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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: May 16, 2018

Re: West Seneca Fire District No. 3 - License Agreement
980 East and West Road (the "Property")

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement with West Seneca Fire District No. 3.

The Fire District will be using the Property to perform training for its members in a real-life setting.

The main purpose of this agreement is to memorialize the District's indemnification of the Town in the event any claims or losses arise as a result of their use of the Property.

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LICENSE AND INDEMNITY AGREEMENT

This License, Indemnity and Protection Easement Agreement (the "Agreement"), dated as of May ___, 2018, by and between the Town of West Seneca, having an address at 1250 Union Road, West Seneca, New York, (the "Licensor" or the "Town") and West Seneca Fire District No. 3, having an address at 2400 Berg Road, West Seneca, New York (the "Licensee" or the "District").

WITNESSETH

WHEREAS, the Town acquired Property commonly known as 980 East and West Road, West Seneca, New York (the "Property") which is improved by a single family dwelling (the "Structure"); and

WHEREAS, the Town intends to demolish the Structure to further its purposes a governmental entity; and

WHEREAS, the District desires to use the Structure for purposes of training its members; and

WHEREAS, Licensor is willing to grant a license allowing District to enter into and train upon the Property and Structure subject to the terms, provisions and conditions hereinafter set forth.

NOW THEREFORE, upon the premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Subject to and in accordance with the terms and conditions of this License Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a license to enter upon the Property and the Structure (the "License Area"), necessary for the purposes of training exercises and complying with any requirement(s) of law imposed upon the Licensee, including any requirements imposed by the Town of West Seneca Department of Engineering and Code Enforcement Department. The term of the license granted herein (the "License Period") shall be for the term ending when the District ceases training at the License Area. The Licensee shall maintain control and responsibility for the Licensed Area during all training exercises. Licensee shall have the right firefighting personnel and emergency service personnel from neighboring agencies in order to train for response to mutual aid situations (the "Licensee Parties")

2. Licensee and the Licensee Parties shall take commercially reasonable measures to prevent any material damage to any adjoining properties or right-of-ways.

3. Licensee agrees to indemnify and save harmless Licensor and Licensor's officers, directors, contractors, agents, members and employees (the "Licensor Parties") from and against any and all liability (statutory or otherwise), claims, suits, demands, actual damages,

consequential damages, punitive damages, judgments, costs, fines, penalties, interest and expense (including, without limitation, reasonable attorneys' fees and disbursements) to which the Licensor Parties may be subject to or suffer arising from, or in connection with the Licensee Parties' use and occupancy of the License Areas and, to the extent caused by Licensee, any violation of any and all laws, orders, rules and regulations of all state, federal, municipal and local governments, departments, commissions and boards.

4. All damage or injury caused by or resulting from the negligent acts or omissions of Licensee or the Licensee Parties shall be restored promptly by Licensee at its sole cost and expense, to the condition existing immediately prior to such injury or damage. It is understood that the structure in the License Area will be irreparably damaged as a result of the training exercises. The damage caused in the normal course of training exercises will not be repaired or restored.

5. Licensee shall provide evidence of the Licensee's insurance naming the Town of West Seneca as an additional insured and in accordance with the following:

(a) The limits for Worker's Compensation and Employers' Liability insurance shall meet statutory limits mandated by State and Federal Laws.

(b) The limits for Commercial General Liability insurance including coverage for the License Areas and Adjacent Property, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows: \$1,000,000 Each Occurrence \$10,000,000 General Aggregate.

(c) Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage: \$ 1,000,000 Each Accident.

(d) Umbrella or Excess Liability coverage: \$ 2,000,000.

(e) If this insurance is written on a Commercial General Liability policy form, the certificates shall be ACORD form 25-S.

6. Miscellaneous Provisions.

(a) This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and shall bind the parties hereto and their respective successors, assigns or other legal representatives. This Agreement supersedes any prior verbal understanding or written agreement between the parties relative to the subject matter hereof, and may not be amended, supplemented or discharged except by an instrument in writing signed by both parties.

(b) Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture arrangement between the parties. The parties' relationship shall at all times be and remain licensor-licensee.

(c) This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York, without regard to its conflicts of law provisions. LICENSOR AND LICENSEE HEREBY VOLUNTARILY, KNOWINGLY AND IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION BROUGHT UNDER THIS AGREEMENT.

(d) This Agreement may be executed in two or more counterparts, each of which, when taken together, shall constitute one and the same instrument. Electronically transmitted signatures shall be deemed binding and effective.

LICENSOR:

LICENSEE:

By: _____

By: _____

Title: _____

Title: _____