

RESOLUTION NO. 051313-2

A RESOLUTION APPROVING A LEASE AGREEMENT WITH CHARLES AND DORAN CLEMENCE CONCERNING THE MAINTENANCE AND USE OF CITY-OWNED PROPERTY

WHEREAS, the City Commission desires to enter into a Lease Agreement with Charles and Doran Clemence for the purposes of maintaining City-owned property and to allow the private use of said property as provided in the Agreement.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

Section 1. Lease Agreement. That a Lease Agreement between Charles and Doran Clemence and the City of Abilene, Kansas, is hereby adopted as attached hereto as **Exhibit A**.

Section 2. Implementation. The Mayor is hereby authorized to execute the Lease Agreement with Charles and Doran Clemence, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

Section 3. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 13th day of May, 2013.



CITY OF ABILENE, KANSAS

By: John Ray
John Ray, Mayor

ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

EXHIBIT A

Lease Agreement

City of Abilene, Kansas

and

Charles and Doran Clemence

(Property Maintenance and Use)

May 13, 2013

PASTURE LEASE

This agreement is entered on this 15th day of May, 2013, by and between the City of Abilene, Kansas, a municipal corporation, "City," and Charles Clemence, "Tenant." The terms of the agreement are as follows:

1. **Leasehold.** City hereby leases to Tenant a tract of land approximately sixty-four and five tenths (64.5) acres and legally described as:

A parcel of land located in the Northwest Quarter of Section 23, Township 13 South, Range 1 East of the 6th Principal Meridian in Dickinson County, Kansas, more particularly described as follows: Beginning at the Northwest Corner of said Northeast Quarter; thence on assumed bearing of N 89° 09' 42" E along the North line of said Northeast Quarter a distance of 1313.92 feet to the Northeast corner of the West Half of said Quarter; thence S 00° 17' 28" E along the East line of the West Half of said Quarter a distance of 1889.67 feet; thence S 89° 06' 34" W a distance of 547.09 feet; thence S 00° 01' 04" E a distance of 407.57 feet; thence S 89° 06' 34" W a distance of 775.87 feet to the West line of said Northeast Quarter; thence N 00° 01' 04" W along said West line a distance of 2298.48 feet to the Point of Beginning; Said parcel containing 64.47 acres, more or less, and is subject to easements, reservations, and restrictions of record.

2. **Term.** This lease shall be for a term of twenty years commencing on the 1st day of June, 2013, and ending on the last day of December, 2033. At the end of this lease, Tenant shall deliver the leased premises to City without further notice, unless extended in writing by the parties.

3. **Consideration.** No rent shall be due from Tenant until such time as he begins to graze cattle on the property. At the time that Tenant begins to graze cattle on the property, Tenant shall pay rent to City at the then applicable market rate as determined by the median pasture rate suggested by the FSA for the Dickinson County, Kansas, area. No grazing shall take place until the Tenant first notifies the City in writing of his intent to graze.

4. **Possession.** Tenant agrees that at the expiration of this lease to give peaceful possession of said premises to City in equivalent condition, to not make or allow any waste thereon, or to not make or allow any alteration, specifically with regard to drainage, thereon without the prior written consent of City.

5. **Assignment.** Tenant shall not assign this lease or any interest in the leasehold without the prior written consent of City, which consent shall not be unreasonably withheld by City.

6. **Permitted Uses and Restrictions.** Tenant shall be permitted to graze no more than twenty-five head of cattle at a time on the property. No confined feeding operation shall be permitted.

7. **Property Maintenance.** Tenant shall clear the property of noxious weeds, shrubs and trees so as to make the property suitable for grazing at Tenant's expense. Tenant shall plant brome or an appropriate grazing grass on the property. City and Tenant shall each pay one-half of the cost of the grass seeding. Tenant shall keep the pasture free of noxious weeds, shrubs and trees at Tenant's expense. Tenant is permitted to burn the pasture after first giving notice to City of intent to burn. City agrees to furnish a water truck to the pasture during the burn should Tenant request one.

8. **Prohibited Uses.** Tenant shall not allow any third parties to use the property for hunting, fishing or other sporting purposes. Tenant shall not apply or allow the use of any chemicals or materials, except for fertilizer, on the property. No hazardous materials shall be stored on the property.

9. **Fence and Cattle Guards.** The property shall be fenced prior to grazing. City and Tenant shall each pay one-half of the cost of installing the fence. The fence must be built according to fence standards in the area and to the satisfaction of the City before City will pay its share of the fence cost. After the fence is installed, Tenant shall continue at his expense to maintain the fence. City agrees to construct cattle guards as it deems necessary to allow access to its water wells. City agrees to install and maintain the cattle guards at its own expense.

10. **Water Use by Tenant.** City agrees to provide Tenant with access to water from its wells at the sole discretion of City. Any water furnished to Tenant by City shall be paid for by Tenant at the rates established for users outside the city limits and pursuant to City Code.

11. **Easement.** Tenant owns land adjacent to the leased premises. Tenant agrees to give City, at no cost, a permanent easement or easements for ingress and egress for City to gain access to its water wells either currently existing or as may be developed in the future. Tenant further agrees to give City, at no cost, permanent easements necessary for water transmission pipe lines under and across Tenant's separate property as needed by City. City shall be responsible for obtaining and paying for a survey to determine the legal description of the easement or easements.

12. **Entry.** City shall have a right of entry upon the leased premises for the purpose of removing and preventing the construction or erection of any building, structures or facilities and the growth of any trees or other objects upon the land, other than those herein expressly reserved to Tenant.

13. **Breach.** Upon the default in the payment of the rent as provided herein, or the violation of any of the preceding covenants or provisions, City, at its election, may either file suit for said rent due or declare this lease at an end and recover the same as if held by forcible detainer. It is further understood and agreed that the grass growing upon the premises and fences, upon the election of City declaring this lease at an end, shall become the property of City.

14. **Insurance and Indemnification.** City shall keep its property insured on a casualty and liability policy for the City. Tenant shall obtain his own personal property insurance insuring his cattle and property used and located on the premises against damage or destruction. City shall have no liability to Tenant for damage caused to Tenant's cattle or personal property

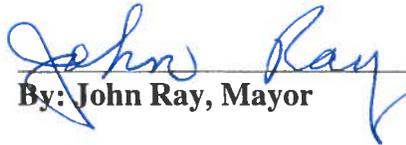
unless directly caused by an employee or agent of the City. City and Tenant each agree to indemnify and release the other from any claim made by a third party for injuries to person or property caused by or due to the negligence of the other party.

15. **Effect.** This lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, trustees, successors and assigns of the parties hereto.

16. **Integration.** This lease contains all of the terms of the agreement between the parties, and any additions or modifications shall be in writing and executed in the same manner as this lease.

In Witness Whereof, the parties have executed this lease agreement on the dates indicated below.

The City of Abilene, Kansas:


By: John Ray, Mayor

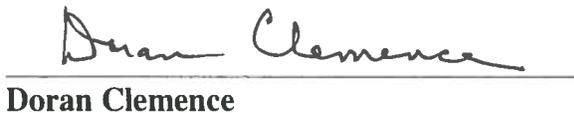


Attest:


Penny Soukup, City Clerk, CMC

Tenants:


Charles Clemence


Doran Clemence