

ORDINANCE NO. 2015-24

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS,
AUTHORIZING THE LICENSING OF CERTAIN CITY PROPERTY FOR
COPPERAS COVE CHAMBER OF COMMERCE SPONSORED EVENTS
AND ADOPTING A PROCESS FOR APPROVING EVENT LICENSE
AGREEMENTS**

WHEREAS, the City of Copperas Cove, Texas (the "City"), is a home rule municipality incorporated under the authority of Article XI, Section 5 of the Texas Constitution;

WHEREAS, City of Copperas Cove Chamber of Commerce (the "Chamber") is a not for profit corporation, which was created to promote commerce within the City but is unaffiliated with the City;

WHEREAS, in order to fulfill its purpose the Chamber annually sponsor's events, for which it seeks use of City property and services; and

WHEREAS, in order to memorialize the terms and conditions under which the City may provide use of its property and services for Chamber sponsored events; City Council wishes to approve a methodology for the issuance of License Agreements.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:

Section 1. The City Council hereby acknowledges that this Ordinance shall be applicable to the following Chamber Sponsored events:

- Cove House Classic
- Gallop or Trot
- Health Fair with Star Group-VHV
- Ogletree Gap Carnival
- Carson and Barnes Circus
- State Bike Race
- Annual City Wide Garage Sale
- Cove Cyclocross
- Haunted Trail Ride
- Annual Christmas Parade
- Krist Kindl Markt
- Christmas Sleigh Ride

- Sleigh Ride at Ogletree Gap
- TBI Bike Race
- Tough Cookie
- Jack Rabbit Run
- Rabbit Fest
- Rabbit Fest Parade
- Summer Run to Fun

Section 2. The form of the License Agreement, attached hereto as Exhibit “A” is approved for use by the City Manager to memorialize the terms and conditions by which the City Property and Services may be used for Chamber events.

Section 3. The City Manager is authorized to execute a License Agreement with the Chamber, without further action from City Council required provided:

- The Chamber sponsored event is reflected in the City’s Budget for the fiscal year the event is to occur
- No material revisions or alterations are made to the insurance or indemnification provision of Agreement form approved by this Ordinance;
- The City is compensated for its actual costs in providing services for a Chamber sponsored event; and
- The City receives 25% of all proceeds the Chamber receives for use of City property for Chamber sponsored events as negotiated by the City Manager.

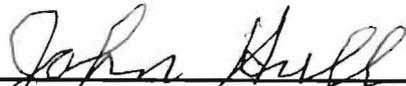
Section 4. All ordinances, or part thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

Section 6. That this ordinance shall go into effect upon passage.

PASSED, APPROVED AND ADOPTED this 4th day of August, 2015, at a regular meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov’t. Code §551.001*, et.seq., at which meeting a quorum was present and voting.

CITY OF COPPERAS COVE



John A. Hull, Mayor

ATTEST:



Mariela Altott, City Secretary

APPROVED AS TO FORM:



Denton, Navarro, Rocha, Bernal,
Hyde & Zech, P.C., City Attorney



Exhibit A

CITY OF COPPERAS COVE SHORT TERM LICENSE AGREEMENT

CITY OF COPPERAS COVE
SHORT TERM LICENSE AGREEMENT

This License Agreement ("*LICENSE*") is made and entered into by and between the City of Copperas Cove ("*CITY*") a Texas home rule municipal corporation acting by and through its City Manager, ("*LICENSE ADMINISTRATOR*") and Account Legal Name, a (corporation/llc/limited partnership? form under the laws of the state of _____) hereinafter called *LICENSEE*, for the following express purposes and conditions, all of which the *LICENSEE* hereby covenants and agrees with *CITY* to keep and perform:

I. PAYMENT TO CITY AND GRANT AND TERM OF LICENSE

1.1 That *CITY*, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by *LICENSEE*, does hereby agree to furnish certain space, hereinafter called *LICENSED PREMISES*, as designated below, and *LICENSEE* agrees as consideration hereof and as payment for the right herein granted to use the *LICENSED PREMISES* to pay *CITY* as follows:

1.2 *LICENSE PURPOSE*: This *LICENSE* to use *City* owned parking facilities is for the Purpose approved by City of Copperas Cove Ordinance No. _____. Specifically, this *LICENSE* is applicable to _____ (the "*EVENT*")

1.3 Commencement Date/Time: *LICENSEE'S* use of the *LICENSED PREMISES* may begin at _____ am/pm on _____, _____, 201____, and shall end at _____ am/pm on _____, _____, 201____.

