

EXHIBIT D TO ENCROACHMENT POLICY

Title of Document: License Agreement

Date of Document: _____

Licensor: City of Lee's Summit, Missouri
220 SE Green Street
Lee's Summit, MO 64063

Licensee: _____

Legal Description: _____, a
subdivision in Lee's Summit, Jackson
County, Missouri

Reference Book and Page(s): _____

EXHIBIT D TO ENCROACHMENT POLICY

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") made this _____ day of _____, 2021 ("Effective Date"), by and between the City of Lee's Summit, Missouri, a Missouri constitutional charter city ("City"), and _____ ("Licensee"). The City and Licensees are sometimes referred to individually as the "Party" and collectively as the "Parties".

RECITALS

WHEREAS, City owns Right-of-Way, described in paragraph 1 below, and the Licensee desires to license from the City a portion of the City's right-of-way for the construction and maintenance of a _____; and

WHEREAS, The City Engineer has reviewed the Licensee's application and found it to be in general conformance with the City's Encroachment Policy, Codes, and Ordinances.

WHEREAS, upon compliance with the terms and conditions of this Agreement, the City is willing to license a portion of the City's right-of-way easement to Licensee.

NOW THEREFORE, the City, in consideration of the obligations hereby assumed by Licensee, the parties agree as follows:

1. **LICENSED PREMISES.** The City hereby issues Licensee a non-exclusive, revocable license and authorizes Licensee, its officers, members, contractors, agents, and guests, to enter, go upon, and use that certain portion of the City's right-of-way depicted in *Exhibit A*, attached and incorporated by reference, ("Licensed Premises") and located at the street address commonly referred to as [INSERT STREET ADDRESS], and legally described as:

[INSERT LEGAL DESCRIPTION]

The Licensed Premises is licensed "as is", and the City is not obligated to rehabilitate or make any modifications, repairs, or improvements to the Licensed Premises.

2. **USE OF LICENSED PREMISES.** Licensee, and Licensee's officers, members, contractors, agents and guests shall have the right to use the Licensed Premises solely for the construction, installation, and maintenance of [INSERT ALL THE WORK & FACILITIES THAT WILL BE ALLOWED] (the "Improvements"). The Improvements and location on the Licensed Premises are subject to approval by the City prior to installation, and shall comply with all existing and future state and local laws and regulations, including the ordinances and regulations of the City. Nothing in this Agreement shall bar, or in any respect prevent, the City from imposing lawful conditions related to other activities by Licensee, or prevent from requiring additional authorizations, in connection with the use and occupancy of the Licensed Premises for other purposes other than those expressly authorized herein.

The City shall not be liable to Licensee if Licensee constructs and installs Improvements pursuant to this Agreement in an area over which the City has erroneously exercised jurisdiction.

3. **MINIMUM CONDITIONS OF USE.** Without limiting the City's authority to regulate the use of the rights of way and public or private property pursuant to its police powers. Licensee shall comply with the following:

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A. *Compliance with Laws, Best Practices:* The construction, installation, operation, and maintenance of the Improvements shall be performed in accordance with best industry practices, and other applicable federal, state, or local laws and regulations that may apply to the construction, installation, operation, and maintenance of facilities like Licensee's Improvements.

B. *Durable Components:* All installation of electronic equipment shall be of a permanent nature, using durable components.

C. *Preventing Accidents:* Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

D. *No Interference With Other Utilities.* A Licensee shall not place Improvements where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the City. It is Licensee's responsibility to locate all utilities in the location the Improvements are to be constructed, installed, operated, and maintained.

E. *Removal:* City may remove, or require removal of, any part of the Improvements that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Licensee for all the costs associated with removal.

F. *Duty to Move for City:* Licensee shall, by a time specified by the City, protect, support, temporarily, relocate, or remove (collectively, "Move") any of the Improvements when required by the City by reason of traffic conditions; public safety; right-of-way construction; right-of-way maintenance or repair (including resurfacing or widening); change of right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government owned communications system, public work or improvement or any government-owned utility; right-of-way vacation; or for any other purpose where the convenience of the City would be served thereby; provided, however, that the Licensee shall, in all such cases, have the privilege of abandoning any property in place.

G. *Right of City to Move in Emergencies:* In the event of an emergency, or where the Improvements create or are contributing to an imminent danger to health, safety, or property, the City may the Move the Improvements without prior notice.

H. *Reasonability:* City will not exercise its right to require Licensee's Improvements to be Moved in an unreasonable or arbitrary manner.

I. *Permits:* Before Licensee makes any installations in the Licensed Premises, Licensee shall submit for approval a map showing the location of the proposed Improvements to the City. Construction, installation, operation, or maintenance of the Improvements shall not commence until all required permits have been obtained and all required permit fees have been paid, except in emergency situations which shall be handled in accordance with the policies of the City.

