

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN
APPROVING A STORMWATER MANAGEMENT CONSTRUCTION,
MAINTENANCE, AND LICENSE AGREEMENT WITH TWIN OAKS
PRESBYTERIAN CHURCH CORPORATION.**

Whereas, Twin Oaks Presbyterian Church Corporation (the "TOPC") owns the real property located adjacent to the residential district of the City where it operates its church; and

Whereas, the City of Twin Oaks ("City") owns and operates a park located to the south of TOPC's church site, and said park includes an area of property leased from TOPC for that purpose; and

Whereas, TOPC and the City have worked cooperatively over many years to address issues related to the operations of their respective properties, including providing for stormwater runoff to flow from TOPC's property across and into the two lakes on City's park property; and

Whereas, the parties have identified certain erosion problems apparently due to stormwater runoff occurring on a portion of TOPC's site near the field that could have potentially affected other properties to the west, and the parties have worked cooperatively to develop a solution to channel additional stormwater south toward the City's park and lakes; and

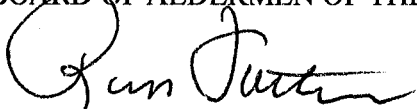
Whereas, the Board of Aldermen desires to approve terms under which stormwater management improvements will be initially constructed by TOPC as well as maintained in the future by approving a Stormwater Management Construction, Maintenance, and License Agreement which the Board has determined to be in the best interest of the health, safety, and welfare of the residents of Twin Oaks.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby approves, and the Mayor is hereby authorized to execute, the Stormwater Management Construction, Maintenance, and License Agreement ("Agreement") substantially in the form of "Exhibit 1" attached hereto and incorporated herein, on behalf of Twin Oaks.

Section 2. This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 7th DAY OF APRIL 2021, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:

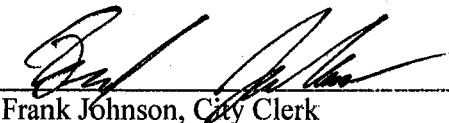

Frank Johnson, City Clerk

Exhibit 1
**STORMWATER MANAGEMENT CONSTRUCTION,
MAINTENANCE, AND LICENSE AGREEMENT**

This Stormwater Management Construction, Maintenance, and License Agreement ("Agreement") is made and entered into on the last date of execution written below ("Effective Date") by and between **TWIN OAKS PRESBYTERIAN CHURCH CORPORATION** ("Church"), a Missouri not for profit corporation whose mailing address is: 1230 Big Bend Rd., St. Louis, Missouri 63021, and the **CITY OF TWIN OAKS, MISSOURI**, a Missouri municipal corporation ("City"), whose address is: 1381 Big Bend Rd., Twin Oaks, MO 63021.

WITNESSETH:

WHEREAS, Grantor owns the real property located at its address given above and operates its church on said site; and

WHEREAS, the City owns and operates a park located to the south of Grantor's church site, and said park includes an area of property leased from Grantor for that purpose; and

WHEREAS, Grantor and the City have worked cooperatively over many years to address issues related to the operations of their respective properties, including providing for stormwater runoff to flow from Grantor's property across and into a detention pond on City's park property; and

WHEREAS, such cooperative efforts have included the parties entering into past agreements including without limitation the following: (1) Land Use Agreement with an effective date of July 18, 1990 and recorded in Deed Book 8928, Pages 616 *et seq.* in the St. Louis County Recorder of Deeds Office; (2) Supplemental Agreement dated October 1, 1992; (3) Ground Lease dated October 1, 1992; (4) Extension of Ground Lease dated April 2, 2003

(extended term of lease until October 1, 2032); and (5) Amendment to Supplemental Agreement dated April 2, 2003 (collectively referred to herein as the "Prior Agreements").

