

**MONTEREY COUNTY WATER RESOURCES AGENCY
BOARD OF DIRECTORS
PERSONNEL AND ADMINISTRATION COMMITTEE**

COMMITTEE MEMBERS

Mark Gonzalez, Chair
Abby Taylor-Silva

David Hart
Richard Ortiz

TIME: **8:30 a.m.**
DATE: **Friday, May 13, 2016**
PLACE: **Monterey County Water Resources Agency
Board Room
893 Blanco Circle
Salinas, CA 93901
(831) 755-4860**

A G E N D A

- 1. Call to Order**
- 2. Public Comment**
(Limited to three (3) minutes per speaker on matters within the jurisdiction of the Agency not listed on this agenda. The public will have the opportunity to ask questions and make statements on agenda items as the Committee considers them.)
- 3. Approve the Minutes of the Personnel and Administration Committee meeting held on April 15, 2016.**
The Committee will consider approval of the Minutes of the above-mentioned meeting.
- 4. Recommend that the full Board approve and recommend that the Monterey County Water Resources Agency Board of Supervisors approve renewal of a multi-year Lease Agreement with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property at Lake Nacimiento; and, authorize the General Manager to execute the Lease Agreement.**
Brent Buche, Deputy General Manager, will provide a verbal update on the above-mentioned item.
- 5. Consider receiving an update on activities at the Lakes.**
Brent Buche, Deputy General Manager, will provide a verbal report on Lakes issues.
- 6. Consider receiving an update on Real Property issues.**
Brent Buche, Deputy General Manager, will provide a verbal report on real property issues.

7. **Set next meeting date and discuss future agenda items.**
The Committee will discuss and determine details for its next meeting.
8. **Adjournment**

**MONTEREY COUNTY WATER RESOURCES AGENCY
BOARD OF DIRECTORS
PERSONNEL AND ADMINISTRATION COMMITTEE**

COMMITTEE MEMBERS

Mark Gonzalez, Chair
Richard Ortiz

David Hart
Abby Taylor-Silva

TIME: 8:30 a.m.
DATE: Friday, April 15, 2016
PLACE: Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901
(831) 755-4860

MINUTES

1. **Call Meeting to Order @ 8:30 a.m. by Committee Chair Mark Gonzalez**
Members Present: Richard Ortiz, David Hart, Mark Gonzalez, Abby Taylor-Silva
Members Absent: None

A quorum was established.

2. **Public Comment:** None
3. **Approve the Minutes of the Personnel and Administration Committee meeting held on March 11, 2016.**

Committee Action:

On Motion and Second by Directors Hart and Ortiz respectively, the Committee approved the Minutes of the Personnel and Administration Committee meeting held on March 11, 2016. Committee Member Abby Taylor-Silva abstained as she was not a member of the Committee at that time.

4. **Consider receiving an update on Personnel and Administration activities.**
Wini Chambliss, Administrative Services Assistant, provided a verbal update on personnel and administrative issues.

Public Comment: John Baillie

Committee Action:

On Motion and Second by Directors Ortiz and Taylor-Silva respectively, by unanimous vote received the update.

5. **Consider receiving a proposal to construct and maintain a boat launch ramp within the Running Deer Community from The Private Property Owners Lake Access Association.**

Brent Buche, Deputy General Manager, provided a verbal update on the above-mentioned item. Jack Diehl presented on behalf of the Private Property Owners Lake Access Association.

Committee Action:

On Motion and Second by Directors Hart and Taylor-Silva respectively, by unanimous vote received the update and directed staff to complete further research and present the results at the next Committee meeting.

4. **Consider receiving an update on the Heritage Ranch Owners Association lease for 25 acres of Agency property.**

Brent Buche, Deputy General Manager, provided a verbal update on the above-mentioned item.

Committee Action:

On Motion and Second by Directors Ortiz and Hart respectively, by unanimous vote received the update.

5. **Consider receiving an update on activities at the lakes.**

Brent Buche, Deputy General Manager, provided a verbal report on Lakes issues.

Committee Action:

On Motion and Second by Directors Hart and Taylor-Silva respectively, by unanimous vote received the update.

6. **Consider receiving an update on real property issues.**

Brent Buche, Deputy General Manager, provided a verbal report on real property issues.

Committee Action:

On Motion and Second by Directors Taylor-Silva and Hart respectively, by unanimous vote received the update.

7. **Set next meeting date and discuss future Agenda items.**

Next meeting date: May 13, 2016 at 8:30 a.m. Agenda items should include the Running Deer Ranch Boat Ramps Project.

8. **Adjournment at 9:30 a.m.**

Submitted by: Alice Henault

Approved on:

**MONTEREY COUNTY WATER RESOURCES AGENCY
BOARD OF DIRECTORS- PERSONNEL AND ADMINISTRATION COMMITTEE**

MEETING DATE:	May 13, 2016	AGENDA ITEM:	
AGENDA TITLE:	Consider recommending that the full Board consider approving and recommending that the Monterey County Water Resources Agency Board of Supervisors approve renewal of a multi-year Lease Agreement with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property at Lake Nacimiento; and, authorizing the General Manager to execute the Lease Agreement.		
Consent ()		Action (X)	
Information ()			
SUBMITTED BY:	Brent Buche	PREPARED BY:	Brent Buche
PHONE:	(831) 755-4860	PHONE:	(831) 755-4860
DEADLINE FOR BOARD ACTION:	May 13, 2016		

RECOMMENDED BOARD ACTION:

Recommend that the full Board approve and recommend that the Monterey County Water Resources Agency Board of Supervisors approve renewal of a multi-year Lease Agreement with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property at Lake Nacimiento; and, authorize the General Manager to execute the Lease Agreement.

