

**ROAD MAINTENANCE AGREEMENT BETWEEN
THE FAMILY RANCH, LLC, AND THE CITY OF LEE'S SUMMIT, MISSOURI**

THIS AGREEMENT ("Agreement") is made this 7th day of July, 2014, by and between The Family Ranch, LLC, a Missouri Limited Liability Company (the "**Developer**"), and the City of Lee's Summit, Missouri, a municipal corporation (the "**City**").

WHEREAS, on August 15, 2013, the City Council concluded a public hearing for Application #PL2013-046, for a special use permit for rock reclamation (mining) on property zoned AG and located at or about 2001 NW Quarry Park Road, Lee's Summit, Missouri, with said property legally described in **Exhibit A** ("**Property**");

WHEREAS, following the public hearing for said Application, the Council adopted Ordinance #7354 which approved the Application and granted a special use permit to the Developer for rock reclamation (mining) on the Property ("**Special Use Permit**");

WHEREAS, Section 2.4 of Ordinance #7354 is a condition of approval of the Special Use Permit, and it requires the Developer to enter into a mutually satisfactory road maintenance agreement with the City;

WHEREAS, in satisfaction of the City Council's condition of approval, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Developer's use of land and operations under the Special Use Permit; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties, and it is the intent of the parties that this Agreement satisfy the requirement of Section 2.4 of Ordinance #7354.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. "**Developer**" shall mean The Family Ranch, LLC, or any other successor or assign in the Property that is legally operating under the Special Use Permit.
 - B. "**Covered Roads**" shall mean those sections of Quarry Park Road and Pryor Road generally shown in the map attached hereto and incorporated by reference as Exhibit 'B', and more specifically described as that public City right-of-way to and from the access point of the Property onto Quarry Park Road towards the west to allow travel

to and from the entrance to the property currently owned by Superior Asphalt, and to the east onto Pryor Road (south) to the State owned right-of-way at the I-470 intersection; provided further that the Covered Roads by this definition do not include the State owned right of way.

C. **"Special Use Permit"** shall mean the special use permit approved by Ordinance No. 7354 on August 15, 2013.

2. **Maintenance Obligations.** Upon the commencement of operations covered by the Special Use Permit, the Covered Roads shall be maintained by the Developer so as to provide a paved condition no less than reasonably adequate for public vehicular transportation, as determined by the City Engineer in the City Engineer's sole professional discretion, and in accordance with the provisions of this Agreement.

A. In connection with its obligation to maintain the existing condition of the Covered Roads, Developer shall use materials of the same or better quality than those utilized by the City to surface and/or repair similar roadways and in accordance with the current standards specifications of the City. All repairs and maintenance activities shall be completed in accordance with standard construction practices acceptable to the City Engineer, and in accordance with all applicable regulatory and legal provisions, including, without limitation, the City's Design and Construction Manual then in effect at the time the maintenance work is performed, and any other applicable rules, requirements and standards established by the City. All such work shall be done in good and workmanlike manner.

B. Developer shall periodically inspect the Covered Roads to determine whether or not any damage has occurred as a result of Developer's activities under the Special Use Permit. Immediately upon discovering the existence of any such damage to the existing condition of the roadways, Developer shall undertake to repair and/or remedy same. Upon discovery of damage by the Developer, the Developer will have 48 hours to contact the City Engineer to work out a schedule of repairs. Repairs shall take place within 30 days, unless a shorter time frame is required in the sole professional discretion of the City Engineer.

C. The Developer has no obligation under this Agreement to treat the Covered Roads for snow or ice, or to remove snow from the Covered Roads.

D. The City Engineer shall act reasonable in the exercise of the City Engineer's sole professional discretion as provided for in this Agreement.

E. The Maintenance Obligations provided for in this Section shall cease when the Special Use Permit and the related activities thereunder cease and expire.

3. **Term.** This Agreement shall commence upon the date indicated above and shall continue in full force and effect until the first to occur of the following: a) the Special Use Permit expires

or is revoked; b) the Developer and the City agree in writing to terminate this Agreement.

3. **Indemnification.**

- A. **General Indemnity.** The Developer shall indemnify, release, , be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, presently or formerly holding office, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of the Developer's obligations under this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out or to the extent caused by the sole negligence of the City, its employees or agents. This indemnification obligation shall survive the termination or expiration of this Agreement.
- B. **No Limitations or Waiver.** The general indemnity of the City as described in Section 3.A. as required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer or its officers, agents, employees, or subcontractors, under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- C. **Notification of Claims.** With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by Section 25 of the Agreement.
- D. **Use of Independent Contractors.** The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

5. **Insurance.**

- A. **General Provisions.** Prior to commencing any work under this Agreement, the Developer shall file with the City evidence of liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. **Limits and Coverage.** Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:
- (1) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
 - (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
 - (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
 - (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any

such policy shall be deemed to waive the City's sovereign immunity.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of all maintenance and repair work and acceptance of same by the City.
 - D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.
7. **Prevailing Wage.** To the extent required by law, the Developer, and all contractors and subcontractors performing work for or on behalf of the Developer with respect to the Covered Roads, shall pay wages in accordance with, and in all respects comply with, Missouri's Prevailing Wage Law (sections 290.210 – 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. If the Developer is required to comply with the Prevailing Wage Law, the Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.
8. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.

