

(Top 3 inches reserved for recording data)

LICENSE AGREEMENT (Deck Encroachment)

This License Agreement (“License” or “Agreement”) is entered into by and between the City of Northfield, a municipal corporation under the laws of the State of Minnesota (“City” or “Licensor”), and Dale H. Talley, a single person, as trustee, or his successor in trust, of the Dale H. Talley Revocable Trust, 1413 Blue Flag Court, Northfield, MN, 55057 (“Licensee”); (collectively the “parties”).

RECITALS:

WHEREAS, the Licensee is the owner of the real property located at 1413 Blue Flag Court in the City of Northfield, Minnesota, which real property is legally described as follows:

Lot 4, Block 3, Prairie Hills 3rd Addition, Dakota County, Minnesota

(hereinafter referred to as the “Property”); and

WHEREAS, the Licensor is the owner of a drainage and utility easement located adjacent to the Property (hereinafter referred to as the “Easement Area”); and

WHEREAS, the Licensee desires to construct a 18’ x 14’ deck on the Property (the “Improvements”), which deck footings will encroach in Licensor’s Easement Area at its base as well as overhanging the Easement Area a distance of 6 feet; and

WHEREAS, the Licensee desires a license from Licensor authorizing Licensee’s limited use of the Easement Area for the deck encroachment; and

WHEREAS, a sketch/schematic of the location of the Improvements describing and depicting the dimensions and location of the deck encroachment within the Easement Area is provided in Exhibit A, which is attached hereto and incorporated herein by reference (the “Licensed Premises”); and

WHEREAS, the Licensee has requested that the Licenser permit the deck encroachment and the Licenser is willing to permit said encroachment as described and depicted in Exhibit A upon those certain conditions contained herein.

NOW, THEREFORE, for valuable consideration, it is agreed by and between the parties as follows:

1. Grant of License and Description of Licensed Premises. In consideration of the terms, covenants, and conditions contained herein, the Licenser hereby grants to the Licensee a terminable, nonexclusive license to use the Licensed Premises for the purpose stated above herein, subject to the following conditions:
 - a. Licensee shall commence no work authorized by this License related to construction, repair or replacement of the Improvements until it has obtained all required approvals and permits as required by the City. Licensee shall submit plans and specifications for Licensee's improvements to the City Engineer for approval. All Improvements shall comply with applicable law and City Code.
 - b. Licensee shall take all necessary precautions to protect and preserve the City's Easement Area during any activities within or use of the Licensed Premises as contemplated in this License.
 - c. Licensee shall take all necessary precautions to avoid creating unsafe or unsanitary conditions within the Licensed Premises and shall not hinder the natural free and clear passage of pedestrians or motorized or non-motorized vehicles.
 - d. Licensee shall conduct any work authorized by this License or subsequently approved by the City in a manner so as to insure the least obstruction to and interference with present and continued use of the Easement Area and shall return the Easement Area, except for the deck encroachment authorized hereby, to its original condition following such authorized work at Licensee's sole cost and expense.
 - e. Licensee shall notify Gopher State One Call prior to conducting any excavation necessary to construct, maintain or repair the Improvements and comply with the requirements thereof.
 - f. Licensee shall maintain access to all properties and cross streets during the term of this License, including emergency vehicle access.
 - g. Licensee shall remove daily all dirt or debris from sidewalks, trails, public and private roadway surfaces and curbs and gutters during any work authorized by this License or subsequently approved by the City.
 - h. Licensee shall not conduct any work within the Easement Area outside the Licensed Premises specified in Exhibit A without the express prior written approval of the City.
 - i. Licensee shall be responsible for either; 1) removing the Improvements and all associated costs, or 2) the cost of removal of the Improvements by the City, should the City or another authorized entity need to conduct work in the Easement Area and the Improvements interfere with such work in the judgment of the City.

Subject to the foregoing, the Licensee shall have the right and duty to operate, maintain, repair and alter said Improvements. Any operation, maintenance, repair or alteration to the Improvements shall not, except for minor changes relating to building materials, expand the encroachment. Alterations or replacement shall require City approval and shall at all times comply with City Code.

2. Term. This Agreement shall terminate (a) upon the destruction, demolition or removal of the Improvements to be situated on the Property in the Easement Area described above, or (b) upon the failure of the Licensee to comply with any material term or condition of this Agreement.

Notwithstanding the foregoing, this License shall be for an indefinite term commencing on the date of the last signatory to this Agreement and continuing until terminated by the City by written notice to the Licensee. Such notice shall be given at least 90 days in advance of the effective date of such termination. Such notice shall be delivered to Licensee or its successor in interest (as their interests and addresses may appear on the tax rolls of the County in which the Property is located), either personally or by certified mail. If such service cannot be made, service may be posted on the building on the Property.

This License may also be terminated at any time by Licensee by written notice to the City. Such notice shall be given at least 90 days in advance of the effective date of such termination and shall be delivered either personally or by certified mail to the City Clerk at the City's main offices.