PRIOR RELEVANT BOARD ACTION:

The Monterey County Water Resources Agency (MCWRA) Board of Directors recommended the MCWRA Board of Supervisors renew a lease agreement with a one-year term with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property on April 27, 2015.

The MCWRA Board of Directors recommended the MCWRA Board of Supervisors renew a lease agreement with a three-year term with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property on August 27, 2012.

The MCWRA Board of Directors recommended to the MCWRA Board of Supervisors the original lease agreement at their August 22, 2011, meeting. The Board of Supervisors approved the original lease agreement at their September 13, 2011, meeting.

DISCUSSION/ANALYSIS:

The MCWRA Board of Directors action of August 27, 2012, was never taken to the MCWRA Board of Supervisors for approval. However, the HROA did continue to submit payment to the MCWRA. Since MCWRA did not follow through on its responsibility of forwarding to the MCWRA Board of Supervisors, MCWRA will start at the base rate again.

The lease fee will be \$2,767.59 a month. That is, the original fee increased annually by the Consumer Price Index. The fee was originally established by comparable market sales documented in three appraisals completed in 2007 and 2008.

The proposed 25-acre lease is located on MCWRA land on the south side of Nacimiento Reservoir on Snake Creek adjacent to property owned by Heritage Ranch. Heritage Ranch has leased the property from the Monterey County Water Resource Agency for the last four years and seeks to

renew the lease for continued use of the property.

FINANCIAL IMPACT:	YES (X) NO ()
FUNDING SOURCE:	Fund 116
COMMITTEE REVIEW AND RECOMMENDATION:	
ATTACHMENTS:	1. Board Order 2. HROA Lease Agreement 3. Location Map of the Lease Property.
APPROVED:	<hr/> General Manager Date



***Before the Board of Directors of the Monterey County Water Resources Agency
County of Monterey, State of California***

BOARD ORDER No. _____

**APPROVE AND RECOMMEND THAT THE MONTEREY COUNTY)
WATER RESOURCES AGENCY BOARD OF SUPERVISORS)
APPROVE RENEWAL OF A MULTI-YEAR LEASE AGREEMENT)
WITH THE HERITAGE RANCH OWNERS ASSOCIATION (HROA))
FOR 25 ACRES OF LAKEFRONT PROPERTY; AND, AUTHORIZE THE)
GENERAL MANAGER TO EXECUTE THE LEASE AGREEMENT.)**

Upon motion of Director _____, seconded by Director _____, and carried by those members present, the Board of Directors hereby:

1. Approves and recommends that the Monterey County Water Resources Agency Board of Supervisors approve renewal of a Multi-year Lease Agreement with the Heritage Ranch Owners Association (HROA) for 25 acres of lakefront property; and,
2. Authorizes the General Manager to execute the Lease Agreement.

PASSED AND ADOPTED on this **23rd** day of **May 2016**, by the following vote, to-wit:

AYES:

NOES:

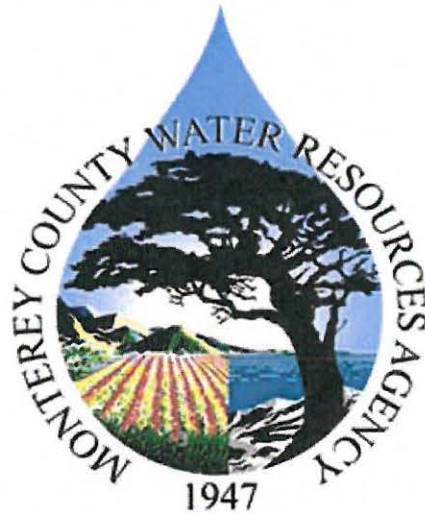
ABSENT:

BY: David Hart, Chair
Board of Directors

ATTEST: David E. Chardavoyne
General Manager

MONTEREY COUNTY WATER RESOURCES AGENCY

STANDARD LEASE AGREEMENT (General / Recreational)



LEASED PREMISES:

**APN-080-121-014, the southern half of the NW ¼ of
the NW ¼ of Township 25S, Range10E, Section 28**

LESSEE:

Heritage Ranch Owners' Association

**MONTEREY COUNTY WATER RESOURCES AGENCY
STANDARD LEASE AGREEMENT
(General / Recreational)**

PREAMBLE

THIS LEASE ("Lease") is made by and between the MONTEREY COUNTY WATER RESOURCES AGENCY, a public agency created pursuant to the Monterey County Water Resources Agency Act (Cal. Water Code, Appendix Chap. 52) ("LESSOR") and Heritage Ranch Owners' Association, a California corporation ("LESSEE"). LESSOR and LESSEE hereby agree as follows:

ARTICLE 1 - PREMISES

1.1 ***Description:*** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at APN-080-121-014, the southern half of the NW ¼ of the NW ¼ of Township 25S, Range 10E, Section 28 (the "Lease Site") and described as follows:

That portion of Lake Nacimiento and adjacent undeveloped real property outlined and described in Exhibit "A", as prepared by Ken Kellam, RCE 10956, dated July 20, 1988, attached hereto and incorporated herein. The lease property is 25 acres.

1.2 ***Compliance with the "Americans with Disabilities Act of 1990" (ADA):*** If applicable, LESSEE shall ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA requirement.

