

**RIGHT-OF-WAY LICENSE AGREEMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This License Agreement (this "**Agreement**") is made the date set forth below by and between the CITY OF PFLUGERVILLE, TEXAS, a home-rule city located in Travis County, Texas (the "**CITY**"), and CARRINGTON COURT RESIDENTIAL COMMUNITY, INC., a Texas non-profit corporation (the "**ASSOCIATION**").

RECITALS:

**WHEREAS**, Carrington Court is a subdivision development located within the corporate limits of the CITY consisting of residential lots and associated improvements, according to the map or plat thereof recorded as Document No. \_\_\_\_\_ in the Official Public Records of Travis County, Texas (the "**Subdivision**"); and

**WHEREAS**, the ASSOCIATION was created to administer the affairs of the Subdivision pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions of Carrington Court (the "**Restrictions**") recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, on \_\_\_\_\_, 2014, and has the authority to levy assessments against the lots within the Subdivision to provide a permanent source of funding for the ASSOCIATION to pay for mowing and maintenance of landscaping within the public rights-of-way; and

**WHEREAS**, in accordance with the Restrictions, the ASSOCIATION is authorized to maintain and irrigate all landscaping within the public rights-of-way within the Subdivision and is further authorized to maintain other property within the Subdivision for the common use and/or benefit of the owners of the Subdivision; and

**WHEREAS**, since the date of recordation of the Restrictions public rights-of-way for streets have been dedicated to the CITY, in trust for the public within those portions of Carrington Court that are included within a subdivision plat that has been approved by the CITY of Pflugerville in accordance with Texas Local Government Code Section 212.005, as more particularly described on **Exhibit A** attached hereto; and

**WHEREAS**, the ASSOCIATION acknowledges and agrees that the CITY has exclusive jurisdiction and control of the public rights-of-way; and

**WHEREAS**, the ASSOCIATION has requested that the CITY grant it a license to install and maintain landscaping vegetation, irrigation and related improvements within portions of the public rights-of-way for the beautification of the Subdivision; and

**WHEREAS**, the ASSOCIATION acknowledges and agrees that no landscaping, irrigation or other improvements may be placed within any portion of the public rights-of-way that would cause a hazard, or potential hazard to public health and safety, as determined in the sole discretion of the CITY.

**NOW, THEREFORE**, in consideration of the premises, in furtherance of the mutual benefits to be derived by the general public and the residents and members of the ASSOCIATION, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and the ASSOCIATION agree as follows:

1. **RECITALS ADOPTED.** The recitals set out above in this instrument are hereby adopted in whole as each were set out herein.
2. **STREET RIGHTS-OF-WAY** (public R-O-W)

2.1. **License granted subject to City approval.** Subject to the review and approval requirements set out in Section 2.2, immediately below, the CITY grants the ASSOCIATION the specific license, permission, authorization and right, at the sole cost and expense of the ASSOCIATION, to (A) construct, install, place, operate, maintain, repair, upgrade, replace and remove trees, shrubs, plants, grasses, ground cover and other landscaping, and private water pipes, lines, sprinklers and other irrigation equipment; (B) to mow the grass and maintain the landscaping (including the right to trim public right-of-way along Johnson Gregg Lane) and prune trees, plants and ground cover, that may from time to time be located on or within the rights-of-way of all streets located within the Subdivision that have been dedicated as public streets as of the date of this Agreement, as described and/or depicted in Exhibit A attached hereto (“**Licensed Property**”); and (C) to maintain, operate, repair, replace and upgrade private water pipes, lines, sprinklers and other irrigation equipment. This license specifically excludes the installation of signage and/or structures within the public right-of-way. Should the ASSOCIATION wish to install signage and/or other structures within the public right-of-way, it must first apply for a separate license from the CITY to do so.

2.2 **Review and approval.** The ASSOCIATION is not authorized to, and shall not, install or otherwise enter any public rights-of-way within the Subdivision for the purpose of installing, any landscaping, irrigation or other improvements under this License, without submitting all plans for any such landscaping or other improvements to the CITY and obtaining approval of said plans. The plans shall be submitted to the CITY in such form as required by the CITY to assure that the proposed landscaping, irrigation or other improvements will not pose a threat to either public safety, including but not limited to impairment of sight lines, or public infrastructure, including but not limited to water, sewer or utility lines.

2.3 **Construction and Operation.** The ASSOCIATION shall be solely responsible for constructing or installing, or causing to be constructed and installed, such landscaping and/or irrigation equipment as it may determine within such public street rights-of-way, and shall be solely responsible for the operation, maintenance, repair, removal and/or replacement of the

landscaping and irrigation equipment that it may elect to construct and install within the public street rights-of-way from time to time.

