

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Lee's Summit, Missouri (hereinafter called "City"), and the Oaks Ridge Meadows Homeowners' Association (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, City presently owns real property described in paragraph 1 below ("Licensed Premises"); and

WHEREAS, City desires to license to Licensee and Licensee desires to license from City the Licensed Premises for the purpose of constructing and maintaining certain improvements as described below ("Improvements") and to use the Licensed Premises for such construction, maintenance and access to such improvements ("Licensed Uses").

NOW, THEREFORE, City, in consideration of the obligations hereby assumed by Licensee, hereby licenses and authorizes Licensee, its officers, members, contractors, agents, and guests, to enter and go upon the Licensed Premises, at all times during the continuance of this Agreement, and there to use and enjoy the Licensed Premises for the construction and maintenance of the Improvements and for the Licensed Uses, subject to the following:

1. **LICENSED PREMISES.** The Licensed Premises referenced in this Agreement is certain portions of property on the west and eastside of the crosswalk located approximately at the street address referred to as 545 NE Anderson Dr, and depicted in EXHIBIT A, attached and incorporated herein by reference.

2. **USE OF LICENSED PREMISES.** Licensee, its officers, members, contractors, agents and guests shall have the right to use the Licensed Premises solely for the construction and maintenance of, and access to, the Improvements and for the Licensed Uses. The Improvements on the Licensed Premises shall comply with all ordinances of the City and are subject to approval of the City. The only Improvements to be allowed, subject to such approval, as Licensed Uses are:

City approved and the most current edition of the Manual on Uniform Traffic Control Devices ("MUTCD") compliant enhanced crosswalk signs or sign assemblies and related equipment and materials, to be located on the north and south side of NE Anderson Drive, so as to be seen by both east and westbound drivers of NE Anderson Drive at the Licensed Premises. An example of compliant signs are shown in EXHIBIT B, attached and incorporated herein by reference.

3. **RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS.** Except as specifically allowed by paragraph 2, Licensee, its officers, members, contractors, agents, and guests are prohibited from making any addition, modification or improvement to any part of the Licensed Premises, and are prohibited from placing, affixing or constructing any structure, utility, signage or markings on the Licensed Premises.

4. **MAINTENANCE AND REMOVAL.** Licensee agrees to maintain, at its sole cost, the Improvements to the Licensed Premises and the Licensed Premises, at all times during the continuation of this Agreement. Licensee agrees to remove said encroachment at its sole cost should City provide notice of the revocation of this License as provided herein. In addition to

any regular maintenance performed by the Licensee, the Licensee shall inspect the Improvements to ensure it is operating in accordance with the most current version of the MUTCD at least once each year this License is in effect. In the event Licensee fails to maintain the Licensed Premises as set forth herein, City reserves the right to revoke this Agreement pursuant to paragraph 8 hereof and remove, at its option and expense, the Improvements on the Licensed Premises. Said maintenance shall include without limitation:

A. UPKEEP. The upkeep of the Improvements to the Licensed Premises and the Licensed Premises in a sightly and litter-free condition, as facilitated by the City conducting regular inspections of the Licensed Premises for removal of debris. Licensee shall not permit the Improvements to fall into any disrepair or become a visual blight.

B. WEEDING, MOWING, ETC. The performance of any other action, including without limitation, the weeding and mowing of the Licensed Premises, which will ensure that the Licensed Premises shall remain in a sightly condition.

5. RESTRICTION AS TO WASTE. Licensee shall not, except so far as may be reasonably necessary for the maintenance of the Improvements on the Licensed Premises and the Licensed Premises as aforesaid, commit or permit any waste thereon, and in particular Licensee shall not without the permission in writing of City cut down or destroy or injure any bushes or trees. Licensee shall be liable for any damage done to the Licensed Premises, except as is permitted by this Agreement, by any persons entering upon the Licensed Premises on behalf of Licensee pursuant to the terms of this Agreement.

6. GENERAL INDEMNITY.

A. GENERAL. Licensee shall indemnify, release, defend, become responsible for and forever hold harmless the City, 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 intentional act of Licensee or its agents, employees, or subcontractors, arising out of or in any way connected with the operations expressly authorized herein.

B. NO LIMITATIONS OR WAIVER. The indemnity required hereunder shall not be limited by reason of the specification of any particular 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 or not 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 any and all claims filed against Licensee or Licensee and the City jointly, and shall provide the City with a copy of the same.

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 any and 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.

## 7. INSURANCE.

### A. GENERAL.

(1) Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor 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.

(2) 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 Contractor 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.

(3) 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.

(4) 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.

