

## **LICENSE AGREEMENT FOR USE OF VILLAGE PROPERTY**

This License Agreement ("Agreement") made this \_\_\_\_\_ day of, \_\_\_\_\_ 2011, by and between the VILLAGE OF ORLAND PARK, an Illinois Municipal Corporation ("Village") and Copenhaver Construction, Inc, an Illinois Corporation ("Licensee"). Village and Licensee are hereinafter sometimes individually referred to as "Party" and collectively as the "Parties."

### **RECITALS**

Village owns property commonly known as the Main Street Triangle located between LaGrange Road, 143<sup>rd</sup> Street and Southwest Highway in the Village of Orland Park.

- a. Licensee desires to use a portion of the Main Street Triangle site as more fully described on Exhibit 'A' ("Property") for the purposes of work required for the undertaking and completion of a State of Illinois project commonly known as IDOT 60N09. The Property will only used for this State of Illinois project. Use of the Property is expressly limited to only those areas and access routes as shown on Exhibit A.
- b. This License Agreement is not intended to create or imply a joint function, joint venture, or joint enterprise between Licensee and the Village.
- c. Subject to the terms and conditions hereinafter set forth, the Village is willing to grant to Licensee permission to use the Property from September 2, 2011 to August 30, 2012, provided that the Licensee shall provide clear access to any part of the Main Street Triangle site (including but not limited to the Property) as may be required by the Village or a Village Contractor within 24-hours of receipt of demand for such access.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Subject to the terms and conditions contained in this Agreement, Village grants to Licensee a non-exclusive and revocable license (the "License") to use portions of the Property as designated by Village for the transportation and storage of clean construction materials and soil on dates and during the hours specified as follows (unless otherwise extended by the Village in its sole discretion):

September 2, 2011 at 12:00 a.m. to August 30, 2012 at 11:59 p.m.

Upon execution of this Agreement, Licensee shall pay to the Village the sum of one dollar (\$1.00) as the fee for the License granted hereunder. The provisions of this Agreement are not intended to relinquish, nor shall they be construed to relinquish,

the authority of the Village or its representatives to exercise the Village's rights as property owner.

## 2. **LICENSEE'S RESPONSIBILITIES**

All of the responsibilities, obligations, liabilities and covenants contained herein shall be at Licensee's sole cost and expense.

- a. Licensee is solely responsible for all supervision and security associated with its use of the Property.
- b. Licensee acknowledges that it has inspected the Property, that it is satisfied with its physical condition and its suitability for its intended use and that it accepts the Property in its current condition. Licensee is solely responsible for determining whether the Property is safe and appropriate for any of its intended activities and shall inspect the Property prior to and subsequent to each use to determine the suitability of the Property for any contemplated use and to identify any safety hazards. Licensee shall take all reasonable measures to protect volunteers, staff, participants, spectators, visitors, guests, officials, and invitees, from known safety hazards. Licensee shall promptly advise the Village of any known safety hazards.
- c. Licensee shall maintain the Property in a safe, sanitary and sightly condition. Licensee shall remove mud, dirt, dust and debris tracked on to hard surfaces inside and outside the Property, including onto public roads and maintain any roads by a date and time requested by the Village. Immediately upon termination of this Agreement, Licensee shall remove all of its equipment and the materials stored on the Property and shall restore the Property to its original condition.
- d. Licensee shall immediately advise the Village of any damage made to Village property and/or any inspection or inquiry relating to the Property by any governmental authority. Licensee shall promptly notify the Village in writing of any condition or activity upon the Property which creates a risk of harm to persons or property, and Licensee shall take timely and appropriate action to prevent injury to persons or property arising out of such condition or activity. Licensee's notification of the Village shall not relieve the Licensee of any other obligations imposed on it by this Agreement. Licensee shall respond promptly to the Village's request for information regarding any such said condition or activity.
- e. Licensee shall be responsible for any damage done to the Property beyond normal wear and tear, and shall fully and promptly reimburse Village for all costs and expenses incurred by Village in repairing and/or remedying said damage, including but not limited to any pollutants or contaminants resulting from the use of the Property.

