RESOLUTION NO. (R)09- 10

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND EXECUTING A LICENSE AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE ORO VALLEY HISTORICAL SOCIETY TO ALLOW FOR THE PLANTING, CULTIVATING AND MAINTENANCE OF NATIVE AMERICAN AND PIONEER GARDENS AND TO PERMIT GUIDED SITE TOURS ON THE SITE KNOWN AS STEAM PUMP RANCH

WHEREAS, The Town of Oro Valley is a municipal corporation within the State of Arizona and is vested with all the rights, privileges and benefits and entitled to the immunities and exemptions granted to municipalities and political subdivisions under the Laws of the State of Arizona; and

WHEREAS, in 2007 the Town completed the acquisition of property known as Steam Pump Ranch in order to preserve the historical integrity of the site; and

WHEREAS, the Oro Valley Historical Society is dedicated to the preservation of the cultural and historical identity of the Town and to the education of the public regarding the same; and

WHEREAS, the planting of Native American and Pioneer Gardens and providing site tours for the public are activities consistent with the Town's adopted Master Plan for Steam Pump Ranch.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley, Arizona, that the License Agreement between the Town of Oro Valley and the Oro Valley Historical Society, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved.

BE IT FURTHER RESOLVED that the that the Mayor and any other administrative officials of the Town of Oro Valley are hereby authorized to take such steps as are necessary to execute and implement the terms of the Agreement.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 18th day of February, 2009.

TOWN OF ORO VALLEY

Paul H. Loomis, Mayor

ORO VALLEY HISTORICAL SOCIETY (Licensee)

Patricia Spoerl

Patricia Spoerl, Board President

Date: 02/23/09

LICENSE

THIS LICENSE AGREEMENT is made between the **Town of Oro Valley, Arizona,** a municipal corporation ("Town") and the **Oro Valley Historical Society** ("Licensee"). The parties agree as follows:

1. Grant of Permission. In consideration of fulfillment of the promises contained herein, the Town hereby gives non-exclusive permission, revocable and terminable as provided herein, to Licensee and its members and guests to enter and remain on that portion of Town's property described as Steam Pump Ranch for the purpose of planting, cultivating, harvesting and maintaining Native American and Pioneer Gardens and providing tours of the grounds, excluding any access to buildings on site unless otherwise indicated herein (Licensed Activities). This License Agreement entitles Licensee to enter and utilize those areas depicted in Exhibit "A" (Licensed Areas) for the Native American and Pioneer Gardens and the storage of attendant equipment, and to provide site tours for the public as described below. The proposed Licensed Activities are consistent with the historical significance of the property, the approved Master Plan, and the mission and purpose of the Licensee.

2. Site Access. Access to the Licensed Areas shall be granted through the southern entry gate which is secured by a touchpad controlled lock. The President and Project Volunteer Coordinator and two OVHS Board members identified by the President for Licensee shall be given the access code upon the stipulation that at least one of the four (4) OVHS members with touchpad access must be present at all times when Licensed Activities are performed. No other members of the Licensee's organization or volunteers shall be given the access code or permitted on site without the aforementioned OVHS members.

3. Site Tours. Licensee may conduct one (1) site tour of the grounds per calendar month for the duration of this Agreement. It shall be Licensee's responsibility to schedule each site tour and provide supervision and guides for each tour. Licensee shall notify the Town Manager, or designee, by telephone no less than seven (7) days prior to each scheduled tour to obtain clearance for the proposed event. Town reserves the right to deny access for a specific tour date and time or to place reasonable restrictions on the scope of a site tour dependant upon, but not limited to, such factors as safety conditions on site and conflicts with scheduled construction and/or maintenance. Town agrees that permission to conduct site tours shall not be unreasonably withheld or restricted.

4. Pioneer Garden. The Parties contemplate that the Licensed Activities shall be commenced in phases dependant on funding. To that end, although designated as a Licensed Area for the purposes of this Agreement, Licensee agrees to obtain permission from the Town Manager prior to beginning work on the Pioneer Garden.

5. Protection of Historically, Archeologically and Culturally Significant Areas. Licensee hereby agrees to exercise due care in performing the Licensed Activities, paying special

attention to the historically and culturally sensitive nature of the Steam Pump Ranch Site. If in the course of performing any Licensed Activities Licensee uncovers any archeologically, historically or culturally significant artifacts, Town shall be immediately notified and all Licensed Activities shall cease in the Licensed Areas. The parties may agree to re-designate the Licensed Areas in the event the discovery of archeological, historical and/or cultural resources renders the current site unusable.

6. Costs. All costs associated with the Licensed Activities shall be at the sole expense of Licensee, with the exception of the cost of water for irrigation. Town shall make available reasonable water service for the purposes of irrigation. Town, however, bears no responsibility for the use or application of such water service.

