of Grazing Land**

Sunol, California

November 1, _____

PUBLIC UTILITIES COMMISSION

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Robert J. Costello - Vice President
Ann Moller Caen - Commissioner
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**Patricia E. Martel
General Manager of Public Utilities**

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**CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION**

CATTLE GRAZING LEASE

THIS CATTLE GRAZING LEASE, dated for reference purposes as of November 1, _____ ("**Lease**"), is by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting through its Public Utilities Commission ("**City**") and _____ **an Individual and** _____ **an Individual (collectively, "Tenant")**.

1. BASIC LEASE INFORMATION

2 The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below shall be deemed to incorporate all the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: November 1, _____

Landlord: CITY AND COUNTY OF SAN FRANCISCO

Tenant: _____

Premises (Section 3.1): San Francisco Water Department Parcels _____ and _____ located in _____ County, California, owned by City and under the jurisdiction of its Public Utilities Commission, Water Department, as more particularly described in Exhibit A.

Term (Section 4.1): Commencement Date: November 1, _____

Expiration Date: October 31, _____

Base Rent (Section 5.1): Annual Base Rent: \$ _____
Semiannual payments: \$ _____

Base Grazing Capacity (Section 7.1) Parcel: _____ AUMs
Parcel: _____ AUMs
Parcel: _____ AUMS
(Subject to Adjustment)

Use (Section 8.1): Cattle grazing

Security
Deposit (Article 24):

Two (2) month's rent

Notice Address of City
(Section 25.1):

San Francisco Public Utilities Commission
Bureau of Commercial Land Management
1155 Market Street, 5th Floor
San Francisco, CA 94103
Attn: Director
Fax No.: (415) 487-5200

with a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Finance/Transactions
Fax No.: (415) 554-4755

Key Contact for City:

Tim Koopmann, California Certified
Rangeland Manager #41

Telephone No.:

(925) 862-2233

Alternate Contact
for City:

Garrett M. Dowd

Telephone No.:

(415) 487-5211

Notice Address of Tenant
(Section 25.1):

Key Contact for Tenant:
Telephone No.:

Alternate Contact
for Tenant:

Telephone No.:

1 **DEFINITIONS**

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section or elsewhere in this Lease:

"**Actual Costs**" means the sum of: (i) direct labor costs and (ii) direct material costs, when Tenant has incurred such costs directly in the performance of any item of Long-Term Maintenance approved or directed by City and where such materials fulfill all specifications as determined by City. When Tenant contracts with third parties for performance of any items of Long-Term Maintenance, "Actual Costs," as used herein shall mean the amount of such contracts negotiated on an arms-length basis as shall have been approved in advance and in writing by City.

"**Additional Charges**" means any and all personal property taxes, possessory interest taxes and other costs, impositions and expenses described in Article 6 hereof or otherwise payable by Tenant under this Lease.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises.

"**Assignment**" has the meaning given in Section 16.1 hereof.

"**Animal Unit Month**" or "**AUM**" means the amount of forage required for the health and growth of one thousand pounds of livestock.

"**Award**" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Basic Lease Information**" means the information with respect to this Lease summarized in Article 1 hereof.

"**Base Grazing Capacity**" means the grazing capacity specified in the Basic Lease Information and described in Section 7.1 hereof, as the same may be adjusted from time to time.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in Section 5.1 hereof.

"**City**" means the City and County of San Francisco, a municipal corporation, and all of its boards, commissions, departments, agencies and other subdivisions, including the Public Utilities Commission.

"**City Facilities**" means any and all water pipelines, roads, culverts, drainage pipelines, hatch covers, wells, dams, tunnels, reservoirs, basins and other surface and subsurface utility facilities now or later located in, under, on or about the Premises for the transportation or distribution of water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

"**Commencement Date**" means the commencement date specified in the Basic Lease Information.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Effective Date**" has the meaning given in Section 25.27 hereof.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, water, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in Section 17.1 hereof.

"**Grazing Plan**" means the annual operating plan required to be prepared by Tenant and submitted to City as set forth in Section 10.1 hereof.

"**Grazing Report**" means the grazing report in substantially the form attached hereto as Exhibit C.

"**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"**Hazardous Material Claims**" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the PUC, their Agents, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs.

"**Improvements**" means any and all corrals, fences, structures, structural range improvements, sanitary facilities improvements and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, roads, trails, driveways, parking areas, plantings and landscaping.

"**Indemnify**" means indemnify, protect, defend and hold harmless forever.

"**Indemnified Parties**" has the meaning given in Section 18.2 hereof and each of them.

"**Investigation**" means any activity undertaken to determine the nature and extent of Hazardous Materials that may be located in, on, under or about the Property or any portion thereof or which have been, are

being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Property.

"**Invitees**" when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

"**Land**" means the real property described in the attached Exhibit A.

"**Landlord**" means the City and County of San Francisco.

"**Law**" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises or any portion thereof.

"**Lease**" means this Lease as it may be amended in accordance with its terms.

"**Lease Year**" means each twelve (12) consecutive month period during the Lease Term, with the first period commencing on the Commencement Date.

"**Livestock**" has the meaning given to such term in Section 7.2(a) hereof.

"**Long-Term Maintenance**" as used herein, shall mean any item of protection, preservation, maintenance and repair of the Premises or any part thereof, including property and any appurtenant facilities used by the Tenant in common with others, the recurrence of which is not anticipated within the twelve (12) month period following its completion. Long-Term Maintenance does not include any item of protection, maintenance or repair which is solely incidental to Tenant's use of the Premises and which Tenant is obligated to perform under routine maintenance or any other provision of this Lease.

"**Losses**" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"**Maximum Grazing Capacity**" means the maximum amount of AUMs possible on a parcel without inducing damage to vegetation or related resources, which may vary from year to year as determined by the City.

"**Official Records**" means the official records of the county(ies) in which the Premises are located.

"**Party**" means City or Tenant, or both if plural.

"**Premises**" has the meaning given in Section 3.1 hereof.

"**PUC**" means the Public Utilities Commission of the City and County of San Francisco.

"**Real Property Manager**" means the Watershed Manager of the Water Supply and Treatment Division Land Section of the PUC, Land and Resource Management Section.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into

or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises, Improvements or City facilities or any portion thereof.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, mitigate or otherwise control Hazardous Materials located in, on, under or about the Premises or City Facilities or existing improvements on the Land, or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"Residual Dry Matter" or **"RDM"** means the amount of standing dead plant material and litter from herbaceous plants, expressed in pounds per acre.

