

AMENDED AGRICULTURAL LEASE (2010)

This Lease is executed at Calistoga, California, on _____, ~~2001~~2009, between the CITY OF CALISTOGA ("**Landlord**") and MARKHAM Vineyards, a California Corporation, ("**Tenant.**")

1. **Lease of Premises.** Landlord leases to Tenant, and Tenant hires from Landlord, on the terms and conditions set forth in this Lease, the Premises with the appurtenances (hereinafter collectively referred to as the "**Premises**"), described as that certain real property located in the County of Napa, State of California, consisting of approximately 6.23 acres, more or less, designated as Parcels Nos. One and Two and more particularly described on **Exhibit A** attached hereto and incorporated herein.

2. **Disclaimer of Warranty – Soil Suitability.** Landlord makes no warranty of the soil's suitability for growing the crops Tenant is authorized to grow under this Lease.

3. **Lease Subject to Existing Rights of Others.**

A. **Generally.** This Lease is subject to: (a) all existing easements, servitudes, licenses and rights-of-way for canals, ditches, levees, roads, highways and telegraph, telephone and electric power lines, railroads, pipelines and other purposes, whether recorded or not; and (b) the rights of other tenants under any existing or future oil, gas and mineral lease or leases from Landlord affecting the entire or any portion of the Premises, whether recorded or not.

B. **Reservoir.** Landlord presently operates a municipal water system reservoir (the "**Reservoir**") on the real property of which the Premises is a part. Notwithstanding any other provision of this Lease, Tenant shall not engage in any activity that would affect the Reservoir, the water in the Reservoir or any water rights of Landlord.

4. **Entry by Owner and Inspection of Records.** Tenant shall permit Landlord, and Landlord's agents and assigns, at all reasonable times, to enter the Premises, and to use the roads established on the Premises now or in the future, for the purposes of inspection, compliance with the terms of this Lease, exercise of all rights under this Lease, posting notices and all other lawful purposes. Tenant shall supply Landlord, and Landlord's agents and assigns, with keys and other instruments necessary to effect entry on the Premises.

Tenant shall make and keep pertinent records of all operations and conduct under this Lease and shall make them available to Landlord, and Landlord's agents and assigns, at all reasonable times for inspection.

5. **Utilities and Other Expenses.** Tenant shall pay for all expenses of operating the Premises, including, but not limited to, ~~charges for water~~, the cost of land preparation, planting, raising and harvesting, including costs for drying and hauling, gas, heat, light, power, telephone service, sewer and for all other services supplied to the Premises.

6. **Condition of Premises.** By entry under this Lease, Tenant accepts the Premises in their present condition; and Tenant agrees, on the last day of the term or on sooner termination of this Lease, to surrender the Premises and the appurtenances to Landlord in the same condition as when received, reasonable use, wear and damage by fire, act of God or the elements excepted, and to remove all of Tenant's personal property from the Premises.

7. **Term.** The term of this Lease shall be for one year. The Term shall commence on January 1, ~~2001~~2010 and shall terminate on December 31, ~~2001~~2010. Tenant may request and the Landlord at its discretion may approve a renewal of the Lease, if Tenant makes such request prior to sixty (60) days from the expiration of the above Term.

8. **Abandonment.** Tenant shall not vacate or abandon the Premises at any time during the term. If Tenant does abandon, vacate or surrender the Premises, or if Tenant is dispossessed by process of law or otherwise, personal property belonging to Tenant and left on the Premises shall be kept for a reasonable time by Landlord, but in no event longer than 15 days after Landlord gives Tenant notice to remove that property from the Premises, after which time, if it has not been reclaimed by Tenant, it may be treated by Landlord as abandoned.

9. **Holding Over.**

A. If, without objection by Landlord, Tenant holds possession of the Premises after expiration of the term of this Lease, Tenant shall become a tenant from month-to-month on the terms specified in this Lease, except those pertaining to Term, but at a monthly rental equivalent to one hundred fifty percent (150%) of the then prevailing rental paid by Tenant at the expiration of the term of this Lease, payable in advance on or before the first day of each month. Each party shall give the other notice of intention to terminate the tenancy at least one (1) month prior to the date of termination of a monthly tenancy.

