

CITY RIGHT-OF-WAY LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “Agreement”) is made effective on this ___ day of _____, 2015, (the “Effective Date”) between the **City of Gainesville** (the “City”), a municipal corporation of the State of Florida, and **Steamers Inc.**, 1326 NE 21st Avenue, Gainesville, Florida 32609 (the “Licensee”), regarding use of City right-of-way.

WITNESSETH:

WHEREAS, the Licensee operates or will be operating an eating place immediately adjacent to the Bo Diddley Community Plaza, which plaza is located at 111 East University Avenue on the corner of SE 1st Street and E University Avenue; and

WHEREAS, the Bo Diddley Community Plaza will be undergoing reconstruction, during which time the plaza together with certain adjacent City right-of-way will be closed to the public; and

WHEREAS, the Licensee seeks to use and control, in association with the operation of an eating place, certain City right-of-way for the duration of the Bo Diddley Community Plaza reconstruction.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Grant of License and Sole Purpose. The City hereby grants to the Licensee and the Licensee hereby accepts from the City a license to use the public right-of-way that is depicted or described on **Exhibit “A”** attached hereto and made a part hereof as if set forth in full (the “Premises”). This Agreement shall be construed as a lease of only the interest, if any, of the City and no warranty of title shall be deemed to be given herewith.

The Licensee’s use of the Premises is for the sole purpose of operating an eating place as defined in the Land Development Code; if the Premises are used for any other purpose, the City shall have the option of immediately terminating this Agreement.

2. Term and Fee. This agreement shall be effective for twelve (12) months from the date the construction fence is placed around Bo Diddley Community Plaza or until the date when the Bo Diddley Community Plaza has been reconstructed and is re-opened to the public, whichever date occurs first. The administrative fee for this Agreement shall be as listed in Appendix A of the City of Gainesville Code of Ordinances for a sidewalk café.
3. Maintenance. The Licensee shall perform, at its sole cost and expense, all work required in the preparation of the Premises for occupancy by Licensee, and Licensee does hereby accept the Premises as now being in fit and tenantable condition for all purposes of Licensee. The Licensee, at its sole cost and expense, shall throughout the term of this Agreement keep and maintain the Premises and any structure now or hereafter erected thereon in a clean and safe condition, shall promptly repair any damage caused by the Licensee, its invitees, employees and others using the Premises, and shall keep the same

free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable.

4. Vacating Premises. Prior to vacating the Premises at the end of the Term or upon termination, the Licensee shall, at the Licensee's sole cost and expense, restore the Premises to the same condition as it existed prior to the Licensee entering into this Agreement with the City.
5. Terms and Conditions. The following terms and conditions shall apply to the Licensee's use of the Premises:
 - a. The principal use shall remain in compliance with the requirements of the City of Gainesville Code of Ordinances.
 - b. There shall be at least a five-foot clearance space free from any obstruction surrounding any fire hydrants on the Premises.
 - c. If enclosures or barriers are required or provided, they shall be designed to provide ADA-compliant access to the public right-of-way. Enclosures or barriers may consist of screens, planters, fencing or other material. Unless otherwise specified in this section, provided that the principal use operates four out of seven days a week and is in operation by 6:00 p.m. each day it is open for business, such enclosure and other improvements may be permanently affixed to the ground, provided they are removed, and the Premises repaired to its original condition, upon termination of this Agreement.
 - d. There shall be no obstruction of the vision triangle, as defined in the Code.
6. Insurance. The Licensee, at its expense, shall maintain general liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage. The City shall be named as an additional insured, as evidenced by a policy endorsement. Policies must be issued by companies authorized to do business in the State of Florida and must be rated at least A- and have a size category rating of VI or higher as per Best's Key Rating Guide, latest edition. The Licensee must give the City no less than 30 days written notice prior to any cancellation, nonrenewal, or any material change in a continuing policy. The City's Risk Management Director is authorized to lower the amount of general liability insurance required, if the Licensee can show that the above amount is excessive for the particular activity. The Licensee shall furnish evidence of such insurance to the City annually.
7. Taxes. The Licensee agrees to pay any and all taxes, including without limitation ad valorem property taxes and personal property taxes, assessed by virtue of the operation of an eating place on the Premises. This provision shall survive the termination or expiration of this Agreement until such time as the taxes are due for the period of time this Agreement was in effect.
8. Utilities. The Licensee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, or any other utility or service used on the Premises.