"Sublease" has the meaning given in Section 16.1 hereof.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be Transferred and that have been Transferred in accordance with this Lease.

"Tenant's Personal Property" means the personal property of Tenant described in Section 9.3 hereof.

"Term" or **"Lease Term"** means the term of this Lease as determined under Section 4.1 hereof.

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Article 16 hereof.

"Unmatured Event of Default" means any Event of Default that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. **PREMISES**

3.1 **Premises.** Subject to the terms, covenants and conditions of this Lease, City hereby leases to Tenant that certain real property situated in the County of Alameda, State of California, consisting approximately of 180 acres as more particularly described in Exhibit A attached hereto (the "**Premises**"); excluding therefrom and reserving unto City, its successors and assigns, the City Facilities and any and all the rights of access provided for in Article 20 below and the other rights described in Section 3.2 below. The Premises are shown generally on Drawing Nos. _____, copies of which are attached hereto as Exhibit B. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all

purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any rights to possession, use or operation of the City Facilities.

3.2 **Reserved Rights**

(a) **Water and Timber Rights.** City reserves and retains for itself and its successors or assigns ownership of all timber, all standing trees, and downed timber on the Premises and all rights to surface water, percolating water and groundwater within the Premises. However, Tenant may use on the Premises any water upon the Premises for domestic purposes, watering stock and other natural uses subject to the terms and conditions hereof. Tenant's foregoing right shall not include water within City Facilities reserved for municipal use.

(b) **Pipelines and Watershed Management.** City reserves and retains for itself and all its successors or assigns the right to use or cause to be used all or any portion of the Premises for the purpose of: planting and caring for trees, wildlife habitat enhancement, soil conservation, constructing erosion control structures, cutting and hauling of wood, construction, maintenance, and the use of roads, railroads, trenches, ditches, pipelines, tunnels, electric power transmission lines, and/or telecommunications lines and facilities, wind power generation, quarrying and using rock, gravel, and minerals, and also the right to do any kind of construction, development work and watershed protection and maintenance on the Premises and to occupy such portion thereof as may be suitable or convenient for any of such purposes.

(c) **Minerals, Oil and Gas.** City does hereby reserve and retain for itself and its successors and assigns all rights to prospect for and develop upon, extract and remove from the Premises `all minerals, oil, and gas, together with the right of ingress to and egress from the Premises over the most convenient routes for said purposes. City does hereby further reserve the right at any time to withdraw from the operation of this Lease, in the manner and as provided for by Section 3.4 hereof, the whole or any portion of the Premises required by City or its successors or assigns for any of the purposes specified in this paragraph.

(d) **Roads.** City does also hereby reserve for the joint use of itself, its employees, Agents, permittees, successors and assigns, and Tenant, any and all roads, trails, paths, and ways upon or across the Premises. City does also reserve the right at any time to establish rights of way across the Premises for hiking and riding trails or other controlled or permitted uses. City agrees to maintain all roads, trails, paths and ways upon or across the Premises.

3.3 **As Is Condition of Premises.**

(a) Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) Tenant acknowledges and agrees that the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor the PUC, including without limitation nor any of their Agents, have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological or environmental condition of the Premises, (iii) the present or future capacity or suitability of the Premises for cattle grazing, (iv) the feasibility, cost or legality of constructing any

Improvements on the Premises if required for Tenant's use and permitted under this Lease, the condition of any fences, roads, gates or range improvements, or (v) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.4 **Withdrawal of Premises.** City reserves the right at any time to reduce the Premises by any position thereof which City may transfer, sell or contract to sell or transfer or which may be devoted to or required for a public use or purpose, including range and watershed improvement or repair, water facilities maintenance and construction, wildlife enhancement and those uses set forth in any watershed plan implemented or adopted by City, upon giving Tenant ninety (90) days prior written notice of its intention to do so. City reserves the right to withdraw from the operation of this Lease at any time and in any manner the whole or any portion of the Premises, the use of which by Tenant may result in damage by erosion, pollution or otherwise, directly or indirectly, to the reservoirs, water courses, dams, works or operations of City. The Parties acknowledge and agree that if the withdrawal of a portion of the Premises does not alter the then current Base Grazing Capacity, Base Rent shall remain the same. However, if the City reduces the Base Grazing Capacity, Base Rent shall be adjusted pursuant to Section 5.2 hereof.

4. **TERM**

4.1 **Term of Lease.** The Premises are leased for a term (the "**Term**") beginning on the Commencement Date in the Basic Lease Information. The Lease Term shall end on the Expiration Date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

4.2 **Commencement Date and Expiration Date.** The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date.**"

5. **RENT**

5.1 **Base Rent.** During the Lease Term, the Tenant shall pay to City annual base rent as determined in accordance with Section 5.2 below ("**Base Rent**"), which shall fluctuate in accordance with the terms of this Lease. Base Rent shall be payable in two (2) equal installments due on November 1 and May 1 of each year (each a "**Payment Date**"). The Base Rent shall be paid in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever. All sums payable by Tenant to City hereunder shall be paid in cash or good check to the San Francisco Public Utilities Commission in care of PUC Finance at 1155 Market Street, 5th Floor, San Francisco, California 94102 or such other place as the City may designate in writing. The first semiannual installment shall be paid on the Commencement Date. If the Commencement Date is not a Payment Date, Base Rent for such fractional period shall be prorated based on a one hundred eighty (180) day semiannual period. The Base Rent shall be paid in full when due and payable regardless of whether or not any livestock are grazed upon the Premises or whether or not any lesser number of AUMs of grazing have been consumed than has been authorized.

5.2 **Adjustment of Base Rent.**

(a) Tenant and City acknowledge that the Base Rent is based on the Base Grazing Capacity (expressed in AUMs) for the Premises for each payment period. Should the actual number of AUMs change, the Parties agree that the Base Rent shall be adjusted to reflect such change.