- f. In use, operation and maintenance of the Property, Licensee shall comply fully and shall cause its employees, agents, contractors, volunteers, representatives and invitees to comply fully with all applicable federal, state, county and local laws, rules and regulations.
- g. The Village does not assume any care, custody, or control of any personal property, materials or equipment upon the Property. Licensee is solely responsible for the care, custody, and control of any property, materials or equipment brought onto the Property. Licensee shall perform all activities on and about the Property in such a manner as not at any time to endanger or interfere with Village operations or with the Village's equipment, or other property.
- h. The Village does not assume any liability for property lost or stolen on the Village Property or for personal injuries sustained on the Property during Licensee's use of any Village Property; or for property loss or damage of adjacent properties related to flooding determined to be caused either directly or indirectly by wooden bridge structure, personal property, or equipment located on the Property. All personal property that is brought upon the Property by Licensee (or any person or firm asking for or on behalf of the Licensee) shall be brought upon the Property at the sole risk of the Licensee.
- i. Licensee agrees that no improvements or alternations, temporary or permanent, structural or non-structural shall be made to or on the Property without the express written consent of the Village.
- j. Licensee shall not trim, cut or in any way disturb any trees or shrubbery on the Village's Property without the written approval of the Village Manager or his duly authorized representative. Licensee will not do or permit any act or thing which may impair the value of the Village's Property or that materially increases the dangers or poses an unreasonable risk of harm to persons or property on or off the Village's Property arising from activities thereon, or that constitutes a public or private nuisance or waste to the Village's Property or any part thereof. Licensee shall ensure the Village's Property is free from all accumulations of waste material or rubbish caused directly or indirectly by Licensee. Licensee shall not represent or hold themselves out as employees or agents of the Village.
- k. Licensee shall not use the Village's Property for any activities involving the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste. Licensee shall not conduct any activity on the Village's Property or use the Village's Property in any manner (i) which would cause the Village's Property to become a hazardous waste treatment, storage or disposal facility, (ii) so as to cause a release or threat of a release of hazardous waste from the Village's Property, or (iii) so as to cause a discharge of pollutants

or effluents into any water source or system. Licensee shall comply with all applicable federal, state and local laws, ordinances, rules and regulations.

- l. Licensee agrees that the Village, its officials, employees, and agents, shall not be liable for injury to the Licensee's business or any loss of income or for damage to the goods, wares, merchandise or the property of the Licensee, its employees, invitees, customers, or any other person in or about the Property, nor shall the Village, its officials, employees, and agents, be liable for injury to the person of the Licensee, its employees, agents, vendors or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, migration of contaminants, obstruction or other defects of the Property, or from any other cause, whether the damage or injury results from conditions arising upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to the Licensee. The Village, its officials, employees and agents, shall not be liable for any damages arising directly or indirectly, from any act or neglect of any other person on the Property.
- m. It is expressly understood, agreed upon and the specific intent of the Parties that the Village, its officers, trustees, agents and employees will at no time assume responsibility or liability for actions of Licensee or Licensee's employees, agents or representatives under this Agreement. Licensee agrees to fully defend, with the attorney chosen by the Village, indemnify and hold harmless the Village, its officers, trustees, agents and employees from and against all claims, suits, damages, losses and expenses of any kind whatsoever, including attorney's fees, arising directly or indirectly out of or by reason of the Licensee and Licensee's employees, agents and representatives action or inactions under this Agreement.
- n. It is specifically recognized, understood and agreed between the Parties that in the event that the Village is in any way deemed to be in breach of this Agreement or any provisions or terms of it, the only claim, suit or action that may be brought against the Village, its officers, trustees, agents and employees is a breach of contract claim for money damages only, and that in the event of a violation by the Village of this Agreement, the Village will pay, at most, as liquidated damages to Licensee, the sum of money which the Licensee paid to the Village for this License which shall not exceed \$1.00. The Parties further recognize and agree that the different types of claims that could possibly be made by Licensee are difficult of ascertainment, and it is the specific intention of the Parties that the Village, its officers, trustees, agents and employees shall never at any time be held liable to Licensee or its heirs or successors for any amount of money that is greater than the amount identified in this paragraph.