Before the effective date of any such termination of this License under this Section, Licensee shall remove all of Licensee's Improvements from the Licensed Premises, at Licensee's sole cost and expense, and shall restore the Licensed Premises to its preexisting condition or better pursuant to the standards and requirements set forth in City Code, as amended, unless otherwise directed by the City in writing. In the event that Licensee fails to remove the improvements from the Licensed Premises before the effective termination date of this License, the City or its authorized agents or representatives may perform any work necessary to remove the Improvements from the Licensed Premises and restore the Licensed Premises to its preexisting condition, and Licensee shall reimburse City for all expenses reasonably incurred by the City in performing such work. If Licensee fails to so reimburse the City as required by this paragraph within 30 days of Licensee's receipt of a billing statement for such charges from the City, the unpaid charges shall constitute a lien against the Property from and after the date they were due and unpaid. The City may take any action it is authorized under law to take to recover such unpaid charges, including certifying such unpaid charges to the county auditor for collection with taxes on the Property.

3. License Fee. Licensee shall pay a license fee of \$1.00 at the time of execution of this Agreement.

4. Use of Licensed Premises. Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the Licensed Premises only for the specific purpose hereinabove stated; provided, however, that during the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the Licensed Premises, whether federal, state, local, or contractual in addition to any such other requirements as applicable to Licensee's Property or the Easement Area. The Licensee shall not intentionally commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises or Easement Area. Should the Licensee intentionally commit or allow to be committed any waste on or destruction to the Licensed Premises or Easement Area, the Licensee shall immediately restore the Licensed Premises and Easement Area to the original condition of the Licensed Premises and Easement Area at the inception of this License Agreement or as altered in accordance with plans and specifications as submitted to, and approved by, the City Administrator of the Licensor, or his or her designated representative, or, alternatively, pay to the Licensor the cost of restoring the Licensed Premises and Easement Area to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs.

During the term of this Agreement, Licensee shall keep the Licensed Premises and the Easement Area in the immediate area of the deck in a sanitary condition, remove all trash from the Licensed Premises and keep the premises free from refuse or other debris. Licensee shall be responsible for snow and ice removal from the Licensed Premises.

5. Conditions of Licensed Premises "As Is" and Not Warranted. The Licensor does not warrant that the Licensed Premises is suitable for the purposes for which it is permitted to be used under this License. The Licensor shall have no responsibility with regard to any failure of or damage to Licensee's Improvements within the Licensed Premises. Licensee understands and acknowledges that this License grants it only a terminable license to use the Licensed Premises, and does not confer any permanent property rights with respect to the Licensed Premises upon Licensee.
6. Licensor's Right of Entry. The Licensee shall permit or allow the Licensor and the agents and employees of the Licensor to enter upon the Licensed Premises at all reasonable times for the purpose of inspecting them. The City may order the immediate cessation of any project or work that exceeds the scope of this License or otherwise poses a threat to the life, health, safety or welfare of the public. The City may order Licensee to correct any project or work or condition to comply with the scope of this License or other applicable standards, conditions, ordinances or laws. If the Improvements made by Licensee in the Licensed Premises fall into disrepair at any time during the term of this License, in the City's discretion, the City may order Licensee to conduct any repairs or perform any maintenance necessary to bring the Improvements into compliance. Any such an order by the City authorized by this Paragraph shall state the violation or condition, the terms of correcting the violation or condition and that failure to correct the violation or condition within the stated time limits shall be cause for immediate revocation of this License. If the violation or condition is not corrected within the stated

time limits, the City may immediately revoke this License and/or pursue any and all remedies available to it as provided herein or in law or equity.

7. Alterations to Licensed Premises. The Licensee shall not be permitted to make any additional improvements or alterations to the Licensed Premises without the prior written consent of the Licensor, except, however, the Licensee shall, at Licensee's expense, make any additional improvements to the Licensed Premises that are needed to maintain the Licensed Premises in their original condition or their condition as altered pursuant to this License, or their condition if such alteration has otherwise been approved in writing by the Licensor.
8. Covenants to Indemnify and Hold Harmless. Licensee shall indemnify, protect, save, hold harmless and insure City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages, including expenses, reasonable attorneys' fees, and costs of alternative dispute resolution, which may arise out of or be caused by Licensee or its agents, employees, contractors, with respect to Licensee's use of the Easement Area or Licensed Premises. Licensee shall defend City against the foregoing, or litigation in connection with the foregoing, at Licensee's expense, with counsel reasonably acceptable to City. The indemnification provision of this Paragraph shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this License.
9. Waiver and Assumption of Risk. The Licensee knows, understands and acknowledges the risks and hazards associated with using the Licensed Premises and Easement Area for the purposes permitted herein and the Improvements thereon and hereby assumes any and all risks and hazards associated therewith. Licensee understands and acknowledges that the primary purposes of the Licensed Premises and the Easement Area, notwithstanding this Agreement, are to accommodate public drainage and utility facilities, and that the Easement Area and drainage and utility facilities located therein require regular maintenance, repairs or other work. Licensee hereby irrevocably waives any and all claims against the Licensor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Licensee as a result of using the Licensed Premises or any of Licensee's activities or Improvements, and hereby irrevocably releases and discharges the Licensor and any of its officials, employees or agents from any and all such claims of liability related to the Licensed Premises or the Improvements therein, or the Licensor's maintenance, repair or other work conducted within the Easement Area by the Licensee or Licensor or any other third party, except those resulting from the negligence or intentional misconduct of the Licensor.
10. Insurance. The Licensee shall at Licensee's expense maintain in effect bodily injury liability insurance and property damage insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04 or the amount stated in the Licensee's insurance certificate, whichever is greater. The City of Northfield shall be named as an additional insured. The Licensee's insurance policy