(b) The rental rate per AUM to be paid by the tenant shall be determined through the use of the chart attached hereto as Exhibit D (Grazing Rental Adjustment Table). The average selling price of beef cattle per hundredweight, as so reported for the most recent month of June (preceding the Commencement Date and each

anniversary thereof), shall be matched with the appropriate price range found in Column 1 of the Grazing Rental Adjustment Table to determine the corresponding rental rate found opposite this entry in Column 2. The rental amount due shall be computed by multiplying the rental rate by the total number of AUMs utilized by Tenant during the six (6) month payment period and multiplying that number by six (6). Thus the Base Rent shall be adjusted upward or downward depending upon the number of AUMs and the average price of beef cattle per hundredweight. The SFPUC will estimate the number of AUMs for the first rental payment based upon the carrying capacity of the Parcel on the Commencement Date. For each subsequent payment, the City shall estimate the number of AUMs for the following six (6) month period to determine rental rate, and add a credit or debit to reflect any difference between the estimated AUMs for the previous six (6) month period and the actual AUMs utilized by Tenant during that period. In the event Landlord has not notified Tenant of the new rental on or before the payment due date, Tenant shall pay the amount paid on the previous rental payment date, with an adjustment to follow upon Landlord's determination of the new rental rate. At the end of the Term, an adjustment between City and Tenant shall be made with respect to the final six (6) month period, and any amounts due to City shall be paid promptly following such adjustment. In no event shall City be required to return at the expiration of this Lease any rental payments previously received by City.

(c) The average selling price of beef cattle shall be taken as the average blended selling price of Medium Frame No. 1 Muscling Steers and Heifers, 500-800 lbs. for the entire month of June. The average sales price to be used in determining the rental rate shall be obtained from reliable and authentic market reports as selected by the SFPUC.

(d) In the event of an increase in Base Grazing Capacity during any semiannual period, the Base Rent to cover such increase for the remainder of the such period shall be due and payable with the next semiannual installment payment. In the event of a decrease in the Base Grazing Capacity, the reduction in the Base Rent shall be credited against the next semiannual installment payment. If the adjustment in the Base Grazing Capacity occurs during the last six months of the Lease Term, the debtor Party shall pay the requisite amount on the effective date of the change in the Base Grazing Capacity

5.3 **Late Charge.** If Tenant fails to pay any Base Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

5.4 **Livestock Lien.** Tenant thereby acknowledges that all Base Rent and Additional Charges not paid when due and payable hereunder shall become a lien on any and all livestock located on the Premises as prescribed by California Civil Code Section 3080, et seq. and City shall have the right to take possession and retain all cattle until all unpaid amounts are satisfied in full.

5.5 **Default Interest.** Any Base Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

6. **TAXES, ASSESSMENTS AND OTHER EXPENSES**

6.1 **Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment of Taxes and Other Charges.** Tenant shall pay any and all personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements installed by or on behalf of Tenant on the Premises, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any other portion of the Improvements permitted hereunder. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to subsection (c) below. Landlord shall pay any and all real property taxes on the Premises.

(b) **Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment, livestock or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Tax Information.** Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 **Other Expenses.** Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3 **Evidence of Payment.** Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. **GRAZING CAPACITY**

7.1. **Base Grazing Capacity.**

(a) The Base Grazing Capacity during the first Lease Year for each parcel located within the Premises is as follows:

Parcel _____ AUMs
Parcel _____ AUMs

Subject to the provisions of Section 7.4 and 7.5 below, the foregoing Base Grazing Capacity shall remain the same for each subsequent Lease Year unless City sends Tenant a written notice thirty (30) days prior to the commencement of the Lease Year, and specifies in such notice the new Base Grazing Capacity for the affected parcel.

7.2 **Relative Forage Requirements.**

(a) **Computation of AUMs.** For the purpose of computing the consumption of the authorized available forage in AUMs, the relative feed requirements of the various kinds of livestock permitted to be kept on the Premises shall be deemed to be as follows, expressed as an animal-unit conversion factor:

<u>TYPE OF LIVESTOCK</u>	<u>ANIMAL-UNIT CONVERSION FACTOR</u>
Calf (6 months to Short Yearling up to 750#).....	0.50
Yearling to 2 Year Old (750# to 1000#).....	0.75
Cow or Cow and Calf (Calf until August 1).....	1.00
Bull.....	1.25
Horse.....	1.25

(b) **Effective Date for Changed AUM.** As the types of livestock increase in weight during any Lease Year, the new factor shall be effective upon the date on which the change in weight is determined to have occurred.

7.3 **City Is Sole Judge of Maximum Grazing Capacity.** City shall be the sole judge as to the Maximum Grazing Capacity of the Premises and any parcels thereof, and the determination of the Certified Rangeland Manager, or other City Representative, as to the Maximum Grazing Capacity and as to the number of AUMs available at any and all times for use by Tenant on the Premises and any parcels thereof and the authorization for use thereof by Tenant, shall be binding and conclusive upon the Parties. In determining the Maximum Grazing Capacity of the Premises or any parcels thereof, City may take into account, by way of example only and without limitations such factors as erosion control, reforestation, native vegetation, water quality, fisheries, wildlife, recreation or other conditions or uses that may affect the use, operation, and conservation of its watershed, lands, and reservoirs. Notwithstanding any other provision, the maximum grazing capacity shall not exceed forty percent (40%) of pre-1991 stocking levels.

7.4 **Changing Base Grazing Capacity By Mutual Consent.** The Parties may change the Base Grazing Capacity by mutual written agreement. Any such agreement shall remain in effect until the beginning of the next Lease Year, unless sooner terminated or amended by further mutual written agreement. In the event that the Maximum Grazing Capacity determined pursuant to Section 7.2 is less than the Base Grazing Capacity, the Base Grazing Capacity shall automatically be reduced to equal the Maximum Grazing Capacity. Under any such automatic reduction or agreement, the Base Rent for the Premises shall be adjusted pursuant to Section 5.2 hereof.

7.5 **Emergency Reduction of Base Grazing Capacity.** At any time and from time to time, the Certified Rangeland Manager or other City Representative may reduce the Base Grazing Capacity or impose a full or partial grazing moratorium in his or her discretion when such action is necessary or appropriate for the conservation of the watershed lands. The reduction shall be expressed in writing, and shall be implemented by the

Tenant within thirty (30) days. In implementing such reduction, Tenant may either (i) reduce animal numbers, or (ii) feed hay of good quality at the equivalent of three (3) AUMs per ton fed. In the event Tenant desires to use option (ii), Tenant shall first obtain City prior written approval. In giving such approval, City may require Tenant to concentrate all or part of the livestock into selected areas for feeding and control and Tenant shall provide suitable documentation for the amounts of hay fed, which shall be included with Tenant's next monthly Grazing Report. In the event of such reduction, the Base Rent shall be adjusted pursuant to Section 5.2 hereof.

