

EXHIBIT 1

CLIMBING QUARRY LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is by and among OLIVER MANAGEMENT SERVICES, INC., a Minnesota corporation and TROPICANA APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (collectively, “Owner”) and the City of Duluth, a Minnesota municipal corporation (“City”).

WHEREAS, Owner is the fee owner of property legally described as Lot 3, Block 1, Villa Village, St. Louis County, Minnesota (the “Owner Property”).

WHEREAS, a portion of the Owner Property has historically been used by the general public as a climbing quarry.

WHEREAS, the parties wish to create a revocable, non-exclusive license in favor of City to formally permit the general public to use a portion of the Owner Property for climbing purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

I. LICENSE

A. Subject to the terms and conditions set forth in this Agreement, Owner grants to City a revocable, non-exclusive license (the “License”) to access and utilize that portion of the Owner Property legally described and depicted on the attached Exhibit A (the “License Area”) for a climbing quarry to be used by the general public.

B. City’s and the public’s use of the License Area shall be limited to climbing purposes. City agrees to maintain signage in the License Area identifying the area that is open to public use.

C. Either party may terminate this Agreement upon 60 days’ written notice to the other party. This Agreement shall automatically terminate upon a change in ownership of the Owner Property.

II. EFFECTIVE DATE

Notwithstanding the date of execution of this Agreement, this Agreement shall have an effective date as of October 1, 2017.

III. LAWS, RULES AND REGULATIONS

City agrees to conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

IV. WAIVER

The waiver by City or Owner of any breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any subsequent breach of same or any term, covenant, or condition of this Agreement.

V. INDEMNIFICATION

To the extent permitted by Minnesota law, City shall defend, indemnify, and hold Owner harmless from and against any and all claims asserted by any person arising from or relating to any negligent acts or omissions of City in carrying out its obligations under this License Agreement.

VI. NO THIRD PARTY RIGHTS

This Agreement is to be construed and understood solely as an agreement between City and Owner regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions of this Agreement, which, as between City and Owner, may be waived at any time by mutual agreement between the parties.

VII. NOTICES

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City
City of Duluth
Attn: Property and Facilities Manager
1532 W. Michigan Street
Duluth, MN 55806

Owner
Tropicana Apartments Limited Partnership
c/o Oliver Companies
Attn: Karen Welnetz
5713 Grand Avenue, Suite #B
Duluth, Minnesota 55807

and

Oliver Management Services Inc.
c/o Oliver Companies
Attn: Karen Welnetz
5713 Grand Avenue, Suite #B
Duluth, Minnesota 55807

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

VIII. COMPLIANCE WITH AGREEMENT

The rights of City and the general public to occupy and use the License Area are subject to City's compliance with the undertakings, provisions, covenants, and conditions herein.

IX. APPLICABLE LAW

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under the state courts located within St. Louis County, Minnesota.

X. AMENDMENTS

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement or their successors in office.

XI. SEVERABILITY

Owner and City agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

XII. AUTHORITY TO EXECUTE AGREEMENT

The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when executed by said officers will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

XIII. ENTIRE AGREEMENT

This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

OLIVER MANAGEMENT SERVICES, INC.

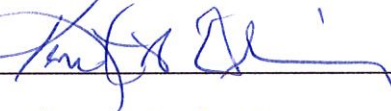
By: 

Its: Vice President
Authorized Representative

Printed Name: Kent Oliver

Dated: 10-23-17

TROPICANA APARTMENTS LIMITED PARTNERSHIP

By: 

Its: General Partner
Authorized Representative

Printed Name: Kent Oliver

Dated: 10-23-17

CITY OF DULUTH

By: _____
Mayor

Attest:

City Clerk
Date Attested: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A

in the S1/2 Section 15, T50N, R15W, St. Louis County, Minnesota

