

# **LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF LEE'S SUMMIT, MISSOURI,  
as Lessor**

**and**

**SONRISE MASONRY, INC.  
as Lessee**

\_\_\_\_\_

**January \_\_\_\_, 2022**

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, (the “Lease”) dated as of \_\_\_\_\_, 2022 (the “Effective Date”), is between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **SONRISE MASONRY, INC**, a corporation organized and existing under the laws of the State of Nebraska, as lessee (the “Company”);

### RECITALS:

1. Pursuant to Ordinance No. \_\_\_ which was adopted by the City Council on \_\_\_\_\_, 2022 to approve this Lease, the City is authorized to enter into this Lease for the purpose of leasing certain real property located at 1305 SW Jefferson Street, in the City to the Company (“**Leased Premises**,” as legally described in **Exhibit A** and depicted in **Exhibit B**) to allow Company to store certain materials and merchandise (as more specifically described in **Section 4.1** hereof), in consideration of rental payments by the Company.

2. Pursuant to the foregoing, the City desires to lease the Leased Premises to the Company and the Company desires to lease the Leased Premises from the City, for the rentals and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in the Redevelopment Agreement which definitions are hereby incorporated herein by reference, the following words and terms as used in this Lease shall have the following meanings:

“**Additional Rent**” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“**Basic Rent**” means the rental described in **Section 5.1** of this Lease.

“**City**” means the City of Lee’s Summit, Missouri and its employees, agents, directors, officers, elected and appointed officials, and contractors.

“**Company**” means Sonrise Masonry, Inc., a Nebraska corporation, and its successors or assigns.

“**Environmental Law**” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to,

or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

**“Full Insurable Value”** means the actual replacement cost of the Leased Premises less physical depreciation as determined in accordance with **Section 7.1** hereof.

**“Lease Term”** means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

**“Lender”** means any person who from time to time has made a loan to Company which is secured by a Mortgage.

**“Mortgage”** means any mortgage or deed of trust (together with all related loan documents and security agreements) relating to the Leased Premises permitted pursuant to the provisions of **Section 10.3** hereof.

**“Net Proceeds”** means, when used with respect to any insurance or condemnation award with respect to the Leased Premises, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees and any extraordinary expenses of the City) incurred in the collection of such gross proceeds.

**“Plans and Specifications”** means the plans and specifications prepared for and showing the Leased Premises, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Leased Premises, and which shall be available for reasonable inspection by the City and its duly appointed representatives.

**“Related Entity”** means any entity in which the ownership or membership of such entity is controlled by the Company or the owners of a majority of the interests in the Company. For purposes hereof, “control” shall mean the power to direct or cause the direction of the management or policies of such entity.

**Section 1.2. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this

instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations by the City.** The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) To the City’s knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(c) The City shall have no authority to operate the Leased Premises as a business or in any other manner except as the lessor thereof.

**Section 2.2. Representations by the Company.** The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Nebraska and is authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The Leased Premises will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

## ARTICLE III

### GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate.** The City hereby rents, leases and lets the Leased Premises exclusively to the Company, and the Company hereby rents, leases and hires the Leased Premises from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

**Section 3.2. Lease Term.** This Lease shall become effective as of the Effective Date, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the Effective Date of this Lease and terminating on December 31, 2022, unless earlier terminated by Company by providing written notice to the City as set forth in this Lease.

After the initial term (the "Term"), this Lease is renewable on an annual basis upon written request by the Company at least thirty (30) days prior to the upcoming termination date, and the Term shall be extended for each such one-year extension period, provided the City, in its sole discretion, accepts Company's request for an extension. The City may terminate at any time and for any reason, with or without cause, upon giving Company thirty (30) days prior notice, including prior to the end of the current Term.

**Section 3.3. Possession and Use of the Leased Premises.** Subject to the provisions of this Section, the Company shall have the right to use the Leased Premises only for specific purposes set forth in Section 4.1 of this Lease. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of Article VII hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

**Section 3.4. Title to the Leased Premises.** The City shall be the sole owner of the Leased Premises during the Lease Term.