~~B.~~ B. If, over Landlord's objection, Tenant holds possession of the Premises after expiration of the term of this Lease or expiration of the holdover tenancy, Tenant shall be deemed to be a tenant-at-sufferance and, without limiting the liability of Tenant for unauthorized occupancy of the Premises, Tenant shall indemnify Landlord and any replacement tenant for the Premises for any damages or loss suffered by either Landlord or the replacement tenant resulting from Tenant's failure to vacate the Premises in a timely manner.

10. **Rent.**

A. **Vineyard Rent.**

i. **Base Rent.** Tenant shall pay to Landlord as annual base rent ("**Base Rent**"), without deduction, set-off, prior notice, or demand the sum of \$1,000 per year, payable on the first day of each lease year.

ii. **Additional Rent.** Tenant shall pay to Landlord as additional rent ("**Additional Rent**"), without deduction, set-off, prior notice, or demand, 45% of the amounts in excess of \$1,500 per acre, actually received by Tenant from the sale of grapes to wineries or other purchasers (verified by sales receipt or a directive to pay by Tenant, at Tenant's option). If Tenant uses grapes from the Premises for the direct production of wine by Tenant or an affiliate of Tenant, Additional Rent shall be based on the California Department of Food and Agriculture Annual Final Grape Crush Report. Rent shall be payable to Landlord within 15 days after the California Department of Food and Agriculture issues its Final Grape Crush Report. Rent payments shall be delivered to Landlord at 1232 Washington St., Calistoga, CA 94515. Providing two cases of wine produced from the grapes grown on the site in conjunction with the rent payment.

B. **Landlord's Audit Rights.** Tenant shall furnish Landlord with copies of all wine grape-producing contracts for grapes produced on the Premises. Landlord, at Landlord's cost, shall have the annual right to audit Tenant's records and receipts for the sale of grapes produced on the Premises. If the audit discloses an underpayment in excess of 2% to Landlord, Tenant shall pay the costs of the audit. Landlord may also use any other reasonable means to verify grape production on the Property.

C. **Reduction in Vineyard Acreage.** If Tenant reduces the amount of acreage planted to vineyard, Additional Rent shall include an amount calculated by the acres so reduced times the overall amount per acre of Additional Rent for that year received by Landlord.

11. **Taxes.** Tenant shall pay before delinquency all real property taxes or possessory interest taxes levied in lieu of real property taxes, bonds and assessments levied on the Premises and any personal property taxes levied with respect to vineyard improvements on the Premises and any of Tenant's personal property. Tenant may contest the validity or amount of any or all such taxes so long as Landlord and the Premises are protected from any claim or lien by an adequate surety bond or other appropriate security.

12. **Insurance Hazards.** Tenant shall not use the Premises, nor permit others to use them, nor do or permit acts that will increase the existing rates of insurance on the structures, trees or other permanent crops on the Premises, or cause a cancellation of any insurance policy covering, in whole or in part, the structures, trees

and permanent crops; nor shall Tenant sell, or permit to be kept, used or sold, in or about the Premises, any article that is prohibited by the standard form of fire insurance policies. Tenant shall comply with all requirements of any insurance organization or company applying to the Premises, necessary for the maintenance of reasonable fire and public liability insurance covering the structures, trees and permanent crops.

13. **Use of Premises.** The Premises are leased for agricultural purposes only. The Premises shall be planted to vineyards. No other crops shall be planted on any portion of the Premises without the prior written consent of the Landlord.

Tenant shall not use, or permit to be used; any part of the Premises for any purpose other than the purpose for which the Premises are leased as set forth in this paragraph. All operations incident to this use on the Premises shall be carried on according to the best course of husbandry practiced in the vicinity; and, on default of Tenant to do so, Landlord reserves the right, after giving 72 hours' notice to make necessary remedial measures at the expense of Tenant, for which Tenant shall reimburse Landlord on demand. Tenant will make diligent efforts to prevent the spread of all noxious weeds, rodents and other pests on the Premises and will take reasonable measures to protect the Premises from infestation of insects, spiders and other such pests. Tenant will make diligent efforts to prevent infestation of organisms that may produce disease in crops grown on the Premises during and after the term of this Lease.