1.3 ***Compliance with "No Smoking Law" (2003 Assembly Bill 846):*** If and as applicable, LESSOR shall ensure that the Premises are in compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as amended, and, if necessary, prior to the Commencement Date, shall modify the same to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846.

ARTICLE 2 - TERM

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be _____ () years, commencing on _____, 20____ ("Lease Commencement Date"), and ending _____, 20____, with such rights of termination of the Lease Term as are hereinafter set forth.

ARTICLE 3 – RENT

3.1 **Rent:** For the first year of this Agreement LESSEE shall pay MCWRA, monthly, the sum of \$ _____. The payments shall commence on the first day of the month following the month this Agreement becomes fully approved and executed and shall continue to be paid on the first day of each month, thereafter. The first rent payment will, in addition to the payment for the current month, include monthly payments for any month or portion of a month between _____ and the date monthly rental payments under this lease commence. The payment is to be made by LESSEE by check payable to the Monterey County Water Resources Agency (MCWRA), delivered in accordance with instructions by MCWRA. A late payment penalty of five percent of the monthly rent will accrue on any payment not made by LESSEE within 15 days of the first of the month and shall be paid as part of the following month's rent payment.

ARTICLE 4 – ANNUAL RENT ADJUSTMENT

4.1 **Adjusted rent:** At the end of each one-year pay period of the Lease Term the monthly base rent shall be adjusted to reflect any increase in the Cost of Living Indexes for all urban consumers for the San Francisco-Oakland-San Jose area. The monthly base rent shall be increased at the end of each year by the percentage increase in said index in the (12) calendar month period preceding such adjustment, based on the most recent publications of the index prior to the adjustment rate.

ARTICLE 5 - TERMINATION BY LESSOR

LESSOR may terminate this Lease for good cause upon sixty (60) days written notice. Good cause shall include non- payment of rent, breach of any provision of this Agreement, or breach of any rules or regulations governing the use of the Premises.

ARTICLE 6 - NOTICES

6.1 **Written notices:** All notices or correspondence provided for herein shall be effective when made in writing, personally delivered or deposited in the United States mail, sent certified, postage prepaid, and addressed as follows:

6.2 **Service of notices:** All notices, correspondence, or other written communication related to this Agreement shall be sent to the following:

///
///
///

LESSEE:

General Manager
Heritage Ranch Owners Association
3945 Heritage Road
Paso Robles, California 93446

LESSOR:

David Chardavoyne
General Manager
Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901

6.3 Rent payments to LESSOR shall be directed to the Agency's Finance Manager at the address listed above.

6.4 Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by phone, regular mail, email or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail if requested by either party. By written notice to the other, either party may change its own mailing address or correspondence information.

6.5 LESSOR'S designated property management representative shall be available to LESSEE by phone during regular business hours, and for emergencies after hours and weekends. LESSOR or LESSOR'S designated property management company shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone number for LESSOR is 831-796-1166.**

6.6 LESSEE shall be available to LESSOR, by phone during regular business hours, and for emergencies after hours and on weekends. LESSEE shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone number for LESSEE is 831-212-0378.**

ARTICLE 7 –IMPROVEMENTS BY TENANT

7.1 **Fencing:** Fencing shall be according to specifications approved by the Agency in writing prior to commencement of construction.

7.2 All improvements, construction of all types shall meet or exceed construction and uniform codes of the County of Monterey. Where applicable, or where required by the Agency, improvements and construction shall meet other applicable codes and regulations, such as the health, environmental health, operations and regulatory requirements of the United States, State of California, and County of Monterey.

7.3 In granting approval for any construction or work, Agency may impose special standards or conditions. Digging, excavation, piling or mounding of material such as earth, and the use of heavy

equipment shall be approved in writing by the Agency beforehand. Operation of machinery and equipment shall be by operators licensed and adequately insured for that purpose.

7.4 Reimbursement for improvements: Certain tenant improvements are subject to limited reimbursement. To receive an eligible reimbursement, the tenant improvements must be approved in writing by the General Manager or designee, AND the maximum amount to be reimbursed must be agreed-to prior to the commencement of construction. The Agency may retain up to 25%, or such other amount as the parties may agree, of the amount to be reimbursed until a final inspection following termination of the lease is performed by the Agency ensuring that the tenant improvements remain on the premises and are in good condition, normal wear and tear excepted. Under no circumstances may tenant improvements be removed after installation or construction unless the General Manager authorizes removal in writing. Under no circumstances may Lessee deduct from (or take credit toward) rents any amounts due to tenant improvements. The process for seeking pre-approval for improvements, verifying completion of improvements, and seeking reimbursement outline in Exhibit B shall be followed.

ARTICLE 8 - NOTICE OF COMPLETION

[Reserved]

ARTICLE 9 - PUBLIC WORKS LAWS

Under Section 1720.2 of the California Labor Code, any construction contract to improve the space to be leased by the MONTEREY COUNTY WATER RESOURCES AGENCY for government services may be considered a 'public work' if certain conditions are met. If applicable, LESSEE shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as amended from time to time.

ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY

It shall be LESSOR'S responsibility to remove any prior LESSEE in the Premises at LESSOR'S sole cost and expense.

ARTICLE 11 - USE

11.1 Use: Subject to the following, LESSEE may use the Premises for mooring on LESSEE-owned slips, day beaching and picnicking, and overflow parking. Except as provided in Section 11.2, LESSEE may alter said use to any lawful purpose, upon the written consent of LESSOR, which consent shall not be unreasonably withheld.

