

**GRAZING LEASE
TUNITAS CREEK GRAZING UNIT
TUNITAS CREEK OPEN SPACE PRESERVE**

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SUMMARY OF GRAZING LEASE TERMS

This is a summary (“Summary”) of the principal terms and conditions of the Grazing Lease. Each item below shall be deemed to incorporate all of the terms and conditions set forth in the Grazing Lease pertaining to such item. In the event of any conflict between the information in this Summary and any more specific provision of the Grazing Lease, the more specific Grazing Lease provision shall control.

Landlord: Midpeninsula Regional Open Space District

Tenant: XXX

Term: Five (5) year Initial Term commencing February 1, 2008.

Grazing Season: Year-round

First Year Grazing Capacity: XXX AUMs authorized (annual adjustments thereafter)

Use: Cattle grazing and authorized adjunct activities.

First Year Rent: \$x,xxx.xx (annual adjustments thereafter)

Rent Payment Dates: First Payment Date: February 1st of each lease year
Second Payment Date: August 1st of each lease year

District Contact Information:

Primary Contact: Real Property Manager
John Doe
Tel: (xxx) xxx-xxxx
Alternate: Skyline Area Superintendent
Tel: (xxx) xxx-xxxx

District:

Midpeninsula Regional Open Space District
Attn: Real Property Manager
330 Distel Circle
Los Altos, CA 94022

With a copy to:

MROSD – Skyline Field Office
Attn: Area Superintendent
21150 Skyline Boulevard
La Honda, CA 94020

Tenant Contact Information:

Primary Contact:

Tel: (xxx) xxx-xxxx
1st Alternate Contact: Jane Doe
Tel: (xxx) xxx-xxxx
2nd Alternate Contact: **Notice Addresses of**

Notice Address of Tenant:

John Doe
P.O. Box 1234
XYZ, CA 94019

GRAZING LEASE

THIS GRAZING LEASE (“LEASE”) IS MADE BY AND BETWEEN THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (“DISTRICT”) AND THE UNDERSIGNED GRAZING TENANT (“TENANT”) UPON THE FOLLOWING TERMS AND CONDITIONS:

1. GRAZING MANAGEMENT PLAN

District has prepared a grazing management plan for the Premises (“Grazing Plan”), incorporated herein by this reference as Exhibit A, and has provided Tenant with a copy of said Grazing Plan. Tenant hereby acknowledges receipt thereof. 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 practice as more specifically set forth in the Grazing Plan, and as may be established and modified from time to time by District. The Grazing Plan serves this Lease as a management tool for developing and implementing range activities in accordance with and complementary to the District’s overall land management, resource administration, public use, and other open space policies, guidelines and goals. The Grazing Plan may be amended by District from time to time, with Tenant’s input, and any such amendment by District shall be effective upon thirty (30) days written notice to Tenant thereof.

2. PREMISES

- (a) **Premises.** District leases to Tenant, and Tenant leases from District, upon the terms and conditions herein, those certain tracts of land specifically defined and delineated in the Grazing Plan (the “Premises”).
- (b) **Reserved Rights.** Tenant's use of the Premises is subject to all existing easements, servitudes, leases and rights of way for ditches, levees, roads, public utilities, pipelines and any other purposes, whether of record or not, and including the right of District to authorize its directors, officers, employees, agents, and volunteers to use the Premises for District purposes. District reserves the right to use the Premises for all public open space purposes, including but not limited to natural resource restoration and management, natural resource monitoring, road grading, mowing, plowing, seeding, fertilizing, prescribed burning and performing any other appropriate or customary seasonal work. District further specifically reserves the right to make use of all roads and trails on the Premises for patrol, maintenance and such other uses as District may reasonably desire to make of such roads or trails. District also reserves the right to make the Premises open to the general public for low intensity open space recreation, subject to reasonable restrictions as determined by District, and including the right to construct trails, public trailhead facilities, and other facilities for such public use purposes.
- (c) **As Is Condition of Premises.** District makes no warranties or representations to Tenant concerning the suitability of the Premises for grazing purposes. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation of the Premises and the suitability of the Premises for Tenant’s intended use. Tenant is fully aware of the needs of its grazing operations and has determined, based solely on its own

inspection, that the Premises are suitable for its operations and intended use. Tenant acknowledges, agrees to, and hereby accepts, the Premises in their present condition, "AS IS, WITH ALL FAULTS", without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, rules and regulations 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 District, including without limitation its directors, officers, employees and agents, has not made, and District hereby disclaims making, any representations or warranties, express or implied, concerning (i) any 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 livestock 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; (v) the condition of any fences, roads, gates or range improvements; or (vi) any other matter whatsoever relating to the Premises or its use, including, without limitation, any implied warranties of fitness for a particular purpose.