14. **Waste.** Tenant shall not commit, or permit others to commit, on the Premises, waste, or a nuisance, or any other act that could disturb the quiet enjoyment of Landlord or any other tenant of Landlord on reserved or adjacent property.

15. **Environmental Matters.**

A. **Compliance with Environmental Requirements.** Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local laws, regulations, ordinances, other requirements, permits and orders issued in relation thereto, which are designed to protect public health and safety, worker health and safety, or the environment, including but not limited to, management of hazardous materials and/or hazardous waste (collectively referred to hereinafter as "**Environmental Requirements**"). For this purpose, "management" includes, but is not limited to, use, storage, handling, and transportation. Tenant expressly agrees not to store hazardous waste on the Premises, treat hazardous waste on the Premises or dispose of, or bury any waste, including hazardous waste, on the Premises.

B. **Handling of Pesticides and Fertilizer.** Tenant expressly agrees to use and handle pesticides and fertilizers in compliance with all Environmental Requirements which are designed to regulate pesticides and fertilizers, including, but not limited to, requirements pertaining to reentry or pre-harvest intervals.

No pesticide or agricultural chemical shall be used by Tenant if it results in a plant-back restriction or other provision which would place any limitation

on the use of the Premises which extends beyond the term of the Lease without the prior written consent of the Landlord. Tenant shall provide Landlord a copy of Tenant's County Pesticide Permit prior to each crop year.

C. Contamination. Tenant expressly agrees, at all times and in all respects, to and comply with all federal, state and local laws, regulations, ordinances, other requirements, and permits and orders issued in relation thereto which concern any contamination, release, pollution, nuisance or waste, whether toxic or nontoxic chemical or biological, which may result from Tenant's operation on, and use of, the Premises during the term of this Lease, whether created or maintained by Tenant, its agents, servants or employees, or whether Tenant assists in the creation or maintenance thereof.

16. Water. Water necessary for the irrigation of the grapevines to be grown on the Premises during the term of this Lease shall **NOT** be available to Tenant from the facilities of the City. Tenant shall have no right to Landlord-provided water, whether for crop irrigation, frost protection, or any other purpose, under this Lease. ~~All costs and expenses arising from the operation, maintenance and repairs of necessary diversion structures, farm laterals, drains and other waterworks related to irrigation water systems on the Premises shall be paid by Tenant. Water from the source mentioned above shall be used only on the Premises and in the performance of Tenant's obligation under this Lease. Tenant shall not export this water to other lands before previously obtaining Landlord's written consent.~~ Landlord assumes no responsibility to Tenant for any water supply issues, any water shortage from the facility mentioned above and assumes no responsibility for, and does not warrant the quality or quantity of the including but not limited to, the absence of City water supplied to the Premises under this Lease.

17. Drainage; Flood Protection. Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local and water agency laws, regulations, ordinances, applicable water quality objectives and other requirements, permits and orders issued in relation thereto which concern all drainage or releases including irrigation tail-water. Tenant shall provide and maintain all ditches and levees required for flood or levee protection to protect the Premises from floods during the term.

18. Oil, Gas and Mineral Rights. All rights in all minerals, oil, gas and other hydrocarbons located on or under the Premises are reserved to Landlord and are excepted from the property covered by the terms of this Lease. Tenant expressly grants to Landlord, and to any and all lessees of these oil, gas and mineral rights, and to Landlord's agents and licensees, a right of entry and a right-of-way for ingress and egress in and to, over and on, the Premises during the term of this Lease for the exploration, drilling and mining of minerals, oil, gas and other hydrocarbons on the Premises; provided that Landlord shall reimburse Tenant for any damages that Tenant sustains as a result of any interference with the agricultural operations conducted on