

GRAZING LICENSE

THIS GRAZING LICENSE is entered into on _____ 2010, between the CITY OF MARTINEZ (Licensor) and PATRICIA HORNUNG (Licensee).

1. PREMISES

A. Licensor hereby licenses to Licensee, and Licensee hereby licenses from Licensor, on the terms and conditions hereinafter set forth, the right to use that certain parcel of real property described in Exhibit A attached hereto and made a part hereof (“premises”) for the purpose of grazing, care and feeding of horses as set forth herein and for no other purpose.

B. Licensor makes no warranties and/or representations to Licensee concerning the suitability of the premises for grazing purposes.

C. Licensee’s possession of the premises is subject to:

1. All existing easements, servitudes, leases, licenses and rights of way for canals, ditches, levees, roads, highways and telegraph, telephone and electric power lines, railroads, pipelines, utilities and other purposes, whether recorded or not; and

2. The primary rights of other persons using the City’s Open Space and Trails, of which the premises forms a part.

D. The License granted to Licensee hereunder shall not give Licensee exclusive rights to use and/or occupy the premises for purposes allowed hereunder and Licensor shall retain the right to license, lease or otherwise convey interests and rights in the premises to other persons not inconsistent with the rights granted to Licensee hereunder.

2. INITIAL TERM, EXTENSION, POSSESSION

A. The initial term of this License shall be for three (3) years commencing _____ and expiring _____ unless earlier terminated in accordance with paragraph 20 hereof. If Licensee remains in possession of the premises after expiration or earlier termination of the initial term, or after the date in any notice given by Licensor to Licensee terminating this License, with Licensor’s written consent and in the absence of a contrary written agreement between the parties, such possession by Licensee shall be deemed to be a license from month-to-month terminable on thirty (30) days’ written notice given at any time by either party to the other at a monthly license fee, payable in advance in an amount as determined in the sole discretion of Licensor. All provisions of this License except those pertaining to the monthly license fee shall apply to the month-to-month license.

B. Licensee may, request to extend the initial term of this License for an additional period of three (3) years. Any extension of the initial term shall be at the sole discretion of Licensor and shall be subject to all the provisions of this License, provided, however, that the amount of the license fee shall be subject to renegotiation at that time.

Upon approval by Licensor of any extension hereof, all references in this License to the term shall be considered to mean the term as extended, and all references to termination or to the end of the term shall be considered to mean the termination or end of the term as extended. Any extension of the Term hereof shall be subject to the following conditions and terms.

1. Conditions precedent:

a. The License shall be in effect at the time notice of request to exercise is given by Licensee and on the last day of the initial term.

b. Licensee shall not be in default under any provision of this License at the time notice of request to exercise is given, or on the last day of term, or at any time during the term for a consecutive period of more than thirty (30) days.

2. Compliance with the following procedure:

a. At least NINETY (90) days before the last day of the initial term, but no earlier than ONE HUNDRED TWENTY (120) days before the last day of the initial term, Licensee shall give Licensor notice irrevocably requesting to exercise the option.

b. In lieu of executing a new License, each party shall, at the request of the other, endorse on the original License, or on a true copy of the original License, that party's signature or signatures, the date of the option was exercised, and the words, "Option Exercised."

3. Licensor's prior written consent granting Licensee the right to extend the original term of this License, which consent is subject to the Licensor's sole and unfettered discretion.

3. LICENSEE'S CONVENANT TO PAY

A. Semi-annual License Fee

Licensee shall pay Licensor as a monthly License Fee, an amount equal to the number of horses Licensee keeps on the premises for any amount of time during each month, during the term, multiplied by \$20 (the "Animal Unit Month rate"). Payment will be made in arrears semi-annually beginning six months after the commencement of the term.

B. Charge for Late Payment

If any payment specified in this license is not paid to Licensor within ten (10) days after due date, a late charge of two percent (2%) of the payment shall become immediately due and payable to Licensor. An additional charge of two percent (2%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

C. Maintenance Deposit

Licensee shall, before execution of this agreement, deposit with CITY \$2,000 to be applied at the discretion of the CITY to perform maintenance and repair duties on the premises which the Licensee fails to discharge pursuant to the terms of this License. Upon notice by City and should it become necessary for CITY to utilize said deposit to correct deficiencies, Licensee shall pay sufficient monies to CITY to maintain this cash deposit at \$2,000. If, at the end of the INITIAL TERM or extended term of this License there should remain any unencumbered or unexpended funds in the maintenance deposit account, those unexpended funds shall be returned to Licensee as long as the Licensee is not otherwise in default under this License.