7.6 **Exceeding Base Grazing Capacity Without Authorization.** The Premises shall be used by Tenant only for grazing the types of animals specified in the Livestock Table in Section 7.2 hereof. Tenant shall limit the number of livestock to be grazed upon the Premises and the period of their grazing so that the authorized number of AUMs shall not be exceeded. Should the Premises be grazed in excess of the Maximum Grazing Capacity, Tenant shall within ten (10) days of receipt of written notice from the City remove such number of livestock necessary to comply with the current Maximum Grazing Capacity. In addition to all other rights City may have or exercise under this Lease, in the event that Tenant permits grazing on the Premises in excess of the Maximum Grazing Capacity, the charge per AUM (as determined in accordance with Article 5 of this Lease) shall double, and Tenant shall pay such amount to City promptly upon demand for so long as Tenant permits grazing in excess of the Maximum Grazing Capacity. Tenant hereby acknowledges and agrees that such amount is the minimum damage to City from such excess usage. The foregoing amount has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant the actual costs thereof being extremely difficult if not impossible to determine. The amount constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

7.7 **Reporting Livestock Information.** Tenant shall submit an accurate monthly accounting of operation upon the Premises in the monthly Grazing Report in substantially the form attached hereto as Exhibit C. Such report shall be filled out and submitted to City no later than the fifteenth (15th) day of the month following the period covered by the report. Tenant further agrees to supply to City in the monthly Grazing Report verification of the quantity of supplemental feed used and the number, type and weights of livestock which Tenant had upon the Premises during the period covered by said report. In addition to the foregoing, a copy of the original weights-in and weights-out slips shall be attached to the monthly Grazing Report which covers feeder cattle being moved onto or off the Premises. All documentation of livestock information required of the Tenant by City, must be certified as true and correct, signed and dated by Tenant or authorized agent of Tenant, prior to submittal to City.

8. **USE; COVENANTS TO PROTECT PREMISES AND CITY FACILITIES**

8.1 **Tenant's Permitted Use.** Tenant may use the Premises for the use specified in the Basic Lease Information, and for no other purpose.

8.2 **Covenants Regarding Use.** As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) **Overgrazing and Undergrazing; Residual Dry Matters.** Tenant agrees not to permit the Premises to be overgrazed or undergrazed, and Tenant agrees to continuously graze the Property in accordance with the City's Grazing Resources Management Plan dated as of July 1997, as it may be amended and updated from time to time, which is incorporated herein by this reference. A layer of RDM shall be maintained by Tenant to minimize soil erosion and enhance both the quality and quantity of forage produced. The target amount of RDM for the unit, as measured by City following the season of use and prior to new forage growth, shall be 1,000 Lbs/Acre. At no time shall the Tenant allow the RDM to drop below 800 Lbs for any given acre, nor above an amount determined by City to be unsafe or inconsistent with the City's watershed management. The Parties

acknowledge that localized over-utilization will occur adjacent to watering facilities, corrals, and salting areas. As such, these areas will not be used to determine the RDM levels of a pasture. If the RDM levels drop below the amounts specified above, City shall notify Tenant, and Tenant shall immediately remove all livestock from the affected pasture(s) until such time as City determines that such pasture(s) have recovered sufficiently for restocking.

(b) **Health of Livestock.** Tenant covenants and warrants that all livestock to be located on Premises shall be in general good health, physical condition and have been inoculated with all appropriate vaccinations according to good husbandry practice.

(c) **Herd Health Program.** Tenant shall develop a herd health program for the prevention and care of general parasitic disease, to maintain healthy immune systems and minimize diarrheal infection.

(d) **Dead Livestock; Disease.** Tenant shall bury or remove any livestock that dies on or near a water course or water body. Upon discovering any dead livestock on or near the Premises, Tenant shall immediately notify City. In such notice, Tenant shall state its proposed method for disposing of the dead livestock. The proposed method shall be subject to approval by City. Tenant shall immediately report any case of infectious animal to the proper governmental or regulatory authorities, and to City, and take adequate steps to isolate, control and eliminate any such disease.

(e) **Fences.** Tenant shall repair and maintain all existing fences (including gates) in a livestock-tight condition acceptable to City. From time to time City can require Tenant to construct fences necessary to protect the watershed.

(f) **No Unlawful Uses.** Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose. Tenant shall take all precautions to eliminate immediately any hazards relating to its activities on or about the Premises.

(g) **Covenant Against Waste.** Tenant shall not cause or permit any waste, damage or injury to the Premises or any other part of the Improvements or City Facilities.

(h) **Covenant to Protect City Facilities.** At all times during the Lease Term, Tenant shall protect the City Facilities from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the City Facilities, or any portion of the City Facilities (including monuments), Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair such City Facilities (including replacement or relocation of monuments) at Tenant's sole expense.

(i) **Covenant Against Impairment of Water Courses; Ponding.** Except for those existing stock ponds that City has designated that Tenant can use for its grazing operation, Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course whether wet or dry, wetland, or other body of water on, in, under or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters. Any maintenance to be performed on any existing stock ponds must be approved in writing by City. Tenant shall not cause any ponding on the Premises or any flooding on adjacent land.

(j) **Covenant Against Dumping.** Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(k) **Covenant Against Hunting or Fishing.** Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the City provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use cyanide guns, traps or other similar non-selective control techniques. Tenant shall not use poison bait unless approved by the Commissioner of the county where the Premises are located. In no event may Tenant use any prophylactic predator control measures.

(l) **Covenant Against Use of Pesticides.** Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the PUC an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, if any (b) describes the steps Tenant will take to meet the City's IPM Policy described in section 39.1 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(m) **Covenant to Keep Premises Free of Noxious Weeds.** Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds as required by applicable Law or required by City, provided that Tenant may use chemical herbicides only if such use complies with the requirements of subsection (l) above.

(n) **Covenant re Obstructive Vegetation.** Should any vegetation, including, without limitation, downed timber, obstruct Tenant's livestock grazing, Tenant shall not remove such vegetation without first obtaining City prior approval.

(o) **Covenant Regarding Roads.** Tenant shall keep all roads on the Premises open and in the same condition as such roads are in as of the Commencement Date hereof, ordinary wear and tear excepted, and shall not interfere with any travel on such roads. Tenant shall not use or allow the use of nonpublic roads for any non grazing purposes.

(p) **Covenant Against Burning.** Tenant shall not burn any weeds, debris or other substances on or about the Premises.

(q) **Covenant Against Off-Road Vehicles.** Except as otherwise approved by City in writing, Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(r) **Pest Control.** Tenant shall at its own cost and expense comply with all federal, state, county and City pest rodent control programs to the satisfaction of City. City reserves the right to determine any and all parameters of pest species control including, without limitation, species, methods, equipment, chemicals, application rate, timetable, follow-up and areas needing control.

