

USE AGREEMENT

1. PARTIES

This Agreement (AGREEMENT) is made by and between the University of Montana Western, located at 710 South Atlantic, Dillon, Montana 59725 (USER) and The Montana Center for Horsemanship (CENTER) an educational Foundation, located at 707 Horseman Way, Dillon, Montana 59725.

2. PURPOSE

USER needs to lease premises in Dillon, Montana, for the USER's Natural Horsemanship program and other equine-related programs. CENTER has premises available for lease which meet this purpose.

3. PREMISES DESCRIPTION

The area to be leased currently includes 84 horse stalls, use of indoor and outdoor arenas, parking area and other amenities required for the UMW Natural Horsemanship program. When the Center obtains the necessary funding, it will develop classrooms, conference center, concessions, training pens and have scheduled use of these additional new premises for UMW classes, student riding time, and other equine related events.

4. TERM

The term of this AGREEMENT shall be seven (7) years, beginning on the 1st day of July, 2018, and terminating on June 30, 2025, unless earlier terminated or extended pursuant to this AGREEMENT.

5. RENEWAL OPTION

This agreement will be reviewed for renewal at the end of the period per procedure required by Montana State law.

6. CONSIDERATION

A. For Natural Horsemanship Program:

USER shall pay CENTER \$232,000 per year (guaranteed 80 boarding stalls which includes feeding horses and routine maintenance of the stalls @ \$290/month rent for 10 months plus exclusive use of an arena during the scheduled Natural Horsemanship skill classes being taught each block) annually in semi-annual payments within 15 working days after the scheduled tuition collection date (around September 15 and February 15). This amount shall constitute the sole guaranteed amount owed by USER to CENTER during the term of this AGREEMENT. Mutually agreed on changes to the terms can be negotiated by March of odd numbered years based on student enrollment and operation cost. USER should encourage private and other donations for the improvement of the CENTER, and also encourage that such donations be made directly to "The Montana Center for Horsemanship."

As the CENTER expands, UMW will market and collect rent on additional available stalls to be utilized by students who choose to board at the CENTER -on an as-rented but not guaranteed basis. The semester boarding rate paid to the center will be \$1450 per student/stall. Fall semester will be considered August 1 through Dec. 31 and spring semester will be January 1 through May 31. All students including Natural Horsemanship majors may board at the center during the months of June and July for a summer rate of \$300 per month of which \$290 will be paid to the CENTER. The payment dates will be September 15, February 15 and June 15. The CENTER will charge other (non-student) horse boarders at a rate equal to or greater than \$290/month. The CENTER and USER will coordinate to maximize occupancy of all the stalls while making sure the parties do not "overbook" the available stalls.

- B. As the CENTER develops, mutually agreed upon use rates will be set for students who use the Center without boarding their horse. A rate list will be established -and posted at the Center. These fees will be collected by Montana Western and paid to the CENTER on the established payment dates. A list will be provided to the CENTER each semester of students who have paid and may schedule use time or be at the open arena times.
- C. CENTER shall deal solely and exclusively with USER regarding Center use by registered full-time students. An appropriate number of staff will be assigned to manage all agreements with the CENTER.
- D. As the Center develops, a master calendar showing the scheduled use of the arenas and pens, open riding hours, an event schedule, etc., will be developed and agreed upon yearly between USER and the CENTER as an appendix to the AGREEMENT.

7. UTILITIES & SERVICES

CENTER shall furnish and pay all utilities including water, gas, electricity, garbage removal, and sewage charges. CENTER shall have full responsibility for feeding and watering of boarded horses and routine cleaning of leased stalls. The CENTER shall also have sole responsibility for providing and maintaining arenas, fences and lighting in the stall area as needed for USER horsemanship activities. USER will provide own cell service as needed. As the CENTER develops full classroom capability, wireless access for computers will be provided.

8. PARKING SPACE

USER may park in available parking spaces. Students who use the parking area do so at their own risk. There is no security personnel and CENTER will not guarantee the safety of the student's property or vehicle.

9. PARKING AREA AND SIDEWALK MAINTENANCE

CENTER shall keep the parking area and sidewalks in good repair, and shall timely remove snow and ice from the parking area and sidewalk.

10. NOTICE PROTOCOL

Any notice or demand required or permitted to be given under this lease must be in writing. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section.

CENTER's address and contact person for purposes of receiving notice or demand are:

Mr. Cal Erb
PO Box 1366
Dillon MT 59725
Phone: 406-683-2391

USER's address and contact person for the purpose of receiving notice or demand are:

Susan D. Briggs
Vice Chancellor for Administration, Finance & Student Affairs
The University of Montana Western
710 South Atlantic Street
Dillon MT 59725
Phone: 406-683-7031

If either party changes its address or contact person, it must notify the other party in writing at the address provided in this section.

