

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) between Roger L. and Sheryl L. Fender, hereinafter collectively called "Lessor" and the City of Lee's Summit, Missouri, hereinafter called "City". Lessor and the City are sometimes referred to in this Lease collectively as “Parties,” or individually as “Party.”

### RECITALS

WHEREAS, the City has leased real property located at 216-218 Douglas Street in Lee’s Summit, Missouri (the “Property”) from Lessor for several years;

WHEREAS, the most recent lease agreement between the City and Lessor regarding the Property expired December 31, 2018, but the City has continued, and Lessor has voluntarily permitted, to use the Property for the purposes set forth in the lease agreement while the City and Lessor negotiated a new lease agreement;

WHEREAS, the City and Lessor desire to execute a new lease agreement to reflect the updated terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged by the parties agree as follows:

### SECTION 1. LEASED PREMISES

Subsection 1.01. Description of Leased Premises. Pursuant to the terms and conditions of this Agreement, the Lessor leases to the City and the City takes from Lessor, the certain real property located at street address commonly referred to as 216-218 Douglas Street, Lee’s Summit, Missouri and legally described in Exhibit “A”, attached and incorporated by reference, and any existing and future improvements (such as, without limitation, buildings, structures, and fixtures) thereon, together with the easements, access and privileges appurtenant thereto or as may be hereafter separately granted to effectuate the purposes of this Agreement, including ingress thereto and egress therefrom. Such real property shall hereafter be referred to the “Leased Premises”.

Subsection 1.02. No Representations or Warranties. The City shall perform, at its own expense, all inspections, surveys and necessary tests, and the Lessor shall make the Leased Premises reasonably available to the City for the conducting of all such activities.

### SECTION 2. OBJECTIVES AND PURPOSE OF LEASE

Subsection 2.01. Use of Leased Premises. Unless otherwise specified in this Agreement, the City shall make all the necessary improvements, if any, to the Leased Premises to provide additional public parking in downtown Lee's Summit.

The Leased Premises shall only be used as a public parking lot. If the City proposes a use of the Leased Premises which conflicts with the above-stated use, the Lessor and the City shall mutually agree upon the proposed use, and the proposed use shall be approved by a written amendment to this Agreement. If Lessor fails to agree to the proposed new use, the City may, at its sole option, may (i) continue to use the Leased Premises as a parking lot or (ii) terminate this Agreement without any penalty.

Subsection 2.02. Vesting of Improvements. The City shall bear all costs of any necessary improvements to the Leased Premises. Pursuant to Section 4 below, upon the expiration of the term or terms of this Agreement, all necessary improvements made to the Leased Premises shall vest in the Lessor.

### **SECTION 3. PARKING LOT CONSTRUCTION REQUIREMENTS**

Subsection 3.01. General. City has constructed a parking lot on the Leased Premises consisting of approximately 16-18 parking spaces.

Subsection 3.02. Exclusive Control of Parking Lot. During the term of this Agreement, exclusive control of the Parking Lot shall reside in the City for use by the general public as additional parking in downtown Lee's Summit.

### **SECTION 4. TERM**

This term of this Agreement shall run for a period of thirty-six (36) months commencing on January 1, 2020 (the "Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for two (2) additional 12-month periods (each a "Renewal Term"), unless terminated earlier pursuant to the termination provisions set forth in this Agreement. The City shall notify Lessor in writing not less than sixty (60) days prior to the end of the current term if the City does not intend to renew the Agreement.

### **SECTION 5. RENTAL PAYMENTS**

The City agrees to pay to the Lessor a one-time rental fee of Twelve-Thousand Four-Hundred and No/100 Dollars (\$12,400) to settle any and all claims for past use of the Property and the first twelve-months of the Initial Term of this Agreement within thirty (30) days after the Effective Dates. Thereafter, the City agrees to pay to Lessor an annual rental fee of Six-Thousand Two-Hundred and No/100 Dollars (\$6,200.00) for the remaining twenty-four months of the Initial Term and first Renewal Term of this Agreement. Upon expiration of the first Renewal Term, the annual rental fee shall increase to Six-Thousand Three-Hundred Twenty Five and No/100 Dollars (\$6,325.00).

The City shall pay Lessor each rental payment on or before February 1<sup>st</sup> of each year this Agreement is in effect.

### **SECTION 6. MAINTENANCE AND OPERATION**

The City shall maintain the Leased Premises at all times in a safe, neat and attractive condition. The City shall repair all damages to the Leased Premises caused by it, its employees, invitees, or patrons, or its operations thereon and shall maintain and repair all improvements thereon at City's sole cost.

## **SECTION 7. INSURANCE**

The City shall, at its expense, procure and keep in force at all times during the term of this Agreement, public liability insurance insuring the City for personal injury and property damage. The City shall furnish the Lessor with a certificate of insurance as evidence of coverage.

## **SECTION 8. ASSIGNMENT AND SUBLEASE**

Subsection 8.01. No Right to Assign. City has no right to assign or otherwise affect this Agreement or any interest therein, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

Subsection 8.02. No Right to Sublease and Encumber. City has no right to sublease, mortgage, encumber or otherwise affect this Agreement or interest therein, without the prior written consent of Lessor, which such consent will not be unreasonably withheld.

## **SECTION 9. GENERAL PROVISIONS**

Subsection 9.01. 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 the Agreement.

Subsection 9.02. Applicable Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Should any part of this Agreement be adjudicated, jurisdiction and venue shall be proper only in the Circuit Court of 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.

Subsection 9.03. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Subsection 9.04. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Subsection 9.05. Binding Effect. This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

Subsection 9.06. Duty to be Reasonable. Wherever in this Agreement the City or Lessor is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment shall not be unreasonably exercised or unreasonably withheld.

Subsection 9.07. Notices. Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notice or payment 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:**

City of Lee's Summit  
Attn: City Manager  
220 SE Green Street  
Lee's Summit, Missouri 64063

**Lessor:**

Roger L. and Sheryl L. Fender  
519 SW 3rd Street  
Lee's Summit, Missouri 64063

With a copy to:

City Attorney  
220 SE Green Street  
Lee's Summit, Missouri 64063

or such place as either party, by written notice to the other, may designate. 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 on the third day after the date of posting.

Subsection 9.08. Waiver. No acceptance by the Lessor of the rent and charges or other payments specified herein, in whole or in part, and for any period or periods, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Lessor or the City, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of City or the Lessor to cancel or terminate this Agreement on account of such default.

Subsection 9.09 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.

Subsection 9.10 No Partnership. Nothing in this Agreement constitutes a partnership or joint venture between the Parties, and neither Party is the principal or agent of the other.

Subsection 9.11 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

Subsection 9.12 Entire Agreement. This Lease contains the entire agreement between the Parties and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Lease, or specifically referred to in a written agreement shall be valid or binding; and this agreement may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed herein.

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

**CITY OF LEE'S SUMMIT**

**LESSOR**

\_\_\_\_\_  
William A. Baird, Mayor

\_\_\_\_\_  
Roger L. Fender

**ATTEST**

\_\_\_\_\_  
Trisha Fowler Arcuri, City Clerk

\_\_\_\_\_  
Sheryl L. Fender

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney's Office

## EXHIBIT A

### Legal Description of the Leased Premises

Original Town of Strother, Lot 6, Block 3, except the western 15 feet of said lot.

A general depiction of the excepted area is shown in the hash-marked area below.