(s) **Monuments.** Tenant acknowledges that the existing monuments on the Premises are in good condition. During the installation of any Improvement hereunder and at all times during the Lease Term,

Tenant shall protect and safeguard City's monuments. Tenant agrees to reimburse City in the amount of \$750.00 for each monument necessitating resurvey, repair and/or replacement. During the Lease Term, the City may replace missing monuments, or install new monuments. When missing monuments are replaced or new monuments installed, Tenant will be given written notice and thereafter Tenant shall assume the same protection and reimbursement responsibilities as with existing monuments provided herein.

(t) **Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines existing now or installed in the future, Tenant's use of vehicles and equipment, within twenty feet (20') of City's pipelines shall be subject to the following restrictions:

(i) The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below, Tenant shall submit to City for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely damaged.

(ii) The "axle loading" of vehicles and equipment must not exceed that allowed for "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.) axles 14 feet (14') apart and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide City adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iii) Tenant shall not use vibrating compaction equipment unless it first obtains City's written approval.

(iv) If potholing establishes that the depth of the soil cover over the pipeline is less than the minimum stated in (i) above, all excavating and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') each side of the pipeline, Tenant shall submit a written proposal together with all supporting calculations and data to City for review and approval.

(u) **Trees and Other Plantings.** Tenant shall not plant any trees or other vegetation except as expressly approved by City.

(v) **No Fuel Storage.** Tenant shall not maintain or store any type of gasoline, propane, oil or other fuel in, on or near the Premises.

9. **IMPROVEMENTS**

9.1 **Construction of Improvements.** Except as expressly provided in this Lease, Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without City's prior written consent in each instance, which City may give or withhold in its sole and absolute discretion. Subject to City's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by City in writing, (ii) in a good and professional manner, (iii) in strict compliance with all Laws, and (iv) subject to all other conditions that City may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of the City Facilities, or any portion thereof, or City's access thereto. Prior to the

commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole cost and expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications, if applicable. If the cost of any proposed Improvements or Alterations is in excess of Five Thousand Dollars (\$5,000), Tenant shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work.

9.2 **Ownership of Improvements.** Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of Section 9.1 above shall be and remain City's property. Upon the Expiration Date or any earlier termination hereof, Tenant shall surrender all such Improvements and Alterations without any further action by either party, without any obligation by City to pay any compensation therefor to Tenant and without the necessity of any deed from Tenant to City. However, in the event that City, at its sole option and without limiting any of the provisions of Section 9.1 above, requires as a condition to approval of any such Improvements or Alterations that Tenant remove such Alterations or Improvements from the Premises upon the expiration or termination of this Lease, Tenant shall do so in accordance with the provisions of Section 22.1 hereof.

9.3 **Tenant's Personal Property.** All mineral block containers, creep feeders, feeding panels, hay feeders, grain feeders, fence panels, bow gate panels, squeeze chute, crowding alley, landing chute, palpation cage, articles of movable personal property and other equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "**Tenant's Personal Property**") shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 22.1 hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

10. **GRAZING METHOD**

10.1 **Annual Grazing Plan.** Tenant shall manage and use the Premises throughout the Term in a good and proper manner, according to approved methods of range management and grazing practices as established and modified from time to time by City. Prior to the Commencement Date, Tenant shall deliver to City an annual Grazing Plan satisfactory to City. The Grazing Plan shall set forth both the proposed method of operation on the Premises and any additional responsibilities for Long-Term Maintenance, Herd Health, Pest Control, and/or development of range resources that are warranted by conditions or circumstances deemed significant by the City. The Grazing Plan shall also set forth the number of animal unit months to be stocked on each grazing unit based on current forage conditions, and include a RDM target level for May 15 annually for the AUM specified. Once approved by City, the Grazing Plan shall be implemented and maintained by Tenant during the Lease Year. Each Lease Year thereafter, Tenant shall prepare a new Grazing Plan to be delivered to City by October 1. Within ten (10) working days of receiving the Grazing Plan, City shall notify Tenant in writing whether it is acceptable. If unacceptable, City shall state in its notice all changes that need to be made to the Grazing Plan. Tenant shall incorporate all changes into the Grazing Plan and resubmit the Grazing Plan for City's approval.

10.2 **Distribution of Livestock.** Tenant shall obtain optimum distribution of livestock over the Premises by distributing or rotating livestock among the pastures to obtain uniform range utilization, minimize overgrazed areas and reduce the overall fire hazard. Accordingly, all cross-fences that define any pasture shall be maintained by Tenant to the satisfaction of the City and in such a way that livestock can be effectively confined within said pasture by merely closing and latching all gates. Tenant shall distribute all salt blocks uniformly

throughout the Premises; provided, however, no salt block shall be located within 1,000 feet of a permanent livestock watering area. Tenant shall periodically move salt blocks and any other feed supplements at the direction of City.

10.3 **Grazing Within Premises.** Tenant shall prevent livestock from roaming or grazing upon any adjacent lands of City or of third parties. In the event City learns that Tenant's livestock has roamed beyond the Premises boundaries, City may notify Tenant orally or in writing of the general location and number of livestock in violation. If Tenant fails to retrieve the livestock within twenty-four (24) hours of notification by City or any other person, City may, at its option, immediately take any steps required to remove or impound the roaming livestock and charge the costs thereof, including labor, materials and equipment, to Tenant. All such costs shall be due and payable by Tenant upon demand by City. If City determines that the roaming livestock poses an immediate threat to any person or property, City shall have the right, but not the obligation, to take any steps required to remove or impound the roaming livestock without prior notification to Tenant. All costs incurred by City shall be reimbursed by Tenant and due and payable upon demand by City.

10.4 **Exclusion of Livestock From Reservoirs and Riparian Zones.** Tenant shall prevent livestock from roaming upon Reservoir Buffers or the reservoir side of exclusion fences surrounding any drinking supply reservoir or where fencing is absent, within the areas occupied by water when said reservoir is at spill elevation (high water mark), regardless of the time of year, or within any Stream Zone Buffer or fenced riparian zone. Tenant shall prevent calves from roaming upon Fenced Riparian Pastures. In the event the City observes: (1) livestock roaming upon Reservoir Buffers or the reservoir side of the exclusion fences or below the high water mark, or within Stream Zone Buffers or any fences riparian zone, or (2) calves within Fenced Riparian Pastures, City will personally notify Tenant of the general location and number of livestock or calves in violation. If Tenant fails to remove immediately roaming livestock, City may, at its option, take any steps required to remove and/or impound the roaming livestock and charge the costs thereof, including labor, materials and equipment, to Tenant, which costs shall be due and payable by Tenant upon written demand by City.