- (d) **Withdrawal of Premises.** Pursuant to Public Resources Code §5563, District hereby reserves the right, at any time, to reduce the size of the Premises leased hereunder, in whole or by any portion thereof, should the District Board of Directors ("Board") by ordinance determine to use such lands for park, open space or other District purpose inconsistent with Tenant's use, in which case the Lease shall terminate as to those lands so identified. District will notify Tenant of the tentative scheduling of any agenda item for Board consideration to act under Section 5563, as to the Premises, no less than ninety (90) days in advance of the meeting proposed for consideration of such an item. Should less than the entire Premises be removed from the Lease pursuant to this Section, the animal unit months ("AUM"), as hereinafter defined, and as permitted hereunder, and the corresponding rental amount, shall be reduced proportionate to the reduction in the area, based on acreage, subject to the Lease. In the alternative, Tenant may elect to terminate the Lease in its entirety and shall have no further obligation hereunder except as to those matters specifically identified as surviving such termination.

3. TERM

- (a) **Term.** The Premises are leased for an initial five (5) year term ("Initial Term") beginning February 1, 2008 ("Commencement Date") and expiring on January 31, 2013, unless extended as provided for herein. Provided Tenant is in compliance with the terms, covenants, and provisions of this Lease (including the Grazing Plan), District may elect to extend the Lease for one additional five (5) year period ("Subsequent Term"), for a maximum total Term of no more than ten (10) years, unless the Lease is terminated by District as otherwise provided for herein. Collectively, the Initial Term and Subsequent Term are referred to herein as the "Lease Term".
- (b) **Grazing Capacity and Grazing Season.** The definition of the "Grazing Capacity" and the "Grazing Season" for all purposes of this Lease is that set forth in the Summary. Tenant will graze the Premises only during the Grazing Season and in compliance at all times with the authorized Grazing Capacity.

- (c) **Termination of Lease at End of Term.** District or Tenant may terminate this Lease at the end of the Initial Term, or at the end of any Subsequent Term, if District or Tenant gives written notice to the other party at least ninety (90) days prior to the Expiration Date of the then effective Term.
- (d) **Possession.** Tenant agrees that in the event of the inability of District to deliver possession of the Premises at the Commencement Date, District shall not be liable for any damage caused thereby nor shall this Lease be void or voidable, but Tenant shall not be liable for Rent (as described hereunder) until such time as District offers to deliver possession of the Premises to Tenant. The Term of the Lease shall not be extended by any such delay.

4. RENT

- (a) **Lease Year Rent.** Each year during the Term, Tenant shall pay to District annual rent (“Rent”) as payment for grazing on the Premises. Rent for the first year of the Initial Term is the amount set forth in the Summary. Rent shall be adjusted each lease year thereafter (“Annual Adjustment of Rent”) as set forth below. Rent shall be payable in two (2) equal installments (each, a “Payment Date”) due as set forth in the Summary. Rent shall be paid on or before the Payment Date at the address shown for District in the Summary. Rent shall be paid in advance without demand, deduction, offset or counterclaim whatsoever except as may otherwise be specifically permitted herein. 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 the Premises are grazed at the Grazing Capacity authorized for any lease year.
- (b) **Annual Adjustment of Rent.** Rent shall be adjusted upward or downward for each lease year depending upon the Grazing Capacity of the Premises, as determined by District prior to the beginning of each lease year, and on whether the average selling price of beef cattle is higher or lower than the corresponding average selling price for the preceding lease year (“Rent Adjustment”). Rent Adjustments will be calculated pursuant to the formula set forth in the Calculation of Annual Grazing Rent, attached hereto and incorporated herein as Exhibit B of this Lease.
- (c) **Rent Credit for Performance of Work.** Tenant may request permission from District to substitute performance of work (“Work”) on the Premises, and only such matters for which Tenant is not otherwise obligated or responsible, in lieu of all or a portion of cash rental payments by the following procedure and subject to the following conditions:
 - 1) Prior to commencing any such Work, Tenant shall submit a written proposal to District for approval of specific Work and shall provide an estimate of the value of such Work.
 - 2) District shall review such Tenant proposal and value estimate, and may elect, in its sole discretion, to authorize the performance of such Work, or may counter the offer of Tenant, either as to the scope of Work or valuation thereof. If acceptable to Tenant, District may authorize the performance of such Work in lieu of all or a portion of Rent in the agreed upon amount. Any such authorization shall be in writing and signed by a duly authorized District representative or shall be of no force and effect.
 - 3) In the event District approves specific Work to be performed by Tenant in lieu of all or a portion of Rent, all such Work shall be performed in a timely and professional manner, to the reasonable satisfaction of District.
 - 4) Tenant shall notify District upon completion of the authorized Work and shall arrange for inspection of such Work by District. If District, after inspection, accepts the Work as

fully and correctly performed, it shall authorize, in writing, that such Work be substituted for all or a portion of Tenant's Rent obligations in the agreed upon amount. If District determines that the Work has not been fully or correctly performed, it shall notify Tenant of the deficiencies and Tenant shall have a reasonable period of time to correct the identified deficiencies. Tenant shall thereafter notify District and request further inspection.