D. Monthly log

At the end of each month during the term, Licensee shall make a written record ("animal log") of each horse which Licensee has kept or placed, for any period of time, on the premises during that month. Along with each rental payment, Licensee shall deliver to Licensor copies of the animal logs pertinent to the previous six months. Licensee shall sign each log, certifying each log as to its accuracy and truth.

E. License Fees shall be payable in cash, certified checks or cashier's check. Labor and materials in lieu of cash may be accepted at the sole discretion of Licensor provided however credit for such labor, or labor and materials shall not be granted unless Licensee obtains prior written consent of Licensor for such credit and such credit will be applied to the next semi-annual or installment payment due following completion of said work. License Fees in the form of labor and materials are permissible if such labor or materials are being utilized in connection with construction, maintaining, improving or removal of fences, gates, or cattle guards, seeding, road or pasture maintenance and /or water developments pertinent to the premises.

4. USE

A. Licensee shall be permitted to use the premises for the grazing, caring and feeding of up to six (6) horses. Any allowance for use of the premises for additional horses shall be at the Licensor's sole discretion. Licensee shall not use the premises for the riding of horses whether casual, regular or otherwise. Licensee shall conduct its operations on the premises in a manner commensurate with that of a reasonable farmer. Licensee shall, in a manner satisfactory to Licensor's representatives, remove from the

premises and properly dispose of any horses or other animals which may die on the premises. In this regard, Licensee has an affirmative duty to remove all dead animals from the premises. If Licensee fails to remove such animals within five days of notice by Licensor requesting such removal, Licensor may remove such animals and charge the Licensee for the time and material expended. Licensee shall pay the bill therefore within thirty (30) days after receiving same. Licensee shall immediately report any case of infectious animal disease appearing in horses or other animals present on the premises to all proper governmental authorities and shall take all steps required to isolate, control and eliminate any such disease, all at Licensee's own expense.

B. Licensor shall advise Licensee when, in the opinion of Licensor's authorized representative, Licensor shall require the reseeded of any areas of the premises with approved pasture grasses, and Licensee shall reseed said areas with such grasses when so instructed, at Licensee's sole cost and expense.

C. Licensee shall not cut, or permit to be cut, any trees on the premises, nor shall Licensee remove or permit to be removed trees downed by wind or other cause on the premises without the prior written consent of Licensor.

D. Licensee shall not burn any vegetation on the premises without the prior written consent of Licensor which consent may be withheld for any reason or no reason whatsoever. In the event Licensor consents to any Licensee requested burn, Licensee shall obtain a permit therefore and shall carefully fireguard all trees, fences and other structures and improvements when burning weeds or stubble on the premises.

E. Licensee shall not carry on or permit upon said premises any nuisance, or anything against public policy, or commit, or suffer to be committed, any waste upon the premises.

F. In addition to providing Licensor the animal logs as described above, Licensee must inform Licensor, semi-annually during the grazing season, or upon the request of Licensor, of the number of horses being stocked on the premises.

G. Licensee shall comply with all laws, permits, statutes, ordinances and rules and other requirements regulating the conduct of Licensee's business.

H. Licensee shall conduct and permit the care and feeding of the horses and the provision of ferrier and veterinarian services thereto only at Benham Drive unless emergency conditions exist.

5. LICENSEE'S DUTY TO PROPERLY UTILIZE RANGE

Licensee shall have an affirmative duty to care for and properly utilize the premises subject to the following specific conditions:

A. Licensee shall ensure that ravines and gullies will remain stabilized against active erosion.

B. Licensee shall maintain the premises in a manner which will ensure that the range on the premises will exhibit a healthy diversity of desirable grasses and forbs and be sustained in this condition over time and during the life of this license.

C. Licensee shall maintain the health of all palatable shrub species on the premises and prevent damage by horses other than light browsing.

D. If required by Licensor, Licensee shall screen small ground objects and livestock trails from view by planting vegetative screening as approved by Licensor.

E. Licensee recognizes that in some years it may be necessary to reduce stocking or remove animals earlier than Licensee expects due to unusual growing conditions.

Licensee is responsible at all times to insure that the above conditions are met. Licensor shall have the right to direct the termination of grazing in the event of overgrazing or direct the amount of grazing that will not constitute overgrazing. Should the License be terminated by Licensor, Licensee shall have no recourse to damages against Licensor or its employees, agents or officers.

