

ADAIR COUNTY COMMISSION MINUTES

MONDAY, NOVEMBER 14, 2016

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IN REF. ORDER NO 10 Fully executed copy of License Agreement with Vanguard Appraisals, Inc.

0 CT 19, 9:00 AM Court

Vanguard Appraisals, Inc.

LICENSE AGREEMENT

This Agreement is made and entered into this 11th day of October, 2016 by and between VANGUARD APPRAISALS, INC., an Iowa corporation, having offices at 1055 Sierra Ct. N.E., Suite D, Cedar Rapids, Iowa 52402 ("Vanguard") and Adair County, MO, Assessor ("Client").

WHEREAS, Vanguard owns, and licenses others to use, certain computer application software modules and related materials known as Vanguard Computer Systems CAM4Vision® software for personal property appraisals and real estate appraisals, and

WHEREAS, Client desires to purchase from Vanguard a non-exclusive license and right to use selected portions or modules of the Vanguard Computer Systems CAM4Vision® software and related materials solely for Client's own purpose of appraising real estate and/or personal property, and Vanguard is willing to grant Client such a license subject to the terms and conditions of this Agreement.

Now therefore, the parties agree as follows:

- LICENSED MATERIALS.** "Licensed Materials" shall mean the selected portions or modules of the Vanguard Computer Systems CAM4Vision® software identified on Schedule A attached hereto and incorporated herein by reference, and any related documentation or materials, and any updates and add-ons to such software, documentation or materials, to be furnished to Client under this Agreement from time to time.
- GRANT OF LICENSE.** Vanguard grants to Client and Client accepts, on and subject to limitations, terms and conditions set forth in this Agreement, a non-exclusive, non-transferable right and license to use Licensed Materials solely for Client's personal and internal purpose of appraising real estate and/or personal property. Each module of the Licensed Materials may only be installed and used on one server at a time, and the Licensed Materials may only be accessed at any one time by the number of users for which Client has paid a license fee as set forth in Schedule A. Additional licensed users for each of the Licensed Materials and additional modules of the Vanguard Computer Systems CAM4Vision® software may be added to this License Agreement as Licensed Materials through supplements to Schedule A approved in writing by both Vanguard and Client, or pursuant to a new License Agreement executed by the parties.
- LICENSE FEES.**
 - Vanguard shall supply the modules of the Licensed Materials and/or Internet Service listed on the attached Schedule A and Vanguard will invoice Client for, and Client agrees to pay, the license fees indicated on the attached Schedule A.
 - All license fees are exclusive of shipping charges and any federal, state, provincial or local taxes, including any sales, use, VAT or other taxes imposed on this transaction, the license fees, or on Licensed Materials or possession of the Licensed Materials, all of which, if any, shall be paid by Client without deduction from the license fees.
 - Fees paid or payable by Client for the purchase of the license for the Licensed Materials are not refundable by Vanguard, and no adjustment will be made to such fees if Client discontinues use of the Licensed Materials or if Vanguard terminates this Agreement under Section 8(b) below. Vanguard reserves the right to collect 75% of the total license fees should the client choose to cancel this Agreement prior to installation of the Licensed Materials.
- LIMITATIONS ON USE OF THE LICENSED MATERIALS.** Client shall not, directly or indirectly:
 - allow the modules contained in the Licensed Materials to be used at any point in time by more than the number of persons for whom a license fee has been paid, as specified on Schedule A, and all such use may only be by those persons using such modules for the benefit of Client in the course and scope of their employment as an employee of Client;
 - copy, modify or create derivative works of the Licensed Materials;
 - transmit, translate, reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Licensed Materials;
 - without the prior written consent of Vanguard, which consent may be withheld by Vanguard in its sole discretion, assign this Agreement, or rent, lease, license, sublicense the Licensed Materials to any other person, or transfer,

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allow access to, distribute or otherwise make available License Materials to independent contractors or others who do not receive a Form W-2, Wage and Tax Statement, from Client, as stated in the United States income tax system as an information return to report wages paid to employees and the taxes withheld from them, or to allow others to do so; or:

- incorporate the Licensed Software, in whole or in part, into a product which Vanguard determines is designed to compete with the Licensed Materials, which will include, but not be limited to, local databases or Web-based search engines; or
- make more than one copy of the Licensed Materials for backup.