- 5) Tenant may thereafter apply the credit authorized herein to Rent accruing under this Lease.
 - 6) In no event shall credit for Work performed in lieu of Rent exceed the amount of Rent due for the remainder of the then current Term, and any excess claimed may not be carried over or otherwise applied to rental obligations arising thereafter. Should District terminate this Lease for any reason permitted hereunder, District shall, prior to the full application of any such credit to Rent due, reimburse Tenant for Work that was approved by District and correctly performed by Tenant, provided that District's termination of this Lease is not due to a material default or breach by Tenant that results in a determination by a court of competent jurisdiction that any such credit accrues to the benefit of the District.
 - 7) Nothing contained herein shall be construed to make Tenant an employee or agent of District and Tenant shall be and remain an independent contractor.
- (d) **Late Charge.** Any Rent received by District five (5) or more days past the Payment Date on which such amount was due, shall be subject to a penalty of 10% of the amount due to District, and Tenant shall pay such additional sum concurrently with the late payment.
- (e) **Livestock Lien.** Tenant hereby acknowledges that all Rent not paid on a Payment Date set forth herein shall become a lien on any and all livestock located on the Premises as authorized by California Civil Code §3080, *et seq.*, and District shall have the right to take possession and retain all such livestock, without resort to additional legal proceeding, until all unpaid amounts are satisfied in full.

5. TAXES

Tenant agrees to be responsible for, and to pay promptly when due, all possessory interest taxes and any other such taxes that are assessed on the basis of this Lease or the grazing operations permitted hereunder. Tenant shall pay any such possessory tax prior to delinquency thereof, and shall not be entitled to offset the amount of such tax against Rent payable under this Lease. Taxes assessed on any personal property of Tenant shall be solely the obligation of Tenant.

6. ANNUAL GRAZING CAPACITY DETERMINATION

- (a) **Definition of Grazing Capacity.** Grazing capacity, for all purposes herein, is the level of livestock use allowed on the Premises consistent with forage production, resource conservation, and open space preservation objectives (the "Grazing Capacity"). The unit of measure of Grazing Capacity shall be the animal unit month ("AUM"), defined herein as the amount of forage, equivalent to 1,000 pounds of dry, herbaceous plant material, necessary to sustain a mature cow for a period of one month. District shall regulate the kind and number of livestock, and the amount of time the Premises are grazed by same, to assure conformity to Grazing Capacity estimates.
- (b) **Procedure for Establishing Annual Grazing Capacity.** The Grazing Capacity for the Premises for the first lease year is that set forth in the Summary. The procedure for

establishing Grazing Capacity thereafter shall be:

- 1) District shall conduct an annual range assessment of the Premises to identify areas District considers suitable for grazing and to estimate the available forage production for the forthcoming lease year. Tenant will be provided an opportunity to participate in this annual range assessment.
 - 2) Residual Dry Matter (RDM) targets described in Section 6(g) herein shall be subtracted from the estimated total amount of available forage within the Premises to determine how much forage is available for livestock to consume in an average year, a wet year, and a dry year. The District's determination of Grazing Capacity for the Premises shall be based upon the estimated forage production in an average rainfall year and may be subject to change by District.
 - 3) Prior to **December 1st** of each year, District shall notify Tenant in writing of the authorized Grazing Capacity for the Premises for the forthcoming lease year. The notice shall set forth any required changes to Tenant's range management methods or grazing practices in accordance with the Grazing Plan, and shall also list any natural resource management or other range or open space management activities appropriate for the Premises during the forthcoming lease year from which Tenant may propose to do Work, as defined in Section 4(c).
 - 4) Subject to the provisions of Section 6(c) through 6(g) below, the authorized Grazing Capacity for the Premises shall remain the same throughout the lease year.
- (c) **District as Sole Judge of Grazing Capacity.** At all times District shall be the sole judge as to the Grazing Capacity of the Premises and any pasture thereof. In determining the Grazing Capacity of the Premises or any pasture thereof, District may take into account, by way of example only and without limitation thereby, such factors as erosion control, re-forestation, native and invasive vegetation, water quality, fisheries, wildlife, recreation or any other conditions that may affect the use, operation, and conservation of the District's lands for open space purposes.
- (d) **Change in Grazing Capacity and/or Length of Grazing Season by Mutual Consent.** During the course of any lease year, the authorized Grazing Capacity and length of the Grazing Season may be modified by mutual consent of District and Tenant. Under such mutual agreement, Rent for the Premises shall be revised upward or downward to reflect, pro rata, any change in authorized Grazing Capacity. In the event of an increase in authorized Grazing Capacity, Rent to cover such increase shall be due and payable upon the next installment payment due following execution of the modification; in the event of a decrease in authorized Grazing Capacity, the Rent covered by said decrease shall be credited against the next installment payment of Rent due from Tenant following execution of the modification.
- (e) **Emergency Reduction of Grazing Capacity.** At any time and from time to time, District may reduce the authorized Grazing Capacity or impose a full or partial grazing moratorium in the District's discretion when such action is necessary or appropriate due to an emergency that poses a threat to the physical or environmental condition of the Premises. Written notice of any such reduction will be given by District to Tenant, who shall have ten (10) days in which to implement the reduction. In implementing such reduction, Tenant may either (i) reduce animal numbers, or (ii) feed weed-free 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 District's written approval. In giving such approval, District may require Tenant to

