LICENSE AGREEMENT

This License Agreement is made this 28 day of ______, 2011, by and between the City of Lawrence, Kansas, a municipal corporation, George B. Leinmiller, Marlene J. Leinmiller, and EVC Naismith, L.C., a Kansas limited liability company.

RECITALS

- **A.** The City of Lawrence, Kansas ("the City"), is the holder of that Right of Way on which Naismith Drive ("the Naismith Drive Right of Way") is located in the City of Lawrence, Douglas County, Kansas.
- **B.** George B. Leinmiller and Marlene J. Leinmiller (collectively, "the Leinmillers) own certain real property, known as Lots A1, A2, and B, Replat of South Hills No. 3, a Subdivision in the City of Lawrence, Kansas, which is adjacent to and along the Naismith Drive Right of Way.
- C. EVC Naismith, L.C. ("EVC"), owns certain real property, known as Lot 1, Block 9, South Hills, a Subdivision in the City of Lawrence, Kansas, which is adjacent to and along the Naismith Drive Right of Way.
- **D.** The Leinmillers and EVC wish to use a portion of the Naismith Drive Right of Way, in order to enhance the use and enjoyment of their properties, as an access drive ("Access Drive") in order to obtain beneficial ingress and egress to and from their respective properties.
- **E.** The City has approved the Leinmillers' and EVC's use of the Naismith Drive Right of Way as an Access Drive, subject to their execution of this License Agreement and compliance with the terms of this License Agreement.

AGREEMENT

NOW THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. Grant of License. For the sum of one dollar and no cents (\$1.00) and other valuable consideration, the sufficiency of which is hereby acknowledged, the City hereby grants to the Leinmillers and EVC the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, the Naismith Drive Right of Way, as shown in more detail in Exhibit A hereto, as an Access Drive to obtain beneficial ingress and egress to and from their respective properties. The foregoing License includes the right to construct, improve, and

maintain the Access Drive and, subject to all applicable codes and ordinances and prior written approval of the City, the right to place directional, private traffic control, and parking control signage in the Adjacent Landscaped Areas, as that term is defined below. The City will not unreasonably deny sign approval requests that comply with all applicable codes and ordinances.

- 2. The City Makes No Representations. The Leinmillers and EVC agree that the City has made no representations to them with respect to the Naismith Drive Right of Way or its condition, and that they are not relying on any representations of the City or its agents with respect to the Naismith Drive Right of Way or its condition. This License Agreement grants the Leinmillers and EVC the License to use that portion of the Naismith Drive Right of Way, as shown in Exhibit A hereto, in its present condition, "as is," without any warranties, representations, or assurances from the City.
- **The Parties' Covenants.** The City, the Leinmillers, and EVC hereby covenant and warrant as follows:
 - **a.** EVC agrees that it shall, at its sole cost and expense, repair, replace, restore, clean, remove snow and ice, and otherwise maintain the Access Drive in good condition, capable of continued use for its intended purpose, ordinary wear and tear excepted.
 - **b.** EVC agrees that it shall, at its sole cost and expense, maintain the landscaping in the areas shown as "Adjacent Landscaped Areas" on Exhibit A hereto ("the Adjacent Landscaped Areas").
 - c. The City agrees that, to the extent that it grants to any other adjacent or nearby property owners a License Agreement or similar right to use the Access Drive, then such grant shall be subject to the assumption thereof by said grantee to a share in a fair and equitable portion of the maintenance obligations described in subparagraph 3(a) and 3(b), *supra*.
 - d. The City, the Leinmillers, and EVC agree not to erect or to allow any barriers, improvements, facilities, parking, or other obstructions that would unreasonably impair access to or use of the Access Drive. In the event that the City must, in the course of doing work in the Naismith Drive Right of Way, temporarily close the Access Drive for any reason, the City hereby agrees to provide the Leinmillers and EVC with a suitable alternative by which to access their respective properties.
 - e. The City, the Leinmillers, and EVC agree not to alter or modify the Access Drive in a manner which would unreasonably interfere with, impede, or impair the continued use or access to the Access Drive. In the event that

- the City must permanently close the Access Drive for any reason, then the City agrees to provide the Leinmillers and EVC with a suitable alternative by which to access their respective properties.
- f. The Leinmillers and EVC agree to maintain comprehensive general liability insurance on the Access Drive located upon such party's respective property. The Leinmillers and EVC further agree to name the City as an additional insured on that insurance.
- **Indemnification.** During the time that this License Agreement is in effect, the Leinmillers and EVC agree to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Leinmillers' or EVC's use or occupancy of the Naismith Drive Right of Way or any portion thereof or any construction, improvement, or maintenance of the Access Drive or the Adjacent Landscaped Area, on account of any injury to persons or damage to property. This paragraph shall not apply to any injury or damage caused by the negligence of the City. Additionally, the City agrees not to waive any defenses that it might assert to any such claim.
- **Accommodation.** The permission granted to the Leinmillers and EVC under the License Agreement is given for good and valuable consideration. However, the permission granted is given as an accommodation to the Leinmillers and EVC and shall be made without requiring the payment of rent from them. The Leinmillers and EVC hereby acknowledges the City's right to the Naismith Drive Right of Way and agree never to assail, resist, or deny such right by virtue of their use or occupancy of the Naismith Drive Right of Way under this License Agreement.
- granted by this License Agreement at any time and for any reason, by giving the Leinmillers and EVC at least 30 days written notice of such termination, except that the City may, at the City's election, terminate the license immediately without such notice (a) if the Leinmillers or EVC fails to comply with or abide by each and all of the provisions of this License Agreement or (b) if the continued occupancy or use of the Naismith Drive Right of Way presents a health or safety hazard. If the City terminates the use of the Naismith Drive Right of Way for use as an Access Drive, as detailed above or for any other reason, then the City agrees to provide the Leinmillers and EVC with a suitable alternative means by which to access their respective properties. The Leinmillers and EVC each reserve to themselves the right to terminate their participation in this License Agreement at any time and for any reason, by giving the other parties hereto at least 30 days written notice of such termination.

- **Pinding Effect.** This License Agreement shall, at all times, be binding upon the City, the Leinmillers' property, and EVC's property, and all owners of the said properties and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of those properties; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of his, her, or its ownership of their respective property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership.
- **Severability.** If any section, sentence, clause, or phrase of this License Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this License Agreement.
- **Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.

CITY OF LAWRENCE, KANSAS, a municipal corporation

DAVID L. CORLISS

City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)	
)	SS:
THE COUNTY OF DOUGLAS)	

BE IT REMEMBERED, that on this day of ______, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires: 3-15-15

IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.

GEORGE B. LEINMILLER

ACKNOWLEDGMENT

THE STATE OF KANSAS SS: THE COUNTY OF DOUGLAS

BE IT REMEMBERED, that on this 21^{ST} day of 1000, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came George B. Leinmiller and Marlene J. Leinmiller, who are personally known to me to be the same persons who executed this instrument in writing, and said persons fully acknowledged this instrument to be their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

My Appointment Expires: 06-17-2013

ADAM STASZKIEWICZ Notary Public State of Kansas

IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.

EVC NAISMITH, L.C.,

MARK R. McPHERSON

Manager

ACKNOWLEDGMENT

THE STATE OF	KADSAS ;)
THE COUNTY O	FJohnson.) SS

BE IT REMEMBERED, that on this 22 day of _______, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came Mark R. McPherson, as Manager of EVC Naismith, L.C, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires: 2/20/2015

NOTARY PUBLIC - State of Kansas
LORRIE MILLER
My Appt. Expires

EXHIBIT "A" Access Drive and Adjacent Landscaped Areas

