

**RENEWAL OF LEASE**

Made this ninth day of December, 2005 at Concord, California by and between the State of California, acting by and through its Department of Fish and Game, hereinafter referred to as "Lessor" and Neushul Mariculture, Inc., hereinafter referred to as "Lessee.

**WITNESSETH:**

**WHEREAS**, Lessee indicated an interest in renewing a prior lease agreement in correspondence dated March 31, 2005 and requested an extension of the lease to renegotiate specific terms of the lease, and

**WHEREAS**, the Fish and Game Commission at the June 24, 2005 meeting in Bishop, California granted the Lessee's request to extend the lease for 120 days to renegotiate specific terms for the new lease, and

**WHEREAS**, the Fish and Game Commission at the September 30, 2005 meeting in Susanville, California granted the Lessee's request to extend the lease for an additional 120 days to renegotiate specific terms for the new lease, and

**WHEREAS**, Lessee is presently a registered aquaculturist authorized to grow marine life for profit in the waters of the State of California as provided in Section 15101 of the Fish and Game Code, and

**WHEREAS**, Lessee expressed support for the Lessor's recommended approval of the requested lease renewal for a 10-year period, at an initial lease rate of twenty-one dollars (\$21.00) per acre at signing and subject to adjustment considering changes in the Consumer Price Index and current lease rates no more often than every five years, at the Fish and Game Commission's discretion, and

**WHEREAS**, the Fish and Game Commission determined that a lease renewal was in the best interest of the State of California at the December 9, 2005 meeting and approved the renewal based on the renegotiated lease terms recommended by the Department of Fish and Game.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

That, in consideration of payment of the monies hereinafter stated in accordance with the renegotiated terms recommended by the Lessor and accepted at a duly called and noticed hearing of the Fish and Game Commission of the State of California, pursuant to law and in consideration of the covenants contained herein on the part of the Lessee, Lessor does hereby grant to Lessee the exclusive privilege to cultivate approved marine algae hereon and in those certain waters of the State of California described as follows, to wit:

All that area of state water bottoms lying within the Santa Barbara Channel (Santa Barbara County), State of California, consisting of two (2) parcels of water bottom lying adjacent to the Ellwood Pier near Ellwood, Santa Barbara County, as shown on the Dos Pueblos Canyon Quadrangle, California, 7-1/2 minute series (topographic) United States Department of Interior, Geological Survey, ranging in depth from 3.05-10.6 meters (10-35 feet), and being more particularly described as follows:

Parcel 1 (of two parcels)

Beginning at a point 1,617 feet from the base, which is the new end of Ellwood Pier, located at approximately 34° 25' 56" North Latitude, 119° 55' 27" West Longitude; thence N 61° 50' W 418 feet, thence South 28° 10' West 209 feet, thence North 61° 51' West 1,254 feet; thence North 28° 10' East 418 feet; thence South 61° 50' East 1,254 feet; thence North 28° 10' East 1,045 feet; thence South 61° 50' East 418 feet; thence South 28° 10' West 1,254 feet along the alignment of and contiguous to, the Ellwood Pier to the point of beginning, containing twenty-four (24) acres more or less.

Parcel 2 (of two parcels)

Beginning at a point which is approximately 393 feet southwesterly from the end of the Ellwood Pier located at approximately 34°25' North Latitude, 119° 55' 23" West Latitude along the old pier alignment South 28° 10' West 209 feet, thence South 61° 50' East 104.5 feet, thence North 28° 10' East 209 feet, thence North 61° 50' West 104.5 to the point of beginning, containing one (1) acre more or less. All bearings true.

These parcels (1 and 2), containing 25 acres more or less, together comprise Aquaculture Lease M-654-03 (Exhibit 1).

This lease, in accordance with the provisions of Fish and Game Code Section 15400, as may from time to time be amended or changed by the State Legislature, is for the sole purpose of cultivating the native marine algae *Gelidium spp.*, *Macrocystis pyrifera*, *M. angustifolia*, *M. intergrifolia*, and *Pelagophycus spp.*, and the exotic algae *Euchema uncinatum* (male plants only) in the previously designated area. All algae shall be planted by the Lessee in a manner approved by the Lessor, to assure that only healthy seed plants will be planted in compliance with Section 15200 of the Fish and Game Code.

