

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Lee's Summit, Missouri (hereinafter called "City"), and Stoney Creek Estates 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 are legally described as:

3831 SW Sandstone Drive. See Exhibit A.

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. Improvements to be allowed, subject to such approval, as Licensed Uses are:

One (1) special speed limit sign. See Exhibit B.

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.** 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. In the event Licensee fails to maintain the Improvements and 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 Licensee 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.

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; provided, however, that Licensee need not save harmless the City from claims, demands, losses and expenses (A) to the extent arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors or (B) to the extent the claim, demand, loss, or expense is actually paid by insurance proceeds received by or for the City from its insurance coverages.

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 PROVISIONS.** Licensee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri. At all times while this Agreement remains in effect, and in recognition of the indemnification provisions set forth above, Licensee shall, at its own cost and expense, maintain a program of commercial general liability insurance and/or self-insurance in the amounts specified below to protect Licensee and the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from any liability for bodily injury, death and property damage occasioned by the activities of Licensee, or any person acting on their behalf, under this Agreement, including, but not limited to, Licensee's operations, products, services or use of automobiles or construction equipment. As proof of this compliance, Licensee shall, during the term of this Agreement, keep on file with the Clerk of the City a certificate of insurance with an insurance company licensed to do business in the State of Missouri and/or affidavit of self-insurance which shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by Licensee, or an employee or officer of Licensee who has knowledge of Licensee's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations.

### B. **LIMITS AND COVERAGE.**

#### (1) **Commercial General Liability:**

(a) In an amount of at least the Missouri sovereign immunity monetary liability limit for (i) all claims arising out of a single occurrence and (ii) for any one person in a single accident or occurrence as set forth in Missouri Revised Statutes section 537.610, for bodily injury and property damage, for the current year.

(b) \$2,000,000 products and completed operations aggregate.

#### (2) **Automobile Liability:** Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.

\*City does not need to be named as an additional insured for automobile liability.

- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption.
- (4) Employer's Liability: Minimum \$2,000.00 each occurrence.
- (5) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of at least the current Missouri sovereign immunity monetary liability limit for (i) all claims arising out of a single occurrence and (ii) for any one person in a single accident or occurrence as set forth in Missouri Revised Statutes section 537.610 for each occurrence and aggregate, for the current year; at least as broad as the underlying general liability, automobile liability and employer's liability.
- (6) The following endorsements shall attach to the policy:
  - (a) The policy shall cover personal injury as well as bodily injury.
  - (b) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
  - (c) Broad form property damage liability shall be afforded.
  - (d) The City shall be listed as an additional insured.
  - (e) Standard form of cross-liability shall be afforded.
  - (f) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

C. 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.

D. 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. **REVOCACTION.** 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 Improvements 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.

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:

Stoney Creek Estates Homeowners' Association  
10660 Barkley St  
Suite 200  
Overland Park, KS 66212

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**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk Denise R. Chisum

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy K. Yendes, Chief of Council of Infrastructure and Planning  
Office of the City Attorney

**ACKNOWLEDGMENT**

STATE OF MISSOURI  
COUNTY OF JACKSON

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, A Notary Public in and for said County and State, personally appeared:

Randall L. Rhoads, Mayor

To me personally known, who being by me duly sworn, did say that she is the Mayor, and said Denise R. Chisum 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 \_\_\_\_\_, 201\_\_\_\_, 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:**