J. *Cleanup and Restoration:* Any and all rights of way, public property, or private property that is disturbed or damaged during the construction, installation, operation, or

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maintenance of the Improvements shall be promptly restored by the Licensee to at least its prior conditions, and as may otherwise be required by City law, ordinance, resolution, regulation or practice, unless the City and the Licensee agree otherwise. If the Licensee fails to restore the affected property to City's satisfaction, within ten (10) calendar days of receipt of written notice to Licensee, City may restore the property and charge the cost thereof to Licensee. Provided that, where any work presents an immediate hazard to public health or safety, the City may, without notice, remove the hazard, and all costs incurred by City shall be paid by Licensee.

4. **RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS.** Except as specifically allowed by paragraph 2, Licensee, and Licensee's officers, members, contractors, agents, and guests shall not modify, remove, alter, damage, destroy, add to, or improve any part of the Licensed Premises or any City property in, on, or under the Licensed Premises, and shall not install, place, affix, make or construct any structure, facility, object, utility, signage, or markings on the Licensed Premises. Upon breach of this provision, Licensee shall pay the City, within thirty (30) days invoice, the cost necessary to restore, repair, and/or replace the Licensed Premises or City property in, on, or under the Premises to its present condition.
5. **MAINTENANCE.** Licensee shall maintain, at its sole cost, the Licensed Premises and the Improvements to the Licensed Premises during the term of this Agreement.
6. **RESTRICTION AS TO WASTE.** Licensee shall not, except as may be reasonably necessary for the maintenance of the Improvements on the Licensed Premises, commit or permit any waste to stored, placed, or remain on the Licensed Premises. Licensee shall not, without the written permission of City, cut down or destroy or injure any shrubbery, bushes, or trees on the Licensed Premises. Licensee shall be liable for any damage done to the Licensed Premises, except as permitted by this Agreement, by any persons entering the Licensed Premises on behalf of Licensee.

7. **GENERAL INDEMNITY.**

A. *General.* Licensee shall indemnify, release, defend, become responsible for and forever hold harmless the City, and its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign Immunity Statute, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property to the extent arising out of or resulting from any act, error, omission, or directive of Licensee or its agents, employees, contractors, or any other person for which Licensee is liable, arising out of or in any way connected with the operations or uses expressly authorized in this Agreement. Nothing in this Agreement requires Licensee to save harmless the City from claims, demands, losses and expenses arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors. Licensee hereby agrees that any insurance proceeds available to pay claims and awards shall first be paid to indemnify the City, its officers, agents, employees, elected officials, and attorneys in their individual and official capacities.

B. *No Limitations Or Waiver.* The indemnity required hereunder shall not be limited

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by reason of the specification of any insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for Licensee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by Licensee. The City does not, and shall not, waive any rights against Licensee which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by Licensee, of any of the insurance policies described in this Agreement. Except as provided in subpart A above, this indemnification by Licensee shall apply regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

C. *Notification Of Claims.* With respect to any claims which are subject to indemnity hereunder, Licensee shall immediately notify the City of all claims filed or threatened to be filed against Licensee or Licensee and the City jointly. Licensee shall provide the City with a copy of the same within forty-eight (48) hours after receiving it.

D. *Challenges To Contract.* Licensee shall indemnify, defend and hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, against all claims or challenges brought against the City with respect to the validity of the terms and conditions of this Agreement.

E. *Use Of Independent Contractors.* The fact that Licensee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, Licensee's duty of defense and indemnification under this section.

8. INSURANCE.

8.1 *General.*

A. Insurer Qualifications. Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

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D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Licensee's insurance shall be, or be endorsed to indicate, its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the six-year period.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Licensee shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work associated with the Improvements is contracted or subcontracted in any way, Licensee shall either cover all contractors and subcontractors in the Licensee's liability insurance policy or execute written agreements with its contractors and subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the City and Licensee. Licensee shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Notice of Claim. Licensee shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. Licensee shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity, regardless of whether such impairment is a result of this Agreement. A breach of this provision is a material breach of the Agreement.

J. Evidence of Insurance. Prior to accessing the Licensed Premises or commencing any work to install the Improvements, Licensee will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Licensee'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 Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement.

If any of the policies required by this Agreement expire during the life of this Agreement,

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Licensee shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 and CG 20 37 07 04, or their equivalents.
 - (b) Excess Liability – Follow Form to underlying insurance.
- (2) Licensee’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 Licensee under this Agreement.

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

City of Lee's Summit
Attn: Public Works Department
220 S.E. Green Street
Lee's Summit, MO 64063 -2358

K. Endorsements. Licensee shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Subsection.

8.2 *Required Insurance Coverage.*

A. Commercial General Liability. For the entirety of this Agreement, Licensee shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 03 97 and CG 20 37 07 04, or their equivalents, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying

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insurance.