concentrate all or part of the livestock into selected areas for feeding and control. In the event of such reduction, the Rent shall be adjusted pursuant to Section 4(b) hereof.

(f) **Exceeding Grazing Capacity Without Authorization.** Tenant shall limit the number of livestock to be grazed upon the Premises and the period of use so that the authorized number of AUMs is not exceeded. Should the Premises, or any portion thereof, unintentionally be grazed in excess of the authorized number of AUMs, Tenant shall immediately remove all or such number of livestock as are necessary to comply with the Grazing Capacity authorized by District. In addition to all other rights which District may have or exercise under this Lease, in the event that Tenant grazes the Premises in excess of the authorized Grazing Capacity, the charge per AUM shall be three (3) times the annual Rent provided for in this Lease for each AUM or portion thereof grazed in excess of said authorized number, for any length of time, such amount being hereby agreed upon as the liquidated minimum damages to District from such excess usage and District shall be entitled to prove and be awarded any greater damage amount, or other relief sought, by a court of competent jurisdiction. Tenant shall pay such amount to District promptly upon demand.

(g) **Minimum Residual Dry Matter (RDM) Requirements.** Residual dry matter (“RDM”), as used herein, is a measure of the amount of dry vegetation left on the ground, typically measured at the end of summer or in the fall, prior to rainfall. The height in inches of standing vegetation remaining on the ground is a general indicator of RDM levels, however the pounds per acre measurement shall be used for the purposes of monitoring and enforcing minimum RDM requirements. The District has set the following minimum RDM requirements for the Premises depending upon average slope:

- 1) On 0% to 30% slopes, the average minimum RDM shall be 800 – 1,000 pounds per acre, or approximately 2 to 3 inches of standing vegetation.
- 2) On slopes greater than 30%, the average minimum RDM shall be 1,200 pounds per acre, or approximately 3 to 4 inches of standing vegetation.

A layer of RDM shall be maintained by Tenant throughout the lease year to minimize soil erosion and enhance both the quality and quantity of forage produced. Tenant and District 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, District shall notify Tenant, and Tenant shall immediately remove all livestock from the affected pasture(s) until such time as District determines that such pasture(s) have recovered sufficiently for restocking.

7. ANNUAL STOCKING AND WORK PROGRAM

Tenant shall prepare an annual stocking and work plan (“Stocking and Work Program”) prior to the beginning of each lease year. No later than **January 7th** of each year, Tenant shall deliver to District a proposed Stocking and Work Program, in a form substantially similar to the example thereof contained in the Grazing Plan, that shall include information on the number and type of all livestock proposed to be grazed upon the Premises during the forthcoming lease year. The Stocking and Work Program shall set forth the number of AUMs to be stocked on each pasture, based on current forage conditions and the Grazing Capacity established by District for the forthcoming lease year, and shall

specify all proposed management activities related to herd health, pest control, infrastructure maintenance, and/or the development of range resources that may be warranted for the conditions and circumstances on the Premises. The range management work proposed by Tenant shall be in full conformance with the Grazing Plan. Within fifteen (15) working days of receipt of the Stocking and Work Program, District shall notify Tenant in writing whether it is acceptable. If unacceptable, District shall state in its notice all changes to be made to the Stocking and Work Program. Tenant shall incorporate all changes into the Stocking and Work Program and resubmit it to District for approval.