10.5 **Restrictions on Horses.** Tenant shall not pasture or permit the pasturage of horses on the Premises unless Tenant physically resides on the Premises under a separate occupancy agreement with City. In such instance, Tenant may pasture only such horses as are needed for the day-to-day operation of the Premises for cattle grazing by the Tenant and such ranch hands as may be residing with or necessary to Tenant. Tenant and each ranch hand may pasture on the Premises a maximum of two (2) horses each not to exceed a total of six (6) horses at a given time without the prior written authorization of City. Should Tenant exceed the authorized number of horses, Tenant shall, within ten (10) days of receipt of notice from City to do so, remove the number of horses necessary to comply with the maximum number of horses permitted.

11. **MAINTENANCE**

11.1 **Routine Maintenance.** Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes or alterations to the Premises or any other part of the Improvements or City Facilities, nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises and any permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost and expense, repair any and all such damage and restore the Premises or City's property to its previous condition.

11.2 **Utilities.** City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, and telephone service for all deposits, connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. The Parties agree that any and all utility improvements shall be subject to the provisions of Section 9.1 and that such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Base Rent or to terminate this Lease.

11.3 **No Right to Repair and Deduct.** Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or the Improvements or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or the Improvements or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Base Rent.

11.4 **Long-Term Maintenance.**

(a) **Procedure.** In addition to its routine maintenance responsibilities, Tenant shall perform such items of Long Term Maintenance (as hereinafter defined) as may from time-to-time be approved in advance or directed by City as specified by the current Grazing Plan. For any long term maintenance project with an estimated cost in excess of \$5000.00, Tenant shall obtain three (3) bids from qualified contractors and forward them to City. In the event Tenant elects to do the work itself, no bids are necessary provided Tenant's bid price is less than the City's fair cost estimate. Bids will be selected on the basis of completion of the project at a reasonable price and in a sound, efficient, timely manner. Tenant shall notify City at least three (3) days prior to commencing the work and immediately upon completion thereof. In any agreement entered into between Tenant and any outside contractor(s) to perform work as required under this Lease pursuant to this Section 11.4 the following language shall be incorporated into said contract:

Contractor represents that it is fully experienced and properly qualified to provide the services required by this contract. Contractor shall act as an independent professional and not as an agent of City. It shall maintain complete control of its employee(s) and subcontractor(s) and nothing contained in this agreement or any subcontractor agreement shall create a contractual relationship between contractor or any subcontractor and City. Contractor shall perform all work in a good and professional manner and in compliance with this agreement and applicable laws and regulations, and written supplemental instructions from City.

Any agreements entered into by Tenant with contractors to perform work in accordance with this Lease must receive prior approval by City. City can condition its approval on (i) the contractor maintaining adequate insurance from an insurance provider and with coverages and terms acceptable to City's Risk Manager and (ii) the contractor Indemnifying the City for matters arising out of the work to be performed by contractor. City shall inspect

the work for adherence to specifications and quality of workmanship and will review receipts and bills of sale for adherence to the previously approved bid estimates.

(b) **Actual Costs.** Tenant shall receive credit against the Annual Base Rental for the Premises for the Actual Costs incurred in the performance of said items upon satisfactory completion of such performance. The total amount of the credit shall not exceed fifty percent (50%) of the current annual Base Rent. Tenant shall not accept any federal cost sharing payments for conservation practices required by Tenant that would result in a duplicate payment. The Parties acknowledge that the sum of all credit for "Actual Costs" may include only such costs as are incurred by Tenant and approved in the annual Grazing Plan in advance by City and Tenant for Long-Term Maintenance. Final determination of Actual Costs shall not be completed until Tenant has provided City with all receipts or other appropriate documentation required to account for all such Actual Costs, and shall not exceed the amount of Actual Costs approved by Landlord in advance. Once so verified, City will credit said Actual Costs against the next semiannual installment payment.

12. **LIENS**

Tenant shall keep the Premises and all other portions of the City Facilities and Improvements free from any liens arising out of any work performed, material furnished, indebtedness or any other obligations whatsoever incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises, Improvements and City Facilities, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises, Improvements and the City Facilities against any and all Losses arising out of any such contest.

13. **COMPLIANCE WITH LAWS**

13.1 **Compliance with Laws.** Tenant shall, at its sole cost and expense, maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present or future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, including, without limitation, all Laws relating to health and safety and handicap accessibility (including the Americans with Disabilities Act).

13.2 **Regulatory Approvals.**

(a) **Responsibility for Obtaining Approvals.** Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the City. Tenant shall bear all costs associated with applying for and obtaining with any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and

all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City, the other Indemnified Parties and the Premises, Improvements and City Facilities Property against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) **Approvals.** Tenant further understands and agrees that City, acting by and through the PUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from any federal, state or local departments, agencies, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

13.3 **Compliance with City's Risk Management Requirements.** Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk or subject City to any potential liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

13.4 **Reports.** City may request from time to time Tenant to submit a report and provide such documentation regarding Tenant's operations and evidencing compliance thereof with all Laws.

14. **DAMAGE OR DESTRUCTION**

14.1 **Damage or Destruction to the Improvements.** In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Tenant shall, at its sole cost and expense and with reasonable promptness and diligence, restore, repair, replace or rebuild the Improvements as nearly as possible to the same condition they were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the active negligence or willful misconduct of City or its Agents.

14.2 **Abatement in Base Rent.** Base Rent payable hereunder during the period from the date of the casualty until completion of the restoration, repairs, replacement or rebuilding shall be abated if such casualty reduces the then current Base Grazing Capacity. If a reduction of the Base Grazing Capacity occurs, the Base Rent shall be reduced pursuant to Section 5.2 hereof.

14.3 **Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of a Taking, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. **EMINENT DOMAIN**

15.1 **General.** If during the Term or during the period between the execution of this Lease and the Commencement Date, Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the

provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2 **Total Taking; Automatic Termination.** If a total Taking of the Premises occurs, this Lease shall terminate as of the Date of Taking.

15.3 **Partial Taking; Election to Terminate.**

(a) **Conditions for Termination.** If a Taking of any portion (but less than all) of the Premises occurs, this Lease shall terminate in its entirety under either of the following circumstances: (i) if all the following exist: (A) the partial Taking renders the remaining portion of the Premises unsuitable for continued use by Tenant, (B) the condition rendering the Premises unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Base Rent, without abatement, and otherwise agrees to, and does, fully perform all its obligations hereunder.