7. Privilege Non-Assignable. License privileges hereunder are not assignable to any other individual or organization.

8. Hold Harmless. Licensee assumes full responsibility and liability for any injury or damage to the above described property or to any person while using the above described property caused by or arising out of the exercise of this License. To the fullest extent allowed by law, Licensee indemnifies, defends, and holds harmless the Town, its officers, departments, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of this License, which are attributed, in whole or in part to Licensee's use of the property, or to any act or omission of Licensee, its agents, employees, members, guests or anyone acting under its direction, control or on its behalf, whether intentional or negligent in connection with or incident to this License. Licensee's indemnity responsibilities shall not extend to the sole negligence of the Town, its officers, departments, employees and agents. This indemnity is independent of the insurance requirements of Section 4 and shall survive the termination of the License for no more than one (1) year following the termination of the Agreement to the extent that Licensee's actions during the term of this License creates a potential liability on behalf of the Town.

9. Insurance. Prior to operation of any activity pursuant to this license, Licensee shall obtain a Two Million Dollar ($2,000,000) general liability insurance policy naming Town as Additional Insured to cover the Licensee's activities within the Town's property. The Town reserves the right to require additional insurance in the Town's sole discretion. The policy shall be maintained throughout the term of this License by Licensee. This License shall automatically terminate if insurance lapses. A certificate of insurance shall be supplied to the Town with the stipulation that the insurance company shall notify the Town in writing of any intent to cancel the liability insurance. This notification shall be required no less than thirty (30) days prior to cancellation and Licensee shall immediately cease operating under this license within thirty (30) days of notification.

10. Property of Licensee. Licensee hereby waives any claims against Town for damages and/or theft caused to the Native American or Pioneer Gardens and/or other property owned by Licensee that remains on the Licensed Areas, including any and all equipment kept in the storage area. Licensee assumes all responsibility for the safekeeping of any of

its property left on site or in the storage area and acknowledges that Town shall not provide any security measures for the site beyond what is currently in place. Additionally, Licensee acknowledges that there may be ongoing maintenance and construction projects on the site that impact the Licensed Areas. Although Town agrees to exercise due care in completing these projects, Licensee hereby agrees to hold harmless Town for any damage resulting from the aforementioned activities.

11. Annual fee. There is no annual fee associated with this license.

12. Permits. This License is not a right-of-way use permit. Following the granting of this License by the Town, Licensee shall obtain all applicable permits, if any, at Licensee's sole expense.

13. Term. This License shall run for a period of three (3) years from the date this License is executed by the Town and may be renewed for additional terms upon agreement of the parties and authorization by the Town Manager on behalf of Town. Notwithstanding any other condition, this License may be terminated by either party prior to expiration or revoked by the Town upon ninety (90) days' written notice to the other. The Town may terminate or revoke by delivering a termination or revocation statement executed by the Town Manager. When this License expires, terminates or is revoked, Licensee shall cease to utilize the property within ninety (90) days. Licensee shall restore the property to the pre-license condition or as may be mutually agreed upon.

14. Licensee has no Interest or Estate. Licensee agrees that it has no claim, interest or estate at any time in the property by virtue of this License or its use hereunder. Upon termination or revocation of this License, Licensee shall have no right of entry upon the property greater than that of the general public.

15. Removal of Equipment. Upon expiration, termination or revocation of this License for any reason, Licensee shall promptly remove all or part of its equipment as required by the Town at Licensee's sole expense and to the satisfaction of the Town. Licensee shall not seek compensation or financial reimbursement for any costs associated with the removal or relocation of the equipment from the Town. In the event any of Licensee's equipment is not promptly removed by Licensee as directed the Town, the Town shall have the right to remove the equipment and Licensee hereby agrees to reimburse the total amount of the Town's costs incurred for the partial or complete removal of the equipment within sixty (60) days of receipt of an invoice from the Town for said costs. In the event Licensee fails to reimburse the Town for the costs of removal within the 60-day period, the Town shall be entitled to the Town's reasonable attorney's fees and interest at the rate established by A.R.S. § 44-1201(A), occurring from the date of costs incurred.

16. Conflict of Interest. This Agreement is subject to A.R.S. § 38-511 which provides for cancellation of contracts by the Town for certain conflicts of interest.

17. Entire Agreement and Amendments. This Agreement and the attached exhibit constitute the entire agreement between the parties. No change or addition is to be made to this Agreement except by a written amendment executed by the Town and Licensee.

18. Notices. Unless provide otherwise, any and all notices required to be given pursuant to this License shall be sent by First Class Mail, postage prepaid, and addressed as follows:

If to Town:

David Andrews
Town Manager
Town of Oro Valley
11000 N. La Canada Dr.
Oro Valley, AZ 85737

Tobin Rosen
Town Attorney
11000 N. La Canada Dr.
Oro Valley, AZ 85737

If to Licensee:

Board of Directors
Oro Valley Historical Society
P.O. Box 69754
Oro Valley, AZ 85737

IN WITNESS WHEREOF, the parties hereto have executed this License as of this 23 day of February, 2009.

TOWN OF ORO VALLEY (Licensor)

Paul H. Loomis, Mayor

ATTEST:

Kathryn Cuvelier, Town Clerk

Date: 2-19-09

APPROVED AS TO FORM:

Tobin Rosen, Town Attorney

Date: 2/20/09

ATTEST:

Kathryn E. Cuvelier, Town Clerk

APPROVED AS TO FORM:

Tobin Rosen, Town Attorney

Date: 2-/28/09