2.4 Maintenance. The ASSOCIATION shall be solely responsible for the maintenance of the irrigation systems to prevent damage to public streets and infrastructure. If damages to the public infrastructure occur as a result of poorly constructed and maintained irrigation systems, the ASSOCIATION shall make payment to the CITY for full reimbursement of all costs the CITY incurs repairing such damages to the public infrastructure. Between the dates December 1<sup>st</sup> and February 28<sup>th</sup> of the following year, the ASSOCIATION shall turn off the irrigation systems timers and shall only operate the irrigation system manually. In order to prevent ice on the streets, the ASSOCIATION shall not operate the irrigation systems whenever a freeze warning is forecasted by the national weather service, until such time as the freeze warning is lifted. When maintenance occurs by the ASSOCIATION or its contractors, traffic control measures shall be utilized in conformance with the Texas Manual on Uniform Traffic Control Devices.

### 3. CITY RIGHTS WITH RESPECT TO THE PUBLIC RIGHTS-OF-WAY

3.1 This Agreement is expressly subject and subordinate to the present and future right of the CITY, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate, and renew any public utility facilities, franchised public utilities, roadways or streets on, beneath or above the surface of the Licensed Property.

3.2 The CITY shall take reasonable measures to prevent damage to any improvements installed by or on behalf of the ASSOCIATION on the Licensed Property, however, any damage to or destruction of the ASSOCIATION's property by the CITY in the exercise of the above-described rights shall be at no charge, cost, claim or liability to the CITY, its agents, contractors, officers or employees.

3.3 Nothing in this Agreement shall be construed to limit in any way the power of the CITY to widen, alter or improve the Licensed Property pursuant to official action by the governing body of the CITY or its successors. The CITY shall endeavor to provide the ASSOCIATION with notice of proposed improvements within the Licensed Property but shall be under no obligation to do so prior to commencement of work on such improvements.

3.4 NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, THE CITY RETAINS THE ABSOLUTE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE, ASSUMING NO OBLIGATION TO THE ASSOCIATION, TO REMOVE ANY OF THE IMPROVEMENTS OR ALTERATIONS THEREOF, WHENEVER SUCH REMOVAL IS DEEMED NECESSARY FOR: (A) EXERCISING THE CITY'S RIGHTS OR DUTIES WITH RESPECT TO THE LICENSED PROPERTY; (B) PROTECTING PERSONS OR PROPERTY; OR (C) PROTECTING THE PUBLIC HEALTH OR SAFETY WITH RESPECT TO THE LICENSED PROPERTY. THE ASSOCIATION SHALL REIMBURSE ALL COSTS INCURRED BY THE CITY IN THE CITY'S ENFORCEMENT OF THIS SECTION. SHOULD THE CITY

INVOKE THE REMEDIES PROVIDED IN THIS SECTION THE CITY MAY IMMEDIATELY TERMINATE THIS AGREEMENT UPON A DETERMINATION, IN THE CITY'S SOLE DISCRETION, THAT THE IMPROVEMENTS OR A PORTION OF THEM CONSTITUTE A DANGER TO THE PUBLIC WHICH CANNOT TO BE REMEDIABLE BY ALTERATION OR MAINTENANCE THEREOF.

4. **INSURANCE**

4.1 Prior to the commencement of any work under this Agreement, the ASSOCIATION shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's City Manager, which shall be clearly labeled with the legal name of the Subdivision right-of-ways project 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 perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's City Manager. No officer or employee, other than the CITY's City Manager, shall have authority to waive this requirement.

4.2 The CITY reserves the right to review the insurance requirements of this Section 4 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 CITY's City Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the 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 ASSOCIATION's right to maintain reasonable deductibles in such amounts as are approved by the CITY, ASSOCIATION shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at ASSOCIATION'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:

<u>TYPE</u>	<u>AMOUNTS</u>
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"> <li>a. Premises operations</li> <li>*b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>*f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</li> <li>*g. Broad form property damage, to include fire legal liability</li> </ul>	<p>For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> <li>a. Owned/leased vehicle</li> <li>b. Non-owned vehicle</li> <li>c. Hired Vehicles</li> </ul>	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p>

\* May be waived by City Manager if not applicable to activities performed by Licensee

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). The ASSOCIATION 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. The ASSOCIATION shall pay any costs incurred resulting from said changes.

City of Pflugerville  
 Attn. City Manager  
 P.O. Box 589  
 Pflugerville, TX 78691

4.5 ASSOCIATION 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 insureds 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 Pflugerville 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, the ASSOCIATION shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend ASSOCIATION's authorization under this Agreement should there be a lapse in ASSOCIATION's insurance coverage at any time during the term of this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

4.8 It is agreed that ASSOCIATION's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY 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.

## 5. INDEMNIFICATION

**5.1 ASSOCIATION 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 ASSOCIATION'S ACTIVITIES UNDER THIS LICENSE AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF ASSOCIATION, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBASSOCIATION OF ASSOCIATION, 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. ASSOCIATION SHALL PROMPTLY ADVISE CITY IN**

**WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR ASSOCIATION KNOWN TO ASSOCIATION RELATED TO OR ARISING OUT OF ASSOCIATION'S ACTIVITIES UNDER THIS LICENSE AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT ASSOCIATION'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING ASSOCIATION OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**5.2 IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS LICENSE AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE, IS AN INDEMNITY EXTENDED BY ASSOCIATION 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. ASSOCIATION 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.**

## **6. TERMINATION**

6.1 Termination by the Association. This Agreement may be terminated by the ASSOCIATION no sooner than ten (10) years after the effective date of this agreement by delivering written notice of termination to the CITY not later than 365 days before the effective date of termination.