(b) **City's Right to Terminate.** In the event of a partial Taking of a substantial portion of the City Facilities, but not the Premises, City shall have the right to terminate this Lease in its entirety.

(c) **Notice of Termination.** Either Party electing to terminate under the provisions of this Article 15 shall do so by giving the other Party written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

15.4 **Base Rent; Award.** Upon termination of this Lease pursuant to an election under Section 15.3 above, then: (i) Tenant's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, except that Base Rent shall be reduced as provided in Section 15.5 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's livestock or other personal property.

15.5 **Partial Taking; Continuation of Lease.** In the event of a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.3 above, this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced based on the reduction of Base Grazing Capacity calculated pursuant to Section 5.2 hereof, provided, that in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's livestock or other Personal Property.

15.6 **Temporary Takings.** Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Base Rent and to perform all the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use of the Premises during the Term up to the total Base Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. **ASSIGNMENT AND SUBLETTING**

16.1 **Restriction on Assignment and Subletting.** Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "**Assignment**"), or permit any portion of the Premises or any Improvements to be used by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "**Sublease**"), without City's prior written consent in each instance, which City may give or withhold in its sole and absolute discretion.

16.2 **Effect of Transfer.** No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article shall be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

16.3 **Assumption by Transferee.** Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Base Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Article. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

17. **DEFAULT; REMEDIES**

17.1 **Events of Default.** Any of the following shall constitute an event of default ("**Event of Default**") by Tenant hereunder:

(a) **Base Rent.** Any failure to pay any Base Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice from City within which to cure any default in the payment of Base Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than once during any calendar year, and any such failure by Tenant after Tenant has received one (1) such notice in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such

failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide such notice regarding Tenant's failure to perform such obligation, and any such failure by Tenant after Tenant has received two (2) such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) **Vacation; Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2 **Remedies.** Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Termination.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Relet.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all its rights and remedies under this Lease, including the right to recover Base Rent as it becomes due, for so long as City does not terminate Tenant's right to possession. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting

(to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Receiver.** The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

(d) **Lien.** The rights and remedies provided by California Civil Code Sections 3080 *et seq.* (foreclosure of livestock lien), which includes that right to retain possession of the livestock, charge the Tenant for the reasonable value of providing livestock services to the livestock until the Tenant's obligations secured by the lien have been satisfied and selling the livestock.

17.3 **City's Right to Cure Tenant's Defaults.** If Tenant defaults in the performance of any of its obligations under this Lease, City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City as additional Base Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

18. **INDEMNIFICATION**

18.1 **Limitation on City's Liability.** Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, Improvements or City Facilities, from any cause whatsoever, other than as a direct and proximate result of the gross negligence or willful misconduct or omission of City or its Agents.

18.2 **Tenant's Indemnity.** Tenant, on behalf of itself and its successors and assigns, shall Indemnify City, PUC, their Agents and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property (including, without limitation, the City Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises, City Facilities or the Improvements; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise

unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and willful misconduct or omission of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. In addition to Tenant's obligation to indemnify City, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. **INSURANCE**

19.1 **Tenant's Insurance.**

(a) **Property Insurance.** At all times Tenant shall, at its sole cost and expense, keep the Premises including any permitted Improvements insured for the mutual benefit of City and Tenant against:

(i) Loss or damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Tenant from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the full insurable value of the Improvements as established by City.

(ii) Such other risks in such amounts as City's Risk Manager may reasonably require.

(iii) Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations.

(b) **Public Liability and Other Insurance.** Tenant shall at all times, at its cost, maintain insurance for the mutual benefit of City and Tenant against:

(i) Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises, Improvements or the City Facilities or the roads adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit.

(ii) Loss of rental from the Premises, Improvements or the City Facilities, under a rental value insurance policy covering risk of loss due to the occurrence of any of the risks described in connection with the Property Insurance, naming City as primary insured, in an amount sufficient to prevent City and Tenant from becoming co-insurers, and in any event, in an amount not less than the aggregate requirements for Base Rent for a period of twelve (12) months following the occurrence of the insured casualty and for such additional time as is required by Tenant to complete the reconstruction and restoration of the Premises, Improvements or the City Facilities following the occurrence of such casualty.

(iii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against City, Tenant or the Premises, Improvements or the City Facilities, not less than \$1,000,000 each accident.

(iv) Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Tenant uses automobiles in connection with its use of the Premises or Improvements.

19.2 **General Requirements.** All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably acceptable to City.

(a) **Claims-Made Form.** Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) **Limit Requirement.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) **Other Requirements.** All liability insurance policies shall be endorsed to provide the following:

(i) Name Tenant as the insured and City, its officers, agents and employees, as additional insured, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

19.3 **Proof of Insurance.** Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

(a) **Future Review of Insurance Requirements.** Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in City is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then the amounts or coverages carried by Tenant shall be increased to conform to such general commercial practice.

(b) **Indemnity.** Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 above, or any other provision of this Lease.

(c) **Lapses.** Notwithstanding anything to the contrary in this Lease, this Lease shall terminate at the option of City, without notice to Tenant, upon the lapse of any required insurance coverage.

19.4 **Tenant's Personal Property.** Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

19.5 **City's Self Insurance.** Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

19.6 **Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises, Improvements, City Facilities or the contents, or any portion thereof, for any loss or damage covered by the insurance maintained by such other party with respect to the Premises, the Improvements, City Facilities, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises, Improvements or City Facilities carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20. **ACCESS BY CITY**

20.1 **General Access by City.**

(a) **Procedure.** City reserves for itself and its designated Agents, the right to enter the Premises, the Improvements or City Facilities at all reasonable times for any purpose.

(b) **Emergency.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises at any time and alter or remove any Improvements or Tenant's Personal Property. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises, Improvements or City Facilities in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising exclusively out of City's entry onto the Premises,

Improvements or City Facilities, except damage arising out of the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts or negligence of Tenant or its Agents.

(d) **No Abatement.** Tenant shall not be entitled to any abatement in Base Rent if City exercises any rights reserved in this Section.

(e) **Conduct of Activities.** City shall use its reasonable good faith efforts to conduct any activities on the Premises, Improvements and City Facilities allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

20.2 **City Installations.** Without limiting Section 20.1 above, City shall have the right at all times, to enter upon the Premises to use, install, construct, repair, maintain, operate, replace, inspect, and remove City Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities; provided, however, the Base Rent shall be abated to the extent of any material interference with Tenant's use during the period of such interference. Such abatement to be calculated pursuant to Section 5.2 hereof.