11. QUIET ENJOYMENT

USER shall peaceably and quietly have, hold and enjoy the leased premises and all rights, easements, covenants and privileges belonging or in any way appertaining thereto, during the term of this AGREEMENT.

12. MAINTENANCE OF PREMISES

CENTER shall, at its own cost and expense, make repairs, keep the leased premises, including all arenas and pens used by USER, in a fit and usable condition and maintain in good working order and condition the exterior of the premises including the roof, the interior, all fixtures, and all related electrical, plumbing, sanitary, heating, ventilation and air-conditioning owned by CENTER.

13. CASUALTY OR FIRE DAMAGE

In the event the leased premises becomes twenty-five percent (25%) destroyed or made uninhabitable or unusable for USER horsemanship boarding and activities by fire or other casualty, or if the premises are condemned by a proper authority, this AGREEMENT may be terminated by either party.

If the premises are less than twenty-five percent (25%) or more destroyed or made uninhabitable or unusable for USER horsemanship boarding and activities by fire or other casualty, the rent shall be reduced by the proportion of the premises that have been rendered uninhabitable or declared unsafe. For purposes of this section, other casualty includes but is not limited to vandalism.

If the premises are not restored, or cannot be restored, and returned to proper condition for use and occupancy within thirty (30) days of the casualty, CENTER or USER may terminate the AGREEMENT upon ten (10) days written notice to the other party.

Upon written notice of termination pursuant to this section, CENTER shall refund any unearned rent paid and USER shall have no further obligation to CENTER under this AGREEMENT. CENTER shall continue to insure the premises until USER personal property is removed from the premises. USER shall have thirty (30) days after termination of this AGREEMENT to remove its property from the premises.

14. ALTERATIONS TO THE CENTER

USER may not make any alterations to the CENTER. Permanent improvements or alterations shall remain the property of the CENTER at the termination of the AGREEMENT. In addition, CENTER agrees to make no substantial alteration to other facilities used by USER, in a manner materially detrimental to the purpose of this AGREEMENT and any USER activities conducted hereto without prior written approval of USER.

USER shall surrender the premises at the end of the AGREEMENT term, including any renewal thereof, in a condition substantially similar to the condition of the premises at the commencement of the AGREEMENT, notwithstanding alterations agreed to by CENTER, reasonable wear and tear alone excepted.

15. SIGNS

USER shall not place signs on the premises without CENTER's prior written consent and approval. If CENTER allows signage and USER wishes to advertise its location at the CENTER, USER shall pay CENTER for installation of a suitable sign on the exterior of the premises at a location mutually agreeable to CENTER and USER.

16. HOLD HARMLESS AND INDEMNIFICATION

Each party to this agreement shall be responsible for claims and damages to persons or property resulting from acts or omissions on the part of itself, its employees, or its officers. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any person firm or corporation not a party to this agreement. Neither party to this agreement shall be considered the agent of the other party.

CENTER and its directors, officers, employees, subsidiaries, and agents will not be liable for claims, demands, liabilities, damages, expenses (including attorneys' fees) for injury to persons or damage to property caused or asserted to have been caused by the negligent or intentional acts or omissions of the USER, its students, faculty, agents, servants, or employees. The parties acknowledge that USER is a

governmental entity and subject to sovereign or governmental immunity. The parties agree that USER does not waive such immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

Formatted: Font: +Body (Calibri), 11 pt, Not Bold, Not Italic

17. INSURANCE INSPECTIONS

At its sole cost and expense, CENTER shall maintain property insurance upon the leased premises and CENTER fixtures for the term of this AGREEMENT against the following hazards:

Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.

Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.

Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

CENTER shall also purchase Occurrence coverage with combined single limits of \$1 million per occurrence / \$2 million aggregate per ~~year~~. This insurance must be from an insurer licensed to do business in Montana or by a domiciliary state and with a Best's rating of no less than A-.

USER shall maintain its own insurance on the contents of the leased premises and its own property and CENTER shall not be liable for any damage done to or loss of personal property belonging to USER or its employees or for damage or loss caused to USER activities arising from any acts or neglect of USER, its employees or other occupants of the leased premises. USER agrees to provide the statutory self-insurance provided by the State of Montana. The law (Title 2, Chapter 9 Montana Code Annotated) provides for tort liability self-insurance with limits of \$750,000 per claim and \$1.5 Million per occurrence and covers only the tort liability of USER's officers, agents, and employees and may not expand that liability to include third parties. USER will provide a Certificate of Insurance upon request.

18. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

USER and CENTER agree to comply with all applicable federal, state and local laws, regulations, and ordinances affecting the use of the premises, as well as those affecting animal care generally and care of horses specifically, and to assume all legal responsibility for any charges or damages for non-observance.

CENTER agrees to provide, upon reasonable request, access to any CENTER records relating to this AGREEMENT; and to create and retain records relating to this AGREEMENT lease for a period of three (3) years from its termination or the conclusion of any claim, litigation or exception relating to the AGREEMENT.

19. ENVIRONMENTAL HAZARDS

CENTER represents that, to the best of its knowledge, any use, storage, treatment or transportation of hazardous substances which has occurred in or on the premises prior to the lease date has been in compliance with all applicable federal, state and local laws, regulations and ordinances.

CENTER further represents that, to the best of its knowledge, no release, leak, discharge, spill disposal or emission of hazardous substances has occurred in, on or under the premises and that the leased premises are free of hazardous substances as of this AGREEMENT date.

If either party to this agreement discovers that a release, leak, discharge, spill, disposal or emission of hazardous substances has occurred in, on or under the premises or that the premises are not free from hazardous substances, the party shall immediately notify the other party.

If USER determines at any time that the leased premises pose a significant environmental hazard to its employees, USER may terminate the AGREEMENT with a written thirty (30) day notice.

20. HORSE HEALTH

USER and CENTER both agree that all horses boarded at the Center will be current on all required vaccinations at least two weeks before arriving at the Center. USER shall provide documentation that all horses boarding at the Center, by students, shall be current on all required vaccinations. CENTER shall be responsible for providing documentation that all non-student parties boarding at the Center are current on all required vaccinations. The parties will annually review the vaccination program and provide a list to each boarder. In the event that there is an emergency requiring additional vaccine, either party may contact the other and implement the new vaccination. Presently the following vaccines are required: a 5-way vaccine which includes Eastern Encephalitis, Western Encephalitis, Tetanus Toxoid, Influenza and Rhinopneumonitis (Influenza and Rhinopneumonitis may be given separately as IM or Intranasal vaccination) and for Strangles (horses 5 years of age and younger). All horses must have a copy of a current Negative Coggins report (drawn & reported within the past 12 months). CENTER will also provide a quarantined area for a sick horse. Record-keeping and other horse health issues will be agreed upon between the CENTER and USER.

21. DEFAULT

The failure of either party to this AGREEMENT to fully perform under any or all of the terms and conditions shall constitute a breach of this lease, entitling the non-defaulting party to take any and all such action as may be provided by law.

Any breach or default alleged under this AGREEMENT shall be occasioned by a thirty (30) day written notice of the same to the defaulting party. If at the end of such thirty (30) day period, the defaulting party has not cured the breach, the non-defaulting party may take any and all such actions as may be provided by law.

At the expiration or termination of this AGREEMENT or any extension hereto, USER will vacate and surrender the premises to CENTER in as good condition and repair as when it took possession, reasonable wear and tear excepted. All property placed in the leased premises by USER shall be removed by USER within thirty (30) days of such expiration or termination. Any failure to remove said property shall be an admission by USER that said property is abandoned.

22. SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this lease is held to be illegal, void or in conflict with any applicable legal requirement, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this AGREEMENT did not contain the particular term, condition or provision held to be invalid.

23. VENUE AND INTERPRETATION

This AGREEMENT shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this AGREEMENT, the proper venue for the hearing of the case is the District Court of the Fifth Judicial District of the State of Montana, in and for the County of Beaverhead. Each party shall be responsible for its own attorney's fees and costs.

24. SUCCESSORS

All rights and liabilities herein given to and or imposed upon both parties shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective successors.

25. ENTIRE LEASE

This AGREEMENT contains the entire agreement between USER and CENTER. Any agreement hereafter made shall not be effective to modify this AGREEMENT unless such agreement is in writing and signed by both parties.

26. SUBLEASE AND ASSIGNMENT

USER agrees not to sublet in whole or part any portion of the leased premises. Neither party may assign this AGREEMENT without the other party's prior written consent, which may not be unreasonably withheld.

27. SMOKE FREE ENVIRONMENT

CENTER shall make the portions of the building occupied by USER tobacco free. When in use by UMW for classes and UMW events, the Center will be tobacco free.

Formatted: Indent: Left: 0"

28. REDUCTION OF FUNDING

The USER must by law terminate this contract if funds are not appropriated or otherwise made available to support the USER's continued performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the USER shall terminate this contract as required by law. The USER shall provide CENTER the date the USER's termination shall take effect. The state shall not be liable to CENTER for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the USER shall be liable to CENTER only for the payment, or prorated portion of that payment, owed to CENTER up to the date the USER's termination takes effect. This is CENTER's sole remedy. The USER shall not be liable to CENTER for any other payments or damages arising from termination under this

Formatted: Indent: Left: 0"

section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

IN WITNESS HEREOF, all parties have entered into and executed this AGREEMENT on the dates stated below:

CENTER: Montana Center for Horsemanship

BY: _____
Cal Erb, President

Date: _____

USER: The University of Montana Western

BY _____
Susan D. Briggs, Vice Chancellor for Administration, Finance & Student Affairs
The University of Montana Western

Date: _____