## ARTICLE IV

### USE OF LEASED PREMISES

**Section 4.1 Permitted Uses; Removal of Property.** The Company shall only use the Leased Premises to (i) store materials associated with its business, provided that the Company is not permitted to

store hazardous materials or hazardous waste, as defined Environmental Laws, and (ii) build a fence in compliance with the following standards:

- (a) the fence materials shall consist of wood, vinyl, steel, masonry or wrought iron materials; and
- (b) the maximum height of the fence shall not exceed six feet above the average grade.

The Company shall install the fence in accordance with the requirements in this Lease within ninety (90) days after the Effective Date of this Lease.

On or before the date of termination or expiration of this Lease, the Company shall remove all materials on the Leased Premises and shall remove all fencing and other improvements to the Leased Premises and repair and restore the Leased Premises to its condition upon the Effective Date of this Lease, reasonable wear and tear excepted. If Company fails to restore and repair the Leased Premises to the City's reasonable satisfaction, the City may perform such restoration and repair work and the Company shall pay the City its actual costs in performing such work within thirty (30) days receipt of an invoice for the work.

#### **4.2 Security Fund.**

(a) This Lease shall not become effective until the Company posts to a bank account a cash deposit upon which the City may draw without the consent of Company to ensure the Company's faithful performance of and compliance with all provisions of this Lease. The amount of the deposit shall be \$2,000. Such account shall remain open for the full term of the Lease plus an additional six (6) months thereafter.

The deposit of the cash security fund, or the receipt of any amounts by the City thereunder, shall not be construed to excuse faithful performance by the Company or limit the liability of the Company under the terms of its Lease for damages to the full amount of the letter of credit, cash security fund or otherwise.

The rights reserved to the City with respect to the cash deposit are in addition to all other rights of the City, and no action, proceeding, or exercise of a right with respect to such cash security fund or letter of credit will affect any other right the City may have.

(b) The following procedures shall apply to drawing on the cash security fund or letter of credit:

(1) If Company is notified in writing by the City that the City believes Company has failed to comply and pay any amounts owed as a result of such noncompliance with any provision of the this Lease, Company shall have ten (10) days to (i) cure the noncompliance; or (ii) if it is not possible to cure the noncompliance within ten (10) days even with the exercise of due diligence, to take reasonable steps to cure the noncompliance and commit to a reasonable period for curing. If Company fails to take actions required by (i)-(ii) above; or fails to comply with the deadline established under (ii) and the City believes that the failure to comply or pay amounts owed can be remedied by an expenditure of the security, the City may withdraw the amount thereof, along with interest, penalties, damages, costs, or expenses the City suffers or incurs by reason of the Company's failure to comply or pay amounts owed, from the cash security fund or from funds available under the letter of credit.

(2) Within three (3) days of a withdrawal from the cash deposit, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Company.

(3) If at the time of a withdrawal from the deposit by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Company to the City until it is paid.

(4) No later than thirty (30) days after mailing of notification to the Company by certified mail, return receipt requested, of a withdrawal under the cash security fund or letter of credit, the Company shall deliver to the City for deposit in the cash security fund an amount equal to the amount so withdrawn and shall restore the letter of credit. Failure to make timely delivery of such amount to the City or to restore the letter of credit shall constitute a material violation of the Lease.

(c) Failure to maintain the cash deposit as set forth in this Section shall constitute a material violation of this Lease.

**Section 4.3. Environmental Matters.** The Company acknowledges that it is responsible for maintaining the Leased Premises in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City and agree to defend and hold the City harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Leased Premises during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Leased Premises.