6. ACCEPTANCE AND SURRENDER OF PREMISES

A. By entry under this License, Licensee accepts the premises in their present “as is” condition and agrees, on the last day of the term or on sooner termination of this License, to surrender the premises and the appurtenances to Licensor in the same condition as when received, reasonable use, wear and damage by fire (not caused by Licensee), Act of God, or the elements excepted, and to remove all of Licensee’s property from the premises.

B. Acceptance of Licensor of surrender by Licensee must be evidenced by a written acknowledgment of acceptance of surrender by Licensor, or Licensee may surrender license by giving 30 days written notice, sent by registered mail to the above address.

7. MAINTENANCE OF IMPROVEMENTS

A. At Licensee’s sole cost; Licensee shall maintain, repair and replace, if necessary, in good order and condition throughout the term hereof, all buildings, structures and /or other improvements related to Licensee’s use of the premises (“improvements”) including, without limitation, all fences, corrals, wells, pumps and pressure systems, ditches, water troughs and roadways. Licensee accepts the premises “as is” and as such, Licensor shall bear no responsibility for maintenance or repair of buildings, structures fences, corrals, wells, pumps and pressure systems, ditches, water

troughs and roadways and/or other improvements which are now or hereafter may be located on the premises.

B. In the event Licensee shall fail to perform its obligations hereunder, Licenser, in addition to all other remedies available hereunder or by law, and without waiving any said alternative remedies, may perform same and Licensee agrees to repay Licenser the cost thereof within 30 days after Licensee receives an invoice for such costs, Failure to pay said costs shall constitute a breach of this License. Licensee waives all rights to make repairs at the expense of Licenser as provided for in any statute or law in effect at the time of execution of this License or any amendment thereof or any other statute or law which may be hereafter enacted during the term of this License.

8. ALTERATIONS, LIENS

A. Licensee agrees not to make any alterations of, changes in, or additions to the premises without the prior written consent of Licenser, which may be withheld for any reason or no reason whatsoever. In determining whether to grant its consent, Licenser may require, among other things, that:

1. Licensee submit, for Licenser's approval, detailed final plans and specifications and working drawings of the proposed alterations and the name of its contractor at least thirty (30) days before the date it intends to commence the alterations.

2. All alterations must be approved by all appropriate government agencies, and all applicable permits and authorizations are obtained prior to commencement of the alterations and such alterations shall be completed with due diligence in compliance with the plans and specifications and all applicable laws.

3. Licensee shall obtain the insurance requested by Licenser in its sole discretion.

All alterations, additions and improvements, including fixtures, made in, to, or on the premises, except unattached, movable fixtures, shall be the property of the Licenser and shall remain upon and be surrendered with the premises, except that Licensee will ascertain from Licenser with thirty (30) days before the end of this term whether Licenser desires to have the premises, or any part or parts thereof, restored to their condition when the premises were delivered to Licensee and, if Licenser shall so desire, Licensee shall so restore said premises or such part of parts thereof before the end of the term of this License, entirely at Licensee's own cost and expense.

B. Licensee agrees that, if any such alteration, changes or additions are to be made, same shall not be commenced until ten days after receipt of the written consent of Licenser required by this paragraph in order that Licenser may post appropriate notices to avoid any liability on account thereof. Licensee agrees to indemnify, defend, protect and hold harmless Licenser from all liens, claims, demands, liabilities arising out of any work performed, materials furnished or obligations incurred by or for Licensee upon said

premises during said term and agrees not to suffer any such lien or other lien to be created.

9. UTILITIES

Licensee agrees to pay for all water, fuel, gas, oil, heat, electricity, power, materials and services which may be furnished to or used in or about said premises during the term of this License.

10. ENTRY AND INSPECTION

Licensee agrees that Licensor and its agents may enter on the premises to inspect them, make any changes, alterations or repairs which Licensor shall consider necessary for the protection, improvement or preservation thereof, or to post any notice provided for by law, or to confirm the number of animals located on the premises, or otherwise to protect any and all rights of Licensor; and Licensee shall not be entitled to any abatement of fees by reason of the exercise by Licensor of any such rights herein reserved. Nothing herein contained shall be construed to obligate Licensor to make any changes, alterations or repairs.

11. ASSIGNMENT AND SUBLETTING

This License is personal to Licensee and Licensee shall not assign, encumber, sublicense or transfer this License in whole or in part.

