





GRAZING LAND LEASE

THIS INDENTURE ("Lease"), made and entered into as of the 1<sup>st</sup> day of December, 2015, by and between City of Onalaska, hereinafter referred to as the "Lessor", and Clearwater Foundation Inc., hereinafter referred to as the "Lessee".

WITNESSETH:

That in consideration of the mutual covenants, promises and agreements herein contained, said parties hereto do hereby covenant, promise, and agree to and with each other as follows:

1. LEASE OF PREMISES.

(a) Real Estate. The Lessor does hereby demise and lease and let unto the Lessee the land legally described on attached Exhibit "A" (the "Premises").

(b) Use of Premises. Lessee may only use the Premises for the grazing of livestock during the term of this Lease.

2. TERM.

(a) The term of this Lease shall commence on the date set forth above and continue thereafter until December 31, 2017 at which time the Lease shall expire. Lessor may extend this Lease for an additional two (2) years by giving Lessee written notice on or before December 1, 2017. Lessee shall have the right and option to renew the Lease ("Renewal Option") for five (5) additional periods of one year each (the "Option Terms") (a separate notice is required for each Option Term); provided, however, each Renewal Option is contingent upon the following: (i) Lessee is not in default of the Lease, (ii) no event has occurred that upon notice or passage of time would constitute a default; and (iii) Lessee is

occupying and using the Premises for the purposes set forth in the Lease. Lessee shall exercise each Renewal Option by giving Lessor written notice at least ninety (90) days prior to the expiration date of the Initial Term or the last day of the then current Option Term. Lessor shall then have sixty days to accept the Renewal Option and notify Lessee in writing of its acceptance or denial. If Lessor fails to respond within sixty days, the Renewal Option shall be deemed accepted. If Lessee fails to give notice to Lessor prior to the ninety (90) day period then Lessee shall forfeit the Renewal Option. If Lessee exercises the Renewal Option, then during the applicable Option Term, Lessor and Lessee respective rights, duties and obligations shall be governed by the terms and conditions of the Lease, except as provided otherwise herein.

(b) Lessor may elect to terminate the lease at anytime upon thirty days written notice to the Lessee.

3. RENTAL AND RENT CREDITS.

(a) The Lessee agrees to pay Four Thousand and 00/100 Dollars (\$4,000) per year for the Premises as the rental obligation of Lessee during the term of this lease. Each annual payment shall be delivered on or before each June 30 during the term of this Lease.

(b) Lessee shall recognize that Lessee's use of the Premises is providing Lessor with a service regarding the control/eradication of invasive species as well as relief from maintaining the landscaping on the Premises. In recognition of the services being provided by Lessee, Lessor grants Lessee a rent credit of Four Thousand and 00/100 Dollars (\$4,000) per year during the term of this Lease.

4. INSURANCE AND INDEMNITY.

As additional rent:

(a) The Lessee shall, throughout the term of this Lease, at its own cost and expense, procure and maintain insurance which covers the Premises against fire and wind, and storm damage and such other risks as may be included in the broadest form of extended coverage insurance as may be from time to time available in amounts determined sufficient by the Lessor. Such policy or policies shall name the Lessor as loss Payee and additional insured; and, Lessee shall furnish proof of insurance, shall include Lessor as loss payee, and additional insured on policies and shall continue to provide Lessor with proof of maintenance of such insurance on a yearly basis. Specifically, the City of Onalaska and its officers, council members, agents, employees and authorized volunteers shall be named as additional insured and the Lessee shall file a copy of the Certificate of Insurance evidencing the coverage provided by this Lease prior to execution of this Lease.

(b) The Lessee agrees to procure and maintain, at the Lessee's own expense, policies of insurance insuring the Lessee's use and occupancy of said Premises or equipment, and insuring Lessor and Lessee from all claims, demands or actions made by or on behalf of any person or persons, firm or corporation and arising from, related to or connected with the Premises or equipment, for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than \$1,000,000.00 combined single limit per occurrence/aggregate. Said insurance shall be written on an "occurrence" basis and not on a "claims made" basis. If at any time during the term of this Lease, Lessee owns or rents more than one location, its liability policy shall

contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned or rented by Lessee. Lessor shall have the right, exercisable by giving notice thereof to Lessee, to require Lessee to increase such limit if, in Lessor's judgment, the amount thereof is insufficient to protect Lessor and Lessee from judgments which might result from such claims, demands or actions. Said insurance shall also fully cover the indemnity and hold harmless set forth in Subparagraph (d) of this Paragraph. The City of Onalaska and its officers, council members, agents, employees and authorized volunteers shall be named as additional insured on such policies and the Lessee shall file a copy of the Certificate of Insurance evidencing the coverage provided by this Agreement prior to execution of this Agreement.

