

LICENSE AGREEMENT

This License Agreement is made this 28 day of June, 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.
3. **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

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.

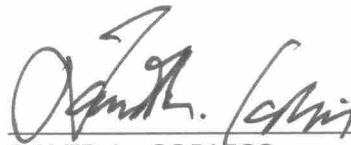
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7. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City, the Leinmillers' property, and EVC's property, and all owners of the said properties and all parties claiming by, through, or under them, and shall run with 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.
8. **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.
9. **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)

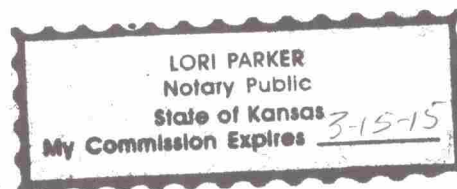
BE IT REMEMBERED, that on this 28th day of June, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, 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



MARLENE J. LEINMILLER

ACKNOWLEDGMENT

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

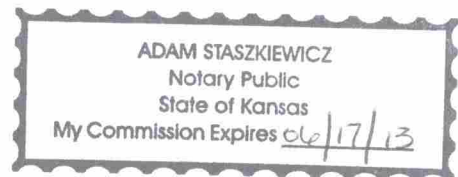
BE IT REMEMBERED, that on this 21ST day of JUNE, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came George B. Leinmiller and Marlene J. Leinmiller, who are personally known to me to be the same persons who executed this instrument in writing, and said persons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



Notary Public

My Appointment Expires: 06-17-2013



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 KANSAS)
THE COUNTY OF Johnson)

ss:

BE IT REMEMBERED, that on this 22nd day of June, 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: 2/22/2015



EXHIBIT "A"
Access Drive and Adjacent Landscaped Areas