## ARTICLE V

### RENT PROVISIONS

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the City in same day funds for the account of the City during this Lease Term, a Basic Rent amount of \$4,900.00. The initial payment of Basic Rent is due on or before the Effective Date of this Lease, and each subsequent payment shall be due on or before **December 1 each year this Lease is in effect, commencing on December 1, 2022**, and continuing until this Lease has been terminated, Beginning January 1, 2023, the Basic Rent shall increase by an amount equal to two percent (2%) of the rent in effect during the immediate preceding Term. If the Basic Rent for the initial Term is less than \$4,900.00, the 2% increase occurring January 1, 2023, as detailed above, shall be based on \$4,900.00 and not the prorated rental amount.

If the initial Term is less than one-year, the Basic Rent shall be prorated by dividing the number of days in the initial Term by 365, and multiplying such quotient by \$4,900.00.

All payments of Basic Rent provided for in this Section shall be paid directly to the City Finance Department.

**Section 5.2. Additional Rent.** The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

- (a) As “Additional Rent – Enforcement” those amounts which are attributable to the following:
  - (1) all reasonable fees, charges and expenses, including agent and counsel fees, of the City incurred under this Lease, or any other document entered into in connection with the Leased Premises, as and when the same become due;
  - (2) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Leased Premises or in connection with a failure of the Company to perform its obligations under this Lease or the Redevelopment Agreement by the City, including counsel fees and expenses;
  - (3) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease;

All payments of Additional Rent shall be paid to the City Finance Department and disbursed in accordance with the applicable terms of the Redevelopment Agreement.

**Section 5.3. Obligations of Company Absolute and Unconditional.**

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Leased Premises has been started or completed, or whether the City’s title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Leased Premises or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Leased Premises, legal curtailment of the Company’s use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City’s legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in any way the rights of the Company to terminate this Lease as provided herein.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease



(including the obligation to pay Basic Rent and Additional Rent) for the benefit of the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

**Section 5.4. Prepayment of Basic Rent.** The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder. During such times as the amount held by the City as Basic Rent shall be sufficient to pay, at the time required, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

## ARTICLE VI

### MAINTENANCE, TAXES AND UTILITIES; TAX ABATEMENT

**Section 6.1. Maintenance and Repairs.** Throughout the Lease Term the Company shall, at its own expense, keep the Leased Premises in as reasonably safe condition as the operation thereof will permit, and keep the Leased Premises in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's Code of Ordinances relating to property maintenance and appearance.

**Section 6.2. Taxes, Assessments and Other Governmental Charges.**

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Leased Premises, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber the City's title to the Leased Premises; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly

procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above, which may be charged as Additional Rent as provided in **Section 5.2**.

**Section 6.3. Utilities.** All utilities and utility services used by the Company in, on or about the Leased Premises shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

**Section 6.4. Special Assessments, Licenses or Fees.** The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Leased Premises if such Leased Premises was not owned by the City.

## ARTICLE VII

### INSURANCE

#### **Section 7.1. Property Insurance.**

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Leased Premises constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City shall be named as a loss payee and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The insurance required in this Section may be supplemented with any additional insurance requirements imposed by a Lender, to the extent required by the Lender.

(b) In the event of loss or damage to the Leased Premises, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease.

#### **Section 7.2. Commercial General Liability Insurance.**

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City shall be named as an additional insured, properly protecting and indemnifying the City, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). The policy shall also include, or be endorsed to include a waiver of subrogation in behalf of the City. The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the

cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 7.3. Workers' Compensation.** The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

**Section 7.4. Blanket Insurance Policies; Self-Insurance.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

**Section 7.5. Certificate of Compliance.** The Company shall provide the City with suitable evidence of insurance in the form of certificates of insurance as required by this Lease, issued by Lessee's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Lease and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Lease. If any of the policies required by this Lease expire during the life of this Lease, the Company shall forward renewal certificates to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Lease shall be identified by referencing this Lease. Certificates of insurance shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:  
Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 and CG 20 37 07 04, or their equivalents.
- (2) Lessee's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Lessee under this Agreement.