1.4 *LICENSED PREMISES*: The *LICENSED PREMISES* are more fully described on **Exhibit "A"**, attached hereto.

1.5 *PERMITTED LICENSED USE AND CITY PROVIDED SERVICES*. *LICENSEE* may only use the *LICENSED PREMISES* for the uses described on **Exhibit "B"**, attached hereto. Services provided by the *CITY* ("*CITY PROVIDED SERVICES*"), if any, are described on **Exhibit "B"**.

1.6 *LICENSE FEES*. For the use of the *LICENSED PREMISES*, *LICENSEE* shall pay to the *CITY* the amount described on **Exhibit "C"**. The *LICENSE FEES* shall include a fix amount, which shall cover the *CITY'S* out of pocket expenses for provision of any services; and, if applicable; a percentage of any parking fees. All event parking fee proceeds received by the *City* shall be deposited to the Parks and Recreation Department budget. All payment of *LICENSE FEES* shall be due on or before the twentieth day after invoice.

II. USE OF LICENSED PROPERTY AND EQUIPMENT

2.1 PERSONNEL AND EXCLUSIVE SERVICES. *LICENSEE* shall employ sufficient qualified personnel as may be required for the proper use and occupancy of the *LICENSED PREMISES* including, but not limited to, tickets sellers, ticket takers, ushers, registration personnel, security guards, paramedics, *LICENSEE* agrees that each person employed by *LICENSEE* to provide services in the *LICENSED PREMISES* will at all times maintain a neat and clean appearance and conduct himself/herself in a polite and professional manner. *LICENSEE* agrees to replace any such employee failing to do so upon notice by the CITY MANAGER.

2.2 CONTROL OF *LICENSED PREMISES*. In furnishing the *LICENSED PREMISES*, *CITY* reserves the right to control the management thereof, and to enforce all necessary and proper rules for the management and operation of said premises.

2.3 REMOVAL OF INSTALLATIONS AND PROPERTY OF *LICENSEE*. All installations and property of *LICENSEE* shall be removed from the exhibit area of the *LICENSED PREMISES* on or before _____ o'clock, on the ____ day of _____, 20xx. In the event that the above stated area is not vacated by *LICENSEE* on the date above named, *CITY* is hereby authorized to remove from said area and to store at the expense of *LICENSEE* all personal property of any and all kinds and description which may then be occupying the *LICENSED PREMISES*. *CITY* shall not be liable for any damages to or loss of such personal property which may be sustained due to such removal or resulting from the place to which it may be removed. *CITY* is hereby expressly released from any and all claims for any damages of whatever kind or nature.

2.4 RESPONSIBILITY FOR DAMAGE. If said *LICENSED PREMISES*, or any portion thereof, during the term of this *LICENSE* shall be damaged by the act, default or negligence of *LICENSEE*, or of *LICENSEE'S* agent, employees, patrons, guests, or any person admitted to the said *LICENSED PREMISES* by *LICENSEE*, *LICENSEE* will pay to *CITY*, upon demand, such sum as shall be necessary to restore said *LICENSED PREMISES* to its present condition. *LICENSEE* hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the *LICENSED PREMISES*.

2.5 CLEAN UP. *LICENSEE shall provide LICENSED PREMISES* clean up at the conclusion of the *EVENT*, and shall have all refuse, trash and debris left from the *EVENT*, removed within 72 hours after the conclusion of the *EVENT*.

2.6 SECURITY PERSONNEL. As a condition of the granting of this *LICENSE*, *LICENSEE* agrees to provide adequate security at all times to the *LICENSED PREMISES*. Security arrangements must be made through the Office of the Chief, Copperas Cove Police Department, and are subject to the approval of the City Manager. *LICENSEE* must contact the Chief's designated representative no later than thirty (30) days prior to event. *LICENSEE's* failure to make such security arrangements may result in the termination of this *LICENSE*.

