

cloud on Landlord's title, Tenant must pay all reasonable costs and expenses, including attorneys' fees, required for the removal of the cloud, either before or after termination of the Lease.

32. **Improvements and Fixtures.** All crops, improvements or alterations erected or made on the Premises will, on expiration or sooner termination of this Lease, belong to Landlord without compensation to Tenant.

33. **Subordination.** This Lease shall be subordinate to any mortgages or deeds of trust that may subsequently be placed on the Premises, to all advances made under them, to the interest on all obligations secured by them, and to all renewals, replacements and extensions of time, provided the mortgagee or beneficiary in those mortgages or deeds of trust recognizes the lease of Tenant in the event of foreclosure if Tenant is not in default under the terms of the Lease. If any mortgagee or beneficiary elects to have this Lease superior to its mortgage or deed of trust and gives notice of its election to Tenant, then this Lease shall be superior to the lien of that mortgage or deed of trust, whether this Lease is dated or recorded before or after the mortgage or deed of trust.

34. **Waiver.** The waiver by Landlord of a breach of any term, covenant or condition contained in this Lease shall not be treated as a waiver of such term, covenant or condition, or as a waiver of a future breach of the same or any other term, covenant or condition contained in this Lease. The acceptance of rent by Landlord shall not be treated as a waiver of a previous breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of a previous breach at the time of acceptance of rent.

35. **Programs and Entitlements.** The parties expressly covenant and agree that at no time, whether during the term of this Lease or thereafter, shall Tenant be entitled to any Emission Reduction Credits ("ERC's"), Emission Credits, Air Pollution Credits, or Burn Units/Credits associated with the elimination of open burning of collected and removed crop residue, FSA acreage basis, crop basis, allotments, units or any other similar governmental benefit or entitlement under any diversion, price support, payment-in-kind or CCC loan program (under the CCC Charter Act) that accrues to either the Premises, the farming of the Premises, the land itself, or the use of the land by Tenant, the history of the farming of the Premises, or in any other manner whatsoever, that would otherwise accrue to the owner of the land. The intent and purpose of this provisions is that all rights and entitlements with respect to any emission credits, acreage reduction program, payment-in-kind program, CCC loan program (under the CCC Charter Act), subsidy or diversion program of every nature or description, the production history, or basis with respect to the Premises, shall at all times remain with the real property and accrue to the benefit of the owner of the land who shall have a separate property right therein, and shall not accrue to the separate account or benefit of the Tenant.

36. **Notices.** Any notice to be given to either party by the other shall be in writing and shall be served either personally or by registered or certified mail addressed as follows (such addresses subject to change upon written notification):

Landlord: City of Calistoga
Attn: City Manager
1232 Washington St.
Calistoga, CA 94515

Tenant: Markham Vineyards
2812 St. Helena Hwy North
P.O. Box 636
St. Helena, CA 94574

37. **Legal Effect.** All covenants of Tenant contained in this Lease are expressly made conditions. The provisions of this Lease shall, subject to the provisions on assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all parties to this Lease; and all parties to this Lease shall be jointly and severally liable under it.

The titles or headings to the paragraphs of this Lease are not a part of this Lease and shall have no effect on the construction or interpretation of any part of this Lease.

TENANT: MARKHAM VINEYARDS

Dated: _____, 2001~~2009~~ By _____

Its: _____

LANDLORD:

CITY OF CALISTOGA, a municipal
corporation

Dated: _____, 2001~~2009~~ By _____

Mayor

ATTESTED:

By: _____, City Clerk