Selective removal by hand only, of competing vegetation and sea urchins will be permitted where necessary to enhance survival, growth and proliferation of cultivated plants.

Juvenile plants may be grown in facilities approved by Lessor for transplanting on lease area. Cultivated plants may be harvested in any manner to establish the most suitable method of harvest.

The notice of intent to plant marine algae on the lease shall be given to the Department of Fish and Game's, Marine Region Aquaculture Coordinator, P.O. Box 1560, Bodega Bay, California 94923, telephone (707) 875-4261, or at such other place as Lessor may from time to time designate. In addition to the required ten (10) day notice, at least a 24-hour notice shall be



prior to termination of the lease. The lease may be renewed if, during the notification period, terms for a new lease are agreed upon by Lessee and the Commission. Lessor retains the right to renegotiate terms of the lease, including annual rental rates, subject to adjustment considering changes in the Consumer Price Index and current lease rates, at the Fish and Game Commission's discretion, no more often than every five (5) years during the current renewal period.

- B. Lessee shall keep records as required in accordance with Fish and Game Code Section 15414 on forms to be supplied by Lessor, and shall maintain adequate accounting records sufficient to determine monies due Lessor by the 10th day of each month for all marine algae harvested during the preceding calendar month. Lessor reserves the right to inspect Lessee's premises, equipment and all books at any time, and Lessee's records pertaining to its cultivation of approved species of marine algae on the leased premises and all such marine algae taken from the leased premises.
- C. In order to provide assurance to lessor that this aquaculture lease is utilized for the development of techniques that may be employed for commercial cultivation of algae as stated in the lease application, Lessee shall report on its planting and harvesting activities each year in the annual proof-of-use statement required in Section H of this agreement. Lessor may declare this lease terminated if Lessee at any time, is proven to be failing in good faith, to pursue the purpose of this lease.
- D. If, at any time subsequent to the beginning date of this lease the use of algae culture equipment authorized herein shall fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as determined by Lessor, then upon written notice by Lessor, Lessee shall have sixty (60) days to repair and correct conditions cited by Lessor. Failure to comply with the written notice shall be grounds for termination of this lease and Lessee shall, at the option of Lessor, remove all improvements located on lands covered by this lease.

As a financial guarantee of growing structure removal and/or clean-up expense in the event the lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California", (Addendum 2) the sum of five hundred dollars (\$500). Such money shall be deposited upon entering the lease. The escrow account shall be increased if the Fish and Game Commission determines that, if abandoned, the culture operation is likely to be more expensive to remove. The escrow account may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual Proof-of Use Report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal the lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission and the Lessor.

If Lessee abandons this lease without removing growing structures therefrom, the escrow deposit shall be expended to remove growing structures or otherwise clean up the lease.

In order to assure compliance with the escrow provisions of this lease, Lessee shall dedicate to the agreed upon escrow account specified in the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California", hereby attached to and made part of this agreement, a total of five hundred dollars (\$500). This amount equals the whole of the amount, five hundred dollars (\$500), to be deposited in the "Escrow Agreement for Clean-up of Aquaculture Lease M-653-09, Santa Barbara Channel, Santa Barbara County, California, Escrow Account".

