

## CANAL PARCEL LICENSE AGREEMENT

(7688 Indiana Avenue)

**THIS LICENSE AGREEMENT** (“License”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and TMCSF Realty, LLC, a California limited liability company (“Licensee”).

### RECITALS

A. City owns that certain property located at 7688 Indiana Avenue, known as Assessor’s Parcel Number 230-242-024 (“Property”). The City utilizes this property for Riverside Water Company Canal right-of-way.

B. Licensee desires to use a portion of the Property consisting of approximately twelve thousand eight hundred and seventy (12,870) square feet for the purpose identified in Section 3 of this License Agreement.

C. City is agreeable to said use subject to the terms and conditions set forth below.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

1. **GRANT OF LICENSE:** City hereby grants to Licensee use of a portion of the Property as generally depicted on Exhibit “A” and described in the legal description marked Exhibit “B”, all as attached hereto and made a part hereof by this reference (the “Premises”).

2. **TERM:** The term of this License shall be for a period of Forty (40) years, and shall become effective upon execution of this License by both parties (“Effective Date”), and shall terminate forty (40) years from the Effective Date unless this License is earlier terminated pursuant

to the termination provisions contained herein. This License may be extended in five-year increments by Licensee giving written notice at least six (6) months prior to expiration of the then-current term.

3. **USE OF PREMISES: USE OF PREMISES:** The Premises shall be used solely for the purpose of reconstruction a portion of the existing and operating Riverside Water Company Canal to cover the same and for grading and paving said land for vehicular ingress and ingress and egress, traffic circulation and parking to the extent approved by the City and the continued use of maintenance of the proposed improvements as set out in the grading plans PW17-0302 and as shown in the site plan attached as Exhibit "C" and for no other purpose. Such use shall not interfere with the primary function of the City's use of the Property. Licensee shall be subject to the following terms and conditions:

(a) Any construction or reconstruction within the Premises shall be in accordance with plans approved by the City, however, notwithstanding any such approval, the Licensee assumes full responsibility for the design, construction or reconstruction, including complete liability for defects in such design and construction or reconstruction, all at Licensee's sole cost.

(b) The property shall be kept in a safe operating condition at all times, and the Licensee hereby assumes all liability arising from any injury or damage to any person or entity caused by the exercise of the rights herein granted.

(c) Licensee agrees that the City has the right to partially or totally remove all or a portion of the surface improvements installed by Licensee, including any concrete paving covering the Premises, as deemed necessary by the City. Costs related to the removal of the surface improvements for such use and costs related to the replacement of the subject surface

improvements shall be borne by and are the responsibility of the Licensee.

(d) Except for the concrete pad Licensee intends to construct on the Property, the Licensee shall keep the Premises clear and free of structures, invasive landscaping, and surface obstructions inconsistent with Licensee's intended use, unless otherwise approved by the City.

(e) No construction or reconstruction shall be commenced until this License has been executed by the parties, and plans have been prepared by Licensee and approved by the City. The City is to be notified prior to the start of any construction activities on the Premises, including any grading work.

(f) City makes no representation, covenant, warranty or promise that the Premises is fit for any particular use, including the use for which this License is granted, and Licensee is not relying on any such representation, covenant, warranty or promise and accepts the Premises in its "as is" condition.

(g) Access to and use of the Premises shall be limited to Licensee, its employees, agents, contractors and members of the general public as potential customers of Riverside Harley Davidson. .

(h) Licensee shall keep the Premises locked at all times.

(i) Licensee shall maintain the Premises in a neat, clean and safe condition at all times, including any landscaping.

#### 4. **CONSIDERATION:**

(a) As consideration for use of the licensed Premises, Licensee shall pay to City a license fee in the amount of five thousand two hundred twenty Dollars (\$5,222.00) per year. Said license fees shall be payable monthly in the amount of four hundred thirty five and 17/100 Dollars

\$435.17 on the first day of each month commencing upon the Effective Date.

(b) Notwithstanding Section 4(a) above, the annual rent shall be increased on each yearly anniversary of the Effective Date by an amount equal to two percent (2%) of such annual rent. For any extended term of the License, as provided under Section 2 herein, the license fee shall be set at the City's then-current license fees for such property.

(c) The annual license fee shall be paid by check made payable to the "City of Riverside" and sent to the City of Riverside, Central Cashiering, City Hall, 3900 Main Street, Riverside, California 92522.