WHEREAS, the parties have identified certain erosion problems apparently due to stormwater runoff occurring on a portion of Grantor's site near a softball/baseball field that could potentially affect other properties to the west, and the parties have worked cooperatively to develop a solution to channel additional stormwater south toward the City's park and detention pond; and

WHEREAS, the parties desire to document the terms under which stormwater management improvements will be initially constructed as well as maintained in the future, to include reconstruction if needed.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, Church and City do hereby agree as follows:

1. **Subject Real Estate.** The real estate that is the subject of this Agreement is identified as follows:

- a. The site of the church facility owned and operated by the Church, a portion which shall be made subject to an easement to be granted to City as provided for herein, consisting of the following parcel of land situated in St. Louis County, Missouri: Locator No. 25Q540655, known as 1230 Big Bend Road ("Church Site");
- b. A portion of the Church Site as depicted on **Exhibit 1** attached hereto, prepared by BFA Engineering Surveying (the "License Area"); and
- c. The site of City's Twin Oaks Park consisting of the following parcel of land situated in St. Louis County, Missouri: Locator No. 25Q540682, known as 1 Twin Oaks Court aka Robert Hartzog Drive ("Twin Oaks Park").

2. **Construction and Maintenance of Stormwater Management Improvements.**

Church agrees to construct a landscaping berm with associated stormwater management improvements within the License Area that are designed to divert stormwater flow from the Church Site to the detention pond within Twin Oaks Park, to be constructed substantially in accordance with the plans shown on **Exhibit 2** attached hereto, prepared by Knibb Lawn Service (the "Improvements"). The following terms shall apply to such design and construction.

- a. **Construction.** Church shall submit to City plans for construction, including any more detailed construction plans City (or its contracted agent, St. Louis County) may require in addition to those shown on **Exhibit 2**, for approval and processing for any necessary permits. Church shall pay any applicable permit fees. Once City approves the plans and notifies Church of such approval and issues any applicable permits, Church shall promptly commence construction and/or installation of the Improvements and landscaping or other features contained within said plans and shall thereafter use reasonable diligence to promptly complete such construction and installation.
- b. **Maintenance and Repair.** Church shall use best efforts to maintain and repair the Improvements and other stormwater management features as may be needed to prevent stormwater from draining off of the Church Site to the residential parcels to the west of the Church site.
- c. **City's Right of Entry.** If Church shall not fulfill the maintenance duties described herein, City shall have the right to enter into the License Area for the purpose of performing such maintenance and repair after providing

Church with notice of City's intent to do so at least fifteen (15) days in advance of City's entry along with an explanation of the needed maintenance. If Church does not address the needed maintenance within said period of time, and City thereafter performs such maintenance, City shall have the right to recover from Church all costs expended by City in performing such maintenance.

3. **City's Consent to Stormwater Diversion.** City hereby consents to the diversion of stormwater from the Church Site to Twin Oaks Park and the detention basin located therein in the manner contemplated by this Agreement and agrees that such diversion is reasonable.

4. **Grant of Access.** Church shall allow City reasonable access over its Church Site for ingress and egress by City, its employees, agents, and contractors, to the City-owned strip of land situated west of the License Area and north of the main portion of Twin Oaks Park. Church may reasonably limit the time, manner, and precise location for such access, but agrees that such access will generally be granted from the southwestern portion of the parking lot on the Church Site. If such access causes damage to the Church Site property, then City shall cause the surface to be restored in the area of such damage to similar condition as existed before such entry.

5. **Grant of License; Term.** Church hereby grants to City a non-exclusive license over the License Area for the purpose of repair, reconstruction and maintenance of a berm, drainage swale, or other stormwater management improvements in order for City to exercise its right of entry provided for herein. This license shall not be revoked for a period of thirty (30) years from the Effective Date, but after such time, said license shall be revocable by Church. Within one hundred-eighty (180) days of the fifteenth anniversary of the Effective

Date of this Agreement, the Twin Oaks Board of Aldermen will endeavor to review the continued need for the license and, if in the Board's sole discretion, it finds that the license is no longer necessary to protect the health, safety and welfare of Twin Oaks citizens, shall request in writing that Church revoke the license.