5. CONFIDENTIALITY.

- Client covenants and agrees as follows:
 - to receive and hold in confidence all Confidential Information revealed to Client by Vanguard pursuant to this Agreement;
 - to not disclose any Confidential Information except to regular employees of Client who will receive a Form W-2, Wage and Tax Statement, from Client, in the current tax year (hereinafter referred to as "Client's Representatives") who have a reasonable need-to-know, who know of Client's obligations hereunder, and who are under legal obligations with respect to Confidential Information received hereunder by virtue of their employment relationship with Client. Client assumes full responsibility for the compliance of Client's Representatives with the restrictions of this Agreement, all of which restrictions shall apply to and bind Client's Representatives. Any other disclosure of Vanguard's Confidential Information shall require Vanguard's prior written permission and execution of a similar agreement;
 - not to use any Confidential Information for itself or for any third party or for any reason or purpose other than solely for its own purpose of appraising real estate;
 - not to use any Confidential Information in any way detrimental to Vanguard (it being acknowledged that any use of Confidential Information by Client for purposes other than to solely for its own purpose of appraising real estate will be deemed detrimental to Vanguard and that no such use shall allow any disclosure that violates paragraph 5(a)(2) above; and
 - at any time, upon the written request of Vanguard, (i) immediately return to Vanguard all copies reflecting any Confidential Information, and all additional documents and things within Client's possession, custody or control containing or reflecting any Confidential Information, (ii) irrevocably delete or erase all Confidential Information from any electronic storage medium (i.e., computer, computer disks, zip drives, etc.) within Client's possession, custody or control and provide Vanguard with a written statement confirming that all Confidential Information of Vanguard has been returned or deleted, and (iii) make no further use of the Confidential Information.
- As used in this Agreement, "Confidential Information" shall mean information relating to the Licensed Materials presented or disclosed to Client by Vanguard, whether such information is presented or disclosed in writing, electronic form, orally or obtained by visual inspection. Client agrees and acknowledges that such Confidential Information is not generally known to Vanguard's competitors, which gives Vanguard a competitive advantage over others who do not possess such Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information (regardless of how it may be marked) which (a) is already rightfully known to Client unless it is only known by Client due to Vanguard's disclosure of Confidential Information to Client prior to the execution of this Agreement, (b) was or becomes publicly known without disclosure by Client, (c) was or is acquired by Client from a third party, provided that the third party providing such information has not directly breached any agreement with, or acted in derogation of, any confidential relationship with Vanguard, or (d) is disclosed pursuant to the lawful requirement of a government agency or is required by operation of law provided that Client gives Vanguard written notice of said disclosure request and a copy thereof so that Vanguard can take action, if any, to protect its Confidential Information. The parties shall be on Client to establish that information pertaining to Vanguard and/or the Licensed Materials is not Confidential Information.

6. LIMITED WARRANTY.

- Vanguard warrants that during the Warranty Period (as defined below) the software module(s) contained in the Licensed Materials will be free from material, reproducible programming malfunctions or defects and will operate in all material respects in conformity with the current specifications for such module(s) published by Vanguard. Vanguard does not warrant that the modules in the Licensed Materials will operate uninterrupted or error free.