11.2 Vineyards: Notwithstanding any other provision of this Agreement, and regardless of the uses permitted under the applicable planning and zoning regulations, vineyards are not a permitted use or activity on the leased premises without the prior written approval of the General Manager.

11.3 **Parking adjacent to oak trees:** Notwithstanding any other provision of this Agreement, parking shall not be allowed within twenty (20) feet of any oak tree.

11.4 **Hours; no parking:** The Property shall be closed between the hours of 10:00 pm and 6:00 am. No overnight parking shall be allowed during the hours the Property is closed.

11.5 **Docks:** Only those docks that are owned by LESSEE shall be allowed on the Property.

11.6 **Marina Rules:** All LESSEE Marina Rules shall apply to the Property. A copy of the LESSEE Marina rules is attached as Exhibit ____ and incorporated by reference. Marina rules shall conform to all applicable laws and regulations and the provisions of this Agreement.

11.7 **Construction, building, cutting timber:** LESSEE may not erect any permanent structures or improvements on the Property without the prior written consent of MCWRA. LESSEE shall not cut, and shall not allow the cutting, of any timber without the prior written consent of the MCWRA. LESSEE shall not remove or place soil, sand, rocks or gravel to or from the subject property without the prior written consent of the MCWRA.

11.8 **Ejection from property:** Any LESSEE member or member of the public may be ordered to leave the Property by any peace officer, Monterey County Park's employee, or MCWRA employee, for violation of any park rule, policy, County, State, or Federal law, or any provision of this Agreement. Persons ordered to leave the Property under this provision shall not be allowed to return onto the Property for a period of at least seven days. MCWRA may increase the time prior to return at its sole discretion.

11.9 **Compliance with Laws:** LESSEE represents and warrants to LESSEE that any construction performed by, for or on behalf of LESSEE, and LESSEE's current and proposed uses, and the operation of the Premises are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSEE agrees to defend and indemnify LESSOR for any responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances related to LESSEE's use, operations or construction.

11.10 **Hazardous Substances:** LESSOR shall have no liability or responsibility for toxic or hazardous materials or substances on the Premises which result from LESSEE'S acts or omissions, or which occur on property not owned and occupied by LESSOR. LESSEE will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or polychlorinated biphenyl (PCB) containing materials. Nothing in this Lease shall be taken as LESSOR'S assumption of any duty or liability not otherwise imposed by law.

11.11 **Environmental Hazards:** LESSEE hereby warrants and guarantees that the Premises and the Common Areas will be maintained free of all Environmental Hazards (including hazards related to asbestos, leads, toxic mold spores or PCBs) and agrees to survey, test, and abate as applicable and in accordance with Environmental Protection Agency ("EPA") guidelines. A qualified industrial hygienist approved by LESSOR and LESSEE shall perform all testing and

development of an abatement work plan as deemed necessary, with the test results/reports/plans forwarded to LESSOR and LESSEE upon completion. LESSEE further agrees to contract with a qualified remediation contractor to provide remediation services as specified in Exhibit on an as-needed basis. LESSEE specifically agrees that any costs related to abatement of Environmental Hazards shall be the LESSEE'S responsibility unless, and only to the extent, such abatement is required by negligent acts or willful misconduct by LESSOR, its agents and employees.

LESSEE shall immediately notify LESSOR of any suspected appearance of toxic mold spores and of any conditions (such as excessive moisture) that may lead to the appearance of toxic mold spores, and LESSOR agrees to investigate same.

ARTICLE 12 - SIGNS AND FIXTURES

LESSEE may place such signs and advertisements upon the Premises as LESSEE may desire, subject to compliance with applicable law and approval by the LESSOR which consent shall not be unreasonably withheld provided, however, that at the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will repair any damage caused by such removal. Any trade fixtures, equipment, furniture, demountable walls, and other movable personal property installed in the Premises by and at the expense of the LESSEE (except those reimbursed in whole or part by LESSOR) shall remain the property of the LESSEE, and the LESSOR agrees that the LESSEE shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other movable personal property (except those reimbursed in whole or part by LESSOR) which it may have stored or installed in the Premises, provided that LESSEE repairs any damage caused by such removal. The LESSOR agrees not to mortgage or pledge the LESSEE'S trade fixtures, equipment and other property. Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, reasonable wear and tear, and damage by casualty or condemnation, and alterations approved by LESSOR, excepted

ARTICLE 13 - SERVICES AND UTILITIES

Services and utilities for the Premises shall be furnished and the cost borne as outlined in Exhibit —.

Unless expressly so provided under this Agreement, this Agreement does not authorize LESSEE to use water from the reservoir on the premises for domestic, potable, farming, livestock or similar purposes.

ARTICLE 14 - REPAIR AND MAINTENANCE

14.1 **Maintenance of property:** LESSEE shall operate and maintain the property in a clean and orderly manner, and in compliance with all applicable laws, ordinances and regulations, and in

compliance with the governing documents of LESSEE. LESSEE shall inform MCWRA in writing within 30 days of the effective date of this Agreement of its plans for controlling and removing litter and trash and of its restroom management and maintenance policies.

14.2 ***No LESSOR duty to maintain or repair:*** MCWRA shall not have any obligation, during the term of this Agreement, to repair, restore, or maintain the subject property, except to the extent of any damage caused to the property by willful misconduct or negligent conduct of MCWRA.

14.3 ***LESSOR and LESSEE Obligations:*** LESSEE'S repair and maintenance responsibilities are set forth in **Exhibit __**, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. As stated in **Exhibit __**, the term "deemed necessary" shall mean that appropriate action needs to be taken to ensure the health, safety and general well-being of the occupants and or invitees of the Premises.