(5) Primary Insurance. Contractor'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.

(6) 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 three-year period.

(7) Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Licensee. Licensee shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

(8) 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.

(9) Automatic Escalator. The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City’s sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.

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

(11) Notice of Claim. The 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. The 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 material breach of the contract.

(12) Evidence of Insurance. Prior to commencing any work or services under this Agreement, 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 and declaration page(s) 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, 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:

- (i) 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) Auto Liability – Under ISO Form CA 20 48 or equivalent.
  - (c) Excess Liability – Follow Form to underlying insurance.
- (ii) Licensee's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (iii) All policies, except for Professional Liability, 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  
220 S.E. Green Street  
Lee's Summit, MO 64063 -2358

**B. REQUIRED INSURANCE COVERAGE.**

(1) Commercial General Liability. 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 insurance.

(2) Vehicle Liability. Licensee shall maintain Business Automobile Liability insurance with an unimpaired limit of \$2,000,000 each occurrence on Licensee’s owned, hired and non-owned vehicles assigned to or used in the performance of the Licensee’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. 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 insurance.

(3) Workers’ Compensation Insurance. To the fullest extent permitted by law, Licensee shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance with an unimpaired limit of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees.

(4) Umbrella Insurance. Licensee shall carry and maintain Umbrella/Excess Liability insurance with an unimpaired limited of not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600 for bodily injury and property damage, for the current year, and applies in excess of the insurance policies required in this Agreement

C. 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.

D. USE OF CONTRACTORS AND SUBCONTRACTORS. Licensee shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under paragraph 7(B) of this License Agreement. Said insurance shall be maintained in full force and effect until the completion of the work performed, and approval thereof by the City.

E. 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 sublet, Licensee shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, 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. REVOCATION. Notwithstanding any provision of this Agreement to the contrary, City may cancel 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 cancel 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 Licensee elects to terminate this Agreement, the City reserves the right to remove, at the City's option, and at the expense of Licensee, all landscaping and encroachments on the Licensed Premises.

9. 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 paragraph 8.

B. HEADINGS. The paragraph 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 waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

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. This instrument shall be construed in accordance with the laws of the State of Missouri. Any 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.

10. UNASSIGNABLE. The license created by this Agreement is solely for Licensee, its officers, members, servants, agents and guests and no others. Neither the license nor this Agreement, in whole or part, is assignable, except that at the request of Licensee, the City will consider assigning this Agreement to a home or property owner association.

11. 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 paragraph 8 shall not be affected thereby and each term and provision of said paragraph 10 shall be valid and enforced to the fullest extent permitted by law.

12. 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 Manager  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, Missouri 64063

and notices to Licensee shall be addressed to:

Oaks Ridge Meadows Homeowners' Association  
11125 Ambassador Dr, Suite 200  
Kansas City, MO 64153

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.

13. 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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned at Lee's Summit, Missouri.

**CITY OF LEE'S SUMMIT, MISSOURI**

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Mayor *William A. Baird*

ATTEST:

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City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

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Nancy K. Yendes, Chief Counsel of Infrastructure and Planning

**ACKNOWLEDGMENT**

STATE OF MISSOURI  
COUNTY OF JACKSON

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, A Notary Public in and for said County and State, personally appeared:

*William A. Baird, Mayor*

To me personally known, who being by me duly sworn, did say that he is the Mayor, and said Trisha Fowler Arcuri is the City Clerk of the CITY OF LEE’S SUMMIT, a Municipal Corporation that executed the foregoing instrument and that said instrument was signed, sealed and delivered in the name and on behalf of said municipal corporation by authority of its City Council, and said Mayor acknowledges said deed to be the free act and deed of said municipal corporation.

\_\_\_\_\_  
**Notary Public Signature**

\_\_\_\_\_  
**Printed or Typed Name**

**My Commission Expires:**

**[licensee name]**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI  
COUNTY OF JACKSON

On this \_\_\_\_ day of \_\_\_\_\_, **202**\_\_, before me appeared \_\_\_\_\_(name), to me personally known, who, being by me duly sworn did say that he or she is the \_\_\_\_\_(position) of \_\_\_\_\_ (name of corporation), and that said instrument was signed on behalf of said [LLC, corporation, Association type of entity] by authority of its board of directors or other authorizing officers, and said \_\_\_\_\_ (name) acknowledged said instrument to be the free act and deed of said [limited liability company, partnership, association, corporation]

\_\_\_\_\_  
**Notary Public Signature**

\_\_\_\_\_  
**Printed or Typed Name**

**My Commission Expires:**