

Department of Management
Interoffice Memorandum

Memorandum

To: Records

From: Roxanne Dietrich, Executive Assistant *rd*

Date: April 30, 2008

Re: License Agreement with Blackwood Construction Services, LLC (Stimmel's Market)

cc: David M. Grahn, Law Director

625 N. Perry St.

Enclosed to be filed is the City's executed copy of the License Agreement with Blackwood Construction Services, LLC for Stimmel's Market.

Thank-you.

rd

Enclosure

File C:\Documents and Settings\roxanne\My Documents\Memos\Records\Clerk\2007\Richard Twp Mutual Aid Fire Agmt.doc

LICENSE AGREEMENT

Pursuant to City Code 133.03

This Non-Exclusive License Agreement (hereinafter called this "Agreement") is made by and between the City of Napoleon, Ohio (hereinafter called the "City") and Blackwood Construction Services, LLC; Al Blackwood, President a person of legal age, (hereinafter called the "Licensee") for the consideration and upon the terms and conditions set forth herein, all of which are hereby agreed to by the parties.

Subject to the full and prompt payment by the Licensee of all monetary consideration set forth in this Agreement and subject to the performance and observance by the Licensee of all terms and conditions set forth in this Agreement, the City hereby grants to the Licensee the non-exclusive license to utilize a portion of right-a-way and/or property of the City (hereinafter called "Premises") for the sole purpose of: **use of a portion of the sidewalk by the Licensee, it's Lessee, and their agents, guests and invitees for temporary placement and use of tables chairs, and umbrellas for food and non-alcoholic beverage service.** Area specifically described as follows:

Situated in the City of Napoleon, County of Henry, and State of Ohio, and described as:

A portion of the area located within the right-of-way abutting the property located at 625 N. Perry Street, the property being described as:

A portion of Lot No. 1 (now Lot Numbers 1,2,3, & 4) in Block No. 2 of Phillip's & Stafford's 4th Addition to the Town (now City) of Napoleon, Henry County, Ohio.

See Exhibits "A" for illustration purpose only.

City claims right to the premises by virtue of the Original Plat to the City of Napoleon, Ohio found in Volume 2 at Page 15 of the Plat Records of the Henry County Recorder, Henry County, Ohio.

The Licensee shall be responsible for improvement costs associated with the said Premises; however, said Premises shall remain the property of the City.

This Agreement does not allow and prohibits the Licensee to construct any structures upon the Premises.

This Agreement does not allow and prohibits the Licensee to serve or have alcoholic beverages upon the Premises.

This Agreement does not allow and prohibits the Licensee to have or maintain temporary placement of tables, chairs, or other similar devices unless the place of business is open for operation or said devices are secured from removal.

The City shall have the exclusive right to terminate this Agreement without cause, and for convenience of the City, without the City suffering penalty or recourse. The City shall give Licensee seven (7) days notice of its intent to terminate this Agreement. This License may terminate by mutual consent of the parties, in writing, at anytime.

This Agreement is subject to the City interfering with the use of the area for installation and/or repair of utilities, whether planned or in case of emergency or other work. Any damage to Licensee's property located upon the City's Premises resulting from the installation or repair of utilities or necessity to work by the City or its agents shall be at the sole expense of Licensee. This Agreement is subject to other uses deemed appropriate by the City as determined in the sole discretion of the City Manager of Napoleon, Ohio.

Hence this Agreement, the parties acknowledge that this land described is on City property or within the City's right-of-way.

Licensee shall pay City the sum of One Dollar (\$1.00) and other valuable consideration in and for the consideration of this Agreement, the receipt of which is hereby acknowledged.

The Licensee at all times shall comply with Zoning Ordinances and Regulations of the City.

In the event Licensee violates any term or condition of this Agreement, the City, by its City Manager or other representative, shall serve Licensee by personal service or by certified mail at the address of: 621 N. Perry Street, Napoleon, Ohio, 43545, or as may be amended in writing to the City, of its intention to terminate this Agreement and the Licensee shall thereafter have thirty (30) days in which to cure any default or reestablish its use of the rights granted by this Agreement. If such violation of any term or condition of this Agreement is not cured by Licensee in the period herein stated, the City may terminate this Agreement without any further action whatsoever without suffering penalty or recourse. In case of abandonment, the City shall notify Licensee of its intent to terminate this Agreement; however, where the City can not reasonable discover the Licensee's whereabouts, the City may terminate this Agreement without notice and without any other action whatsoever and without the City suffering penalty or recourse. In that event of termination with or without cause or of abandonment, Licensee shall immediately forfeit all rights and privileges associated with this Agreement (including the right of possession) and shall vacate the Premises covered by this Agreement; and all improvements thereon shall be the sole and absolute property of the City without any obligation to compensate Licensee therefore if not claimed and removed by Licensee within thirty (30) days of actual abandonment. In case of termination and/or abandonment, Licensee shall pay the cost of any cleanup and restoration of Premises to its original condition.