14.4 ***Negligent Acts or Omissions of LESSEE:*** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance to the extent required as a direct result of the negligence or willful misconduct of LESSEE.

14.5 ***Failure of LESSEE to Make Repairs:*** If LESSEE fails to maintain the Premises or to make the repairs required in this article within the time periods as specified in Article 22, LESSOR may perform such maintenance or make such repairs at its expense and add the cost of such repairs to the upcoming rent due from LESSEE.

14.4 ***LESSOR/LESSEE Obligations in Applying Noxious Substances:*** If applicable, LESSEE shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to occupied spaces with the Premises or the Common Areas without prior coordination and approval of LESSOR. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the LESSOR. Examples of such substances or materials include, but are not limited to, the following:

- a. Termite Control Materials
- b. Pesticides
- c. Paint
- d. Water Treatment Chemicals
- e. Any other substance that is or could be construed as hazardous

ARTICLE 15 - Invasive Species Inspection and Control Measures

LESSEE shall continue to work with both San Luis Obispo and Monterey Counties to protect Lake Nacimiento from the spread of invasive species. To that end, LESSEE has established and will continue to implement an Invasive Mussel Inspection Plan which is attached hereto as **Exhibit __** and incorporated by reference.

ARTICLE 16 - SERVICE COMPANIES

Within ten (10) days after occupancy of the Premises by LESSEE, LESSOR shall give LESSEE a list (see **Exhibit** __) of the names, addresses and telephone numbers of agencies or persons convenient to LESSEE as a local source of service with regard to the Parties' responsibilities under **Exhibit** __ and **Exhibit** __ of this Lease. If LESSOR fails to provide such list, LESSEE may choose service companies as needed and without penalty.

ARTICLE 17 - CONDITION OF THE LEASED PROPERTY

17.1 ***Opportunity to inspect:*** LESSEE acknowledges that it has inspected the subject property and knows its condition and further acknowledges that the MCWRA has not, and does not, make any representation or warranty regarding the condition of the subject property.

17.2 ***Erosion standards and control:*** LESSEE will take an erosion class, as offered by the County of Monterey. LESSEE shall follow the standards of the Monterey County Code regarding erosion control in its use and maintenance of the property. (See MCC sections 51.39, 16.08, and 16.12.)

ARTICLE 18 - ALTERATIONS, MECHANICS' LIENS

18.1 ***Alterations:*** Except for the Premise Improvements, no alterations or improvements shall be made to the Premises by LESSEE or at LESSEE'S request without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

18.2 ***Condition at Termination:*** Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, reasonable wear and tear, and damage by casualty or condemnation, and alterations approved by LESSOR, excepted.

18.3 ***Mechanic's Liens:*** LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by such LESSEE or on its behalf.

ARTICLE 19 - ASSIGNMENT AND SUBLETTING

LESSEE has no right to assign this Agreement to any party or entity, or in any manner sublease, transfer, or in any manner encumber, the subject property, without the prior written consent of the MCWRA.

ARTICLE 20 - ENTRY BY LESSOR

20.1 ***Entry by LESSOR:*** LESSOR shall, at all times during the term of this Agreement, have the right to enter upon and inspect the property for any purpose, including, but not limited to, assuring that the obligations of LESSEE, including those set forth in Paragraphs __ and __, above, are met. LESSOR and LESSOR'S agents will give reasonable advance notice of entry (except in the case of emergency), and such entry shall be made in a reasonable manner and not unreasonably

interfere with the conduct of LESSEE'S business.

20.2 **Entry by peace officers and LESSOR employees:** LESSEE agrees that MCWRA employees, Monterey County Park's employees, and any County, State, or Federal peace officer may enter the Property at any time to routinely patrol the property, investigate any crime, or for any other lawful purpose

ARTICLE 21 - INSURANCE AND INDEMNIFICATION

21.1 **Insurance:** LESSEE shall, at all times during the term of this Agreement, maintain public liability and property damage insurance of at least \$2,000,000 per occurrence or if LESSEE requires aggregate no less than \$5,000,000 and property damage insurance of at least \$250,000 insuring against all liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE'S use or occupancy of the Premises. LESSEE must also carry Auto liability of \$1,000,000 combined single limit. Such insurance shall name the MCWRA as an additional insured and is expressly intended to provide MCWRA with protection from third party property damage and bodily injury claims, and damage to MCWRA property, arising out of the use of the property. LESSEE shall provide proof of such insurance to the MCWRA upon MCWRA's request.

21.2 **Duty to defend and indemnify LESSOR from activities:** LESSEE, LESSEE shall indemnify, defend, and hold harmless the MCWRA, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting from the following:

- boats or other water vehicles sinking in the lake;
- boats or other water vehicles catching fire on the lake or on shore; and
- oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the lake.

21.3 **Duty to defend and indemnify LESSOR generally:** LESSEE shall indemnify, defend, and hold harmless the MCWRA, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the LESSEE's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the MCWRA. LESSEE's performance" includes LESSEE's action or inaction and the action or inaction of LESSEE's officers, employees, agents and subcontractors.

ARTICLE 22 - DESTRUCTION

22.1 **Destruction of property:** If the Premises are totally destroyed by fire or other casualty, either party may terminate this Lease immediately by giving notice to the other party.