In recognition and agreement that its damage award against the Village may be limited, and except for that amount identified in the paragraph above, Licensee hereby forever waives, releases and dismisses the Village, its officers, trustees, agents and employees of and from any and all claims, debts, dues and obligations of every kind and nature that it may have either directly or indirectly that arises or grows out of or may arise or grow out of this Agreement. Licensee specifically waives and releases the Village, its officers, trustees, agents and employees from any and all claims, debts, dues and obligations of every kind and nature under the Illinois and United States Constitutions as well as under any federal or state statute or law, including but not limited to the Civil Rights Act. Licensee further waives all remedies which are available to it for the violation of any of the terms of this Agreement, including but not limited to the equitable remedy of specific performance, and agrees not to seek injunctive relief of any sort. Except for a claim for money damages as set forth above, which damages are limited, Licensee covenants not to sue the Village, its officers, trustees, agents and employees for a violation of any provisions or terms of this Agreement and the Village's responsibilities and obligations under it.

- o. The Licensee shall not assign, transfer, pledge, sublet, surrender or otherwise encumber or dispose of this Agreement or any portion of it or any rights and privileges created by it and shall not permit any other person or persons, company or corporation to use or occupy the Property or any part of it without the prior written consent of the Village Manager.
- p. The Village reserves the right to impose additional conditions, terms, restrictions or other requirements determined to be necessary by it for the public health, safety and welfare of its citizens.

### 3. **INSURANCE AND INDEMNIFICATION**

#### a. General and Umbrella Liability Insurance

Licensee must obtain general liability (GL) and, if necessary, umbrella insurance with a limit of not less than \$1,000,000 each occurrence and umbrella insurance in the amount of \$5,000,000.00.

GL insurance shall be written on Insurance Services Office (ISO) occurrence form or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of the Village assumed in a license agreement).

The Village of Orland Park shall be included as an insured under the GL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. The insurance shall

contain no special limitations on the scope of protection afforded to the Village, its officers, officials, employees, agents, or volunteers.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Village. Any insurance or self-insurance maintained by the Village shall be excess of the Licensee's insurance and shall not contribute with it.

b. General Insurance Provisions

1. Evidence of Insurance

Prior to entering the license premises and/or exercising any rights under this License Agreement, Licensee shall furnish the Village with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Village prior to the cancellation or material change of any insurance referred to therein. Written notice to the Village shall be by certified mail, return receipt requested.

Failure of the Village to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Village to identify a deficiency from evidence that is provided shall not be construed as a waiver of Licensee's obligation to maintain such insurance.

The Village shall have the right, but not the obligation, of prohibiting Licensee from entering the license premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Village.

Failure to maintain the required insurance may result in termination of this License Agreement at the Village's option.

Licensee shall provide certified copies of all insurance policies required above within 10 days of Village's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Village has the right to reject insurance written by an insurer it deems unacceptable.

### 3. Cross-Liability Coverage

If Licensee's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### 4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Village. At the option of the Village, the Licensee may be asked to eliminate such deductibles or self-insured retentions as respects the Village, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