At all times during the existence of this Agreement, Licensee shall maintain in full force and effect liability insurance, naming the City of Napoleon as an additional insured with insurance carriers and in amounts satisfactory to the City. The Licensee shall pay all premiums for such insurance coverage as they become due. The City shall have the right to hold a memorandum copy of such insurance policy and the Licensee shall deliver to the City a memorandum copy thereof and receipts verifying that all premiums therefore have been paid.

In addition, the Licensee shall indemnify and hold harmless the City, its officers, officials, agents, and employees from all demands, claims, expenses, losses and liabilities whatsoever that may occur or may be claimed by persons or entities with respect to the injury, death, damage or destruction of any person or property occurring on or about the Premises resulting from the use, misuse, possession, occupancy or non-occupancy of the premises by the Licensee or its Lessee, or their agents, guests and invitees or others herein mentioned or not. Licensee shall pay to defend any such claim. This provision shall survive termination of this Agreement.

The Licensee shall not create, permit, or suffer any lien or encumbrance against or upon the Premises during the existence of this Agreement.

The City's waiver of any default by Licensee shall not constitute a continuing waiver or a waiver of any subsequent default, whether of the same or any other term or condition of this Agreement. Any delay or failure by the City to exercise any right, power, or remedy provided in this Agreement or bylaw or in equity shall not constitute a waiver of any such right, power or remedy or acquiescence in any default by the Licensee.

The intent of the parties in this Agreement is to grant a one year revocable license to Licensee, not a leasehold interest, easement, right-of-way or any other right, title or interest in land. This License shall remain in effect so long as Blackwood Construction Services, LLC; Al Blackwood, President owns the adjacent property as recorded in Henry County Deed Volume 134, at Page 964 of the Deed Records of Henry County, unless otherwise terminated by the City or Blackwood Construction Services, LLC; Al Blackwood, President. This Agreement shall automatically terminate upon the transfer of the Licensee's rights to the adjacent property, as recorded in Volume 134, at Page 964 of the Deed Records of Henry County, Ohio to a third party. This Agreement is not transferable.

This Agreement contains the entire agreement between the parties. There are no promises, terms, conditions or obligations other than those set forth in this Agreement. This Agreement shall supersede all previous commitments, representations, understandings and agreements, whether verbal or written, regarding the subject mater of this Agreement.

This Agreement is effective April 28, 2008, and terminates one year thereafter, unless terminated earlier by one or both of the parties to this Agreement in accordance with the termination rights of one or both of the parties. This Agreement terminates, supersedes, and replaces the prior Agreement covering the same subject matter dated 4/16/2008, the parties waving any notice requirement to allow for such termination.

The City shall cause this Agreement to be filed with the recorder of Henry County, Ohio at the Licensee's expense.

IN WITNESS WHEREOF, the City has caused two (2) originals of this Agreement to be executed on this 30th day of April, 2008, and the Licensee has executed two (2) originals of this Agreement on this 30th day of April, 2008.

Signed and acknowledged in the presence of:

CITY OF NAPOLEON, OHIO

Jon A. Bisher
Pursuant to City Code Sec. 133.03

State of Ohio ss:
County of Henry

Before me, a Notary Public in and for the State of Ohio, personally appeared the City of Napoleon by Dr. Jon A. Bisher, City Manager, who acknowledged that he signed this License Agreement and that the same is his free act and deed as such officer and the free act and deed of the City of Napoleon, Ohio.

IN TESTIMONY WHEREOF, I have signed my name and affixed my official seal at Napoleon, Ohio, this 30th day of April, 2008.

(SEAL)



OFFICIAL SEAL
ROXANNE DIETRICH
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 6-23-2012

Roxanne Dietrich
Notary Public
My Commission Expires:

Signed and acknowledged in the presence of:

LICENSEE, BLACKWOOD CONSTRUCTION,
LLC

Al Blackwood
Al Blackwood, President

State of Ohio ss:
County of Henry

Before me, a Notary Public in and for the State of Ohio, personally appeared Al Blackwood, President, Licensee, who acknowledged that he signed this License Agreement and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have signed my name and affixed my official seal at Napoleon
Ohio, this 30th day of April, 2008.

(SEAL)

Roxanne Dietrich
Notary Public
My Commission Expires:



OFFICIAL SEAL
ROXANNE DIETRICH
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 6-23-2012

Edst

Edst
"A"

Perry Street

Tree well

non
tree well
58
in
car park
sidewalk

Tree well

701

Street

625

621

619

615

107

109

111

117 115

119

121

Washington Street

3

114

116