and certificate shall not be cancelled or its conditions altered in any manner without Ten (10) days prior written notice to the City Clerk. Upon request, the Licensee shall deliver to the City Clerk certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. If Licensee fails to maintain a policy of insurance as required by the City for the term of this License, the City may immediately revoke this License and require the immediate removal by the Licensee of the Licensee's Improvements from the Licensed Premises and Easement Area at the Licensee's sole cost and expense, and the Licensee shall restore the Licensed Premises and Easement Area to its preexisting condition or better pursuant to the standards and requirements set forth in City Code.

11. Real Estate Taxes. The Licensee agrees to pay any and all real estate taxes which may be assessed against the Licensed Premises being licensed hereunder as such real estate taxes become due and payable.
12. Mechanic's Liens. The Licensee hereby covenants and agrees that the Licensee will not permit or allow any mechanic's or materialman's liens to be placed on the Licensor's interest in the Licensed Premises during the term hereof for labor performed or material supplied in connection with any work or improvements performed or caused to be performed by the Licensee. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Licensor's interest, the Licensee shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that the Licensee may contest any such lien provided the Licensee first provides adequate security protecting the Licensor against such lien.
13. Attorneys' Fees. If any action at law or in equity shall be brought by Licensor on account of any breach of this License Agreement by Licensee or for the recovery of the possession of the Licensed Premises, Licensor shall be entitled to recover from Licensee reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.
14. General Terms.
 - a. RECITALS. The recitals to this Agreement are made a part hereof and incorporated herein by reference.
 - b. VOLUNTARY AND KNOWING ACTION. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
 - c. AUTHORIZED SIGNATORIES. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the

full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

- d. **NOTICES.** All communications, demands, notices, or objections permitted or required to be given or served under this License Agreement shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to the other party to this License Agreement, to the address set forth in this License Agreement, or if to a party not a party to this License Agreement, to the address designated by a party to this License Agreement in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the 10th day after the giving of such notice, such newly designated address shall be such address for the purpose of all communications, demands, notices, or objections permitted or required to be given or served under this License Agreement.
- e. **ASSIGNMENT OR TRANSFER OF LICENSE.** Licensee shall have no right to assign its interest in this License Agreement without the prior written consent of Licensor, which consent may be granted in writing by the City Administrator upon request.
- f. **MODIFICATIONS/AMENDMENT.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and Licensee.
- g. **NOT PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY.** Nothing contained in this License Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Licensor and the Licensee.
- h. **CUMULATIVE RIGHTS.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Licensor or the Licensee is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
- i. **RECORDS—AVAILABILITY AND RETENTION.** Pursuant to Minn. Stat. § 16C.05, subd. 5, Licensee agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Licensee and involve transactions relating to this Agreement. Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.

- j. **COMPLIANCE WITH LAWS.** Licensee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, improvements, personal property, programs and staff for which Licensee is responsible.
- k. **GOVERNING LAW.** This Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- l. **DATA PRACTICES.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- m. **NO WAIVER.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- n. **SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- o. **ENTIRE AGREEMENT.** These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- p. **HEADINGS AND CAPTIONS.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- q. **SURVIVABILITY.** All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- r. **RECORDING.** This License Agreement shall bind the heirs, executors, administrators, assigns and successors of the parties. This License shall be recorded

by the Licensee at the expense of the Licensee as soon as practicable following execution.

CITY OF NORTHFIELD; LICENSOR

By: _____
Rhonda Pownell, Its Mayor

Date: _____

By: _____
Deb Little, Its City Clerk

Date: _____

COUNTY OF RICE)
) ss.
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me, a notary public in and for the above named County and State, on _____, 2019, by Rhonda Pownell and Deb Little, respectively the Mayor and City Clerk, on behalf of the City of Northfield, a municipal corporation under the laws of the State of Minnesota, Licensor.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.
Northfield City Attorney
525 Park Street, Suite 470
St. Paul, MN 55103-2122
Telephone: (651) 225-8840

EXHIBIT A
Description and Depiction of Licensed Premises