(c) The Lessee shall provide the Lessor with copies of any and all policies. Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties of this Lease, or anyone claiming by, through, or under it in connection with the Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Lease to be so insured, then the party so insured or so required hereby releases the other party from any liability said other party may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance or which could have been recovered had such insurance been carried as so required, and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or

increase the cost thereof, except that in the case of increased cost, the other party shall have the right, with fifteen (15) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect.

(d) The Lessee shall defend, indemnify, and hold the Lessor harmless against any and all claims, damages and lawsuits arising after the commencement date of this Lease, and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained in or about the Premises or as a result of the Lessee's possession or use of the Premises, and the Lessee agrees to save the Lessor harmless from, and indemnify the Lessor against, any and all injury, loss, or damage, or claim for injury, loss or damage, of whatever nature, to any person or property caused by, or resulting from any act, omission or negligence of the Lessee or any employee or agent of the Lessee. In addition, the Lessor shall be exempt from any and all liability for any damage or injury to persons or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any cause or happening whatsoever unless caused by the negligent acts of Lessor, and the Lessee shall defend, indemnify, and hold the Lessor harmless therefrom.

(e) The Lessee agrees that the Lessor shall have no obligation or liability to insure against any loss or damage in respect of the inventory or parts, accessories or property, including animals owned, stored or held by the Lessee in or upon the Premises, and the Lessee agrees to save the Lessor harmless from, and indemnify the Lessor against, any and all loss or damage, or claim for injury, of any matter, in respect of the said inventory, accessories and

property which may arise during the term of this Lease.

5. CONDITION OF THE PREMISES.

(a) The Lessee has examined and knows the condition of the Premises, and has received the same in good order and repair, and no representations as to the condition or repair thereof have been made by the Lessor or any agent or employee of said Lessor, prior to, or at the execution of this Lease. The Lessee agrees that at the expiration or termination of this Lease the Lessee shall leave said Premises in good condition, ordinary wear and tear being excepted.

6. REPAIRS AND MAINTENANCE.

(a) The Lessee covenants and agrees to keep and maintain in good order, condition and repair the interior and exterior of the entire Premises during the term of the Lease, and further agrees that the Lessor shall be under no obligation to make any repairs or perform any maintenance to the Premises during the term of the Lease or the Option Terms. The Lessee covenants and agrees that it shall be responsible for all repairs, alterations or maintenance, including replacement if necessary of heating, ventilating and air-conditioning equipment. Lessee shall be responsible for maintenance for the entire Premises regardless of whether the entire area is used for grazing, including maintenance in compliance with the City Ordinances of a three (3) foot buffer zone between any fence which may be constructed and the City's sidewalks or wetlands, as may be designated by the City (the "Buffer Zone"). The Buffer Zone shall be maintained by Lessee in compliance with the City's ordinances and regulations.

(b) If the Lessee refuses or neglects to commence or complete repairs

promptly and adequately, the Lessor may, but shall not be required to, do so and the Lessee shall pay the cost thereof to Lessor upon demand. It is understood that the intention of the parties hereto is that the Lessee shall pay all expenses of maintenance and repair during the term of this Lease. The Lessee further covenants and agrees not to permit alterations of or upon any part of the Premises except by and with the prior consent of the Lessor. All alterations and additions to said premises shall be made in accordance with all applicable laws and shall remain for the benefit of the Lessor unless otherwise provided in the said consent; and the Lessee further agrees, in the event of making such alterations as herein provided, to indemnify and save harmless the Lessor from all expense, liens, claims or damages to either person or property or the Premises arising out of or resulting from the undertaking or making of said alterations or additions.

7. ALTERATIONS AND IMPROVEMENTS.

(a) Lessee shall not make any alterations in or additions to the Premises, or make any contracts therefor, without first procuring the Lessor's written consent. Lessee shall be responsible for the cost, setup and maintenance and removal of any additional fencing needed, except that Lessor shall have the right to request that any additional fencing be left upon termination of the Lease.

(b) All alterations, additions and improvements and fixtures (other than Lessee's movable office equipment), shall be the property of Lessor, and shall remain upon and be surrendered with the demised premises as a part thereof, without disturbance, molestation, or injury, at the termination of this Lease, whether by the lapse of time or otherwise, all without compensation or credit to Lessee. Lessee may remove all personal

property, and other movable office equipment upon termination of the Lease, provided that the premises are left in a good state of repair, allowance being made for ordinary wear and tear.