B. Workers' Compensation. Licensee shall ensure that all contractors or subcontractors performing work for Licensee obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is subcontracted, Licensee shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with all Missouri laws and regulations, and to fully protect the City from any and all claims of such employees arising out of occurrences during work performed hereunder. Licensee hereby indemnifies the City for any damage resulting to it from failure of either Licensee or any contractor or subcontractor to obtain and maintain such insurance. Licensee further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. Licensee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.

8.3 *Cancellation and Expiration Notice*. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

9. TERM; TERMINATION AND REVOCATION. The term of this Agreement shall begin on the Effective Date and remain in place for as long as the Licensee owns the Licensed Premises, provided that the license shall automatically terminate and be revoked, without notice, on (i) the date on which the majority of the Improvements are removed or substantially altered without permission from the City; (ii) the date Licensee no longer owns or occupies the portion of the right-of-way easement where the Licensed Premises is located; or (iii) the date the City vacates the portion of the right-of-way easement where the Licensed Premises is located, whichever occurs first.

If Licensee sells, leases, or otherwise transfers all or part of its interest in the License Premises, Licensee shall notify the City of such action as soon as possible, but no later than ten (10) calendar days after the date of sale, execution of the lease, or date of the transfer of interest.

Notwithstanding any provision of this Agreement to the contrary, City may terminate this Agreement and revoke the license hereby granted as to all or any part of the Licensed Premises at any time upon sixty (60) days advance notice in writing, provided, however, no advance notice is required if Licensee shall break any of the conditions or obligations herein contained. Licensee may terminate this Agreement at any time upon sixty (60) days advance notice in writing. No such termination by Licensee shall negate any rights or obligations of the parties accrued through the date of such termination.

In the event of the termination of this Agreement, the Licensee shall remove, at its sole expense, the Improvements from the Licensed Premises. Licensee shall also restore the Licensed Premises to at least the same condition it is in as of the date of this Agreement, normal wear and tear excepted. If the Licensee fails to restore the affected property to City's satisfaction, within ten (10) calendar days of receipt of written notice to Licensee, City may restore the property and charge the cost thereof to Licensee. Licensee shall pay the City, within thirty (30) days invoice.

10. CONSTRUCTION OF AGREEMENT.

A. *Simple License*. The license created by this Agreement shall be construed as a simple license (sometimes referred to as a "bare," "mere" or "naked" license) revocable at the will of the City, subject only to any advance written notice of revocation required by this

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Agreement.

B. *Headings.* The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

C. *Non-Waiver.* No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Licensee from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

D. *Jointly Drafted.* This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.

E. *Applicable Law; Venue.* This Agreement shall be governed by the laws of the State of Missouri, and a suit pertaining to this Agreement may be brought only in 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.

11. UNASSIGNABLE; NO SUBLICENSE. The license created by this Agreement is solely for Licensee, its officers, members, servants, agents and guests and no others. Licensee shall not assign the license granted herein, or any interest of the license, and shall not sublicense any interest to the Licensed Premises, Improvements or any part thereof or any right or privilege appurtenant thereto, or suffer any other person (the officers, members, servants, agents and guests of Licensee excepted) to occupy or use the Premises, or any portion thereof, without the prior written and consent of the City. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

12. NON-SEVERABLE. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be deemed invalid and unenforceable, provided, however, that the terms and provisions of paragraphs 6 and 8 shall not be affected thereby and each term and provision of said paragraphs 6 and 8 shall be valid and enforced to the fullest extent permitted by law.

13. NOTICE. Whenever any notice is required by this Agreement to be made, given or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, addressed to:

City of Lee's Summit
Attn: City Manager
220 S.E. Green Street
Lee's Summit, Missouri 64063

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and notices to Licensee shall be addressed to:

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the item shall be considered received the third day after the date of mailing.

- 14. RIGHTS/OBLIGATIONS OF PARTIES ONLY. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- 15. SURVIVAL. The obligations of the Parties under Sections 6 through 12 shall survive any termination of this Agreement or revocation of the license granted herein.
- 16. COUNTERPARTS. The Parties agree that this Agreement may be signed in two or more counterparts, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.
- 17. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereunder and all other representations of statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the Effective Date.

City of Lee’s Summit, Missouri

Licensee

Stephen A. Arbo, City Manager

[INSERT NAME/TITLE]

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Scott Ison,
Chief Counsel of Infrastructure and Recreation

RECOMMENDED FOR APPROVAL

George M. Binger III, P.E.
City Engineer

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LICENSOR’S/CITY’S ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2021, before me, a notary public, personally appeared _____, representative for the **City of Lee’s Summit, Missouri**, to be known as the person(s) in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

My term expires: _____

LICENSEE’S ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2021, before me, a notary public, personally appeared _____, to be known as the person(s) in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

My term expires: _____

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EXHIBIT A