

CONSTRUCTION STAGING AREA LICENSE AGREEMENT

THIS CONSTRUCTION STAGING AREA LICENSE AGREEMENT [“License”] is entered into by and between the City of Overland Park, Kansas [“Licensor”] and Straub Construction Company, Inc. [“Licensee”]

RECITALS

WHEREAS, Licensor is the owner of property currently used for a public parking lot within Downtown Overland Park on the west side of Marty Street between 80th Street and 81st Street in proximity to property owned and to be developed by the Licensee [“Parking Lot”], and

WHEREAS, the Licensee is proposing to redevelop a portion of Downtown Overland Park [vicinity of 7924 Santa Fe Drive] and that redevelopment will provide a substantial benefit to the economic vitality of the downtown area as well as sales and property tax revenue to the City eventually, and

WHEREAS, the nature of redevelopment in the downtown area requires the use of the entire parcel of property being redeveloped for the building being constructed and parking facilities, leaving no property available for a construction staging area during the construction process, presenting substantial practical difficulties and expense for redevelopment in the downtown area, and

WHEREAS, the Licensor has agreed to allow Licensee temporary use of said public parking area for a construction staging area pursuant to the terms and conditions set forth in this License Agreement.

NOW, THEREFORE, the Licensor and Licensee agree as follows:

1. **LICENSE.** Licensor hereby grants to Licensee a temporary and non-exclusive license to use the portion of said public parking lot legally described on Exhibit A, [“the staging area”] which is attached to and made a part of this Agreement, for the purpose of a construction staging area for construction taking place on the property legally described on Exhibit B [“the construction area”]. The rights of the Licensee under this License shall include a nonexclusive right of Licensee over and across the staging area for storage and operation of construction equipment and supplies and for ingress and egress. The Licensee shall cooperate with the Licensor in determining the layout and exact use of the staging area and in protecting the Licensor’s permanent use of the staging area as a public parking lot after this license has terminated.
2. **TERM.** The term of this License shall begin on the date of the issuance of a building permit to the Licensee for the construction area and may continue for so long as the City’s Director of Planning and Development Services or his designee [“the Director”] determines that use of the staging area is necessary for the construction taking place at the construction area. Either the Licensor or the

Licensee may terminate this License at any time upon thirty (30) days written notice to the other party. If this License is terminated pursuant to this provision, the Licensee shall remove all equipment, fencing, materials and so forth from the staging area and return the site to its original or better condition within 10 business days after termination as directed by the Director.

3. FEE. No fee shall be required for this License.
4. USE. The rights of the Licensee hereunder shall be to temporarily use the designate area of the staging area for necessary construction related purposes, such as a construction trailer, construction equipment, a materials trailer, building materials and other related uses, all as determined by the Director and as specified in a Site Plan, including fencing and access, as approved by the Director. Licensee shall not permit any waste or damage to be done to the staging area and shall maintain the staging area and keep the said area in good condition and repair and free of any litter, construction debris or any other waste and not allow any such litter or debris to blow away from the site. The site shall be returned to the Licensor in its original or better condition when a Temporary Certificate of Occupancy is issued for the construction area, and no permanent Certificate of Occupancy shall be issued unless and until the Licensor has approved the condition of the staging area. No materials, equipment or any else not intended and used for the construction area specified in Exhibit B shall be stored at this site.
5. INDEMNIFICATION. Licensee shall indemnify, defend protect and hold harmless the Licensor, and its officers, agents, and employees from and against any and all liens and encumbrances of any nature whatsoever which may arise in the exercise of Licensee's rights hereunder, and from all claims, causes of action, liabilities, costs and expenses (including all reasonable attorney's and in-house counsel fees), losses or damages arising from Licensee's use of the staging area, any breach of this License, or any act or failure to act of Licensee or Licensee's agents, employees, construction workers, or invitees, except those arising out of the sole negligence or willful misconduct of the Licensor, its officers, agents and employees.
6. RISK OF DAMAGE OR LOSS. Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to its property or injury to all persons and personal property in or upon the staging area. Licensee hereby releases and relieves Licensor, and waives its entire right of recovery against Licensor, for any loss or damage arising out of or incident to the Licensee's use of the staging area.
7. HAZARDOUS MATERIALS. Licensee shall not use, generate, manufacture, store or transport or dispose of, on or over the staging area, any flammable liquids, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or any other "hazardous materials" as that term may be

defined under federal or state laws, except for the hazardous materials which may be in the vehicles that Licensee will park or store on the staging area. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the staging area as a result of Licensee's use and occupancy thereof, Licensee shall provide notice as required by law and Licensee, at its sole cost and expense, shall undertake all appropriate remediation on all the property affected, whether owned by Licensor or any third party, to the satisfaction of the Licensor and any governmental body have jurisdiction thereof. Licensee must also notify Licensor as required by law of any release of hazardous materials that have come or will come to be located on or beneath the staging area.