9. COMPLIANCE WITH LAWS AND REGULATIONS. The Lessee will comply with all statutes, ordinances, rules, orders, regulations and requirements of all federal, state, city and local governments, and with all rules, orders and regulations of the applicable Board of Fire Underwriters.

10. LESSOR NOT LIABLE TO LESSEE FOR DAMAGES.

(a) The Lessor shall not be liable for any damage alleged or caused by failure to keep the Premises in repair, and shall not be liable for any damage alleged or caused by or from plumbing, gas, water, steam or other pipes, or sewerage, or the bursting, leaking, or running of any cistern, tank, washstand, water closet or waste pipe, in, above, upon or about the Lease Premises, nor for damage occasioned by water, snow or ice being upon, nor for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property.

11. DEFAULT AND REMEDIES.

(a) If the Lessee defaults in the payment of the rent or breaches any of the provisions, covenants or conditions in this Lease, then the Lessor shall have the unequivocal and categorical right to declare this Lease terminated by giving written notice to the Lessee. If the Lessee fails to correct the default within fifteen (15) days after written notice is mailed to the Lessee at the Premises, then this Lease shall terminate and the Lessor shall have the right, with or without process of law, to expel, remove and put out, using such force as may be

necessary so to do, any person occupying the Premises. The Lessor shall then have the right to occupy or use the premises without prejudice to any remedies to recover rental arrearage or other remedies.

(b) In the event this Lease is terminated because of the Lessee's noncompliance with or breach of this Lease, then the Lessor may, at its option, relet the Premises as the agent of the Lessee, and the Lessee shall pay the Lessor the difference between the rent reserved under this Lease for the portion of the term remaining from the date of the breach, and the amount received by the Lessor under the reletting. The Lessee and Lessor each hereby waives all right to trial by jury in any proceeding hereafter instituted by either of them against the other in respect to the Premises and further each of them hereby waives all right to jury trial in any other action brought by either of them against the other arising out of this Lease.

12. QUIET POSSESSION. The Lessor covenants that the Lessee, on paying the rent above stipulated and performing the covenants and conditions of this Lease, shall have, hold and enjoy the Premises free from molestation, eviction or disturbance by the Lessor, or by any other person or persons lawfully claiming the same, and that the Lessor has good right to make this Lease for the full term hereby granted.

13. SUBLEASING OR ASSIGNMENT. The Lessee may not sublease all or part, of its interest in this Lease or the term hereof, without the prior consent of the Lessor.

14. MISCELLANEOUS PROVISIONS.

(a) Unless otherwise required by law, all written notices shall be given by certified mail. Notices to the Lessor shall be addressed to the person and address at which

rent has been last paid. Notices to the Lessee shall be addressed to the Lessee at the Premises. The Lessor and the Lessee may, from time to time, change these addresses by notifying each other of this change in writing.

(b) The terms, conditions and covenants contained in this Lease and any riders and plans attached hereto shall bind and inure to the benefits of the Lessor and the Lessee and their respective successors, heirs and legal representatives and assigns.

(c) This Lease shall be governed by and construed under the laws of the State of Wisconsin.

(d) In the event that any provision of this Lease shall be held invalid or unenforceable, no other provision of this Lease shall be affected by such holding, and all of the remaining provisions of this Lease shall continue in full force and effect pursuant to the terms thereof.

(e) The paragraph captions are inserted only for convenience and reference, and are not intended, in any way, to define, limit, or describe the scope, intent and language of this Lease or its provisions.

(f) This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

(g) This Lease may be executed in any number of counterparts with the same effect as if all parties executed a single instrument.

(h) A short form of this Lease in recordable form may be requested by either the Lessor or Lessee for recording their respective interest in said Lease, and each party

agrees to execute such "Short Form of Lease" at the request of the other party hereto.

IN WITNESS WHEREOF, the Lessor and Lessee have respectively signed and sealed this Lease as of the day and year first above written at \_\_\_\_\_, Wisconsin.

LESSOR:

CITY OF ONALASKA

LESSEE:

CLEARWATER FOUNDATION INC.

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

Name: Joe Chilsen

Title: Mayor

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

Name:

Title:

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

Name: Caroline Burmaster

Title: City Clerk

EXHIBIT A  
To Lease

# Park and Recreation Organization Chart (3/28/2016)