6.2 Termination by the City. This Agreement may be revoked at any time by the CITY, if such revocation is reasonably required by the public interest, after providing at least 30 days prior written notice to the ASSOCIATION. Circumstances under which the CITY may revoke this Agreement, pursuant to this subsection include, but are not limited to the following:

- (a) The improvements installed on the Licensed Property by or on behalf of the ASSOCIATION (or a portion of them) interfere with the CITY's use of the Licensed Property;
- (b) Use of the Licensed Property becomes necessary for a public purpose; provided, however, the CITY may remove landscaping and other improvements installed by the ASSOCIATION without terminating this Agreement pursuant to Section 3.4 herein;
- (c) Despite 30 days written notice and opportunity to cure, the ASSOCIATION fails to (i) maintain or make necessary alterations to prevent deterioration of the

aesthetic integrity of the landscaping or the workability of irrigation or other improvements; or (ii) comply with any other terms and conditions of this Agreement, including but not limited to, the insurance requirements specified herein.

- (d) The Association fails to comply with the terms and conditions of this Agreement, including but not limited to, the insurance requirements specified herein.

6.3 In the event that this Agreement is terminated by either Party, then at the election of the CITY, either (i) the improvements installed by or on behalf of the ASSOCIATION within the Licensed Property shall be removed by the ASSOCIATION and the rights-of-way be restored to a condition equivalent to a condition typical for rights-of-way within the City of Pflugerville within 60 days following notification by the CITY to do so; or (ii) the CITY shall assume all rights, title and ownership to the ASSOCIATION's improvements within the Licensed Property. In the event that the CITY elects to require the removal of the ASSOCIATION's improvements and the restoration of the rights-of-way in accordance with this Section; and the ASSOCIATION fails to timely do so, then the CITY may take such actions necessary to remove the ASSOCIATION's improvements and restore the rights-of-way and charge the ASSOCIATION with the reasonable and actual costs for such removal and restoration.

## 7. ASSIGNMENT

7.1 The ASSOCIATION shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the CITY, which may be withheld for any reason. If such consent is granted, it shall then be the duty of the ASSOCIATION, its successors and assigns, to give prompt written notice to the CITY of any assignment or transfer of any of the ASSOCIATION's rights in this Agreement.

## 8. MISCELLANEOUS PROVISIONS

8.1 Laws Observance. ASSOCIATION shall not do, nor suffer to be done by any of its employees, agents, contractors or others for which the ASSOCIATION is legally liable, anything on the Licensed Property, during the term of this Agreement, in violation of the laws of the United States, the State of Texas, or any of the ordinances of CITY.

8.2 Attorney's fees. If either Party is required to file suit to collect any amount owed under this Agreement or to enforce its rights hereunder, the prevailing party shall be entitled to seek and recover reasonable attorney's fees.

8.3 No Waiver. No waiver by either Party 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.

8.4 Severability. In case any one or more of the provisions contained in this Agreement 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 Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.5 Notice. Any notices required or appropriate under this Agreement shall be given in writing to the ASSOCIATION at the address shown below, and to CITY, City of Pflugerville; Attn. City Manager, P.O. Box 589, Pflugerville, TX 78691

8.6 Headings. The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this Agreement.

8.7 Jurisdiction and Venue. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Travis County, Texas. This Agreement is made and is to be performed in Travis County, Texas, and is governed by the laws of the State of Texas.

8.8 Authorized Agent. The signer of this Agreement for the ASSOCIATION hereby represents that he or she has full authority to execute this Agreement on behalf of the ASSOCIATION.

8.9 Entire Agreement. This Agreement and any exhibits and addendum hereto 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 Agreement, 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.

SIGNATURE PAGE TO FOLLOW

**EXECUTED** effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY:**

**CITY OF PFLUGERVILLE, TEXAS,**  
(a Texas home-rule municipality)

By: \_\_\_\_\_  
Brandon E. Wade, City Manager

**ASSOCIATION:**

**CARRINGTON COURT RESIDENTIAL COMMUNITY, INC.**  
(a Texas non-profit corporation)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 10700 Pecan Park Blvd., Suite 400  
Austin, TX 78750

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of THE CITY OF PFLUGERVILLE, TEXAS, a home rule city, on behalf of said city.

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

STATE OF TEXAS                   §  
  §  
COUNTY OF WILLIAMSON      §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of Carrington Court Residential Community, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

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

**AFTER RECORDING, PLEASE RETURN TO:**

City of Pflugerville  
Attn. City Manager  
P.O. Box 589  
Pflugerville, TX 78691

**EXHIBIT A**

**Licensed Property**