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- As the sole obligation of Vanguard and the sole remedy of Client under the foregoing warranty, Vanguard will seek to correct, through the means Vanguard determines to be most appropriate, any malfunction or defect in such Licensed Materials at no additional charge to Client within a reasonable time after they become known, provided (1) such malfunctions or defects are reported to Vanguard by Client within twelve (12) months from the effective date of this Agreement or thereafter during any period in which Client maintains a Service Contract with Vanguard under which Client is current and not in default (the "Warranty Period"), and (2) Vanguard is able to reproduce and confirm the reported malfunction or defect.
- The foregoing limited warranty shall be null and void, and Vanguard shall have no warranty obligation with respect to any software module contained in the Licensed Materials if such module is modified or altered by any party other than Vanguard, its employees or agents, or such module is used for purposes for which it was not intended or for purposes not authorized by this Agreement, or the module was damaged due to causes external to such software (e.g., a power surge or electromagnetic field, etc.). Vanguard shall have no responsibility for any hardware failures.
- THE LICENSED MATERIALS ARE OTHERWISE PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. VANGUARD FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM INTERFERENCE WITH EMPLOYMENT OR FROM NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AND ANY WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE LICENSED MATERIALS REMAINS WITH CLIENT.
- TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VANGUARD OR ITS SUPPLIERS BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES, RESULTS FROM INQUIRY, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR LIABILITY TO USE THE LICENSED MATERIALS, EVEN IF VANGUARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT. In no event shall Vanguard's liability for the performance or non-performance of this Agreement, or otherwise, exceed the amount actually paid to Vanguard under this Agreement.

7. TITLE. Title, ownership, rights and intellectual property rights in and to the Licensed Materials shall remain in Vanguard and/or its suppliers. The Licensed Materials are protected by the copyright laws of the United States and international copyright treaties. Title, ownership rights and intellectual property rights in and to the content accessed through the Licensed Materials is the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content.

8. TERM.

- The rights granted by Vanguard shall take effect on the date first written above and shall remain in force as long as Client is in compliance with the limitations, terms and conditions of this Agreement, provided Vanguard reserves the right to change this Agreement when deemed necessary in Vanguard's discretion due to changes in technical specifications.
- Vanguard further reserves the right to terminate this Agreement and any Service Contract by written notice to Client if Client fails to comply with any of the limitations, terms or conditions set forth in this Agreement and such failure continues for a period of ten (10) days after Client receives written notice of such failure from Vanguard.
- Upon termination of this Agreement in accordance with Section 8(b), Client shall cease to use, and promptly return and return to Vanguard the Licensed Materials, and Vanguard shall have the right to uninstall Licensed Materials from the Client's system. Sections 4, 5, 6, 7 and 10 shall survive any termination of this Agreement.

9. REPRESENTATIONS AND WARRANTIES OF CLIENT. Client represents and warrants to Vanguard as follows:

- Client has taken all necessary action to make this Agreement legally binding on Client, that the individual signing this Agreement on behalf of Client has been fully authorized and empowered to execute this Agreement on behalf of Client, and this Agreement constitutes a legal, valid and binding obligation of Client in accordance with its terms, (b) no consent,

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approval or authorization by any other party or governmental authority is required in connection with the execution, delivery, validity or enforceability of this Agreement; and (c) Client has funding sufficient for Client to fulfill its obligations under this Agreement.

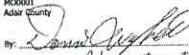
10. MISCELLANEOUS. (a) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. (b) This Agreement may be amended only by a writing signed by both parties; (c) this Agreement shall be governed by the laws of the State of Iowa, without regard to conflicts of law provisions. (d) Any litigation arising out of this Agreement shall only be commenced in, and Client consents to the exclusive jurisdiction of the state and federal courts sitting in Linn County, Iowa. (e) If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent and full force and effect; (f) a waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof; (g) the provisions of this Agreement that require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination; (h) neither party shall be in default or liable for any delay, failure in performance (excluding the obligation to pay), or interruption of service resulting directly or indirectly from any cause beyond its reasonable control; (i) Vanguard shall be entitled (without the necessity of posting any bond or establishing the adequacy of damages as a remedy) to specific performance and injunctive relief to correct or enjoin any breach or threatened breach of Sections 4 and 5, in addition to all other remedies which might be available at law or in equity; and (j) any dispute arising under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith.

IN WITNESS WHEREOF, the Parties hereto have caused this LICENSE AGREEMENT to be executed by their duly authorized representatives in duplicate as of the date and year first above written.

VANGUARD APPRAISALS, INC.


By: 
Mark Thompson, Senior Vice President

MCR001
Adair County

By: 
Adair County Assessor

Date: 10/12/2016

Adair County (Additional signature if required by jurisdiction)

By: 
Adair County Assessor

Date: 11/14/2016

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ATTEST:


Andrea Lohop
County Clerk


Mark Thompson
Presiding Commissioner