6. **Ground Lease Acknowledgement.** Church hereby acknowledges that the Ground Lease dated October 1, 1992, as extended by the Extension of Ground Lease dated April 2, 2003, entered into between the parties remain valid and in full force and effect, and further that as of the date of this Agreement, the City is not in breach of any material provision thereof. Nothing contained in this Agreement is intended to supersede any provision of said lease.

7. **Notices.** Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested and postage prepaid, by completed electronic transmission, or if delivered by hand, as follows:

If to City: City of Twin Oaks, Missouri
 Attn: City Clerk
 1381 Big Bend Rd.
 Twin Oaks MO 63021
 fjohnson@cityoftwinoaks.com

If to Church: Twin Oaks Presbyterian Church Corporation
 Attn: _____
 1230 Big Bend Rd.
 St. Louis MO 63021

or to such other persons or addresses as the parties may hereafter direct by written notice. Notices, except those hand delivered or sent by electronic transmission, shall be deemed delivered two (2) days after being deposited with the United States Postal Service. Notices

sent by electronic transmission or hand delivery shall be deemed delivered upon actual delivery to the person noted above.

8. **Binding Agreement; Successors.** This Agreement constitutes the entire Agreement between the parties hereto and there are no understandings, written or oral, other than the Prior Agreements referenced above, relating to the subject matter hereof. This Agreement may not be changed, modified, or amended, in whole or in part, except in writing signed by the parties. This Agreement shall be binding upon the respective heirs, successors, and assigns of Church and City, and shall run with the real estate described herein.

Governing Law and Venue. This Agreement shall be governed by the laws of the State of Missouri. Any and all legal action necessary to enforce this Agreement shall be brought in the Circuit Court of St. Louis County, Missouri.

Headings. The headings of sections and subsections of this Agreement have been inserted for ease of reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

Waiver. The failure of any party at any time to require performance by another party of any provision hereof shall in no way affect the right of the non-requiring party thereafter to enforce the same. No waiver shall be effective unless in writing, nor shall waiver by any party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

9. **Severability.** In the event that any one or more provisions, clauses, subclauses or subparagraphs contained in this Agreement shall for any reason be held to be invalid, illegal, void or unenforceable, the same shall not affect any other provision, paragraph, clause, subparagraph or subclause of this Agreement, but shall be construed as if such invalid, illegal,

void or unenforceable provision, clause, paragraph, subparagraph, or subclause had never been contained herein.

10. **Execution and Counterparts.** This Agreement may be executed in two or more identical counterparts and shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered in their respective names as of the date(s) written below.

**TWIN OAKS PRESBYTERIAN
CHURCH CORPORATION**

By: _____

Date: _____

Name:

Title:

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On the _____ day of _____, 2021, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he/she is the _____ of Twin Oaks Presbyterian Church Corporation, a Missouri not for profit corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors; and said _____ acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

(NOTARY SEAL)

Notary Public

My Commission Expires:

CITY OF TWIN OAKS, MISSOURI

By: _____
Russ Fortune, Mayor

Date: _____

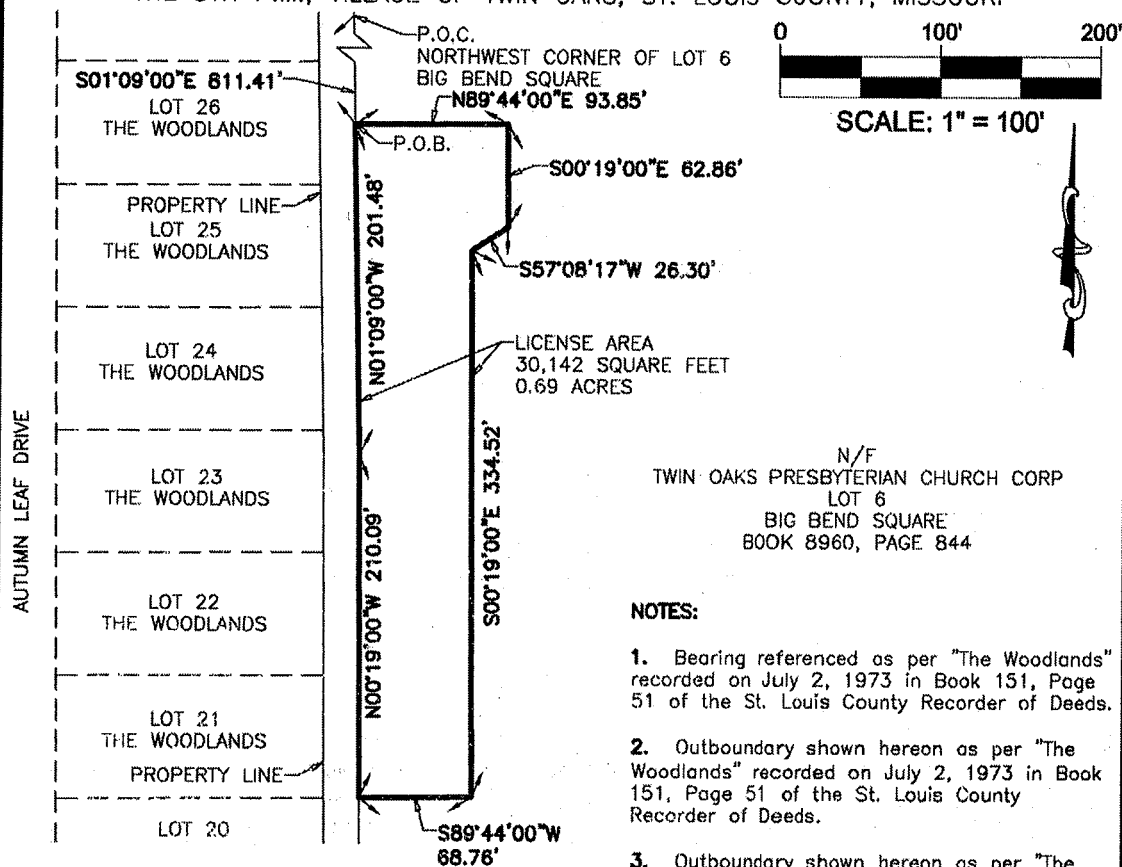
Attest:

Frank Johnson, City Clerk

EXHIBIT 1

LICENSE AREA

PART OF LOT 6 OF "BIG BEND SQUARE",
BEING PART OF SECTION 7, TOWNSHIP 44 NORTH, RANGE 5 EAST OF
THE 5TH P.M., VILLAGE OF TWIN OAKS, ST. LOUIS COUNTY, MISSOURI



N/F
TWIN OAKS PRESBYTERIAN CHURCH CORP
LOT 6
BIG BEND SQUARE
BOOK 8960, PAGE 844

NOTES:

1. Bearing referenced as per "The Woodlands" recorded on July 2, 1973 in Book 151, Page 51 of the St. Louis County Recorder of Deeds.
2. Outboundary shown hereon as per "The Woodlands" recorded on July 2, 1973 in Book 151, Page 51 of the St. Louis County Recorder of Deeds.
3. Outboundary shown hereon as per "The Woodlands Plat No. 2" recorded on October 30, 1980 in Book 203, Page 42 of the St. Louis County Recorder of Deeds.
4. Outboundary shown hereon as per "Big Bend Square" recorded on August 29, 1979 in Book 194, Page 34&35 of the St. Louis County Recorder of Deeds.
5. Deed per Book 8960, Page 844 recorded on April 5, 1991 of the St. Louis County Recorder of Deeds.

Mark R. Frankenberg, PLS #2365
State of Missouri
Registered Land Surveyor for
Buescher Frankenberg Associates, Inc
Corporate #0096

bfaeng.com

TELEPHONE: (636) 239-4751



103 ELM STREET, WASHINGTON, MISSOURI 63090

DRAWN BY DATE Project No.
B.L.P. 02-09-21 3497-4C

EXHIBIT 2

Knibb
Lawn Service

P. O. Box 1684, Manchester, MO 63011 • (314) 952-1270

CHURCH BERM EXHIBIT

