

STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS     §

**LICENSE AGREEMENT**

**THIS AGREEMENT** is made by and between City of Coppell, Texas (hereinafter referred to as "CITY") and Village at Cottonwood Creek 5 Homeowners Association (hereinafter collectively referred to as "LICENSEE") acting by and through their authorized representatives.

**WITNESSETH:**

**WHEREAS**, LICENSEE desires to install and maintain an extension of an existing brick screening wall (hereinafter referred to "PERMITTED IMPROVEMENTS") which will encroach within the City of Coppell variable width Right-of-Way, as shown on the attached plat of Village at Cottonwood Creek Section V, recorded as Volume 97061 Page 3057, official public records of Dallas County Texas, marked as Exhibit "A" and also shown on the attached exhibit marked Exhibit 'B' and incorporated herein for all purposes, (hereinafter referred to as ENCROACHMENT AREA); and

**WHEREAS**, LICENSEE has requested the CITY allow the PERMITTED IMPROVEMENTS and/or continued use and occupancy, as depicted in the Exhibit B attached hereto;

**WHEREAS**, LICENSEE desires to install and maintain "PERMITTED IMPROVEMENTS" within the ENCROACHMENT AREA and requests continued use and occupancy of the ENCROACHMENT AREA for PERMITTED IMPROVEMENTS under the terms and conditions of this License Agreement;

**WHEREAS**, CITY acknowledges that if the PERMITTED IMPROVEMENTS are damaged by the CITY, the CITY will not be responsible for repair or replacement of any PERMITTED IMPROVEMENTS within the ENCROACHMENT AREA. Any repair or replacement of the PERMITTED IMPROVEMENTS necessary as a result of damage by parties other than the CITY and/or natural deterioration will not be the responsibility of the CITY.

**NOW THEREFORE**, in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purpose:** CITY hereby grants LICENSEE a revocable license for the purpose of constructing, maintaining and using at the sole costs of the LICENSEE an extension of an existing brick screening wall (the "PERMITTED IMPROVEMENTS ") encroaching into the CITY variable width Right-of-Way as shown on the attached plat of Village at Cottonwood Creek Section V, recorded as Volume 97061 Page 3057, official public records of Dallas County Texas, marked as Exhibit "A" and also shown on the attached exhibit marked Exhibit 'B' and incorporated herein for all purposes,.

2. **Term:** The term of this License shall be perpetual, subject, however, to termination by the CITY as provided herein.

3. **Non-exclusive:** This License is nonexclusive and is subject to any existing utility, drainage or communications facilities located in, on, under or upon the CITY variable width Right-of-Way or property owned by CITY, any utility or communication company, public or private, to all vested rights presently owned by any utility or communication company, public or private for the use of the CITY variable width Right-of-Way for facilities presently located within the boundaries of the variable width Right-of-Way and to any existing lease, license, or other interest in the variable width Right-of-Way granted by CITY to any individual, corporation or other entity, public or private.

4. **Environmental Protection:** LICENSEE shall not use or permit the use of the property for any purpose that may be in violation of any laws pertaining to the health of the environment, including without limitation, the comprehensive environmental response, compensation and liability act of 1980 ("CERCLA"), the resource conservation and recovery act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. LICENSEE warrants that the PERMITTED use of the property will not result in the disposal or other release of any hazardous substance or solid waste on or to the property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the property or adjoining property by LICENSEE. The terms "hazardous substance and waste" shall have the meaning specified in CERCLA and the term solid waste and disposal (or dispose) shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, at the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. LICENSEE shall indemnify and hold CITY harmless against all costs, environmental clean up to the property and surrounding CITY property resulting from LICENSEE' use of the property under this License.

5. **Mechanic's liens not permitted:** LICENSEE shall fully pay all labor and materials used in, on or about the property and will not permit or suffer any mechanic's or material man's liens of any nature be affixed against the property by reason of any work done or materials furnished to the property at LICENSEE' instance or request.