(d) If Licensee fails to pay the annual license fee by the tenth (10th) day of the month in which it is due, Licensee agrees that the actual damage to the City would be impracticable or extremely difficult to determine. Therefore, Licensee agrees to pay a late fee equal to ten percent (10%) of the annual license fee, which amount shall be added to the license fee due and considered part of the license fee due City hereunder. The amounts due under this subparagraph are in addition to and not in lieu of any other remedies of City.

5. **NON-DISCRIMINATION:** Except as provided in Section 12940 of the California Government Code, during Licensee's performance of this License, Licensee shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical handicap, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation in use of the Premises during the term of this License. Further, Licensee agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this License.

6. **SUPERVISION:** Licensee shall be responsible for supervision and monitoring of

all activities on the Premises, including control of access to the Premises at all times, and monitoring and abatement of any nuisance that is caused, or may be caused, by Licensee or Licensee's use.

7. **MAINTENANCE:** The Premises shall be maintained by Licensee in a clean and orderly condition, including but not limited to weed abatement, all in compliance with all applicable provisions of the governing Municipal Code of the city for which the Property resides. A neat and clean appearance, and safe and sanitary conditions are required and are considered of utmost importance by City.

8. **FLAMMABLES, WASTE AND NUISANCES:** Licensee agrees that it will not place or store, or allow any placement or storage of any hazardous waste, hazardous material, or flammable materials within the boundaries of the Premises other than fuel contained in motorcycles and related vehicles, and that it will not commit any waste upon or damage to the Premises, nor suffer any to be done. Licensee also specifically agrees that it will not allow others to take such actions within the boundaries of the Premises. Licensee further agrees that it will keep the Premises clean, free from rubbish and debris, and in a condition satisfactory to City in accordance with Section 7.

9. **HAZARDOUS SUBSTANCES INDEMNITY:** Licensee expressly agrees to and shall indemnify, defend, release and hold the City, their officers, officials, directors, agents, servants, and employees harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up, and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorney's fees, expert

fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Premises by Licensee, its officers, directors, agents, servants, or employees. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this License.

10. **HAZARDOUS SUBSTANCES DEFINED:** Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; The Clean Water Act, 33 U.S.C. § 1251, *et seq.*; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act, H. & S.C. § 25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, *et seq.*; Underground Storage of Hazardous Substances H.& S.C. § 25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H & S.C. § 25300 *et seq.*); The Hazardous Waste Management Act, H. & S.C. § 25170.1, *et seq.*; Hazardous Materials Response Plans and Inventory H.& S.C. § 25001 *et seq.*; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains

gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

11. **UTILITIES:** There currently is no utility service to the Premises. The City shall be under no obligation to provide any utility service of any kind to the Premises during the term of this License. If Licensee determines utilities are required for Licensee's use of the Premises, Licensee shall arrange and pay directly for all new utilities and services supplied to the Premises, including but not limited to water, electricity, telephone, and natural gas, together with any taxes thereon.

12. **TAXES:** Without admitting any such liability, Licensee recognizes and understands that this License may create a possessory interest subject to property taxation pursuant to California Revenue and Taxation Code Section 107 and that Licensee may be subject to the payment of property taxes levied on such interest if such a determination is made by either the San Bernardino or Riverside County Tax Assessor or other government entity with the authority to make such determinations. All taxes and assessments which become due and payable with respect to the Premises, and any improvements thereon, shall be the sole responsibility of Licensee, and any such payments shall not reduce any payment due City hereunder.

If Licensee shall, in good faith, desire to contest the validity, the imposition, or the amount of any tax or assessment or any other governmental charge herein agreed to be paid by Licensee, Licensee shall be permitted to do so; provided, however, the Licensee shall not permit or allow any lien to be placed or assessed upon the Premises or any improvements thereon.

13. **CITY'S RIGHT TO INSPECT:** City shall have the right to inspect the premises

and any improvements made thereto at any time to ensure compliance with the terms of this License. Any repairs found necessary as a result of inspections and which are the responsibility of Licensee shall be made promptly by Licensee, but in no event shall such repairs be initiated by Licensee later than ten (10) calendar days after receipt of written notification of the need for such repairs, and such repairs shall be completed within a reasonable time after receipt of such notification.

14. **FREE FROM LIENS OR CLAIMS:** Licensee shall keep the Premises free from any mechanics' or materialmen's liens or other liens of any kind or nature for any work done, labor performed, or material furnished thereon at the insistence of or on account of Licensee, and Licensee further agrees to indemnify and save harmless City from and against any and all claims, liens, demands, costs and expenses of whatsoever nature for any such work done, labor performed, or materials furnished. The City at any time may post and keep posted on the Premises appropriate notices to protect the City against the claims of any such persons, firms or corporations.