22.2 **LESSOR termination for default:** If LESSEE remains in occupancy of the Premises though partially destroyed, the rent for said Premises as herein provided, during restoration, shall be reduced by the same ratio as the rentable square feet LESSEE is thus precluded from occupying, bears to the total rentable area in the Premises. For purposes of this Article, "rentable area" shall not include public areas.

ARTICLE 23 - DEFAULT BY LESSEE

23.1 **Default:** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR'S option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent or other obligation when such default continues for a period of thirty (30) days after written notice from LESSOR to LESSEE of such default, or
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof from LESSOR to LESSEE of such default or, if such default is not reasonably curable within such thirty (30) day period, LESSEE fails to commence to cure such default within such thirty (30) day period and thereafter diligently pursue such cure to completion, or
- c. LESSEE is adjudicated bankrupt, or
- d. LESSEE'S lease interest is sold under execution of judgment.
- e. Notice of default is sufficient if it is in writing, identifies the act, omission, or condition that constitutes the default, and is served upon LESSEE in the manner provided by this Lease for the giving of notice.

23.2 **Remedies:** If LESSEE fails to cure a prospective default within the-time frames outlined above, if any, LESSOR shall have the option to cure the default, if curable, or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSOR elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSEE to LESSOR, as additional rent, within thirty (30) days of receipt of LESSOR'S invoice for said costs.

23.3 **Termination following notice to cure:** In the event that LESSEE defaults under any provision of this Agreement the MCWRA may, if such default is not cured within 30 days following written notice given by the MCWRA to LESSEE, elect to terminate this Agreement. Such termination is effective upon the expiration of the 30 day cure period and a written "notice" of election to terminate" being served upon LESSEE by the MCWRA.

Such election to terminate in no way absolves LESSEE from any obligations under this Agreement, including the payment of any rent then owing, or the obligation to return the property in substantially similar condition to that at the effective date of this Agreement.

ARTICLE 24 - DEFAULT BY AGENCY

24.1 ***Default:*** LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR'S obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

24.2 ***Remedies:*** If LESSOR fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs.

ARTICLE 25 - CONDEMNATION

If the Premises are taken or condemned for a public or quasi-public use, or the part taken renders the entire Premises insufficient for the conduct of LESSEE'S business and operations, then this Lease shall terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S business and operations, then the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in proportion that the rentable area of the Premises taken bears to the rentable area of the Premises before the taking.

ARTICLE 26 - HOLDING OVER

If LESSEE remains in possession of the Premises after the Lease Term or any Extended Term, this Lease shall automatically be extended on a month-to-month basis at the monthly rent applicable to the last month of the Lease Term, subject to termination upon sixty (60) days' written notice by either party. During such holdover period, the cost of living increases provided by this Lease shall be applied to rent. All other terms and conditions shall remain in full force and effect.

ARTICLE 27 - WAIVER

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party consent to any breach of any term, covenant or condition, nor shall either party be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

ARTICLE 28 - QUIET POSSESSION

LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR, subject to the terms of this Lease.

ARTICLE 29 - ESTOPPEL CERTIFICATE

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

ARTICLE 30 - MISCELLANEOUS PROVISIONS

30.1 **Amendment; Waiver:** This Lease may be amended or modified only by an instrument in writing signed by LESSEE and LESSOR. Any waiver of any term or condition of this Lease must be in writing and signed by LESSEE and LESSOR. A waiver of any of the terms and conditions of this Lease shall not be construed as a waiver of any other term or condition in this Lease.

30.2 **Time is of the Essence:** Time is of the essence of in each and all of the provisions of this Lease.

30.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

30.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

30.5 **Authority:** Any individual executing this lease on behalf of LESSEE or LESSOR represents and warrants hereby that he or she has the requisite authority to enter into this Lease on behalf of such party and bind the party to the terms and conditions of this Lease.

30.6 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Lease and the provisions of any addendum or exhibit attached hereto, the provisions of this Lease shall prevail and control.

30.7 **Integration:** This Lease, including the exhibits and addenda, represents the entire agreement between LESSEE and LESSOR with respect to the subject matter of this Lease and shall supersede all prior negotiations, representations or agreements, either written or oral, between LESSEE and LESSOR as of the effective date of this Lease, which is the date that LESSEE signs this Lease.

30.8 **Successors and Assigns:** This Lease and the rights, privileges, duties, and obligations of LESSEE and LESSOR under this lease, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successor, permitted assigns, and heirs.

30.9 **Headings:** The headings in this lease are for convenience only and shall not be used to interpret this terms of this Lease.

30.10 **Governing Law:** This Lease shall be governed by and interpreted under the laws of the State of California.

30.11 **Construction of Lease:** LESSEE and LESSOR agree that each party has fully participated in the review and revision of this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this lease or any amendment to this Lease. The parties agree that they have been afforded an opportunity to have this Agreement reviewed by counsel of their choice. In interpreting this Agreement there shall be no presumption based upon the authorship of this Agreement.

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

30.13 **Disputes; consultations by parties:** In the event that any problem or issue arises with respect to the implementation or interpretation of the Agreement, the parties mutually agree to meet at the request of either of them to discuss and resolve the issue. In such event, the General Manager of LESSEE will meet with the General Manager of MCWRA or his/her designee to reach a mutually satisfactory and reasonable conclusion.

If the parties cannot resolve the dispute pursuant to the preceding paragraph above, the Parties agree to mediate any disagreements in good faith. Should either Party determine the dispute cannot be resolved in mediation, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

31 – LESSEE FEES AND EXPENSES

In addition to any other rates, rents, charges, cost of living increases or other fees and expenses otherwise provided for in this Agreement, LESSEE agrees to pay, upon invoice or demand, those costs, fees and expenses provided for in Exhibit ___ to this agreement, or as may be provided for by a schedule of fees and expenses adopted by the Agency from time to time.