6. **Future City use:** This License is made expressly subject and subordinate to the right of CITY to access and use all or portion of the variable width Right-of-Way for any public purpose whatsoever. In the event that CITY shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation, maintenance or removal of the brick screening wall extension shall be necessary or convenient for CITY's use of the variable width Right-of-Way, LICENSEE shall at its sole cost remove and/or indemnify and hold CITY harmless against any cost or claims for structural or cosmetic damage Permitted Improvement or other damages occasioned by CITY's activities within the variable width Right-of-Way.

7. **Duration of License:** This License shall terminate and be of no further force and effect in the event LICENSEE shall discontinue or abandon the use of the PERMITTED IMPROVEMENTS or in the event LICENSEE shall remove the PERMITTED IMPROVEMENTS from the property; or, in the event that the City abandons the properties depicted as a public variable width Right-of-Way on Exhibit B, then this agreement shall be of no further effect.
8. **Compliance with laws:** LICENSEE agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the LICENSEE.
9. **Indemnification:** LICENSEE shall defend, protect and keep CITY forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the property by the LICENSEE, whether occasioned by the neglect of LICENSEE, its employees, officers, agents, contractors or assigns or those holding under LICENSEE. LICENSEE shall at all times defend, protect and indemnify and it is the intention of the parties hereto that LICENSEE hold CITY harmless against and from any and all loss, cost, damage, or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about the property causing personal injury, death or property damage resulting from use of property by LICENSEE, its agents, employees, customers and invitees. LICENSEE shall at all times defend, protect, indemnify and hold CITY harmless against and from any and all loss, cost, damage, or expense, including attorney's fees arising out of or from any and all claims or causes of action resulting from any failure of LICENSEE, their officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof.
10. **Action upon termination:** At such time as this License may be terminated or canceled for any reason whatsoever, LICENSEE, upon request by CITY, shall at its sole cost remove all PERMITTED IMPROVEMENTS and appurtenances owned by it, situated in, under or attached to the CITY variable width Right-of-Way and shall restore such property to substantially the condition of the property prior to LICENSEE's encroachment at LICENSEE sole expense.
11. **Termination:** This Agreement may be terminated in any of the following ways:
- a. Written agreement of both parties;
  - b. By CITY upon failure of LICENSEE to perform its obligations as set forth in this Agreement;
  - c. By the CITY abandoning any interest in the variable width Right-of-Way.
12. **Notice:** When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the parties at the address set forth opposite their signature. Either party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

13. **Attorney's fees:** Any signatory to this Agreement, who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Agreement shall be entitled to recover court cost and reasonable attorney's fees from the non-prevailing party.

14. **Governing law:** This Agreement is governed by the laws of the State of Texas; and venue for any action shall be in Dallas County, Texas.

15. **Binding effect:** This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

16. **Entire Agreement:** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, if any, relating to the property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

17. **Recitals:** The recitals to this Agreement are incorporated herein by reference.

18. **Legal construction:** The provisions of this Agreement are hereby declared covenants running with the property and are fully binding on all successors, heirs, and assigns of LICENSEE who acquired any right, title, or interest in or to the property or any part thereof. Any person who acquires any right, title, or interest in or to the property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this agreement with respect to the right, title or interest in such property.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
MIKE LAND, CITY MANAGER

ATTEST:

By: \_\_\_\_\_  
ASHLEY OWENS, CITY SECRETARY

**ACCEPTANCE ACKNOWLEDGED BY:**

**LICENSEE:**

By: \_\_\_\_\_  
DESIGNATED AGENT,  
VILLAGE AT COTTONWOOD CREEK SECTION  
V HOMEOWNERS ASSOCIATION

**LICENSEE'S ACKNOWLEDGMENT**

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF DALLAS**           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by DESIGNATED AGENT with VILLAGE AT COTTONWOOD CREEK SECTION V  
HOMEOWNERS ASSOCIATION.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

**CITY'S ACKNOWLEDGMENT**

**STATE OF TEXAS**                   §  
   §  
**COUNTY OF DALLAS**           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by Mike Land, City Manager of the City of Coppell, Texas, a Texas municipality, on behalf of  
said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_