9. Compliance with Laws. The Licensee agrees to obtain all permits and approvals required by the City in order to use the Premises. In addition, Licensee agrees, at Licensee's sole cost and expense, to use the Premises and any portion thereof in compliance with all federal, state and municipal laws, ordinances, rules, regulations, requirements, or orders of governmental authorities or agencies, now in effect or hereafter enacted or adopted (the "Laws") and the Licensee agrees not to use, nor suffer or permit any person to use in any manner whatsoever, the Premises or any part thereof for any illegal purpose, or for any purpose in violation of any Laws. Licensee will release, indemnify and hold harmless the City, its employees, officers, and agents, from and against any damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation of Laws by any act, omission or neglect of the Licensee, or any owner, employee or agent of Licensee. In the event of any such violation, or in case the City Manager or designee shall deem any conduct on the Premises to be objectionable or improper, the City Manager shall have the right and power to at once declare this Agreement terminated without previous notice to the Licensee.
10. Hazardous Materials. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. Licensee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by any governmental authority with jurisdiction, within the Premises. If any contamination either spread to or was released onto adjoining property as a result of Licensee's use of the Premises, the Licensee shall be held similarly responsible. The Licensee shall indemnify, defend, save, and hold harmless the City and its officers, agents and employees from and against, including but not limited to, any and all liability, claims, suits, losses, demands, fines, fees, penalties, proceedings, actions and causes of action, including reasonable attorney's fees for trial and on appeal, of any kind and nature arising from or in any way related to the actual or threatened damage to the environment, agency cost investigation, personal injury or death, or damage to property, due to a release or alleged release of hazardous materials by the Licensee or its respective employees, agents, invitees and assigns on or under the Premises or in the surface or ground water located on or under the Premises, or gaseous emissions from the Premises or any other condition existing on the Premises resulting from hazardous materials released or alleged released by the Licensee or its respective employees, agents, invitees and assigns. Licensee further expressly agrees that its indemnity obligations shall include, but are not limited to, the cost of any required or necessary inspection, audit, cleanup, remediation, or detoxification and the preparation of any enclosure, remediation or other required plans, consent order, license application, or the like. This indemnity shall survive the termination or expiration of this Agreement.
11. Indemnification. The Licensee shall indemnify, defend, save, and hold harmless the City and its officers, agents and employees from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), for any personal injury or property damage resulting from the use and control of the Premises and the condition and maintenance of the Premises,

including utilities located within the Premises, or otherwise arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Licensee and its officers, agents, employees, and invitees.

12. Right of Entry. The City shall have the right to at any time enter the Premises for purposes of inspection. This right of entry shall not relieve the Licensee of its duty to maintain the Premises.
13. Sovereign Immunity. The Licensee and the City agree that nothing in this Agreement is intended to be or shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.
14. Eminent Domain. The Licensee acknowledges and agrees that its relationship with the City under this Agreement is one of licensee and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle the Licensee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in this Agreement, or any other facts or circumstances arising out of or in connection with this Agreement.

The Licensee hereby waives and relinquishes any legal rights and monetary claims that it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from the Licensee's loss of occupancy of the Premises, or any such rights, claims, or damages flowing from adjacent properties owned or leased by the Licensee as a result of the Licensee's loss of occupancy of the Premises. The Licensee also hereby waives and relinquishes any legal rights and monetary claims that it might have for full compensation, or damages of any sort as set out above as a result of the Licensee's loss of occupancy of the Premises, when any or all adjacent properties owned or leased by the Licensee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale, or has been terminated prior thereto.

15. Public Records. If the Licensee is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, the Licensee shall:
 - a. Keep and maintain all public records, as defined in Section 119.011(12), Florida Statutes, that ordinarily and necessarily would be required by the City; and
 - b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by law; and
 - c. Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Licensee upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The Licensee shall promptly provide the City with a copy of any request to inspect or copy public records in possession of the Licensee and shall promptly provide the City a copy of the Licensee's response to each such request. Failure by the Licensee to comply with this section, including failure to provide a public record upon request, is a breach of this Agreement and the City may immediately terminate this Agreement and may pursue all remedies for breach of this Agreement.

16. Assignment. This Agreement is personal to the Licensee. The Licensee shall not assign, transfer, encumber or otherwise convey this Agreement or its interest in this Agreement to any other person, legal entity or corporation. Any attempted or actual assignment, transfer, encumbrance, or other conveyance, shall render this Agreement null and void.
17. Amendment. This Agreement may not be amended, unless evidenced in a writing executed by all parties.
18. Default. Violation of this Agreement by the Licensee shall place the Licensee in default. Except as otherwise provided in this Agreement, the City shall provide notice of the default to the Licensee and Licensee shall have ten calendar days to correct the default. If the default is not corrected, the City may terminate this Agreement.
19. Termination. This Agreement may be terminated by either party without cause upon one hundred and twenty (120) days prior written notice to the other party.
20. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.
21. Notice. Any notice required under the terms of this Agreement must be in writing and must be either hand delivered or sent by certified mail to the address of the party to whom the notice is to be given (the "Notice"). Addresses of the parties are as follows:

- As to the City:
City of Gainesville
P.O. Box 490
Gainesville, FL 32627

200 E. University Avenue, 4th Floor
Gainesville, FL 32601

Attn: Russ Blackburn, City Manager

- As to the Licensee:
 Arthur H. Guy, President
 Steamers Inc.
 1326 NE 21st Avenue
 Gainesville, FL 32609

IN WITNESS WHEREOF, the parties to this Agreement have set their hands and seals on the day and year first above written.

WITNESSES:

CITY OF GAINESVILLE, FLORIDA

 Russ Blackburn, City Manager

WITNESSES:

STEAMERS, INC.

 Print Name: _____
 Title: _____

THIS IS A FORM DOCUMENT, APPROVED AS TO FORM AND LEGALITY BY THE OFFICE OF THE CITY ATTORNEY. THIS DOCUMENT SHALL NOT BE ALTERED OR REVISED IN ANY MANNER WITHOUT REVIEW AND APPROVAL OF THE OFFICE OF THE CITY ATTORNEY.

EXHIBIT "A"
DESCRIPTION/DEPICTION OF THE PREMISES