2.7 LICENSEE'S REPRESENTATIVE. A representative of *LICENSEE* approved by City Manager or his designee shall remain on the premises during the term hereof and until performers and the public have left the premises.

2.8 FUTURE OPERATING TERMS. *CITY* will promptly notify *LICENSEE* of any changes to the documents that will apply to the *LICENSEE*'s event, such as the policies, rules and regulations or Event Services Guide. Any ancillary pricing outlined in the lease documents will be guaranteed to *LICENSEE* at least six (6) months prior to occupancy.

III. INDEMNITY

3.1 **LICENSEE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, BODILY INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO LICENSEE'S ACTIVITIES UNDER THIS LICENSE AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF LICENSEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBLICENSEE OF LICENSEE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS LICENSE AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. LICENSEE SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR LICENSEE KNOWN TO LICENSEE RELATED TO OR ARISING OUT OF LICENSEE'S ACTIVITIES UNDER THE LICENSE AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT LICENSEE'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING LICENSEE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

3.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS LICENSE AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE, IS AN INDEMNITY EXTENDED BY LICENSEE TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE, PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE

SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. LICENSEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY AS SET FORTH ABOVE.

IV. INSURANCE REQUIREMENTS

4.1 Prior to the *EVENT*, *LICENSEE* shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the *CITY MANAGER*, which shall be clearly labeled with the legal name of the *EVENT* in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The *CITY* will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the *CITY*. The *CITY* shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the *CITY MANAGER*. No officer or employee, other than the *CITY MANAGER*, shall have authority to waive this requirement.

4.2 The *CITY* reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the *CITY MANAGER*, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will *CITY* allow modification whereupon *CITY* may incur increased risk.

4.3 A *LICENSEE*'s financial integrity is of interest to the *CITY*; therefore, subject to *LICENSEE*'s right to maintain reasonable deductibles in such amounts as are approved by the *CITY*, *LICENSEE* shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at *LICENSEE*'s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 / \$1,000,000 / \$1,000,000

<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *g. Broad form property damage, to include 	<p>Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicle b. Non-owned vehicle c. Hired Vehicles 	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p>

4.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LICENSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. LICENSEE shall pay any costs incurred resulting from said changes.

City of Copperas Cove

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4.5 LICENSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured's by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Copperas Cove where the CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

4.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, *LICENSEE* shall provide a replacement Certificate of Insurance and applicable endorsements to *CITY*. *CITY* shall have the option to terminate this *LICENSE*.

4.7 Nothing herein contained shall be construed as limiting in any way the extent to which *LICENSEE* may be held responsible for payments of damages to persons or property resulting from *LICENSEE*'s or its subcontractors' performance of the work covered under this Agreement.

4.8 It is agreed that Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Copperas Cove for liability arising out of operations under this Agreement.

4.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

V. LAW OBSERVANCE/TAXES

5.1 *LICENSEE* shall not do, nor suffer to be done, anything on the *LICENSED PREMISES*, during the term of this *LICENSE*, in violation of the laws of the United States, the State of Texas, or any of the ordinances of *CITY*, and violation of this section is cause for *CITY*'S termination of this *LICENSE*. If the attention of said *LICENSEE* is called to such violations, *LICENSEE* will immediately desist from and correct such violations.

5.2 If actual sales are made on the *LICENSED PREMISES*, *LICENSEE* must inform each seller of the applicable sales tax. This rate is subject to change and *LICENSEE* must check with the Local State Comptroller's Office (1-800-252-5555) prior to show date to ascertain the current rate. Additionally, *LICENSEE* is responsible for ensuring that each seller possesses a sales permit number prior to the start of the show.

VI. ATTORNEY'S FEES

6.1 If either Party is required to file suit to collect any amount owed it under this *LICENSE* for the use of the *LICENSED PREMISES*, the prevailing party shall be entitled to seek reasonable attorney's fees.

VII. NON-DISCRIMINATION

7.1 *LICENSEE*, its agents, and employees agree not to discriminate on account of race, color, religion, national origin, gender, or handicapped condition in the use of or admission to the *LICENSED PREMISES*.