8. USE OF PREMISES

- (a) **Tenant's Permitted Use.** Tenant may use the Premises for the uses specified in the Grazing Plan, and for no other purpose or use without the prior written consent of District, the exercise of which shall be in its sole discretion. Livestock grazed on the Premises must be either owned by the Tenant or grazed under the direct supervision of Tenant.
- (b) **Land Management and Forage Utilization.** Tenant shall distribute or rotate livestock throughout the Premises as specified in the Grazing Plan and Tenant's annual Stocking and Work Program approved by District. Tenant shall maintain 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. Tenant shall maintain in good condition and repair all cross-fences and gates that define any pasture, and shall distribute salt blocks uniformly throughout the Premises. Tenant shall maintain any developed livestock watering system in good condition and repair. Tenant shall conduct grazing activities, and use the Premises in accordance with, sound rangeland management practices, including, but not limited to, those standards and practices set forth or referenced in the Grazing Plan, and shall otherwise conduct livestock grazing operations in a safe, responsible, professional and environmentally protective manner.
- (c) **Grazing Within Premises.** Tenant shall, at all times, prevent livestock from trespassing onto lands owned or managed by District on which Tenant is not authorized to graze, into areas within the Premises excluded from the authorized grazing areas, or upon any adjacent third-party lands, whether private or public. Notwithstanding the foregoing, nothing in this subsection (c) shall be construed to require Tenant to install additional fencing on the Premises beyond that required elsewhere in this Lease or by the Grazing Plan.
- (d) **Supplemental Feeding.** Subject to verbal authorization from the District's Area Superintendent or other authorized District representative, Tenant may provide supplemental feed to maintain the health and vitality of permitted livestock. Tenant may not conduct supplemental feeding on the Premises to prolong grazing use in areas where the forage levels specified in the approved annual Stocking and Work Program have been reached or exceeded. Any supplemental feed shall be certified to be free of non-native, invasive plant materials, commonly known as "weed free" feed or forage.
- (e) **Health of Livestock.** Tenant covenants and warrants that all livestock on the Premises shall be in general good health and physical condition and that they have been inoculated with all appropriate vaccinations according to good husbandry practice. Tenant will cull the grazing herd of all diseased or otherwise unhealthy livestock in a prompt and responsible manner.
- (f) **Disposal of Livestock Carcasses.** Tenant shall remove from the Premises, or bury on the Premises in a manner and location satisfactory to District, any and all livestock that may die

on the Premises. Tenant shall immediately notify District upon discovering any dead livestock on or near the Premises. Tenant's notification shall state the proposed method and location for disposing of the dead livestock. The proposed method and location shall be subject to approval by District and may include permission to discharge firearms on the Premises in furtherance of the disposal.

- (g) **Motorized Vehicles and Heavy Equipment.** Tenant acknowledges that use of roads and vehicle accessible trails and areas of the Premises, both during and immediately following wet weather, carries the potential for serious degradation of road and ground surfaces, including but not limited to, rutting and erosion. Tenant shall refrain, to the maximum extent feasible consistent with reasonable grazing practices, from using motorized vehicles on the Premises during wet conditions. All motorized vehicle use by Tenant during wet conditions is restricted to the use of balloon-tired, all-terrain vehicles. All motorized vehicles and equipment used by Tenant on the Premises must be outfitted with appropriate spark arrestors and mufflers. No heavy equipment, including, but not limited to bulldozers, backhoes, excavators, or trenchers is allowed to cross or operate on the Premises without District's prior written consent. District may, in its sole discretion, close any or all roads, or promulgate and enforce use restrictions on road use for resource management, erosion control, law enforcement purposes, or other purposes necessary or appropriate for the sound management of the Premises, by providing Tenant with prior written notice thereof.
- (h) **Weed and Pest Control.** Except as set forth in Section 8(d) above, District will have the right, but not the obligation, at its sole cost and expense, and in its sole discretion as to the manner, time or extent of such efforts, for the control of noxious weeds and animal pests on the Premises. Tenant shall fully cooperate with District in any programs designed to control or eradicate weed and pest populations, including relocation of livestock if necessary. District shall provide Tenant with at least 48 hours notice, verbal or written, prior to the commencement of such control programs. Tenant shall not introduce any noxious vegetation onto or about the Premises. In no event shall District be liable to Tenant for the presence or introduction of noxious vegetation or animal pests on the Premises.
- (i) **Hazardous Substances.** Tenant is absolutely prohibited from transporting, mixing, generating, applying, storing, or disposing of herbicides, pesticides, rodenticides or any hazardous substances, except for equipment and vehicle fuel and fueling operations typical for use in grazing operations, upon the Premises without the prior express written consent of District. Fuel will be kept in properly sealed containers, suitable for the substance, and all fuel transfer operations will be conducted with sufficient care and diligence to prevent contamination of or on the Premises.
- (j) **Compliance with Law.** Tenant will comply with all applicable laws, permits, statutes, ordinances, rules, governmental orders, regulations, and requirements pertaining to the occupancy and use of the Premises, including without limitation, District Land Use Regulations. Tenant shall not use, nor permit others to use, the Premises for any unlawful or prohibited purpose or purposes except as may otherwise be specifically authorized hereunder.