15. **INSURANCE:** Prior to City's execution of this License, Licensee shall obtain, and shall thereafter maintain during the term of this License at Licensee's sole expense, such commercial general and automobile liability insurance as required to insure Licensee against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Licensee.

(a) All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a liability rating of A or higher, and a financial rating of at least VII.

(b) Licensee's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

(c) Licensee's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence, unless otherwise approved by the City's Risk Manager and the City Attorney, or their designees.

(d) These minimum amounts of coverage shall not constitute any limitation or cap on Licensee's indemnification obligations under Section 17 hereof.

(e) Insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this License, for both commercial general and auto liability, shall be filed with City and shall include City, their officers, agents and employees as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following:

"It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside."

(f) The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail.

(g) City, its agents and employees make no representation that the limits of the insurance specified to be carried by Licensee pursuant to this License are adequate to protect

Licensee. If Licensee believes that any required insurance coverage is inadequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, at Licensee's sole expense.

16. **NONINTERFERENCE WITH USE:** Licensee's use of the Premises and the exercise of the rights herein granted shall not in any manner whatsoever interfere with the City's operations. City shall at all times have access to the Premises. The rights herein granted are not exclusive rights and in no way limit the City's use of the Premises for purposes not inconsistent with the uses granted herein.

17. **INDEMNIFICATION:** Except as to the sole negligence or willful misconduct of City, Licensee shall protect, defend, indemnify, and hold City and its officers, agents, employees and volunteers completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this License and/or the use or occupancy of the Premises or the acts or omissions of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the negligence or willful misconduct of City and/or its officers, employees or agents. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Licensee or any of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests. City shall give Licensee reasonable notice of any such claims or actions. Licensee shall use counsel reasonably acceptable to City in carrying out its obligations hereunder.

The parties expressly agree that any payment, attorney fee, cost or expense City may incur or makes to or on behalf of an injured employee under City's self-administered workers' compensation program is included as a loss, expense or cost for the purpose of this section, and that this section shall survive termination of this License.

18. **ASSIGNMENTS:** This License is personal to Licensee, and Licensee shall not assign or transfer this License or any privilege thereunder, in whole or in part, and any attempt so to do shall be void and shall confer no right on any third party. Notwithstanding this prohibition, the City may, in its sole discretion and at Licensee's request, may approve of such an assignment or transfer.

19. **NON-POSSESSORY INTEREST:** No permanent or possessory interest shall accrue to Licensee in the licensed Premises by reason of this License or by exercise of the permission given and Licensee agrees to claim no such interest.

20. **GOVERNING LAW AND JURISDICTION:** Licensee agrees that in the exercise of its rights under this License, Licensee shall comply with all applicable federal, state, county and local laws, and regulations in connection with its use of the licensed Premises. The existence, validity, construction, operation and effect of this License and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this License shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

21. **TERMINATION:** In addition to the other methods of terminating this License, as

provided herein, this License may be terminated at any time upon ninety (90) days notice in writing to Licensee. City will give Licensee thirty (30) days written notice to terminate in the event Licensee has failed to perform or has breached any of the terms, covenants or conditions of this License. Licensee shall have ten (10) days in which to cure the default. Should Licensee fail to cure within that ten (10) day period, this License shall automatically be terminated.

Upon termination of this License in any manner provided in this License, the Premises shall remain in its improved condition, including but not limited to all improvements, landscaping (personal property not applicable) existing on the Premises at the time of termination unless the City submits a written request to Licensee that some or all of the improvements be removed, in which case Licensee is given thirty (30) days to complete said removal of the improvements as identified by City. Should the City accept the Premises with all improvements thereon, and then such improvements shall become the property of the City.

If the Premises are abandoned by the Licensee for a period of two (2) months, all rights of the Licensee shall automatically terminate hereunder. Further, if the Licensee fails to conform to the terms and conditions of this License, all of the Licensee's rights hereunder shall terminate.

No termination hereunder shall release the Licensee from any liability or obligation, which may have attached or accrued prior to or which may accrue as of the time of termination of this License.

22. **DEFAULT:** Upon the failure of Licensee to perform any condition or term required herein, the City shall give written notice of such failure to perform as constituting a default of this License. If within ten (10) calendar days Licensee does not correct the failure to the

satisfaction of the City, or does not provide a written explanation of Licensee's failure to perform, which explanation must be acceptable to City, this License shall then terminate immediately without further notice. Also, the City shall have the right to require that all operations immediately cease if City determines that the activities are being conducted in an unsafe or illegal manner. Upon termination of this License and if City requests, the Licensee shall immediately remove all personal property, facilities and improvements from the Premises.