- E. Lessee shall observe and comply with all rules and regulations now or hereinafter promulgated by any governmental agency having authority by law, including but not limited to State Water Resources Control Board, State Coastal Commission, State Lands Commission, and U.S. Army Corps of Engineers. Any other permits or licenses required by such agencies will be obtained by Lessee at his own sole cost and expense.
- F. Lessee recognizes and understands in accepting this lease that his interest therein may be subject to a possible possessory interest tax that the county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by Lessee.
- G. Any modification of natural or existing features of the real property described in this lease, which are not consistent with the authorized uses under this lease are expressly prohibited without prior written consent of the Lessor.
- H. As evidence of progress in aquaculture, Lessee shall submit each year to the State at the Marine Region office, P.O. Box 1560, Bodega Bay, California 94923, a written declaration under penalty of perjury, showing the date and amount of each type of aquaculture development and date and amount of designated species comprising each planting, including a diagram (map) showing area, amounts, and dates planted. Such annual proof-of-use shall be submitted on or before February 1 of each year for the previous year, January 1 -- December 31, inclusive.
- I. This lease shall be canceled at any time Lessee fails to possess a valid aquaculture registration issued pursuant to Section 15101 of the Fish and Game Code. Lessee agrees not to commit, suffer, or permit any waste on said premises or any act to be done thereon in violation of any laws or ordinances. This lease shall be subject to termination by Lessee at any time during the term hereof, by giving Lessor notice in writing at least ninety (90) days prior to the date when such termination shall become effective. In the event of such termination by Lessee, any unearned rental shall be forfeited to the Lessor.
- J. In addition to the conditions and restrictions herein provided for in this lease, and any right or privilege granted, conveyed or leased hereunder, shall be subject to, and Lessee agrees to comply with all applicable provisions of the California Fish and Game Code, and regulation of the Fish and Game Commission, in particular Sections 15400 - 15415, inclusive, of the Fish and Game Code, and expressly recognizes the right of the Legislature and the Fish and Game Commission to enact new laws and regulations. In the event of any conflict between the provisions of this lease and any law or regulation,

the latter will control. This lease shall be deemed amended automatically upon the effective date of such conflicting law or regulation.

- K. This lease is personal to the Lessee and shall not be transferred, assigned, hypothecated or subleased, either voluntarily or by operation of law, without prior approval of the Fish and Game Commission.
- L. The waiver by the Lessor of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach, whether of the same or any other term, covenant or condition, regardless of the Lessor's knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by the Lessor shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of the Lessee to pay the particular monies so accepted, regardless of the Lessor's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of the agreement or revocation of any notice or other act by the Lessor. In the event of any breach by Lessee of any of the provisions hereof, other than the payment of any sum due from Lessee to Lessor hereunder, which breach is not remedied, abated and cured by Lessee within sixty (60) days after notice in writing, shall cause this lease to thereupon cease and terminate.
- M. Lessee shall not assign or transfer this agreement without prior written approval. Such written approval of the assignment or transfer of lease shall be subject to any and all conditions required by the Fish and Game Commission including, without limitation by reason of the specifications herein, the altering, changing or amending of this agreement as deemed by the Commission to be in the best interest of the State.
- N. Lessee hereby indemnifies and holds harmless the Lessor, its officers, agents and employees against any and all claims and demands of every kind and nature whatsoever arising out of or in any way connected with the use by the Lessee of said lease or the exercise of the privilege granted herein.
- P. The terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties and the successors, and assigns of the parties hereto.
- Q. The attached Nondiscrimination Clause (OCP-1) is hereby made a part of this agreement.

Except as herein amended, all other terms of said lease agreement shall remain unchanged and in full force and effect.

**IN WITNESS THEREOF**, the parties hereto have caused this lease to be duly executed as of the day and year first above written.

**APPROVED:**

**FISH AND GAME COMMISSION**

By: \_\_\_\_\_  
JOHN CARLSON JR., EXECUTIVE DIRECTOR

**STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME**

By: \_\_\_\_\_  
LESSOR

**BRUCE HARGER  
NEUSHUL MARICULTURE, INC.**

By: \_\_\_\_\_  
LESSEE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }SS

On \_\_\_\_\_ before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,

personally known to me

NAME(S) OF SIGNER(S)

- OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

INDIVIDUAL  
CORPORATE OFFICER

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
TITLE(S)  
PARTNER(S)  
LIMITED or GENERAL  
ATTORNEY-IN-FACT  
TRUSTEE(S)  
GUARDIAN/CONSERVATOR  
OTHER:

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

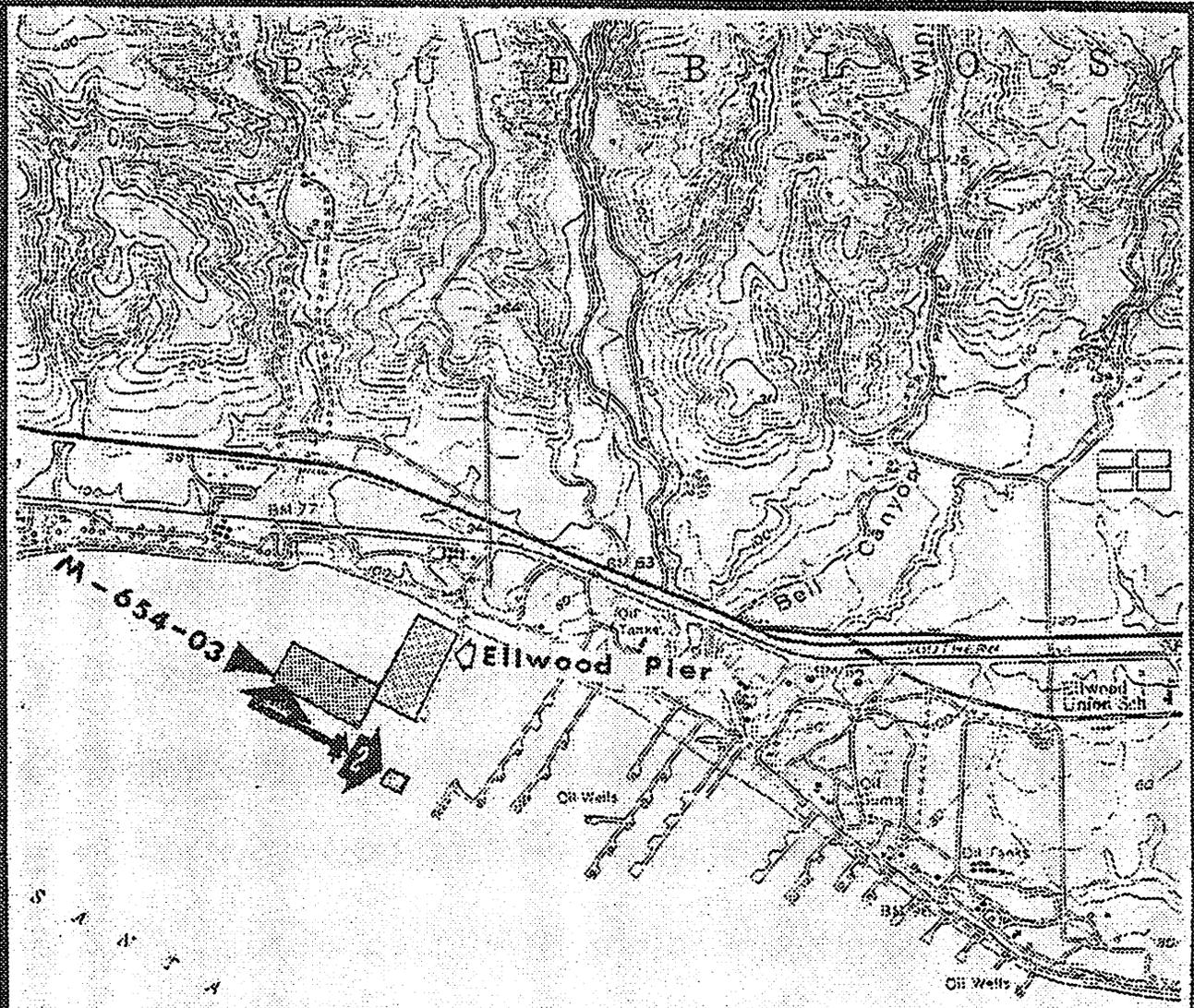
\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE



**LOCATION MAP  
SANTA BARBARA AREA  
AQUACULTURE LEASES**



DEPARTMENT OF FISH AND GAME MARINE RESOURCES DIVISION