

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Lawrence, Kansas, a municipal corporation, and Joseph J. DeForest and Laura L. DeForest.

### **RECITALS**

- A.** The City of Lawrence, Douglas County, Kansas ("City") is the holder of the Right of Way on which Eighth Street ("City's Right of Way") is located in the City of Lawrence, Douglas County, Kansas;
- B.** Joseph J. DeForest and Laura L. DeForest ("Licensees") are the owners of that real property ("Property"), commonly known as 5627 Chimney Rocks Circle, adjacent to and along the City's Right of Way, in the City of Lawrence, Kansas, and legally described as follows:

Parcel 5A of Lot 5 in Block 5 of the 2nd Plat of Oregon Trail Addition, an addition to the City of Lawrence, Douglas County, Kansas.

- C.** In order to enhance the use and enjoyment of the Property, Licensees have requested a License from the City to maintain an underground storm water drainage pipe ("Pipe") on a portion of the City's Right of Way, as shown in Exhibit A, which document is adopted herein by reference and incorporated herein by reference, and the City has agreed to provide a License to Licensees for such purpose, all in accordance with the terms and conditions of this License Agreement.

### **TERMS**

**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 the parties, the parties agree as follows:

- 1. Grant of License.** The City hereby grants to Licensees the non-exclusive license, right, privilege, and permission ("License") to use, in common with others, that portion of the City's Right of Way for the purpose of installing and maintaining, at Licensees' sole cost and expense, the Pipe identified in subsection **(C)** of the Recitals section, above.
- 2. Covenants of the Licensees.** In exchange for this License, in addition to giving good and valuable consideration, the Licensees hereby covenant and warrant as follows:

- (a) To maintain the Pipe at the Licensees' sole cost and expense for the duration of the License Agreement.
  - (b) To move or remove the Pipe, at the Licensees' sole cost and expense, upon the City's request, if the City determines the Pipe needs to be moved or removed related to the installation, repair, maintenance, or expansion of any streets or utilities located, or to be located in, on, under, or through the City's Right of Way, or if the Licensees fail to properly maintain the Pipe. The Licensees shall bear all costs associated with moving or removing the Pipe and Licensees hereby agree that the City shall have no duty to replace the Pipe. If the Pipe has not been removed from the City's Right of Way within thirty days after the City's request, the City may have the Pipe removed and the cost for removal shall be assessed to the Licensee.
  - (c) To comply with all applicable laws and ordinances including all land use requirements and building standards of the City and, as applicable, Douglas County, Kansas.
  - (d) To refrain from causing any waste, damage, or injury to the City's Right of Way.
  - (e) The Licensees shall not have any right to enlarge, intensify, or increase the proposed scope of their use or occupancy of the City's Right of Way as described in this License Agreement without the prior written consent of the City.
3. **The City Makes No Representations.** The Licensees agree that the City has made no representations to them with respect to the City's Right of Way or its condition, and that the Licensees are not relying on any representations of the City or the City's agents with respect to the use or condition of the City's Right of Way. This License Agreement grants the Licensees the privilege and permission to use that portion of the City's Right of Way described in Exhibit A of this License Agreement, in its present condition, "as is," without any warranties, representations, or assurances from the City.
4. **Accommodation.** The permission granted to the Licensees under the License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to the Licensee and shall be made without requiring the payment of rent from the Licensees. The Licensees hereby acknowledge the City's right to the City's Right of Way and agree never to assail, resist, or deny such right by the virtue of the Licensees' use or occupancy of the City's Right of Way under this License Agreement.

5. **Indemnification.** During the time that this License Agreement is in effect, the Licensees 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 Licensees' use or occupancy of the City's Right of Way, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.
6. **Termination.**
- (a) The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason, by giving the Licensees at least ninety (90) days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice:
- (i) If the Licensees fails to comply with or abide by each and all of the provisions, including the Licensees' Covenants, of this License Agreement; or
- (ii) If the continued use or occupancy of the City's Right of Way presents a health or safety hazard.
- (b) Licensees reserve the right to terminate the permission granted by this License Agreement if use of the Pipe is no longer needed and its service is discontinued. Such termination shall not be effective until the City has been provided at least 30-days written notice of the discontinuation of the Pipe's use.
7. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Licensees and all owners of the Property 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 the Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of the Property, or portion thereof, except for the duties and obligations arising during the period of said 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.

10. **Recitals**. The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth herein *verbatim*.

*[SIGNATURE APPEAR ON THE FOLLOWING PAGES]*

**IN WITNESS WHEREOF**, the undersigned have caused this License Agreement to be executed as of the date noted above.

**CITY:**  
**CITY OF LAWRENCE, KANSAS, a**  
**municipal corporation**

\_\_\_\_\_  
THOMAS M. MARKUS  
City Manager

**ACKNOWLEDGMENT**

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

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, 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:

**LICENSEES:**

\_\_\_\_\_  
JOSEPH J. DEFOREST  
Property Owner

\_\_\_\_\_  
LAURA J. DEFOREST  
Property Owner

**ACKNOWLEDGMENT**

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

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a notary public in and for the County and State aforesaid, came Joseph J. DeForest and Laura L. DeForest, 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 intentional acts and deeds.

**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: