

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is hereby made and entered into by and between **MFP MID-AMERICA SHOPPING CENTERS LLC**, whose address is 608 N 114<sup>th</sup> Street, Omaha NE 68154 (hereinafter referred to as the “Licensor”) and the **CITY OF RAPID CITY**, a municipality existing under the laws of the State of South Dakota, whose address is 300 Sixth Street, Rapid City, SD 57701 (hereinafter referred to as the “City”).

### WITNESSETH:

WHEREAS, Licensor is the owner of certain real property located in the City of Rapid City, as more particularly described as follows:

**Lots D, E, F and G of Lot 1 of the Northeast Quarter of the Northeast Quarter (NE¼/NE¼) of Section 3 in Township 1 North of Range 7 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, as shown on the plats filed in Plat Book 2, Page 61, Plat Book 3, Page 47, Plat Book 3, Page 122, and Plat filed in the Steel File December 19, 1940, respectively; Excepting therefrom Lot H of Lot 1 of Baken Park Subdivision, as shown on the plat filed in Plat Book 13, Page 103, Excepting therefrom Lot H1 of said Lot D, as shown on the plat filed in Highway Plat Book 5, Page 197, and Excepting therefrom Lot H1 of said Lots E and G, as shown on the plat filed in Highway Plat Book 5, Page 192, and including Lot H2 of said Lot G, as shown on the plat filed in Highway Plat Book 10, Page 197, and including Lots U1, U2 and U3 from said Lot G, as shown on the plat filed in Highway Plat Book 10, Page 198, and including Lots H2 and H3 of said Lot E, as shown on the plat, filed in Highway Plat Book 10, Page 199, and including Lot U1 in said Lot E, as shown on the plat filed in Highway Plat Book 10, Page 200.**

which shall be hereinafter referred to as the “License Area”; and

WHEREAS, the Army Corps of Engineers requires vegetation removal at the location of Rapid Creek along the License Area as noted in Rapid Creek Flood Protection Project Post Inspection Map (Attachment 1); and

WHEREAS, the extent of tree removal will generally be in accordance with the intent of the Landscaping Plan from *1980 Rapid Creek Flood Protection Project, Operation and Maintenance Manual* (Attachment 2); and

WHEREAS, the dense vegetation at Rapid Creek along the License Area is known for transient activity; and

WHEREAS, the City desires to access License Area for the purpose of tree removal along the Rapid Creek; and

WHEREAS, the City’s actions on the property will result in substantial benefit to the City and Licensor; and

WHEREAS, Licensor desires to grant to City a license for the aforementioned purpose.

NOW, THEREFORE, for and in consideration of the terms, conditions and mutual covenants contained herein and other good and valuable consideration received by each party, the sufficiency of which are hereby acknowledged, Licensor and City hereby agree as follows:

1. GRANT OF LICENSE: Licensor hereby grants City, its agents, officers and assigns the right, privilege and license to use the License Area to locate, inspect, remove, and alter trees and vegetation near the western property boundary of License Area; and attain ingress and egress to and upon said License Area for the purpose of exercising the rights, privileges and license granted herein.

2. TERM: This License is granted for a term of twelve (12) months from the date this Agreement is signed by Licensor. This Agreement may be terminated by Licensor or City on sixty days' written notice.

3. CONSIDERATION: The parties agree that the work done by the City and the mutual covenants and promises contained in this License Agreement is good and sufficient consideration for the grant of a license by Licensor to the City.

4. RETENTION OF RIGHTS: Licensor retains the right to use the License Area in any manner not inconsistent with the rights herein granted to City.

5. INDEMNIFICATION: The City expressly acknowledges and accepts responsibility for loss, damage, or injury to persons or property, arising out of or resulting from tree and vegetation removal on the License Area, unless, such claim or demand shall arise out of or result from the negligence or willful misconduct of Licensor, its agents, employees, or assigns.

6. WORKMANSHIP: City agrees that any and all work performed on the License Area and in association with the purposes of this License shall be done in a good and workmanlike manner and in accordance with applicable law.

7. TERMINATION: Upon termination of this License Agreement, City shall, within a reasonable time and at City's sole cost and expense, remove all equipment, accessories, and materials owned by City from the License Area and restore said License Area as nearly as practicable to its condition prior to the granting of the License.

8. TIME: Time is of the essence of this Agreement.

9. SEVERABILITY: The parties agree that if any provisions of this Agreement are held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

10. BINDING EFFECT: This Agreement is binding upon the parties, their heirs, successors, administrators, executors and assigns.

11. INTEGRATION: This writing represents the entire agreement between the parties, and there are no other oral or collateral agreements or understandings of any kind or character except those contained herein.

12. AMENDMENTS: The provisions hereof may be modified only by written agreement signed by the parties.

13. COUNTERPARTS. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. HEADINGS: The paragraph headings contained herein are inserted for convenience only and do not constitute a part of this Agreement.

15. VENUE. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

IN WITNESS WHEREOF, the undersigned parties have executed this License

Agreement on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**MFP MID-AMERICA SHOPPING CENTERS LLC**

By Michael D. Perlins  
Its Managing Director

**CITY OF RAPID CITY**

By \_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

(seal)

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**MFP MID-AMERICA SHOPPING CENTERS LLC**

By *Michael D. Perkowski*  
Its *Managing Director*

**CITY OF RAPID CITY**

By \_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

(seal)



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

## Public Works Department Engineering Services Division

300 Sixth Street, Rapid City SD

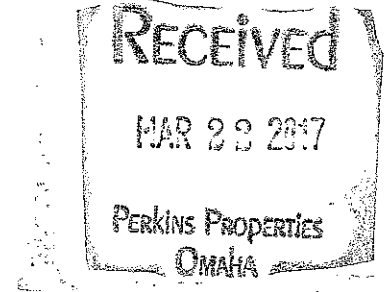
605-394-4154

**COPY**

MFP Mid-America Shopping Centers LLC  
608 N. 114<sup>th</sup> Street  
Omaha NE 68154

March 17, 2017

Tree removal along Rapid Creek at Baken Park



Dear Property Owner:

The City of Rapid City is interested in tree removal along Rapid Creek at the location of Baken Park. The US Army Corps of Engineers (ACOE) inspects this area annually, it's also referred to as the "Rapid Creek Flood Protection Project". Attached is an excerpt from their last inspection. In addition to the ACOE requirements, tree removal at this location will help limit vegetative cover that promotes transient activity. The extent of tree removal will be generally in accordance with the attached landscaping plan from the *1980 Rapid Creek Flood Protection Project, Operation and Maintenance Manual*. The project will likely occur between August and September 2017.

Today I spoke with Chuck Casanova about the project, and he agreed that tree removal may be mutually beneficial.

Attached are two copies of the license agreement. Please review and return both signed agreements to my attention if you are agreeable to allowing the City of Rapid City to access the property for tree removal. Once approved by City Council an original copy will be sent for your records.

Do not hesitate to call if you have any questions.

Respectfully,

Brandon Quiett, PE  
Project Engineer  
brandon.quiett@rcgov.org

Cc: Wade Nyberg, Assistant City Attorney



EQUAL HOUSING  
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

**Chuck Casanova**

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**From:** Chuck Casanova  
**Sent:** Wednesday, April 12, 2017 2:08 PM  
**To:** 'Quiett Brandon'  
**Subject:** Baken Park - Rapid Creek Tree Removal  
**Attachments:** Rapid Creek Tree Removal.pdf

**COPY**

Good Afternoon Brandon,

Find attached signed agreement for the tree removal along Rapid Creek at Baken Park. I will get the originals in tonight's mail and will request an executed document be returned once signed by the Mayor.

Thank you,

Chuck Casanova  
Perkins Properties, Inc  
608 N 114<sup>th</sup> Street  
Omaha, NE 68154  
402-496-3300  
402-496-9210 fax  
ccasanova@perkinsproperties.us

**RECEIVED**

APR 17 2017

**ENGINEERING  
SERVICES**