VIII. PERFORMANCE QUALITY

8.1 *LICENSEE* hereby agrees that no activity, performance, exhibition or entertainment (*attraction*) shall be given or held or take place in the *LICENSED PREMISES* herein described which is potentially dangerous to the public or which is illegal, indecent, obscene, lewd, or immoral, and should any exhibition or performance or any part thereof be deemed by the CITY MANAGER to be dangerous, illegal, indecent, obscene, lewd, immoral or in any manner offensive to persons of ordinary sensibilities, then said CITY MANAGER shall have the right to demand of *LICENSEE* that *LICENSEE* immediately, upon receipt of such notice, make such changes.

IX. ABANDONED ITEMS

9.1 *CITY* shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition, or entertainment given or held on the *LICENSED PREMISES*. *LICENSEE* agrees to hold *CITY* harmless for dispensing of said articles not claimed within 24 hours after the end of the event.

X. TERMS USED

10.1 It is understood that whenever this *LICENSE* authorizes or requires *CITY* to take any action, it may be done by the CITY MANAGER or by other persons designated by the CITY MANAGER.

XI. CANCELLATION BY CITY

11.1 Violation by *LICENSEE* of any material covenant, agreement or condition contained herein shall be cause for termination hereof by *CITY*. In such a case, *LICENSEE* forfeits any payment already made. In addition, *CITY* may likewise terminate this *LICENSE* if the *LICENSEE* should, prior to the date of occupancy thereunder, violate any material covenant, agreement, or condition in any other agreement which the *LICENSEE* might have for use of the *LICENSED PREMISES*, or should a court having jurisdiction over *LICENSEE* take its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act. Written notice of such cancellation will be given to the *LICENSEE* by the CITY MANAGER. *LICENSEE* waives any and all claims for damages against *CITY* resulting from such cancellation.

11.2 *CITY* shall notify *LICENSEE* of any breach in writing, specifying the nature of the breach and providing for a reasonable time to cure such breach. Should *LICENSEE* fail to cure such breach in a reasonable time, *CITY* may cancel this agreement.

XII. NO WAIVER

12.1 No waiver by *CITY* of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

XIII. IMPOSSIBILITY OF PERFORMANCE

13.1 If the (a) *LICENSE PREMISES*, or any portion thereof be destroyed or damaged by fire or other calamity so as to prevent the use of the *LICENSED PREMISES* for the purposes and during the periods specified in this *LICENSE*, or (b) if the performance of this agreement is prevented, in part or in full, by an act of God, civil strike (except for strikes involving City's own employees), lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood, curtailment or delay in transportation facilities preventing at least 55% of the projected participants from attending or any other cause beyond the control of the Parties, making it inadvisable, illegal, or impossible to provide the facility or hold the meeting then this *LICENSE* shall terminate. In such an event, neither party shall be liable or responsible to *LICENSEE* for any damages caused thereby and *LICENSEE* hereby waives any claim against *CITY* for damages by reason of such terminations, except that any unearned portion of the rent due thereunder shall abate, or, if previously paid, shall be refunded by *CITY* to *LICENSEE*.

XIV. SEVERABILITY

14.1 In case any one or more of the provisions contained in this *LICENSE* shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this *LICENSE* shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

XV. NOTICES

15.1 Any notices required or appropriate under this *LICENSE* shall be given in writing to *LICENSEE* at the address shown below, and to City, c/o CITY MANAGER, , Copperas Cove, Texas, 7

XVI. HEADINGS

16.1 The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this *LICENSE*.

XVII. NO ASSIGNMENT

17.1 This *LICENSE* is personal to *LICENSEE*. It is nonassignable and any attempt to assign this *LICENSE* will terminate all rights and privileges herein granted.

XVIII. TEXAS LAW TO APPLY

18.1 This Agreement will be interpreted according to the Constitution and laws of the State of Texas and is made and is to be performed in Coryell County, Texas.

XIX. ENTIRE AGREEMENT

19.1 This *LICENSE* and addendum contain the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this *LICENSE*, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written or contained in Addendum(s) and information sheet.

XX. AUTHORIZED AGENT

20.1 The signer of this *LICENSE* for *LICENSEE* hereby represents that he or she has full authority to execute this *LICENSE* on behalf of *LICENSEE*.