8. **ALTERATIONS.** Licensee shall not alter the staging area or any improvements on the staging area except as specifically authorized by the Director.
9. **RESTORATION.** Licensee shall maintain the staging area in its current condition and will restore the staging area to its pre-construction condition to include repair to any damaged pavement, curbs, markings, or other public infrastructure components. All repairs must be completed ten [10] days after completion of the term outlined in paragraph 2 above.
10. **LIENS, TAXES AND ASSESSMENTS.** Licensee shall keep the staging area free from all liens, taxes and assessments resulting from or caused by the Licensee's use of the staging area, and shall operate the staging area in full compliance with all federal, state and municipal laws, ordinances and regulations governing the use and occupancy of the staging area.
11. **FENCING AND SIGNAGE.** Licensee may, with the advance approval of the Director, erect fencing and post signage at the entry to the staging area indicating that the use of the staging area is restricted to the Licensee during the term of this Agreement.
12. **SURRENDER.** Upon the termination of this license, all rights, use and interest of the Licensee in and to this License shall be surrendered peaceably to the Licensor and the Licensee shall remove all property from the staging area and restore the staging area and, if needed, any adjoining property, to its former condition or better.
13. **INSURANCE.** Licensee shall maintain in full force and effect during the term of this License, at Licensee's sole cost and expense, a policy of comprehensive general liability insurance in terms and amounts satisfactory to the Licensor and approved in writing by the Licensor's Risk Manager.
14. **DEFAULT.** In the event of a breach by Licensee of any of the terms of this License, all rights of Licensee hereunder shall cease and terminate, and in addition to all other rights Licensor may have at law or in equity, Licensor may re-enter the staging area and take possession thereof without notice and may

remove any and all persons and property therefrom, and may also cancel and terminate this License; upon any such cancellation, all rights of Licensee in and to the staging area shall cease and terminate.

15. **RULES AND REGULATIONS.** The Director shall have the right to establish and enforce reasonable rules and regulations concerning the management, use and operation of the staging area, and compliance with said rules and regulations by the Licensee and his officers, agents and employees is expressly made a term of this License Agreement.
16. **ASSIGNMENT AND SUBLETTING.** This License is personal to the Licensee and Licensee agrees not to sublease, assign, sell, transfer, encumber, pledge or otherwise hypothecate any part of the License or Licensee's interest in the staging area to any other person or entity without the prior written consent of the Director, which consent may be withheld in the Director's or Licensor's sole and absolute discretion. Any purported assignment or sublease by Licensee of this License shall be void *ab initio* and a basis for immediate termination of this License. In the event that the Director or the Licensor shall provide such prior written consent to an assignment or sublease by Licensee, any such assignment or sublease shall not relieve Licensee of its obligations under this License.
17. **ATTORNEY'S FEES.** If any party named herein brings an action to enforce the terms hereof or to declare its rights hereunder, the prevailing party in any such action, on trial and appeal, shall be entitled to recover its costs and reasonable attorney's fees, including those of in-house counsel.
18. **NOTICES.** All notices, consents, requests, demands, approvals, waivers, and other communications desired or required to be given hereunder shall be in writing and signed by the party so giving notice, and shall, with respect to the Licensor, be delivered, received and time stamped in the office of the Overland Park City Clerk, City Hall, 8500 Santa Fe Drive, Overland Park, KS, 66212. With respect to the Licensee, the notices shall be given to: Straub Construction Company, Inc. Attn: Michael Knight, 7775 Meadow View Drive, Shawnee, Kansas 66227. Either party may, from time to time, change the designated party and address for its notices in the manner outlined above.
19. **GOVERNING LAW.** This License Agreement shall be interpreted, enforced and governed by the laws of the State of Kansas.
20. **AMENDMENTS.** No provision of this License Agreement may be amended or modified except by an agreement in writing executed by both parties hereto.
21. **SEVERABILITY.** In the event that one or more of the provisions contained in this License shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of

the provisions of this License shall continue in full force and effect without impairment.

22. SOLE AGREEMENT. This License constitutes the sole agreement between the Licensor and the Licensee with respect to the staging are.

IN WITNESS WHEREOF, each of the parties has caused its authorized representative to execute triplicate original counterparts of this License this _____ day of _____, 2008.

Licensor: _____
John Nachbar
City Manager
Overland Park, Kansas

Licensee: _____
Michael Knight
Straub Construction Company, Inc.

Attest: _____
Marian Cook
City Clerk

Reviewed By: _____
Bart Budetti
Assistant City Attorney