Dated:

Dated:

Monterey County Water Resources Agency

Heritage Ranch Owners Association
[form of business entity]

By _____
By _____

By _____

LESSOR

LESSEE

Attachments

- A. Lease Property Description
- B. LESSEE Marina Rules
- C. Mussel Inspection Plan

[signature page follows]

**LESSEE: (MONTEREY COUNTY
WATER RESOURCES AGENCY)**

By:

David E. Chardavoyne

Title: General Manager

Date:

**APPROVED AS TO FORM: (County
Counsel)**

By:

Jesse J. Avila

Title: Deputy County Counsel

Date:

**APPROVED AS TO FISCAL
PROVISIONS: (County Auditor/Controller)**

By:

Name:

Title: [Assistant] Auditor Controller

Date:

**APPROVED AS TO LIABILITY
PROVISIONS: (County Risk Management)**

By:

Name:

Title: Risk Manager

Date:

LESSEE:

(_____)

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

EXHIBIT A

DESCRIPTION OF PREMISES

Legal Description
Common Description or address
Existing facilities, structures, improvements
Current Basic Floor Plan
Natural features
Vicinity Map
Site Plan/ Plot Plan

EXHIBIT B

**IMPROVEMENTS: PRE-APPROVAL, VERIFICATION OF COMPLETION,
REIMBURSEMENT PROCESS**

EXHIBIT C

PREMISE IMPROVEMENTS¹

1. Premise Improvements:

- a. LESSOR shall construct all Premise Improvements in accordance with the Plans and Specifications as approved by LESSOR and LESSEE, which Plans and Specifications are or will be attached to this **Exhibit C** upon such approval. Premise Improvements must satisfy the Federal Americans with Disabilities Act, as and if applicable.
- b. Premise Improvements are generally described as follows: the remodel of existing interior and/or exterior features as to conform to LESSEE'S approved program for the use of the Premises.
- c. LESSOR shall commence construction of the Premises Improvement work at the earliest opportunity. Cost and schedule of Premise Improvement work shall be approved by LESSOR and LESSEE prior to commencement.
- d. LESSOR shall diligently pursue construction of approved Premises Improvement work and deliver the Premises to LESSEE in a condition suitable for occupancy no later than a date certain, that will be mutually established by LESSOR and LESSEE on or before the date LESSOR'S contractor commences construction of the Premise Improvements.

2. Construction Plans and Specifications, Change Orders and Delay:

- a. LESSOR shall provide for LESSEE'S approval the complete and detailed proposed Plans and Specifications for the Premises Improvements, the design of which shall conform to LESSEE'S approved program for use of the Premises.
- b. LESSEE shall provide LESSOR with written notice of its approval or disapproval of the Plans and Specifications within five (5) business days² after receipt of such Plans and Specifications. If LESSEE disapproves the Plans and Specifications, LESSEE shall describe the reasons for its disapproval in reasonable detail in LESSEE'S notice of disapproval. LESSOR shall revise the Plans and Specifications to satisfy the issues giving rise to LESSEE'S disapproval and submit the revised Plans and Specification to LESSEE as provided in clause 2.a of this **Exhibit C**.

¹ Will Exhibit C always be substantially in this format or will it vary from lease to lease?

² Please confirm that the time periods in this Exhibit are satisfactory to the County.

- c. During construction, LESSOR and LESSEE'S Representative (as defined below) shall confer periodically regarding the progress of the work and the approximate cost of the work completed. LESSEE'S Representative may request changes, modifications or alterations to the Plans and Specifications by written change order delivered to LESSOR, but no such change shall be made without the written approval of LESSOR, which approval shall not be unreasonably withheld. LESSOR shall approve or deny each LESSEE change order within four (4) business days, and LESSOR shall also provide to LESSEE'S Representative, by written notice to LESSEE, an estimate of the maximum cost of each change order within five (5) business days after the delivery of the change order to LESSOR. No work based upon a change order shall be undertaken unless and until LESSEE'S Representative shall have approved (by notice to LESSOR) LESSOR'S cost estimate.
- d. If LESSOR determines that a change proposed by LESSEE will delay completion of the construction beyond the period allocated for such construction, LESSOR shall, within four (4) business days, notify LESSEE'S Representative of the estimated length of the delay caused by LESSEE'S request. LESSEE'S Representative shall advise LESSOR within two (2) business days after receipt of such notice as to whether LESSOR shall proceed with requested change, modification or alteration. LESSOR shall not make the requested change to the Plans and Specifications without LESSEE'S approval of any proposed time extensions.
- e. If LESSOR requires that LESSEE clarify or refine the Plans and Specifications, then LESSEE'S Representative shall meet with LESSOR for the purpose of clarifying or refining the Plans and Specifications within two (2) business days after LESSEE'S receipt of LESSOR'S request therefore. No such clarification or refinement shall be deemed to be a change order.
- f. If LESSOR determines that the Plans and Specifications must be changed as a result of omissions or errors in the Plans and Specifications, then LESSOR shall, prepare and submit to LESSEE revised Plans and Specifications correcting any such omission or error. LESSEE shall approve or disapprove such revised Plans and Specifications within two (2) business days after receipt and shall not unreasonably withhold its approval.
- g. LESSOR shall not be responsible for any delays in the time for completion of construction resulting from LESSEE'S delay. For purposes herein, LESSEE'S delay in the completion of the construction of the Premise Improvements are delays that may arise solely as a result of: (1) LESSEE'S failure to comply with its obligations set forth in subsection b, d, e, or f, above, within the time specified; (2) any change directed by LESSEE after notification to LESSEE that the change will delay completion of the construction as provided in subsection d, above; or (3) extra time required to obtain any long lead items specified by LESSEE. For purposes herein, an item shall be considered a long lead item if LESSOR notifies LESSEE within fifteen (15) business days after receipt of LESSEE'S approval of the Plans and Specifications that such item is not readily available or readily installable after the same is requested by LESSEE.

