

**CITY BROKEN ARROW USE AGREEMENT WITH PATIO CONDOMINIUM HOME
OWNERS' ASSOCIATION, INC.**

This Agreement is entered on the ____ day of _____, 2018, by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**City**) and the Patio Condominium Home Owners' Association, Inc., a/k/a Patio Condominiums, Inc. (**Licensee**).

I. LICENSE

City grants an exclusive license and agrees to allow **Licensee** to use two parking lots in the City of Broken Arrow as shown on attachment "A" and "B" (**Premises**). **Licensee** shall pay the City a licensee fee in the amount of \$1.00 per year, total amount of \$99.00 for initial 99 year term payable upon execution of the Agreement.

II. TERM

This Agreement shall be in effect from the date of its approval by both parties through June 30th, 2118. Thereafter this Agreement shall automatically renew for successive one-year periods corresponding with the **City's** fiscal year of July 1st through June 30th.

III. IMPROVEMENTS

The **Premises** shall remain the property of the **City**, and may not be modified, altered, or destroyed without the prior written permission from the **City**. Further, no improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of the **City**. Any improvement, structures or fixtures of any kind, which are built or brought upon said property, shall become the property of the **City** upon the termination of this Agreement unless the city gives prior written permission for their removal. Any additions or modification authorized to be removed shall be removed in a manner approved by the **City** immediately upon termination of the Agreement and **Licensee** shall restore the **Premises** to the condition that existed prior to the additions or modifications. All such equipment and furnishings provided by **Licensee** for use at the **Premises** shall remain the property of **Licensee** unless otherwise donated to **City**.

IV. MAINTENANCE

Licensee acknowledges that it has inspected the **Premises** thoroughly, and has full knowledge of the conditions of the **Premises**. The **City** makes no representations or warranties, express or implied, as to the condition of the **Premises**.

Licensee shall inspect the **Premises** monthly and shall immediately notify the City of any damages or of any repairs, which may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **Licensee** shall not allow individuals to utilize the **Premises** until the defective portion of the **Premises** has been repaired or replaced.

Licensee agrees to take all reasonable precautions to prevent waste, damage or injury to the **Premises** by **Licensee** or by any volunteers, guests, invitees or others who may be on the **Premises** that the **Licensee** has allowed use of the **Premises**.

The **Licensee** shall be responsible for installation, repair, maintenance and upkeep of all signage, irrigation and snow and ice removal of **Premises at the Licensee's** expense.

Licensee shall perform all custodial duties of the **Premises** as needed, and on a regular basis to ensure cleanliness of Premises. **Licensee** shall pick up all trash and deposit in an appropriate trash receptacle.

Licensee shall promptly reimburse the City for the cost of parts of labor for any replacement or repair on the **Premises** as a result of the negligent acts of **Licensee** or by its volunteers, guest, or invitees, and for the **City's** cost in performing any of **Licensee's** contractual duties.

The city retains the right to enter any portion of the Premises at any and all times, without prior notice, to inspect the **Premises** or to conduct maintenance or repairs, or for the purpose of determining whether **Licensee** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the City under this Agreement.

The **City** shall be responsible for installation, repair, maintenance and upkeep of paving, lighting, fencing and striping of the parking spaces on the **Premises** as the City deems necessary. That in the event this Agreement is terminated by the parties hereto, all improvements shall remain on the **Premises**.

V. INDEMNIFICATION

Licensee is not affiliated with the **City** in any respect under this Agreement. This Agreement shall not be construed to create the relationship of agent, servant, employee partnership, joint venture or association as between the **City** and **Licensee** or its officers, employees, contractors or representatives for any purposes.

As partial consideration for this Agreement, **Licensee** agrees to indemnify, defend (at the **City's** option), and hold harmless the **City**, its employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings, reasonable attorney's fees, and actual damages of any kind of nature, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of **Licensee**, its guests, invitees, licensees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to any injury or damage that occurs relating to **Licensee** activities, or **Licensee's** performance or failure to perform the terms and conditions of this Agreement. Such obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the City, or occurring within the scope of the City's obligations to maintain and repair the property as provided for elsewhere hereunder, and in accordance with the terms, conditions and exceptions in the Governmental Tort Claims Act. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

Licensee shall provide the **City** with Prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received, and actual or anticipated disputes with or claims by any individual.

VI. INSURANCE AND WAIVER OF SUBROGATION

Without limiting the **City's** right to indemnification, **Licensee** and each of its contractors, shall obtain insurance in no less than or in terms more restrictive than the following: General Liability Insurance covering all premises and activities, with an applicable limit of liability not less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate;; and **Licensee** shall include the **City** as an Additional Insured on all required insurance policies. **Licensee** shall also require its contractors to list the **City** as an Additional Insured. **Licensee** shall submit certificates of insurance to the **City's** Risk Manager for approval before allowing any individuals, including but not limited to any contractors, to commence work or engage in any activities under this Agreement. **Licensee** and its contractors shall maintain the required insurance with insurers that carry a Best's "A" rating and which are licensed and admitted to write insurance business in Oklahoma. Failure of **Licensee** or its contractors to obtain and maintain any required insurance does not relieve **Licensee** from any liability hereunder.

VII. TERMINATION

This Agreement shall be subject to termination upon expiration of this Agreement, June 20, 2118, by either party for any reason at any time by the terminating party notifying the other party in writing of such termination. The terminating party must provide 60 day notice of its intent to terminate to the other party.

Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping the **City** from enforcing the full provisions thereof.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned or encumbered by **Licensee or the City without the prior written consent of the parties hereto.**

This Agreement is not a waiver of any permit or other legal requirements, and does not assure approval based upon any circumstances other than compliance with the law.

This Agreement shall be construed under the laws of the State of Oklahoma. Exclusive Original Jurisdiction and venue for any action relating to this Agreement shall be solely in the Tulsa County District Courts of Oklahoma. **Licensee** shall conform to and abide by all Federal, State, and local laws and regulations, including, but not limited to all laws regarding employment of aliens, and that no person shall be subjected to discrimination under a project, program or activity supported by this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement.

This documents may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by the parties.

The parties have caused this Agreement to be executed on the dates hereinafter set forth.

As approved to form:

City of Broken Arrow

Leslie Myers
Assistant City Attorney

By: _____
Craig Thurmond, Mayor

Attested:

Patio Condominium Home Owners' Association,
Inc.

City Clerk/Seal

By: *Jose C. Gutierrez*
President

Date of Execution:

Printed Name: JOSE GUTIERREZ

Mailing address (other than the premises address):

PO BOX 150220
TULSA OK 74115

State of Oklahoma)
)ss.
County of Tulsa)

Before me, a Notary Public, on this 11 day of April, 2018, personally appeared Jose Gutierrez known to me to be the identical person who executed the within and foregoing instrument, and as a President of Patio Condominium Home Owners' Association, Inc., a/k/a Patio Condominiums, Inc., acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said corporation for the uses and purposes therein set forth.

My Commission Expires:

Tammy R. Seale
Notary Public



TAMMY R. SEALE
Notary Public
Tulsa County
State of Oklahoma
Commission # 17011422
Expires: Dec. 14, 2021