

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF INDEPENDENCE, MISSOURI, (hereinafter called "CITY"), and **NKMS REAL ESTATE INVESTMENTS, INC** (hereinafter called "LICENSEE").

WITNESSETH:

WHEREAS, LICENSEE owns a certain tract of land ("Property"), which is commonly known as **20511 E Trinity Pl**, Independence, Jackson County, Missouri; and

WHEREAS, CITY owns a **Sanitary Sewer** easement which is located within the Property ("Easement"); and

WHEREAS, LICENSEE is in the process of constructing **Freestanding Monument Sign** on the Property; and

WHEREAS, CITY desires to license to LICENSEE and LICENSEE desires to license from CITY a portion of the Easement for construction, operation and maintenance of a portion of the Facility ("Licensed Premises").

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 construction purposes, subject to the following:

1. LICENSED PREMISES. The Licensed Premises referenced in this Agreement is comprised of a portion of the City's **Sanitary Sewer Easement**.

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, operation and maintenance of a portion of the Facility, Freestanding Monument Sign, as well as the continued encroachment of said improvements upon the Licensed Premises.

3. RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS. Except as specifically allowed by paragraph 2, or by written consent of the CITY, 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. NOT TO INTERFERE WITH USE. LICENSEE, its officers, members, contractors, agents and guests shall not engage in any activity on the Licensed Premises that interferes with the operation of or damages or destroys any facility, improvement, fixture, utility, or other CITY property, except as expressly authorized with the approval of the CITY.

5. RULES AND REGULATIONS. LICENSEE, its officers, members, contractors, agents and guests shall comply with all ordinances, rules and regulations of the CITY applicable to the use of the Licensed Premises.

6. MAINTENANCE. LICENSEE agrees to maintain, at its sole cost, the Facility and other improvements on the Licensed Premises, at all times during the continuation of this Agreement. 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 9 hereof and remove, at the option of City and at the expense of LICENSEE, all improvements of LICENSEE on the Licensed Premises. If at any time during the continuation of the Agreement CITY is required to repair, remove, improve, or any other work is to be completed on City facilities within the easement, removal and replacement of the LICENSEE placed structure will be done at the expense of the LICENSEE.

7. GENERAL INDEMNITY.

A. GENERAL. LICENSEE shall cover, 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. The duty to defend provided by this Agreement shall accrue immediately upon receipt of any lawsuits, suits, actions, claims or demands by the CITY, and the CITY shall retain complete control over the defense of any such lawsuit, suit, action, claim or demand. The LICENSEE's duty to defend includes the obligation to reimburse to the City all costs, fees, or expenses, incurred by the CITY in the defense of any such lawsuits, suits, actions, claims, or demands. Such reimbursement is due within thirty (30) days of the CITY submitting notice of proof of payment of such costs, fees or expenses.

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 or defense 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.

8. INSURANCE.

A. 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.

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 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.

9. 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.

#### 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 paragraph 10.

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.

11. AGREEMENT SHALL RUN WITH THE LAND. The license, benefits and obligations created by this Agreement shall run with the land and shall be binding upon any successors in title or interest to the Property or the improvements, including the Facility, located therein. A copy of this Agreement shall be recorded with the Jackson County Recorder of Deed's Office by the LICENSEE within 30 days of the acceptance of the agreement, or the agreement shall be null and void. A copy of the recorded document shall be presented to the City.

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 7, 9 and 14 shall not be affected thereby and each term and provision of said paragraphs 7, 9, and 14 shall be valid and enforced to the fullest extent permitted by law.

#### 13. ENVIRONMENTAL PROVISIONS.

A. COVENANTS. LICENSEE hereby covenants and agrees to comply in all material respects with all-applicable Environmental Laws and Regulations in connection with its use and

occupancy of the Property. For purposes of this Agreement, "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. §7401 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 et seq.; the Noise Control Act, 42 U.S.C. §4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 et seq.; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. §2601 et seq.; the Atomic Energy Act, 42 U.S.C. §2011 et seq.; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101 et seq.; all Missouri State environmental protection, superlien and environmental clean-up statutes, with implementing regulations and guidelines and all local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials.

B. ENVIRONMENTAL INDEMNIFICATION. In addition to any indemnification set forth herein, the LICENSEE hereby indemnifies and agrees to defend and hold harmless the City, and its agents, partners, officers, representatives, elected officials, attorneys, and employees, each in their official and individual capacities, from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation ("Claims") arising from or attributable to (i) the presence due to LICENSEE's handling, generation, manufacturing, processing, treating, storing, using, reusing, refining, recycling, reclaiming, blending or burning for energy recovery, incinerating, accumulating speculatively, transporting, transferring, disposing or abandoning of Hazardous Materials ("Management") on the Property or the subsurface thereof or the violation of any Environmental Laws due to LICENSEE'S Management, including, without limiting the generality thereof, any cost, claim, liability or defense expended in remediation required by a governmental authority, or by reason or any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment (as environment is defined in CERCLA), due to LICENSEE'S Management of the Property or violation of any Environmental Laws, or (ii) any breach by Lessee of any of its warranties, representations or covenants in this Subsection. Lessee's obligations hereunder shall survive the termination or expiration of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Property or any part thereof.

C. DEFINITIONS. For purposes of this subsection, the term "Hazardous Materials" shall mean and include the following, including mixtures thereof; any hazardous substance, pollutant, contaminant, waste, by-product or constituent as defined in any environmental law; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes however produced regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. §1910.1200 et seq.; any "Hazardous Waste" as defined by the Missouri Hazardous Waste Management Law, MO.Rev.Stat. §§260.350 to 260.480; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA.

15. 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 Independence  
ATTN: City Counselor  
P. O. Box 1019  
Independence, MO 64051

And to

City of Independence  
ATTN: Director, Municipal Services  
P. O. Box 1019  
Independence, MO 64051

and notices to LICENSEE shall be addressed to:

NKMS REAL ESTATE INVESTMENTS, INC  
2829 TOWNSGATE ROAD, SUITE 350  
WESTLAKE VILLAGE, CA 91361

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.

16. 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 Independence, Missouri.

**CITY OF INDEPENDENCE, MISSOURI**

By: \_\_\_\_\_  
Zachary Walker, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
City Counselor

**LICENSEE**

Print: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Sign: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF MISSOURI        )  
  ) ss  
COUNTY OF JACKSON     )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_, husband and wife, known to me to be the persons who executed the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public in and for said County and State

My commission expires:

\_\_\_\_\_