

## IRREVOCABLE LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY

THIS IRREVOCABLE LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY is granted this \_\_\_\_ day of \_\_\_\_\_, 2023, (the "Effective Date") by the City of Moberly, Missouri, a statutory third class city, ("City"), whose address is 101 West Reed Street, Moberly, Missouri 65270, to Orscheln Properties Co. L.L.C. ("Licensee"), whose address is 2000 US Highway 63 South, P.O. Box 280, Moberly, Missouri 65270.

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**WHEREAS**, City owns the right-of-way which is commonly known and/or described as the sidewalk located between the O'Keefe Building at 101 West Coates Street and West Coates Street as depicted on the attached Exhibit 1 (hereinafter "Licensed Premises");

**WHEREAS**, Licensee desires to construct a stairway on the Licensed Premises (the "Improvement") to access an entrance to the O'Keefe Building of the size and design depicted on the attached Exhibit 1;

**WHEREAS**, pursuant to the Moberly City Code and the laws of the State of Missouri, the City is vested with power and authority over the use of municipally owned streets, sidewalks, rights-of-way and other public places;

**WHEREAS**, the City is willing to grant a license to Licensee to allow Licensee to install, use and maintain the Improvement as depicted in Exhibit 1 with certain conditions and stipulations; and

**WHEREAS**, the intent of this License is to authorize the installation, use and maintenance of the Improvement within the Licensed Premises without cost or liability to the City.

### LICENSE

#### 1. **Grant of License.**

The City hereby grants to Licensee a non-exclusive irrevocable authorization (the "License") to install, use and maintain the Improvement on the Licensed Premises provided, however, that as conditions to the License, the Licensee shall install, use and maintain the Improvement only within the boundaries of the area depicted on Exhibit 1.

The rights granted under this License are expressly subject to the rights of the public and any rights granted previously by the City to any person. The City may enforce this License either by seeking damages or by specific performance or through any other legal or equitable remedy available to the City.

#### 2. **Design, Installation, Operation, Maintenance and Additional Improvement.**

a. The Licensee shall pay all costs of design, installation, operation and maintenance of the Improvement. Upon termination of the License as provided herein and upon City's demand, Licensee shall pay all costs and perform all removal of the Improvement from the Licensed Premises and, as applicable, shall pay all costs of and be responsible for returning the sidewalk surface to substantially the same condition that it is on the Effective Date.

b. Licensee agrees to complete an additional improvement as directed by City to relocate a Light Pole within the vicinity of the Improvement to allow sufficient space for the City to perform snow removal using motor vehicles designed for sidewalk snow removal.

c. The stairway is an addition to a building in the Downtown Historic District and a notable historic property. Licensee agrees to design the Improvement to match the historical features of the building or the approved design of the Historic Preservation Commission.

d. The Licensee shall not be construed to abridge, limit or restrict the City in exercising its right to make full use of the Licensed Premises encroached upon as a public sidewalk nor shall it operate to restrict utility companies or any other Licensees in exercising their rights to construct, remove, operate and maintain their installations within the Licensed Premises.

e. Licensee hereby assumes full responsibility for any and all damages incurred to public facilities, utilities or other private improvements located within the Licensed Premises due to Licensee's activities authorized by this License.

f. Licensee shall maintain the Improvement in a good and attractive condition during the term of this License.

### **3. Repair of Damages.**

Licensee shall promptly repair all damage to the Licensed Premises caused by its activities. If such damage poses a threat to health, safety or welfare of the public or individuals, the City may cause repairs to be made at Licensee's expense unless the Licensee makes such repairs upon the City's request.

### **4. Term.**

This License shall commence upon the Effective Date and shall terminate upon one of the Termination Conditions as provided in Section 5, or upon Licensee's request so long as Licensee removes all Improvements and returns the Licensed Premises to substantially similar condition as that prior to installation of the Improvement.

### **5. Termination.**

a. The City may terminate this License to Licensee and upon the occurrence of any one or more of the following events (the "Termination Conditions"):

(i) The failure by Licensee to maintain the Improvement in a good and attractive condition, after Licensee has failed to cure such breach for a period of thirty (30) days from receipt of written notice of such breach by Licensee from City.

(ii). Failure of Licensee to use the Improvement in accordance with its Intended Purpose. For purposes of this Section, Intended Purpose shall mean a primary or secondary entrance to the building. In the event that the City observes Licensee has abandoned the use of the Improvements for a period of twelve (12) consecutive months, then the City shall provide notice to Licensee specifying such observation and Licensee shall have thirty (30) days to cure such abandonment.

b. Upon termination, Licensee shall, at Licensee's sole cost, remove the Improvement and restore the Licensed Premises to substantially the same condition that it is in on the Effective Date.

c. Upon termination, this License shall be deemed null and void and of no further force and effect.

d. In the event that Licensee fails to remove the Improvement by the 30<sup>th</sup> day after termination, the City may remove or cause the Improvement to be removed. The City may collect the cost of removal from the Licensee and Licensee agrees to pay such cost promptly upon written demand therefore.

**6. Notice.**

Every Notice required or permitted hereunder shall be in writing and shall be deemed to have been given when personally delivered by hand, or upon delivery when sent by overnight mail, to the party's address set forth in the introductory paragraph of this License or at such other address as a party may designate, in writing, to the other party.

