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## ENCROACHMENT AGREEMENT

This Encroachment Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2026, by and between the CITY OF JACKSON, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri ("City"), and PEARL STEWART TRUST, whose mailing address is 1404 Warren Lake Drive, Jackson, Missouri 63755 (collectively referred to as the "Owner").

### RECITALS

**WHEREAS**, Owner is the fee simple owner of certain real property located at 1404 Warren Lake Drive, Jackson, Missouri, more particularly described as Lots Eighty-six (86), Eighty-seven (87), and Eighty-eight (88) of Warren Place Subdivision Phase 2 in the City of Jackson, County of Cape Girardeau, Missouri, as shown by plat filed for record in Plat Book 20 at Page 19 in the land records of Cape Girardeau County, Missouri (the "Property") and more particularly described in Exhibit A attached hereto and made a part hereof; and

**WHEREAS**, the City owns and maintains a public right-of-way and easement adjacent to or upon the Property (the "Right-of-Way"); and

**WHEREAS**, Owner desires to construct and install a heated driveway (the "Improvement") that will encroach upon the City's Right-of-Way; and

**WHEREAS**, the City is willing to permit such encroachment subject to the terms and conditions set forth herein, including the City's authority to require removal of the Improvement without obligation to repair or replace the heating components, in order to protect public safety and infrastructure pursuant to Missouri law, including Section 67.1830, RSMo; and

**WHEREAS**, this Agreement is intended to establish clear and unambiguous provisions regarding liability, removal, insurance, and indemnification to ensure enforceability under Missouri law.

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

## **1. GRANT OF PERMISSION**

Subject to the terms and conditions of this Agreement, the City hereby grants Owner a revocable, non-exclusive license to construct, install, maintain, and use the Improvement within the Right-of-Way, solely for the purpose of a heated driveway serving the Property. The exact location and specifications of the Improvement shall be as described in Exhibit B (plans and diagrams approved by the City) attached hereto and made a part hereof as Exhibit B.. Owner shall obtain all necessary permits from the City prior to commencing construction and shall comply with all applicable laws, ordinances, and regulations.

## **2. REMOVAL OF IMPROVEMENT**

a. Owner agrees that the Improvement is installed at Owner's sole risk and expense. If the City determines, in its sole discretion, that it is necessary to access the Right-of-Way for the repair, replacement, maintenance, or addition of infrastructure (including but not limited to utilities, sewers, water lines, roads, or other public improvements), the City will, upon written notice remove the Improvement or any portion thereof at City's sole cost and expense.

b. The City shall have the obligation to repair, replace, and restore that portion of the concrete Improvement but the City shall not have any obligation to repair, replace, or restore heating components of the Improvement that is damaged or removed in connection with work. Any such repair, replacement, or restoration of the heating components of the heated driveway shall be at Owner's sole cost and expense.

## **3. INDEMNIFICATION AND HOLD HARMLESS**

Owner hereby agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, and any Utilities from and against any and all claims, demands, actions, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to the construction, installation, maintenance, use, or removal of the Improvement, or Owner's use of the Right-of-Way, except to the extent caused by the gross negligence or willful misconduct of the City. This indemnification shall survive the termination of this Agreement.

Owner expressly waives any claim against the City or Utilities for damage to the Improvement resulting from lawful activities in the Right-of-Way and agrees that such waiver is clear, unambiguous, and enforceable.

## **4. NO PROPERTY INTEREST CREATED**

This Agreement grants only a revocable license and does not convey any property interest, easement, or other right in the Right-of-Way to Owner.

## **5. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. Venue for any dispute shall be in the Circuit Court of Cape Girardeau County, Missouri.

**6. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. Owner agrees that this Agreement shall run with the land and be recorded against the Property in the land records of Cape Girardeau County, Missouri.

**7. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements. It may be amended only in writing signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**CITY:**

CITY OF JACKSON, MISSOURI

By: \_\_\_\_\_  
Dwain L. Hahs, Mayor

ATTEST:

\_\_\_\_\_  
Angela Birk, City Clerk

**OWNER:**

\_\_\_\_\_  
Boone C. Wagner

\_\_\_\_\_  
Megan J. Wagner

STATE OF MISSOURI )