9. ENTRY AND INSPECTION BY DISTRICT

Tenant agrees that District and its directors, officers, employees, agents and authorized volunteers may enter the Premises at any time to inspect the Premises, or to make any changes, alterations or repairs which District in its sole discretion considers appropriate for the protection, improvement

or preservation of the Premises, and to post any notice provided for by law or otherwise to protect the rights of District. Nothing herein contained shall be construed to obligate District to make any changes, alterations or repairs to the Premises.

10. MAINTENANCE OF IMPROVEMENTS

- (a) **Routine Maintenance.** Except as otherwise specifically set forth herein, Tenant shall, at Tenant's sole cost and expense, in a timely manner, maintain and repair all improvements related to grazing use, whether existing at commencement of the Lease or newly constructed, including roads, fences, gates, livestock guards, barns, buildings, structures, corrals, wells, pumps and pressure systems, spring boxes, pipelines, and water troughs, without any alterations or additions except as approved in writing by District. Tenant may maintain improvements and appurtenances that need replacement at a minimal operational level pending their replacement or reconstruction with prior written approval of District.
- (b) **Emergency Road Repairs.** Tenant may perform limited emergency repairs to any road that is impassable for uses authorized hereunder. Tenant must make a reasonable, good faith effort to notify District prior to commencing emergency work undertaken pursuant to this section. "Emergency" for purposes of this section shall mean imminent danger to the health or safety of humans, the natural resource values of the Premises, water bodies or structures, or to livestock permitted on the Premises hereunder. All emergency work undertaken pursuant to this section shall be performed, to the maximum extent feasible, in a manner consistent with District road repair standards. No material may be permitted to enter waterways. Tenant shall be responsible for remediation of any emergency road repair work, as such may be ordered by District or by lawful regulatory authority, including proper permitting, associate fees and charges and for any fines levied. Tenant shall not be entitled to reimbursement or rent credit for any such emergency repairs.

11. ALTERATIONS

Tenant agrees to obtain and fully comply with all applicable permits, authorizations, laws, ordinances, and regulations, and to obtain the prior written consent of District before making any alterations of, changes in, or additions to the Premises. All alterations, additions and improvements made in, to, or on the Premises, except unattached, movable fixtures, are the property of the District and will remain upon, and be surrendered with, the Premises upon termination of this Lease.

12. TERMINATION FOR BREACH OR DEFAULT

- (a) **District Right to Terminate for Default.** District shall have the right to terminate this Lease at any time upon default of this Lease by Tenant. In the event of such earlier termination by District, Tenant shall be allowed thirty (30) days following the giving by District of written notice of termination to Tenant in which to vacate the Premises. In the event of such early termination, Tenant's sole claim against District shall be to a pro-rata refund of Rent actually paid in advance.
- (b) **Default.** The occurrence of any of the following shall constitute a material default under and breach of this Lease by Tenant:
 - 1) Any failure by Tenant to pay the Rent or any other monetary sums required to be paid hereunder (where such failure continues for three (3) business days after written notice to quit or pay rent by District to Tenant).

- 2) The abandonment of the Premises by Tenant.
 - 3) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by District to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.
 - 4) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or, the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days. Tenant agrees that in the event of the occurrence of any of the above-specified circumstances, then this Lease, or any interest in or to the Premises, shall not become an asset in any of such proceedings.
- (c) **Remedies.** In the event of any material default or breach by Tenant, District may, at any time thereafter, and without thereby limiting District in the exercise of any right or remedy, at law or in equity, that District may have by reason of such default or breach:
- 1) Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due, without terminating Tenant's right to possession irrespective of whether or not Tenant has abandoned the Premises. In the event District elects not to terminate the Lease, District shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as District deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new Tenant taking possession of the Premises, notwithstanding failure by District to elect to terminate the Lease initially. District at any time during the Term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.
 - 2) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to District. In such event District shall be entitled to recover from Tenant all damages incurred by District by reason of Tenant's default, including without limitation thereto, the following: (a) the worth at the time of award of any unpaid Rent which has been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (c) any other amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform any obligations under this Lease or

which in the ordinary course of events would be likely to result therefrom; plus (d) at District's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which District, in its sole discretion, deems reasonable and necessary. As used in (a) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum from the date of default. As used in (b), the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). The term "Rent," as used in this Section, shall be deemed to be and to mean the Rent to be paid pursuant to Section 4 hereof and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

- (d) **Cumulative Rights.** All rights, options and remedies of District contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and District shall have the right to pursue any one or all of such remedies and any other remedy or relief which may be provided for by law or in equity, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by District of any Rent or other payments due hereunder or any omission by District to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of District to or of any act by Tenant requiring District's consent or approval shall not be deemed to waive or render unnecessary District's consent or approval to or of any subsequent similar acts by Tenant.