**7. Indemnification.**

The Licensee expressly agrees to, and shall, indemnify and hold harmless the City and any of its officers, agents, elected officials or employees from any and all claims, demands, damages, liability, or court awards, including costs and attorneys' fees, that arise from the construction or use of the Improvement and that are incurred by the City or that may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any person or entity in connection with or arising out of any act, omission, error, mistake, negligence, or other fault of the Licensee or any of such Licensee's agents, partners, Licensees, sub-licensees, or lessees in connection with the Improvement.

**8. Miscellaneous Provisions.**

a. Waiver of Breach. A waiver by any party to this License of the breach of any term or provision of this License shall not operate or be construed as a waiver of any subsequent breach by either party.

b. Assignment. This License may not be assigned by the Licensee to any other party unless agreed to in writing by the City; provided, Licensee may assign to an affiliate of Orscheln or to any purchaser of the O'Keefe Building.

c. No Third Party Beneficiaries. Nothing contained in this License is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party.

d. Governing Law, Venue, and Enforcement. This License shall be governed by and interpreted according to the law of the State of Missouri. Venue for any action arising under this License shall be in the Circuit Court of Randolph County, Missouri.

e. No Waiver of Immunity. Nothing in this License is intended to waive any protection afforded to the City by the statutes or common law of the State of Missouri for sovereign immunity.

f. Force Majeure. In the event that Licensee or City shall be delayed or hindered in or prevented from doing or performing any act required in this Irrevocable License for Use of Public Right-

of-Way by reason of strikes, lockouts, casualties, acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations or issuance of any permit, riots, insurrection, war or other causes beyond the control of Licensee or City, then Licensee or City shall not be liable or responsible for any such delays and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**CITY OF MOBERLY, MISSOURI**

By: \_\_\_\_\_  
Brian Crane, City Manager

ATTEST:

\_\_\_\_\_  
Shannon Hance, MRCC, City Clerk

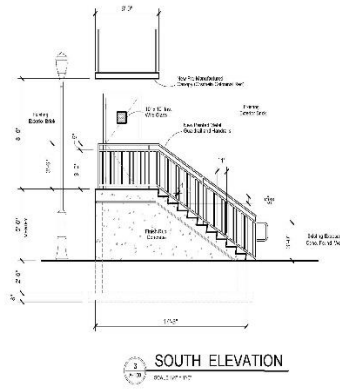
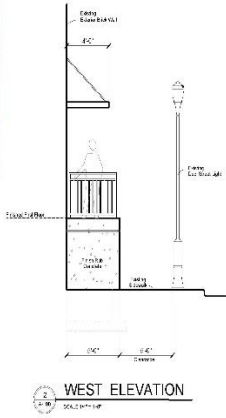
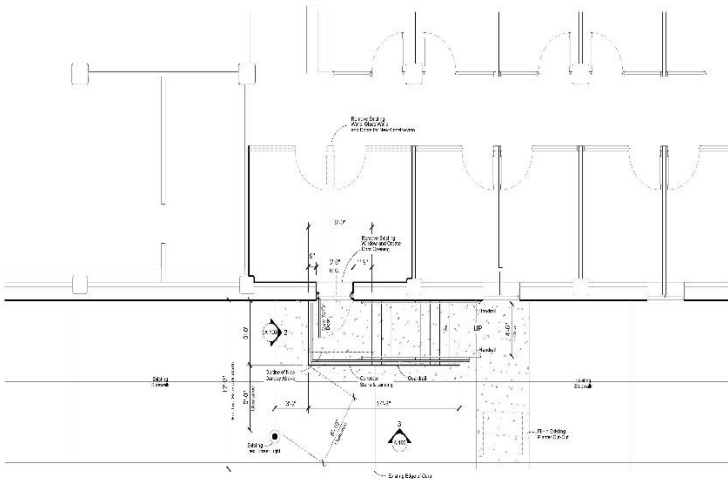
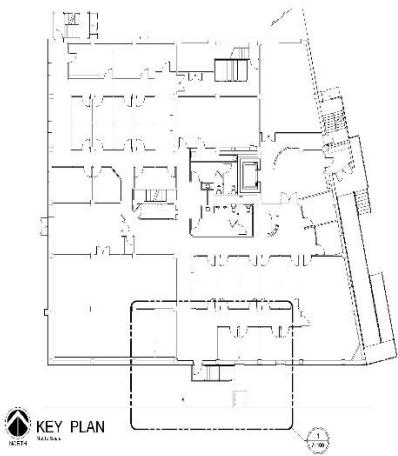
**ORSCHLN PROPERTIES CO. L.L.C.**

By: \_\_\_\_\_

ATTEST:

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00446185.docx

EXHIBIT 1



ORSCHELEN PROPERTIES CO., LLC  
10000 N. 10TH AVE., SUITE 100  
DENVER, CO 80231  
TEL: 303.733.8800  
WWW.ORSCHLENPROPERTIES.COM



PROPOSED SOUTH ENTRANCE PLAN FOR THE O'KEEFE BUILDING

NO.	DESCRIPTION	DATE
1	CONCEPT	10/15/2021
2	REVISION	10/15/2021

PROPOSED SOUTH ENTRANCE PLAN FOR:  
**ORSCHELEN PROPERTIES  
THE O'KEEFE BUILDING**  
MOOREHEAD, HANCOCK COUNTY, MAINE 04959

DATE: 10/15/2021

CONCEPTUAL PLAN

A-100