20.3 **Roadways.** City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the City Facilities, provided that City shall use its reasonable good faith efforts to use such roadways in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

21. **ESTOPPEL CERTIFICATES**

21.1 **Form of Certificate; Delivery.** Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Base Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate.

22. **SURRENDER**

22.1 **Removal of Cattle and Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, Tenant shall, at its sole cost and expense, remove any and all the livestock and Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of Section 9.2 above). In addition, Tenant shall, at its sole cost and expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under

this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

22.2 **Transfer of Title to Premises.** Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of Section 9.2 above.

23. **HAZARDOUS MATERIALS**

23.1 **No Hazardous Materials.** Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any other part of the Property, or transported to or from the Premises or any other part of the Property without the prior written consent of City, which consent may be withheld in City's sole discretion. Without limiting the foregoing restrictions, Tenant shall handle all Hazardous Materials on the Premises in compliance with all Environmental Laws. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any other part thereof. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting Section 23 hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

23.2 **Tenant's Environmental Indemnity.** If Tenant breaches any of its obligations contained in Section 23.1 above, or, if any act or omission of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises or any other part thereof, then, without limiting Tenant's general Indemnity contained in Section 18.2 above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any part thereof to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises. Without limiting the foregoing, if Tenant any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any part thereof, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other part of the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies

regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

24. **SECURITY DEPOSIT**

24.1 **Security Deposit.** Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or City Facilities caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

24.2 **Performance Bond; Letter of Credit.** In lieu of the security deposit provided in Section 24.1 above, Tenant may deliver to City (i) a valid surety bond in the sum equal to amount specified, issued by a surety company acceptable to City's Controller in such form as approved by the City Attorney of City or (ii) a "clean" (i.e., unconditional), irrevocable letter of credit issued by a financial institution acceptable to the City's General Manager and in form approved by the City Attorney with an initial term of no less than one year and automatic extensions through the end of the Term of this Lease and thirty (30) days thereafter. Tenant shall keep such surety bond or letter of credit, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination hereof, to insure, the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such bond or letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof. In the event of any nonextension of the letter of credit or bond, Tenant shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit or bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required hereunder.

25. **GENERAL PROVISIONS**

25.1 **Notices.** Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, by sending it first-class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's address set forth in the Basic Lease Information, (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

25.2 **No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of possession of the Premises prior to the expiration of the Term by City or any of its Agents, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

25.3 **Amendments.** Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

25.4 **Tenant Authority.** If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby certify, covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

25.5 **Joint and Several Obligations.** The word "Tenant" as used herein shall include the plural as well as the singular. If Tenant consists of more than one individual or entity, the obligations and liabilities under this Lease imposed on each such person or entity shall be joint and several.

25.6 **Interpretation of Lease.** The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified,

provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion.

25.7 **Successors and Assigns.** Subject to the provisions of Section 16 hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and their personal representatives and successors and assigns.

25.8 **Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

25.9 **Governing Law.** This Lease shall be construed and enforced in accordance with the Laws of the State of California.

25.10 **Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

25.11 **Attorneys' Fees.** In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

25.12 **Holding Over.** Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis. Base Rent shall be continued to be based on the total allowable Base Grazing Capacity. Terms and conditions of the Lease shall otherwise be the same during the holdover period herein specified so far as applicable. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Base Rent. Base Rent for any hold over period without the City's consent shall be 200% of the amount determined per the Grazing Rental Adjustment Table in accordance Article 5.

25.13 **Time of Essence.** Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

25.14 **Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

25.15 **Survival of Indemnities.** Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

25.16 **Status of Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

25.17 **No Recording.** Tenant agrees that it shall not record this Lease nor any memorandum or short form hereof in the Official Records.

25.18 **Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

25.19 **Wages and Working Conditions.** With respect to the construction of any permitted Improvements, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the counties where the Premises are located.

25.20 **Non-Discrimination in City Contracts and Benefits Ordinance.**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) **Subleases and Other Subcontracts.** Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health

benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Tenant shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

25.21 **Requiring Health Benefits for Covered Employees.** Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us/HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Tenant meets the requirements of a “small business” as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant’s failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within 30 days after receiving City’s written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and

Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

25.22 **Notification of Limitations on Contributions.** San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving 1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; 2) any employment for compensation; or 3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: 1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; 2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or 3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded. Tenant understands that any public official who approved this Lease may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this Lease. Upon request, Tenant agrees to furnish, before this Lease is entered into, such information as any public official approving this Lease may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this Lease is entered into, Tenant with a list of public officials who, under the Conduct Code, approved this Lease. Failure of any public official who approved this Lease to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this Lease. Notwithstanding anything to the contrary in this Lease, neither party shall have the right to terminate this Lease due to any failure by the other party to provide the information described in this paragraph.

25.23 **No Relocation Assistance.** This Lease creates no right in Tenant to receive any relocation assistance upon any termination of tenancy except as otherwise provided in this Lease with respect to a Taking.

25.24 **MacBride Principles - Northern Ireland.** City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

25.25 **Conflicts of Interest.** Tenant states that it is familiar with the provisions of Section C8.105 and 15.103 of the San Francisco Charter and Section 87100 et seq. of the California Gov't Code and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the PUC of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any member of the PUC, or other officer or employee of City, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

25.26 **Charter Provisions.** This Lease is governed by and subject to the provisions of the City's Charter and Administrative Code.

25.27 **Tropical Hardwood and Virgin Redwood Ban.** City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood product.

25.28 **Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

25.29 **Effective Date.** This Lease shall become effective on the date (the "**Effective Date**") upon which (i) City's Public Utilities Commission enacts a resolution approving this Lease, in accordance with all applicable Laws, and (ii) the Parties hereto have duly executed this Lease.

25.30 **Disclosure.** Tenant understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.), apply to this Lease and any and all records, information, and materials submitted to the City in connection with this Lease. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Lease.

25.31 **City Authority.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF CITY'S PUBLIC UTILITIES COMMISSION SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S PUBLIC UTILITIES COMMISSION APPROVES THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

City and Tenant have executed this Lease, in triplicate, as of the date first written above.

TENANT:

a California corporation

_____, an individual

_____, an individual

CITY:
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

General Manager
Public Utilities Commission

APPROVED BY
PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. _____
ADOPTED _____

Secretary

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By _____
Deputy City Attorney

EXHIBIT A

REAL PROPERTY DESCRIPTION

EXHIBIT B

DRAWING NO. _____

EXHIBIT C

FORM OF GRAZING REPORT

EXHIBIT D

GRAZING RENTAL ADJUSTMENT TABLE