13. SURRENDER OF PREMISES

Tenant agrees that upon termination of this Lease to promptly surrender the Premises and all appurtenances to District in the same condition as when received, reasonable use, wear and tear, damage by fire, acts of God or nature excepted, and to remove all of Tenant's livestock and personal property from the Premises.

14. ASSIGNMENT AND SUBLETTING

Pursuant to the provisions of Civil Code §1995.230, this Lease is personal to Tenant and may not be assigned, sublet or otherwise transferred by Tenant, in whole or in part, in any manner whatsoever without first obtaining the express written consent of District which may approve or disapprove such assignment, sublease or other transfer in its sole discretion based on its review and assessment of the proposed transferee's experience with grazing, especially on public lands, general business experience and financial stability on a level comparable to that of Tenant, and proposed transferee's ability to competently and timely perform all aspects of the Grazing Plan.

15. INDEMNIFICATION

Tenant agrees to indemnify, protect, defend, and hold District harmless from and against any and all claims, losses, damages, demands, liabilities, suits, penalties, costs, expenses (including, without limitation, attorneys' fees), causes of action, claims and/or judgments arising out of or arising in connection with any injury or damage to any person or property including, without limitation, District and its directors, officers, employees, agents volunteers, and guests from any cause or causes whatsoever while in, upon or in any way connected with this Lease, the Premises,

or its appurtenances during the Term of the Lease.

16. INSURANCE

Tenant agrees to obtain, and keep in force during the term of the Lease, all at Tenant's own cost and expense, a policy or policies of Commercial General Liability Insurance and Business Auto Coverage insurance, each in an amount of not less than \$1,000,000.00 aggregate and per occurrence or accident for all covered losses. Such policy or policies shall name District as an additional insured, and evidence of such endorsement, by a duly executed Certificate of Insurance (ACORD 25-S, or a successor or comparable form, subject to prior approval by District) shall be provided District within ten (10) days of execution hereof and shall be updated thereafter as necessary. Each of the policies must contain a provision that such policy will not be cancelled or materially changed without thirty (30) days prior written notice to District. Tenant shall also comply with all applicable statutory worker compensation requirements. Upon request by District, Tenant shall direct his insurer or insurance agent to furnish District with a copy of any policy required by this Lease, certified to be a true and complete copy of the original.

17. ABANDONMENT

Tenant shall be deemed to have abandoned the Premises if Tenant fails to pay any rental amount due District at the times or in the manner provided, fails to observe and perform any of the other covenants or conditions of this Lease, where such failure to observe or perform continues for a period of fifteen (15) days after written notice by District to Tenant, or ceases active grazing use of the Premises for a continuous period of sixty (60) days. In the event Tenant is deemed to have abandoned the Premises, any prepaid Rent shall belong entirely to District and shall not be refunded, in whole or in part, to Tenant.

18. WAIVER OF RELOCATION BENEFITS

Tenant specifically waives any and all rights to relocation benefits or assistance that might otherwise be available to Tenant upon termination of this Lease (for any reason or under any circumstances) including, but not limited to, those authorized under California Government Code §7260 *et seq.* or otherwise.

19. UTILITIES

District shall have no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant shall have the sole responsibility to locate such utilities and to protect them from damage. Tenant shall make all arrangements directly with utility companies for delivery, and shall timely pay for any and all utilities and services furnished to or used by Tenant, including without limitation, gas, electric, water and telephone service for all deposits, connection, installation and usage charges.

20. NO RIGHT TO REPAIR AND DEDUCT

No residential tenancy is created by or permitted hereunder, and Tenant expressly waives the benefit of any existing, or subsequently enacted or set out, law, judicial or administrative decision, that might otherwise permit Tenant to make repairs or replacements at District's expense, or to terminate this Lease because of District's failure to keep the Premises, improvements, or any part thereof, in good order, condition and repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or improvements or any part thereof being in need of repair or replacement except as is

specifically authorized pursuant to Section 4 (c) hereof. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code §1932 or any similar laws with respect to the right of Tenant to terminate this Lease.