12. HOLD HARMLESS

Licensee shall indemnify, defend, protect and hold Licensor, its agents, officers and employees harmless from all liabilities, penalties, losses, damages, costs (including, without limitation, attorney's and experts' fees), expenses, causes of action, claims and/or judgments arising out of or in connection with Licensee's use or occupancy of the premises and/or Licensee's activities hereunder.

13. INSURANCE

A. Licensee shall procure, and keep in force during the term of the License, at Licensee's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California and which are acceptable to the Licensor in Licensor's sole opinion. Licensee shall, upon Licensee's execution of the License, supply Licensor with an executed certificate of insurance and endorsements as required by the City Manager showing that such insurance is in force prior to commencement of the term:

1. Public Liability (bodily injury and property damage) including premises and operations, blanket contractual liability, broad form property damage,

personal injury and owners' and contractor's protective liability in an amount not less than \$1,000,000 per occurrence, combined single limit.

The above policy must contain provisions naming the licensor as additional insured and stating that the policy shall not be cancelled or materially changed without thirty (30) days' prior written notice to Licensor. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Licensee to furnish the required insurance during the term of the License.

B. The policies listed under subparagraph (a) shall be primary insurance and any other insurance available to Licensor under any other policies shall be excess over the insurance outlined above.

14. DEFAULT

Licensee hereby agrees that:

A. Should Licensee fail to pay the License Fee set forth herein, or any part thereof, or any sum required by Licensee to be paid to Licensor at the times or in the manner herein provided; or

B. If Licensee shall abandon or vacate said premises, or

C. If default should be made in any of the other covenants of or conditions which are Licensee's to perform and herein contained, and not be cured within ten (10) days after written notice by Licensor to Licensee of such default; Licensor, or Licensor's agents and representatives, with or without terminating this License, shall have the right to re-enter the premises or any part thereof, either with or without process of law, and expel, remove and put out Licensee or any person or persons occupying said premises and remove all personal property and livestock therefrom, using such force as may be necessary to again repossess said premises, without prejudice to any remedy which might otherwise be available at law or equity, and without liability to any person for damages sustained by reason of such removal. No such re-entry or taking of possession of said premises by Licensor shall be construed as an election on its part to terminate this License unless a written notice of such intention is given to Licensee. Licensor may likewise, at Licensor's option, but at the cost of Licensee and in addition to any other remedies which Licensor may have upon such default or failure or neglect and with notice to Licensee, petition the Superior Court of the State of California for and be entitled as a matter of right to the appointment of a Receiver and said Court may appoint such Receiver and vest in him/her such powers and authority as may be necessary or proper to fully protect all the rights herein granted or reserved to Licensor.

Licensor may likewise, at Licensor's option and in addition to any other remedies which Licensor may have upon such default, failure or neglect, let, relet or license said premises in whole or in part, at such rental and upon such terms and for such length of

time, whether less or greater than the unexpired portion of the term of this License, as Licensor may see fit.

Should this License not be terminated, Licensor may, notwithstanding such letting, reletting, or licensing at any time thereafter elect to terminate same immediately upon notice to Licensee. Should this License, prior to the expiration of the term hereof be terminated by Licensor by reason of any breach hereof by Licensee. Licensor shall thereupon, at its options, be entitled to recover from Licensee:

1. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this License;
2. The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this License until the time of award exceeds the amount of the loss of rent that Licensee proves could have been reasonably avoided;
3. The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Licensee proves could have been reasonably avoided; and
4. Any other amount, and court costs, necessary to compensate Licensor for all detriment proximately caused by Licensee's default.

“The worth, at the time of the award,” as used in (1) and (2) of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. “The Worth, at the time of the award,” as referred to in (3) of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

15. WEED AND PEST CONTROL

Licensee shall, at its sole cost and expense, control ground squirrels, mice, rats, gophers and other animals and all noxious weeds encroaching upon the premises only upon Licensor notifying Licensee of the necessity of such control. In such event, Licensee shall within thirty (30) days following such notice comply as directed. The methods used for such control must be methods approved in writing by the Licensor's Park and Recreation Department or any other department designed by Licensor. In the event that Licensee does not so comply, Licensor may take such steps as are required to fulfill Licensee's obligation hereunder and charge the cost to Licensee, which cost Licensee agrees to pay upon demand.