All Certificates of Insurance shall name Lessor of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit  
Attn: City Attorneys Office  
220 SE Green Street  
Lee's Summit, MO 64063

## ARTICLE VIII

### ALTERATION OF THE PROJECT

**Section 8.1. Permits and Authorizations.** The Company shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, restoration, replacement, modification or addition to the Leased Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

**Section 8.2. Mechanics' Liens.**

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Leased Premises, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Leased Premises, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Leased Premises, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to the Leased Premises or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days after the Company becomes aware of any such lien notifies the City in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Leased Premises, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Leased Premises will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

**ARTICLE IX**

**DAMAGE AND DESTRUCTION**

**Section 9.1. Damage or Destruction.**

(a) If the Leased Premises is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable or desirable, or that the Company does not have the right under any Mortgage to use any Net Proceeds for repair or restoration of

the Leased Premises, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Leased Premises is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Leased Premises Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Leased Premises Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Leased Premises as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Leased Premises Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

(b) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(c) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(d) The Company agrees to give prompt notice to the City with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Leased Premises.

(e) The Company shall not, by reason of its inability to use all or any part of the Leased Premises during any period in which the Leased Premises is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

## ARTICLE X

### SPECIAL COVENANTS

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.** The City makes no warranty, either express or implied, as to the condition of the Leased Premises or that it will be suitable for the Company's purposes or needs. The Company releases the City from, agrees that the City shall not be liable for, and agrees to defend and hold the City harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Leased Premises or the Company's use thereof, unless such loss is the result of the City's negligence or willful misconduct. This provision shall survive termination of this Lease.

**Section 10.2. City's Right of Access to the Leased Premises.** The Company agrees that the City and its duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Leased Premises without interference or prejudice to the Company's operations, and (b) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease.

**Section 10.3. Granting of Easements; Mortgages and Financing Arrangements.**

(a) Company shall not at any time or times grant subleases, easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Leased Premises, or part thereof, by the grantee.

(b) Any breach of this Section shall be considered a material breach of the Lease and an Event of Default.

**Section 10.4. Indemnification of City.** The Company shall indemnify and save and hold harmless the City and the City Council members, officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the execution of this Lease, the Redevelopment Agreement or any other documents entered into in connection with this Lease and from the conduct or management of, or from any work or thing done in or on the Leased Premises during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Leased Premises, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Leased Premises, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Leased Premises, and (g) any claim relating to the presence on, escape or removal from the Leased Premises during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.4** shall not extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Leased Premises by employees of the City or the result of negligence or willful misconduct by the City. Upon notice from the City, the Company shall defend the City in any such action or proceeding. This **Section 10.4** shall survive any termination of this Lease with respect to liability arising during the Lease Term.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company

to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

**Section 10.5. Company to Maintain its Corporate Existence.** The Company agrees that until this Lease is terminated, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation expressly assumes in writing all of the obligations of the Company contained in this Lease; and, further provided, that if the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$50,000,000. The term “net worth,” as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries.

## ARTICLE XI

### DEFAULTS AND REMEDIES

**Section 11.1. Events of Default.** If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” or “default” under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City; or

(b) Default in the due and punctual payment of Additional Rent for a period of 15 days following written notice to the Company by the City; or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company’s part to be observed or performed, and such default shall continue for 30 days after the City has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default provided that (1) the Company has commenced such cure within said 30-day period, and (2) the Company diligently prosecutes such cure to completion); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 90 days; or

With regard to any alleged default concerning which notice is given to the Company under the provisions of this Section, the City hereby grants the Company full authority for account of the City to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the City, with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts in order to remedy such default.

**Section 11.2. Remedies on Default.** If any Event of Default referred to in **Section 11.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election, then or at any time thereafter, and while such default continues, give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, this Lease shall thereupon be terminated.

**Section 11.3. Survival of Obligations.** The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause, except as specifically limited in this Lease.

**Section 11.4. Performance of the Company's Obligations by the City.** If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the City, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City and all incidental reasonable costs and expenses incurred by the City (including, without



limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City on demand, and if not so paid by the Company, the City shall have the same rights and remedies provided for in **Section 11.2** hereof in the case of default by the Company in the payment of Basic Rent.