#### c. Indemnification

Licensee shall release, indemnify, defend and hold harmless the Village and its officers, officials, employees, volunteers and agents and each of them, from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), that arise in whole or in part from, relate in whole or in part to, or result in whole or in part from or in any way connected with (i) the exercise of any of the rights granted to the Licensee by this Agreement; (ii) any breach of this Agreement by the Licensee, (iii) the design, construction, inspection, repair, renewal, maintenance, reconstruction, existence, operation, use, misuse, relocation or removal of any part of the Property; (iv) any act or omission of the Licensee relating in any matter to this Agreement; (v) the conduct or management of the Property or of any business or activity therein, or any work or thing whatsoever done, or condition created in or about the Property during the term of the License Agreement; (vi) any act, omission wrongful act or negligence of Licensee or any of Licensee's agents, employees, guests, licensees, invitees or contractors of Licensee; (vii) any accident, injury or damage whatsoever occurring in or at the Property. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Party or person described in this Paragraph. Licensee shall similarly protect, indemnify and hold and save harmless the Village, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Licensee's breach of any of its obligations under, or Licensee's default of, any provision of this License Agreement. Licensee shall also indemnify the Village for any costs, including attorney's fees, which the Village may incur in enforcing the provisions of this Agreement.

## 4. **EARLY TERMINATION**

Village reserves the right to alter the terms and conditions of the License or to terminate this License Agreement at any time and for any reason, including, but not limited to: sale or transfer of the Property to any person or entity, expiration of liability insurance, the misconduct of individuals or for misuse of property; for purposes deemed necessary for public safety or preservation of property as may be determined in the sole discretion of the Village; or because Licensee has breached any of its obligations under this Agreement. Nothing contained in this Agreement shall create any vested or property right in any license nor shall it limit or restrict the rights of the Village to at any time revoke the same or to amend or terminate this Agreement. Licensee acknowledges and agrees that the Village may require, at any time, Licensee to vacate all or part of the Village's property. The Village shall not be responsible in any way for any losses, damages or expenses suffered by Licensee or Licensee's agents, employees, guests, licensees, invitees or contractors in Licensee vacating the Property. The Village is not responsible for any damage caused by the Village or otherwise to the Licensee's or Licensee's agents, employees, guests, licensees, invitees or contractors equipment or property. The Licensee shall bear the sole and entire risk of its property or equipment being located on the Village's Property.

**5. NO THIRD PARTY BENEFICIARY OR TRANSFER OF LICENSE**

This License Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party. The License granted under this Agreement shall be purely a personal privilege, good to August 30, 2012, unless sooner revoked as in this Agreement provided, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such License shall not descend by the laws of testate or intestate devolution but shall cease upon the death of the Licensee.

**6. MISCELLANEOUS**

- a. The Village does not warrant its title to the Property and hereby expressly disclaims any implied or express warranties of any type or nature, including but not limited to warranties of merchantability or suitability for a particular purpose with respect to the Property.
- b. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.
- c. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and

provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

- d. This Agreement embodies the entire agreement between the Parties hereto and supersedes any and all prior agreements and understandings, whether written or oral, and whether formal or informal. In addition, this Agreement embodies and merges the entire understanding between and among the Parties hereto, and any and all prior correspondence, conversations, or memoranda relating the subject matter stated herein are being merged herein and replaced hereby. No change hereto shall be effective without the written consent and authorization of all of the Parties hereto.
- e. Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions, conditions and indemnifications of this Agreement shall survive the termination of this Agreement.
- f. This Agreement shall be governed by the laws of the State of Illinois. The provisions of this Agreement shall be enforceable in any action in law or in chancery. The Parties hereto agree that any legal action to enforce any right or obligation contained in or arising out of this Agreement shall be brought in the Circuit Court of Cook County, Illinois.
- g. In construing this Agreement and/or determining the rights of the Parties hereunder, no Party shall be deemed to have drafted or created this Agreement, or any portion thereof but the Licensee acknowledges that it has requested this Agreement and shall fully comply with all of its terms.
- h. The Village does not waive or release any claims it has or may have in the future against the Licensee. The failure of any Party to this Agreement to enforce the provisions of this Agreement or require performance by another party under any of the Agreement provisions, shall not be construed as a waiver of such provision(s) or affect the right of the Party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed as of the date first above written.

Copenhaver Construction, Inc.

By: \_\_\_\_\_  
Ken Copenhaver

VILLAGE OF ORLAND PARK

By: \_\_\_\_\_  
Its: President

ATTEST:

By: \_\_\_\_\_  
Its: Secretary