9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to its obligations under this Agreement. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply.
14. **Recording and Binding Effect.** The City shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office"), and shall be reimbursed by the Developer for the filing fee associated with same. This Agreement shall run with the land and be binding on and inure to the benefit of the parties and their respective legal representatives, successors in interest, successors and assigns to the extent that the Special Use Permit is transferred to such party or parties in the manner provided for under the Unified Development Ordinance, as long as the Special Use Permit is in effect.
15. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
16. **Representations.** The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact on the Covered Roads that will be caused by the Developer's activities under the Special Use Permit, and that this Agreement is not intended to be, nor shall it be construed as, a delegation of the City's police powers.

17. **No Waiver of Breach.** No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
18. **Rules of Construction.** Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
19. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the City, which consent shall not be unreasonably withheld. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement and during the term of the Special Use Permit, to the extent that the Special Use Permit is to be transferred with the Property in the manner provided for by the City's Unified Development Ordinance.
20. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
21. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
22. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
23. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
25. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

With a copy to:

City Attorney
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

Flip Short
The Family Ranch, LLC
801 NW Commerce Dr.
Lee's Summit, Missouri 64086

With a copy to:


Christine Bushyhead
MKL, PC
2600 Grand Blvd., Ste. 440
Kansas City, Missouri 64108

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

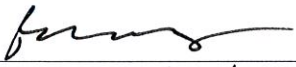
By:


Stephen A. Arbo, *City Manager*

Approved as to form:


John L. Mautino, *Deputy City Attorney*

THE FAMILY RANCH, LLC

By: 

Its: Managing Member

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this 7th day of July, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Jina M. McPherson-Bellamy
NOTARY PUBLIC
Jina M. McPherson-Bellamy

My Commission Expires:

4/3/2016

[SEAL]



JINA M. MCPHERSON-BELLAMY
My Commission Expires
April 3, 2016
Jackson County
Commission #12479932

Notary for The Family Ranch, LLC

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

BE IT REMEMBERED, that on this 27th day of June, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Phillip Short, the Managing Member of The Family Ranch, LLC, who is personally known to me to be the same person who executed the within instrument on behalf of the Family Ranch, LLC, and such person duly acknowledged the execution of the same to be the act and deed of Phillip Short.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Kristan Stanley
NOTARY PUBLIC

My Commission Expires:

Aug. 14, 2017

[SEAL]

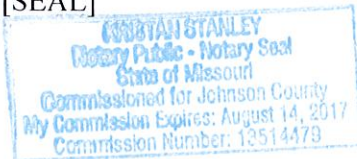


EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

Parcel No. 51-800-01-03-00-0-00-000

A tract of land in the Southwest Quarter of the Northeast Quarter of Section 35, Township 48, Range 32, City of Lee's Summit, Jackson County, Missouri, more particularly described as follows:

Commencing at the Southwest corner of the Northeast Quarter of said Section 35; thence South 86 degrees 35 minutes 26 seconds East along the South line of said Northeast Quarter Section, a distance of 1311.71 feet to the Southeast corner of the Southwest Quarter of said Northeast Quarter Section, thence North 2 degrees 28 minutes 04 seconds East along the East line of the Southwest Quarter of said Northeast Quarter Section and parallel with the West line of said Northeast Quarter Section, a distance of 282.38 feet (282.15 feet Deed); thence North 52 degrees 58 minutes 43 seconds West, a distance of 18.00 feet (North 53 degrees 45 minutes 21 seconds West, a distance of 22.33 feet Deed) to a point on the North right of way line of Interstate No. 470 as now established, said point being the point of beginning; thence continuing North 52 degrees 58 minutes 43 seconds West, a distance of 833.08 feet (North 53 degrees 45 minutes 21 seconds West, a distance of 841.82 feet Deed); thence South 33 degrees 03 minutes 26 seconds West, a distance of 526.71 feet (South 31 degrees 23 minutes 25 seconds West, a distance of 517.25 feet, Deed) to a point on the North right of way line of said Interstate 470; thence South 84 degrees 53 minutes 05 seconds East, a distance of 561.37 feet (South 85 degrees 06 minutes 10 seconds East along said North Highway right of way line, a distance of 561.58 feet, Deed); thence North 87 degrees 59 minutes 25 seconds East, a distance of 201.56 feet (North 87 degrees 46 minutes 20 seconds East along said North right of way line, a distance of 201.56 feet, Deed); thence South 84 degrees 53 minutes 05 seconds East, a distance of 192.65 feet (South 85 degrees 06 minutes 10 seconds East along said North right of way line, a distance of 188.09 feet, Deed); to the point of beginning, subject to that part thereof in roads.