21. GENERAL PROVISIONS

- (a) **Amendments; Entire Agreement.** Neither this Lease nor any term or provision hereof may be changed, waived, discharged or terminated except by a written instrument signed by the Parties hereto or as otherwise permitted hereunder. This Lease, including the Exhibits hereto, 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 or the Grazing Plan and any changes therefrom) may be introduced in any judicial, administrative or other legal proceedings involving this Lease. Tenant hereby acknowledges that neither District, nor District's directors, officers, employees or 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.
- (b) **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 enforceable to the fullest extent permitted by law.
- (c) **Time.** Time is of the essence to every term and condition hereof to which time is a material factor.
- (d) **Governing Law and Venue.** This Lease shall be construed pursuant to California law and proper venue for all purposes shall be in the County of Santa Clara.
- (e) **Attorneys' Fees; Costs of Suit.** If legal action shall be brought by either of the parties, the party prevailing in said action shall be entitled to recover from the party not prevailing the costs of the suit and reasonable attorney's fees. For purposes of this Lease, reasonable fees of attorneys employed by District shall be based on the fees regularly charged by private attorneys with an equivalent number of years of experience in the subject matter area of the law and actively practicing within the jurisdiction of District.
- (f) **Holding Over.** Tenant specifically waives the provisions of Code of Civil Procedure §1161(2). Any holding over after expiration of the Term with the express written consent of District shall be construed to automatically extend the Term of this Lease only on a month-to-month basis. All other terms, conditions and covenants of the Lease shall remain in effect during the hold over period so far as applicable.
- (g) **Notices.** Wherever this Lease provides for notices between the parties, or wherever the law requires or gives the right of serving a notice, the same shall be in writing and either served personally or sent by registered or certified mail, postage prepaid and addressed to the appropriate party as shown in the Summary. District and Tenant may at any time, in the manner provided herein, change the place or person designated for receiving notice.

IN WITNESS WHEREOF the parties hereto subscribe their names.

DISTRICT:

TENANT:

Craig Britton, General Manager

XXXX

Date: _____

Date: _____

Attest:

Gregory Sam, District Clerk

Approved as to form and procedure:

Susan Schectman, General Counsel

**EXHIBIT A
TO
GRAZING LEASE**

**Grazing Management Plan
(under separate cover)**

**EXHIBIT B
TO
GRAZING LEASE**

CALCULATION OF ANNUAL GRAZING RENT

The Lease Summary specifies the Rent to be paid by Tenant during the first lease year. For each lease year thereafter, annual Rent shall be adjusted upward or downward based upon two factors:

- 1) The Grazing Capacity in AUMs authorized by District for the upcoming lease year.
- 2) An increase or decrease in the per AUM rental rate based upon whether the average selling price of beef cattle is higher or lower than the average selling price for the preceding year. The per AUM rental rate shall be adjusted upward or downward by 50% of the percentage change in beef cattle prices.

For the purpose of calculating the per AUM rental rate, the average selling price of beef cattle shall be taken as the average selling price of Medium Frame No.1 Muscling Steers and Heifers, 500-800 lbs., as reported by the Cattle Marketing Information Service, Inc. (Cattle-Fax) for the month of June prior to the start of the new lease year. In the event that the average sales price of beef cattle is not obtainable in any year from Cattle-Fax as now constituted, then the average sales price to be used in determining the rental rate shall be obtained from some other authentic source to be selected by District as providing a comparable price for this purpose.

EXAMPLE:

Assume the Grazing Capacity authorized by the District for the first lease year was 489 AUM, and the Rent for the first lease year was \$1,900, or \$3.89 per AUM.

For the upcoming lease year, assume the District has authorized an increase in Grazing Capacity to 560 AUMs. Assume that the average selling price of beef cattle from June to June decreased by 2.2%, equal to a 1.1% decrease in the per AUM rental rate per the above formula. Rent for the upcoming lease year would be calculated as follows:

Grazing Capacity = 560 AUM
Per AUM Rent = \$3.89 – 1.1% = \$3.84
Rent for upcoming lease year = 560 AUM X \$3.84 = \$2,150.40

The total authorized AUMs for each upcoming lease year shall be established by the District on the basis of the Grazing Capacity of the Premises as determined by District, and stocking levels

shall be computed by calculating the relative forage requirements of each of the kind or kinds of livestock intended to be grazed on the Premises in any one grazing year, as expressed by the following conversion factors:

<u>Type of Livestock</u>	<u>Animal Unit Months (AUMs)</u>
Adult Cow with Calf up to 6 months old	1.00
Heifer or Steer, 2 years & older (1,000 lbs. or more)	1.00
Yearling to 2-year-old (750 to 1,000 lbs.)	0.75
Weaned Calf to Short Yearling (up to 750 lbs.)	0.50
Bull	1.00
Horse	1.25
Sheep	0.20
Goats	0.20

Tenant shall use the Premises only for grazing the type of livestock permitted by District under the terms of the Lease.