



Document 2015 459

Book 2015 Page 459 Type 06 024 Pages 8

Date 2/19/2015 Time 2:34 PM

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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

✓ Mark Nitchals
City Administrator
City of Winterset
124 W. Court Avenue
Winterset IA 50273

CERTIFICATION

License for Use of City Property agreement for certain real estate described as:

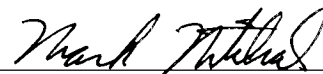
The East 60 feet of the South 4 feet of the East/West alley right-of-way located in Block 18, Original Town of Winterset, Madison County, Iowa.

The undersigned, being the duly appointed and acting City Clerk of the City of Winterset, Iowa, does hereby certify that attached is a true and authentic copy of the above described document, that said license agreement was duly approved by the City Council of the City of Winterset, and that the document is a true and authentic copy of the official records in the custody of the City Clerk of the City of Winterset, Iowa.

Dated this 19th day of February, 2015.



SEAL



Mark Nitchals
City Clerk
City of Winterset, Iowa

LICENSE FOR USE OF CITY PROPERTY

THIS LICENSE AGREEMENT ("Agreement"), dated February 16, 2015, between the City of Winterset, an Iowa municipal corporation ("City"), and T2-CKC, LLC, an Iowa Limited Liability Company ("Licensee").

PURPOSE

Licensee has requested the City to issue it a license for the purpose of constructing and maintaining a stairway on City-owned right-of-way.

TERMS AND CONDITIONS

The parties agree as follows:

1.1. **License.** Subject to the terms and conditions below, City hereby grants to Licensee the non-exclusive use of the City property described and defined in Section 1.2.

1.2. **License Fee.** In consideration of the privileges granted by the City to Licensee under the terms of this License, and for use of the License Property during the term of this License, Licensee shall pay a one-time fee to the City in the amount of One Dollar (\$1.00).

1.3. **License Property.** The licensed property consists of that property described in Exhibit A and highlighted on the map attached as Exhibit B (the "License Property").

1.4. **Condition of the Property.** The Licensee accepts the property "as is" and the City makes no warranty or guarantee as to the suitability of said property for the purpose of this Agreement.

1.5. **Use of the Public Right-of-Way.** Licensee shall not interfere with use of any City right of way by the public except as allowed by this Agreement.

1.6. **Uses of the Property.** Licensee may use the Licensed Property for the purposes herein and for no other purpose or use without the express written consent of the City. The purpose and use of the Licensed Property shall be for construction and use of a stairway on the property as described in Section 1.3.

1.7. **Term of License.** This License shall begin on the date of execution of this Agreement and shall expire on December 31, 2017, unless earlier revoked or terminated as otherwise provided for in this Agreement. The term shall automatically renew for an additional period of three years at the end of the initial term and thereafter every three years for three year

terms unless either party gives written notice of termination of the license agreement to the other party at least 30 days prior to the end of the term. A party giving such a 30 day notice of cancellation shall set up a meeting between the parties prior to the termination date of this Agreement.

1.8. **Construction and Operation Requirements.** Licensee agrees to the following:

- (a) Licensee shall submit its plans for construction to City for approval of such.
- (b) Licensee shall pay all costs associated with constructing, operating, and maintaining any improvements made pursuant to this Agreement, costs associated with relocation or removal of the improvements if so requested by the City, and the cost of permits, inspection services, and applicable administrative fees related thereto.
- (c) Licensee and its agents shall maintain the property in a reasonably clean condition, and, at the termination of the license, shall remove all constructed structures, equipment, refuse and any other materials brought onto the property by the Licensee.
- (d) Licensee shall comply with all laws, rules, and regulations applicable to the construction and maintenance of the approved structure.

1.9. **Compliance with Laws.** Licensee shall comply with local, state, and federal laws, regulations, ordinances and orders governing the Licensed Property and the activities authorized hereunder, and shall obtain all necessary permits from the City prior to commencement of the activities authorized hereunder.

1.10. **Risk of Loss.** The risk of loss shall remain solely with the Licensee throughout the term this Agreement including, but not limited to, construction, maintenance, termination, or revocation.

1.11. **Indemnification and Insurance.** Licensee shall defend, indemnify and hold harmless the City, its officers, agents, employees, successors and assigns against any and all claims, losses, costs, damages, expenses and liabilities, including reasonable attorneys' fees, brought by any person or entity other than Licensee for or from loss of life or damage or injury to any person or property of any person or entity. However, Licensee shall not be required to indemnify and hold harmless the City, its officers, agents, employees, successors or assigns in the case of negligence or negligent acts by the City, its officers, agents, employees, successors or assigns. The indemnity obligation contained in this Section shall survive the expiration or earlier termination of this Agreement. In no event, however, shall the foregoing agreement to defend, indemnify and hold harmless the City be deemed to extend to any liability for any environmental condition of the Licensed Property.

Unless limited by the provision above in this Section, Licensee shall, at its own expense, defend the City in all litigation, pay all reasonable attorneys' fees, damages, court costs and other expenses arising out of such litigation or claims incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents or employees, arising out of such litigation.