Parcel No. 51-800-02-21-00-0-00-000

All that part of Section 35, Township 48, Range 32, In Lee's Summit, Jackson County, Missouri, described as follows:

From the center of said Section 35, run South 43 rods (709.5 feet); thence North 75 degrees West 9 rods (148.5 feet) to the point of beginning of the tract described herein; thence North 30 degrees East 97 rods (1600.5 feet); thence North 58 degrees West 44-3/4 rods (738.38 feet); to the East line of the Southeast 1/4 of the Northwest 1/4 of said Section 35; thence North along said East line 10 rods (165 feet) to the Northeast corner of said 1/4 1/4 section; thence West along the North line of said 1/4 1/4 section 970 feet; more or less to a point 350 feet East of the Northwest corner of said 1/4 1/4 section; thence South parallel with the West line of said 1/4 1/4 section 124 feet; thence West parallel with the North line of said 1/4 1/4 section 350 feet to the West line of said 1/4 1/4 section; thence South along said West line, 1225.31 feet to a point 29.31 feet South of the

Northwest corner of the Northeast 1/4 of Southwest 1/4 of said Section 35; thence East parallel with the North line of said 1/4 1/4 section, 265.30 feet; thence South parallel with the West line of said 1/4 1/4 section, 441.15 feet to a point in a line bearing South 75 degrees East end passing through the point of beginning, thence South 75 degrees East along said line to the point of beginning, Excepting therefrom those parts in a 30 foot strip and a 60 foot strip deeded to the City of Lee's Summit by Document No 845259 and excepting that part taken for R/W of Interstate Route 470 by Suit No. 741042 in the Circuit Court of Jackson County, Missouri, and excepting that part deeded by Charles B. Cook and Nellie O. Cook, husband and wife to Charles B Cook and Nellie O. Cook, husband and wife in Document No. I-1398491n the office of the Recorder of Deeds and EXCEPTING that part described as follows:

All that part of the Southeast 1/4 of the Northwest 1/4 of Section 35, Township 48, Range 32, described as follows: Beginning at a point 124 feet South of the Northwest corner of said 1/4 1/4 Section; thence East 350 feet; thence South 124 feet; thence West 350 feet to the West line of said 1/4 1/4 Section; thence North 124 feet to the point of beginning.

Also EXCEPTING all that part South of the North R/W line of Interstate Route 470 by Suit No. 741042 in the Circuit Court of Jackson County, Missouri.

Parcel No. 51-800-02-06-00-0-00-000

Part of the Southwest Quarter of the Northwest Quarter of Section 35, Township 48 North, Range 32 West in Lee's Summit, Jackson County, Missouri, more particularly described as follows:

Beginning at the Northwest corner of said Quarter Quarter Section; thence South 86 degrees 36 minutes 33 seconds East along the North line of said Quarter Quarter Section, a distance of 1308.17 feet to a point being 20.00 feet Westerly of the East line of said Quarter Quarter Section; thence South 02 degrees 29 minutes 11 seconds West (South 03 degrees 00 minutes 16 seconds West-Deed) parallel with the East line of the Southwest Quarter of the Northwest Quarter of said Section 35, a distance of 980.90 feet to a point on the existing North right of way line of I-470 Highway; thence North 85 degrees 08 minutes 16 seconds West (North 85 degrees 02 minutes 17 seconds West-Deed) along said existing North right of way line, a distance of 145.28 feet (127.64 feet-Deed) to a point being 150 feet left of Highway Station 354+00; thence North 78 degrees 00 minutes 46 seconds West (North 77 degrees 54 minutes 47 seconds West-Deed) continuing along said existing North right of way line of I-470 Highway, a distance of 201.56 feet to a point being 175 feet left of Highway Station 352+00; thence North 85 degrees 08 minutes 16 seconds West (North 85 degrees 02 minutes 17 seconds West-Deed) continuing along said existing North right of way line of I-470 Highway, a distance of 966.76 feet (967.23 feet-Deed) to a point on the West line of said Quarter Quarter Section; thence North 02 degrees 36 minutes 11 seconds East (North 02 degrees 37 minutes 26 seconds East-Deed) along said West line, a distance of 922.17 feet (923.46 feet-Deed) to the point of beginning.

EXHIBIT B

MAP OF THE COVERED ROADS