**Section 11.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 11.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 11.7. Application of Article.** If any portion of the Project Site has been assigned pursuant to an Assignment and Assumption Agreement, this **Article XI** and the rights and obligations hereunder shall be applied individually with respect to each Assigned Property. Each "Event of Default" or "default" shall be individual to the particular Assigned Property and shall not create an "Event of Default" or "default" with respect to any other Assigned Property. If any portion of the Project Site has become Assigned Property, application of this Article to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property.

## ARTICLE XII

### ASSIGNMENT AND SUBLEASE

#### **Section 12.1. Assignment of Lease; Sublease of Leased Premises.**

(a) The Company may not assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof to any person or party except a Related Entity or as allowed by **Section 10.5** for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

- (1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;
- (2) Such assignment shall include the entire then unexpired term of this Lease; and
- (3) A duplicate original of such assignment shall be delivered to the City within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all

of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

Notwithstanding the requirements of this subsection (a), the Company shall have the right to collaterally assign the Company's rights and obligations under this Lease to the Company's lender for the Leased Premises.

(b) The City agrees that any requested consent or signature of the City to any sublease or assignment to an Related Entity under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

**Section 12.2. Prohibition Against Fee Mortgage of Leased Premises.** The City shall not mortgage its fee interest in the Leased Premises.

**Section 12.3. Restrictions on Sale or Encumbrance of Leased Premises by City.** During this Lease Term, the City agrees that it will not sell, assign, encumber, transfer or convey the Leased Premises or any interest therein.

### ARTICLE XIII

#### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 13.1. Amendments, Changes and Modifications.** Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified, altered or terminated except as mutually agreed by the Parties.

### ARTICLE XIV

#### MISCELLANEOUS PROVISIONS

**Section 14.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing. Notices with respect to Assigned Property shall be given to the appropriate Partial Assignee.

**Section 14.2. City Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Leased Premises subject to zoning, building permit or other regulatory approvals by the City.

**Section 14.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City a source of revenue to replace the real property taxes that are abated during the Lease Term, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon

demand therefor, as Additional Rent – Enforcement, such further sums of money, in cash, as may from time to time be required for such purposes as set forth in this Lease.

**Section 14.4. Limitation on Liability of City.** No provision, covenant or agreement contained in this Lease or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

**Section 14.5. Governing Law; Venue.** This Lease shall be construed in accordance with and governed by the laws of the State of Missouri, and any legal action pertaining to this Agreement may be brought only in federal or state courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

**Section 14.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

**Section 14.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 14.8. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 14.9. Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 14.10. Satisfaction of the Company's Obligations.** Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

**Section 14.11 Complete Agreement.** To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering the subject matter of this Lease are contained in this Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this lease.

**Section 14.12. Employee Verification.** The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection

with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City upon execution of this Lease and on or before December 1 of each year during the term of this Lease, beginning December 1, 2022.

[Remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

**CITY OF LEE’S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Name: William A. Baird  
Title: Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Trisha Fowler Arcuri  
Title: City Clerk

Approved as to form:

By: \_\_\_\_\_  
Name: Daniel White  
Title: Chief Counsel of Management and Operations

**SONRISE MASONRY, INC.,**  
a Nebraska corporation

By: \_\_\_\_\_  
Jerry Raybuck, Owner

**EXHIBIT A**

**LEASED PREMISES**

The following described real estate located in Jackson County, Missouri:

SIMONIN ADD RES OF LOT 2 PT OF LOT 6---DAF: BEGINNING AT THE SOUTHWEST  
CORNER OF LOT 6 THEN EAST 115.70' THEN NORTH 76.41' THEN WEST 115.70' THEN  
SOUTH 76.41' TO POB

EXCLUDING  
any public rights-of-way.

**EXHIBIT B**

**MAP OF LEASED PREMISES**