3. Approval of Plans by Public Authorities: Following LESSEE'S approval of the Plans and Specifications, LESSOR shall obtain approval of the Plans and Specifications for the Premises from all appropriate governmental agencies, and a copy of the Plans and Specifications, as approved by such governmental agencies, shall be dated and initialed by both LESSOR and LESSEE. LESSOR shall exercise due diligence in obtaining any such approval. LESSEE shall cooperate with LESSOR in obtaining all such approvals, and in this regard, LESSEE shall approve all revisions and changes to the Plans and specifications reasonably required by any governmental agency, with due diligence and without delays.
4. Quality of Work: All work performed hereunder shall be done in a good and workmanlike manner, free from faults and defects and in accordance with the Plans and Specifications. All materials and equipment installed in the Premise Improvements shall be new unless otherwise specified in the Plans and Specifications.
5. LESSEE'S Access during Construction: LESSEE'S representative, agents, consultants and contractors ("LESSEE'S Representatives") shall have access to the Premises during the construction of the Premise Improvements for activities and purposes related to construction of the Premises or preparation of the Premises for occupancy. LESSEE'S Representatives on the Premises during construction shall cooperate with LESSOR'S contractor and not delay in any way the performance by LESSOR'S contractors or LESSOR'S representatives of any work (including but not limited to the construction of Premise Improvements).
6. Acceptance of Premises:
 - a. At any time during the construction of the Premise Improvements, LESSEE may reject any work that does not conform to the Plans and Specifications or does not meet good and workmanlike standards as reasonably interpreted by and at the sole discretion of the LESSEE.
 - b. Within five (5) business days after LESSOR delivers to LESSEE a list of work items remaining to be done or corrected and notifies LESSEE that the Premise Improvements are ready for inspection by LESSEE'S representative, LESSEE shall deliver to LESSOR a list of items that LESSEE shall have reasonably determined that LESSOR must complete or correct prior to LESSEE'S acceptance of possession in order for the work to conform to the Plans and Specifications. LESSOR shall immediately commence to complete or correct the items listed by LESSEE, except those it contends are not justified. If LESSEE fails to deliver such a list within the five (5) business day period, LESSEE shall be deemed to have accepted the Premises subject to completion of the corrections on LESSOR'S list of corrections and to have approved the construction.
 - c. Acceptance by LESSEE shall not be unreasonably withheld.

7. Notices: All notices required or permitted hereunder shall be in writing and shall be delivered as indicated in Article 6 of the Lease to which this Exhibit is attached.
8. Notice of Non-Responsibility: LESSOR may post such notices of non-responsibility for payment to LESSEE contracted vendors as it reasonably deems appropriate in or around the Premises during the construction provided for herein.
9. Responsibility for Damage: If LESSEE installs equipment in the Premises prior to completion of the work hereunder, LESSEE shall bear the risk of loss to such equipment other than loss that is a result of negligence or willful misconduct by LESSOR, its agents or contractors.
10. Telecommunications/Data: Premise Improvements may include the installation of necessary telecommunications/data processing linkages, and alarm systems. Specification for telecommunications/data processing linkages and alarm systems will be developed and provided by the Monterey County Information Technology Department as specified in **Exhibit G** of the Lease to which this Exhibit is attached.

PREMISE IMPROVEMENTS PLANS AND SPECIFICATIONS

[TO BE ATTACHED TO THE LEASE WHEN COMPLETED]

EXHIBIT ____

REMEDATION CONTRACTOR SPECIFICATIONS

A. Scope of Services

Remediation Contractor to provide treatment, cleanup, damage restoration and any other necessary remediation of:

- Water and/or sewage damage
- Mold, asbestos, lead, and polychlorinated biphenyl (PCB) contamination
- Fire and smoke damage
- Hazardous materials within the license and certification capabilities of the Remediation Contractor
- Human bodily fluids, including but not limited to blood, vomit, urine, feces, and saliva
- Routine sanitation cleanup

B. Work Standards

All work must be done in accordance with the California Health and Safety Code, California Occupational Safety and Health Act (OSHA), and other applicable laws and regulations. The Remediation Contractor must take all care to ensure that work proceeds under the highest standards of safety and prudence, and in compliance with all applicable laws.

EXHIBIT ____

SERVICE CONTACT LIST

EXHIBIT __

SCHEDULE OF FEES AND EXPENSES

Name	Purpose	Amount/Rate
Lease Administration Fee	Administer the lease by periodic field inspections and yearly document review	A- Hourly rate B- Flat C- Per acre D- Per cow
Follow-up/ Compliance Inspection Fee	Document compliance with deficiency or discrepancy; follow-up from annual field inspec.	A- Flat B- Hourly C-
Late charge		
Lease violation penalty	Escaped cows, unauthorized improvements; illegal dumping; runaway vessels, booms; pollution; encroachment; authorizing access by non tenants etc.	
Pollution Clean-up fee		