Licensee shall take out and maintain at its own expense during the term of this License, Comprehensive General Liability insurance, wherein the City is named as an additional insured, as shall protect itself, the City, and any entity performing work covered by this License from claims for damage for personal injury, disease, illness or death, including accidental death, as well as from claims for property damages which may arise from operations under this License, whether such operations be by itself or by any entity or by anyone directly or indirectly employed by either of them. The Comprehensive General Liability insurance policy shall have limits of liability of not less than Five Hundred Thousand Dollars (\$500,000.00) applicable to the liability assumed by Licensee under this Section. Licensee shall provide the City with a copy of its Certificate of Insurance prior to the commencement of construction and keep such Certificate up to date if any changes should occur. All insurance required hereunder shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Iowa, and shall contain a provision whereby the insurer agrees not to cancel the insurance without thirty (30) days prior written notice to the City.

If Licensee fails to comply with the insurance requirements of this Section at any time, City may, in its sole discretion, cancel this Agreement immediately without any notice otherwise required.

1.12. **City Infrastructure.** Unless otherwise agreed to by the parties or provided for in this Agreement, Licensee shall not interfere with or damage existing utility facilities or City infrastructure, on, off, under, or near the Licensed Property, and shall indemnify and reimburse the City for any damages, costs, expenses or liabilities resulting from Licensee's damage or interference therewith.

1.13. **Events of Default.** Each of the following, without limitation, shall constitute an event of default by Licensee:

- (a) Licensee fails to keep, perform and observe any promise or agreement contained in this License; or
- (b) Any lien is filed or remains against the Licensed Property by virtue of any work performed under this Agreement.

Upon such event, the City shall provide written notification to the Licensee that provides a minimum period of ten (10) days for Licensee to cure such default except as to insurance requirements in Section 1.11.

1.14. **Result of Default.** Upon the occurrence of any of items in Section 1.8 and a lack of cure by Licensee, the City may, at its option, exercise any one or more of the following rights and remedies:

- (a) deny access to the Licensed Property; or
- (b) terminate this License Agreement; or
- (c) Exercise any and all additional rights and remedies that the City may have at law or in equity.

1.15. **Waiver.** No waiver by the City at any time of any of the terms or conditions of this License Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other terms or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of the City to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any fee then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquish thereof, or acquiescence therein and no notice by the City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the City of default in one or more instances. No waiver shall be valid against the City unless reduced to writing and signed by an officer of the City duly empowered to execute same.

1.16. **Exceptions to Default.** Except as otherwise provided herein, neither the City nor Licensee shall be deemed to be in default or breach of this License Agreement by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of government authority, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided that Licensee's obligation to pay fees, additional fees, charges or other money payments required by this License Agreement which have been incurred prior to the force majeure event or following its cessation shall continue.

1.17. **Safety Measures.** Licensee shall take such measures as are necessary or appropriate to protect the general public from any danger posed by Licensee's activities or Licensee's property under this License. Licensee shall also take measures to protect existing City infrastructure on the property, including but not limited to sidewalks, water and sewer lines, water meters and other utilities. If at any time during the term of this Agreement the City deems the Licensed Property to be a risk to public safety, the City may terminate this agreement subject to the notice requirements of Section 1.12 of this Agreement.

1.18. **Surrender of Premises and Title to Improvements.** Licensee shall yield and deliver peaceably to the City possession of the Licensed Property on the date of cessation of this License, whether such cessation be by revocation, termination, expiration or otherwise, promptly

and in good condition. Prior to such surrender of the Licensed Property, Licensee shall remove all improvements and restore the Licensed Property to its original condition. Otherwise, title to all improvements constructed or installed by Licensee on the Licensed Property shall vest in the City upon revocation, termination, expiration or otherwise of this License and the City may assess costs to Licensee for removal of such improvements and restoration of the Licensed Property to its original condition.

1.19. **City's Right of Entry.** The City of Winterset, its officers and employees, shall be entitled to enter the Licensed Property at any time for all reasonable purposes, including, without limitation, inspection of the Licensee's activities and protection of the public.

1.20. **Non-transferability.** This License is personal to the Licensee and may not be transferred or assigned in any manner without the prior written approval of the City; provided, however, that Licensee may transfer this License without the City's prior written approval to any successor-in-interest to Licensee, whether by merger, acquisition, or transfer of partnership interests.

1.21. **Amendments.** A party may amend this Agreement only by an amendment in writing and signed by both parties. Any oral amendment is void.

1.22. **Merger.** This Agreement is the final and exclusive statement of the parties' agreement and supersedes any and all prior negotiations and agreements.

1.23. **Severability.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.

To evidence the parties' agreement to this Agreement, they have executed and delivered it on the date stated in the preamble.

CITY:

CITY OF WINTERSET,
an Iowa municipal corporation

By  _____
James C. Olson, Mayor

ATTEST:

 _____
Mark Nitchals, City Administrator

LICENSEE:

T2-CKC, LLC,
an Iowa Limited Liability Company

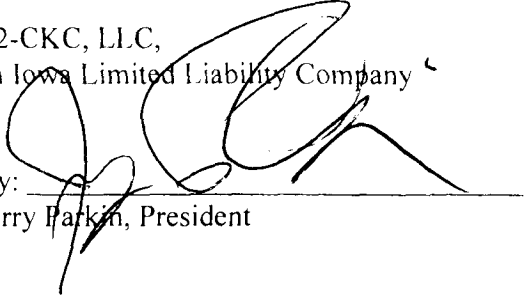
By: 
Jerry Parkin, President

Exhibit A

The East 60 feet of the South 4 feet of the East/West right-of-way located in Block 18, Original Town of Winterset, Madison County, Iowa.