

**Exhibit 1 to Ordinance**

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*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:* Richard V. Baker & Joan M. Baker  
200 SE Brownfield Drive  
Lee's Summit, MO 64063

*Legal Description:* Lot 35, Indian Creek, 1<sup>st</sup> Plat,  
a subdivision in Lee's Summit, Jackson  
County, Missouri

*Reference Book and Page(s):* \_\_\_\_\_

## Exhibit 1 to Ordinance

### LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Lee's Summit, Missouri, a Missouri constitutional charter city (hereinafter called "City"), and Richard V. Baker & Joan M. Baker (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, City owns a Right-of-Way (ROW), described in paragraph 1 below, and the City desires to license to Licensee and the Licensee desires to license from the City a portion of the City's ROW ("Licensed Premises") for the construction and maintenance of a wood privacy fence, no greater than 6 feet tall, with wood posts no larger than nominal 4x4 lumber; and to leave in place the existing swing set ("Improvements").

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 Improvements, subject to the following:

1. LICENSED PREMISES. The Licensed Premises referenced in this Agreement consists of:

The portion of the right-of-way west of the sidewalk and along the east side of the property commonly known as 200 SE Brownfield Drive, as shown in the diagram which is attached hereto as Exhibit A and incorporated 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 the Improvements. The Improvements shall consist of a wood privacy fence, no greater than 6 feet tall, with wood posts no larger than nominal 4x4 lumber; and to leave in place the existing swing set. The Improvements on the Licensed Premises shall comply with all ordinances of the City and are subject to approval of the City.

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.

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.

## Exhibit 1 to Ordinance

### 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 to the extent 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 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 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

## Exhibit 1 to Ordinance

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. Prior to any access in City-owned easements, the Easement User shall procure and maintain insurance against claims for: A) bodily injury, personal injury, sickness or disease, or death of any persons other than ROW user's employees; B) damages insured by usual personal and advertising injury liability coverage; C) damages because of injury to or destruction of tangible property, including loss of use resulting from; D) products/completed operations; and E) damages involving liability insurance applicable to Easements User's indemnity obligations under Division. Such insurance shall cover claims as may be occasioned by the operations, acts, errors, omissions, or negligence of Easement User or its officers, agents, representatives, employees, lessees, or contractors during all times that occupies the ROW. Insurance limits may be met by the combination of primary and umbrella or excess coverage.

The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute and the City shall be named and endorsed as an additional insured. The City shall not have any deductible for any coverage to be used to indemnify it, its officer, employees, agents and attorneys as required herein, the intent being that the City shall not pay any amounts towards its defense or damages arising out the Easement-user's use of the City-owned easement and any condition the Easement-user creates or contributes to create on the Easement, ROW or on abutting property. The insurance is intended to provide protection to the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the Easement-user and any proceeds thereof shall first be used to indemnify any claims or awards against the City, its officers, agents, employees, elected officials, and attorneys in their individual and official capacities.. The Easement-user agrees it does not have a cause of action or claim against the City for any action that such insurance would provide coverage for.

A copy of the liability insurance certificate and all required endorsements must be on file with the City Clerk.

C. LIMITS AND COVERAGE.

- (1) General Liability: A general liability policy in the minimum amount of \$1,000,000 for each occurrence.

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 this paragraph. Said insurance shall be maintained in full force and effect until the completion of the work performed, and approval thereof by the City.

## Exhibit 1 to Ordinance

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 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.

### 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 homes association.

## Exhibit 1 to Ordinance

### 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 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.

### 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 S.E. Green  
Lee's Summit, Missouri 64063

and notices to Licensee shall be addressed to:

Richard V. Baker & Joan M. Baker  
200 SE Brownfield Drive  
Lee's Summit, MO 64063

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

**Exhibit 1 to Ordinance**

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**

\_\_\_\_\_  
Stephen A. Arbo, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk Trisha Fowler-Arcuri

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

**RICHARD V. BAKER**

*Richard V. Baker*  
\_\_\_\_\_

**JOAN M. BAKER**

*Joan M. Baker*  
\_\_\_\_\_

Exhibit 1 to Ordinance

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 4th day of June, 2021, before me, a notary public, personally appeared Richard V. Baker and Joan M. Baker, 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.

Megan Wasek  
\_\_\_\_\_  
Notary Public

My term expires: 9/11/2022



# Exhibit A to License Agreement