16. LICENSEE AS INDEPENDENT CONTRACTOR

Licensee enters into this License as an independent contractor and not as an agent or employee of Licensor, as the word “employee” is defined in the Workmen’s Compensation Act of the State of California.

17. CONFLICT OF INTEREST

Licensee hereby warrants and represents to Licensor that no officer and/or employee of Licensor nor any member of Licensor’s Park & Recreation Commission or City Council has or will have, directly or indirectly, any interest whatsoever in this License.

18. COST OF SUIT

If legal action shall be brought by either of the parties hereto for unlawful detainer of the premises, or for the recovery of any rent due under the provisions of this License, or because of the breach of any term, covenant or provisions hereof, the party prevailing in said action shall be entitled to recover from the party all prevailing costs of suit and a reasonable attorney’s fee.

19. NOTICES

Wherever this License provides for notices between the parties, or wherever the law requires or gives the right of serving a notice, the same shall be served personally or by registered or certified mail, addressed follows:

TO LICENSOR:

**CITY OF MARTINEZ
City Manager
525 Henrietta Street
Martinez, CA 94553-2394**

TO LICENSEE:

PATRICIA HORNUNG
2816 Greenhorn Court
Cool, CA 95614
(925)945-8328
(530) 887-1471

Licensor and Licensee may at any time in the manner provided herein change the place of receiving notice.

20. TERMINATION

The Licensor shall have the right to terminate this License without cause at any time upon the giving to Licensee at least ninety (90) days advance written notice. Upon the effective date of said termination, Licensee shall be required to comply with all the other terms and conditions in this License governing Licensee's rights and obligations upon the termination of this License. Should Licensor terminate this License pursuant to this section, Licensee shall have not rights (and waives any such rights) or recourse as against Licensor, and/or its agents, officers and /or employees for any damages, claims injuries or liabilities suffered or incurred by Licensee as a result thereof, and Licensee waives any and all rights it may have against Licensor and its agents, offices and employees under California Civil Code section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

21. CUMULATIVE REMEDIES, NON-WAIVER

The receipt by Licensor of any License Fee or payment with or without knowledge of the breach of any covenant hereof shall not be deemed a waiver of any such breach and no waiver by Licensor of any sum due hereunder or any provision hereof shall be deemed to have been made unless expressed in writing and signed by Licensor. No delay or omission in the exercise of any right or remedy accruing to Licensor upon any breach by Licensee under this License shall impair such right or remedy or be construed as a waiver of any such breach theretofore or hereafter occurring. The waiver by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Licensor either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law.

22. TAXES

Licensee agrees to be responsible for all taxes that arise by virtue of the imposition of a possessory interest tax and such other taxes and all personal property taxes as arise from Licensee's grazing operation and use of the premises.

23. MISCELLANEOUS

A. It is agreed by and between the parties hereto that all the agreements herein contained upon the part of Licensee, whether technically covenants or conditions, shall be deemed conditions for the purpose hereof, conferring upon Licensor, in the event of breach of any of said agreements, the right to terminate this License.

B. Licensee agrees, at any time and from time to time within ten (10) days of written request from Licensor, to execute, acknowledge and deliver to Licensor a statement in writing certifying that this License is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified, and stating the modification), and the dates to which the License Fees and other charges have been paid in advance, if any, it being intended that such a statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the premises.

C. In case there is more than one Licensee, the obligation of Licensee's executing this License shall be joint and several. The words "Licensor" and "Licensee" as used herein shall include the plural as well as singular. The covenants and agreements contained herein shall be binding upon and be enforceable by the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the restrictions herein imposed on assignment by Licensee.

D. Time is of the essence of this License and of each and every covenant, condition and provision herein contained.

E. The paragraph headings of this License are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this License or any provision thereof or in any way affect this License.

F. The word "term" as used herein shall be deemed to refer to both the initial and extended term.

G. This License shall be governed by the Laws of the State of California.

H. This License supersedes any prior agreements and contains the entire agreement of the parties with respect to their subject matter contained herein.

IN WITNES WHEREOF the parties here to have subscribed their names, the day and year first hereinabove written.

LICENSOR

LICENSEE

City of Martinez

By: _____

Patricia Hornung

Date: _____

Date: _____

EXHIBIT "A"

ASSESSORS' PARCEL

164- 02-26
164-452-59
164-470-02

TOTALING: 49.04 acres

Initials:

Licensor

Licensee

RESOLUTION NO. _____

ADOPTED: _____