23. **HOLDING OVER:** If Licensee fails to vacate the Premises upon termination of this License, Licensee agrees to pay City a fee of One Hundred Dollars (\$100.00) per day for each day that Licensee occupies the Premises beyond termination of this License.

24. **ENTIRE AGREEMENT:** This License embodies the entire agreement between the parties hereto in relation to the subject matter hereof, and no other agreement or understanding, verbal or otherwise, relative to this subject matter exists between the parties at the time of execution of this License. This License may only be modified or amended by the mutual consent of the parties in writing.

25. **NOTICES:** Service of any notices, bills, invoices or other documents required or permitted under this License shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City  
City of Riverside  
David Welch  
Real Property Services Manager  
3900 Main Street, 5<sup>th</sup> Floor  
Riverside, Ca. 92522

Licensee  
TMCSF Realty, LLC  
Attn: Glen Espinosa  
7688 Indiana Avenue  
Riverside, Ca 92504  
Phone: 951-785-0100

Phone: (951) 826-5649

Fax: (951) 826-5744

26. **SEVERABILITY:** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this License shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this License is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this License and shall not affect any other provision, term, condition, covenant, and/or restriction, of this License and the remainder of the License shall continue in full force and effect.

27. **PARAGRAPH TITLES:** The paragraph titles of this License are (i) inserted only for the convenience of the parties, (ii) are not intended to describe, define, limit, or otherwise affect the provisions in the portions of the License to which they pertain, and (iii) in no way describe, define, limit, or otherwise affect the scope or intent of this License or in any way affect the agreement of the parties set out in this License.

28. **RESERVATIONS:** This License is subject to all reservations, restrictions, rights and rights-of-way of record.

29. **AUTHORITY:** The individuals executing this License and the instruments referenced herein each represent and warrant that they have the legal power, right and actual authority to bind their respective parties to the terms and conditions hereof and thereof.

[signatures on next page]

IN WITNESS WHEREOF the parties hereto have caused this License to be duly  
executed on the date and year first written above.

**CITY OF RIVERSIDE**

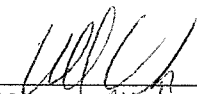
**TMCSF Realty, LLC**, a California limited  
liability company

By: \_\_\_\_\_  
City Manager

By:   
Printed Name: DAVID VAZACKA  
Its: MANAGER

**ATTEST:**

By: \_\_\_\_\_  
Colleen Nicol  
City Clerk

By:   
Printed Name: Michael Vazacka  
Its: MEMBER

Approved as to Form:


  
Assistant City Attorney

EXHIBIT "A"

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

A strip of land 33.00 feet in width, lying within that portion of Lots 2 and 3 of El Grande Tract, as shown by map on file in Book 5, Page 174 of Maps, records of Riverside County, California, the centerline of which is described as follows:


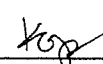
COMMENCING at the most westerly corner of said Lot 3;

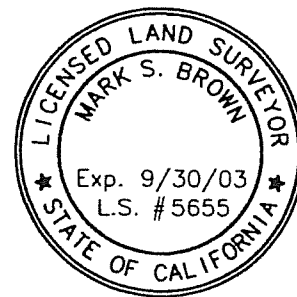
THENCE South  $33^{\circ}59'18''$  East, along said southwesterly line of Lot 3, a distance of 43.91 feet to the POINT OF BEGINNING of this centerline description;

THENCE North  $56^{\circ}07'19''$  East, a distance of 384.98 feet to a point in the northeasterly line of Parcel B of those certain parcels of land described in deed to Judson V. Dabney, II, et al., by document recorded May 31, 2001, per Document No. 2001-241167 of Official Records of said Riverside County, distant therein 44.75 feet southeasterly from the northwesterly line of said Lot 2, and the END of this centerline description;


The sidelines of said strip of land shall be lengthened or shortened to terminate in said southwesterly line of Lot 3 and lengthened or shortened to terminate in said northeasterly line of Parcel B.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

 8/7/01 Prep.   
Mark S. Brown, L.S. 5655 Date  
License Expires 9/30/03



DESCRIPTION APPROVAL:

BY:  5/8/18  
DATE  
FOR: CURTIS C. STEPHENS, L.S. 7519  
CITY SURVEYOR



# • CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: N.T.S.

DRAWN BY: Kgs DATE: 6/15/01

RIVERSIDE WATER CO. CANAL - SKIP FORDYCE H.D.