

**PUBLIC PARKLAND LANDSCAPING MAINTENANCE LICENSE
AGREEMENT (VILLAGES OF HIDDEN LAKE PARKLAND)**

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 VILLAGES OF HIDDEN LAKE HOME OWNERS ASSOCIATION, INC., a Texas non-profit corporation (the "**Association**").

RECITALS:

WHEREAS; the Villages of Hidden Lake is a subdivision development located within the extraterritorial jurisdiction of the City consisting of residential lots and associated improvements; and

WHEREAS; the "ASSOCIATION" was created to administer the affairs of the Villages of Hidden Lake pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions of the Villages of Hidden Lake (the "Restrictions") recorded under Document No. 2003103969 of the Official Public Records of Travis County, Texas, May 8, 2003 as amended, and has the authority to levy assessments against the lots within the Villages of Hidden Lake to provide a permanent source of funding for the ASSOCIATION to pay for mowing and maintenance of landscaping within the parkland dedicated to the CITY.

WHEREAS; In accordance with the Restrictions, the ASSOCIATION is authorized to maintain and irrigate all landscaping and public parkland improvements within the Villages of Hidden Lake Parkland located at the intersection of Bandice Lane and Hidden Park Drive (the "Public Parkland") dedicated to the public and is further authorized to maintain other property within the Villages of Hidden Lake;

WHEREAS; Since the date of recordation of the Restrictions, Public Parkland has been dedicated to the CITY, in trust for the public within those portions of the Villages of Hidden Lake that are included within a subdivision plat that have 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 is required to mow and maintain landscaping within the Public Parkland, maintain liability insurance, and indemnify the City for any personal injury or property damage claims arising from maintenance activities performed by or on behalf of the Association by this license agreement as set forth herein until such time that the Villages of Hidden Lake is annexed by the City.

WHEREAS; the ASSOCIATION acknowledges and agrees that the CITY has exclusive jurisdiction and control of the Public Parkland; and

WHEREAS; the ASSOCIATION has requested that the CITY grant it a license to install and maintain landscaping vegetation and other public parkland improvements approved by the City on Public Parkland for the beautification of the Villages of Hidden Lake; and

WHEREAS; the ASSOCIATION acknowledges and agrees that no landscaping or public parkland improvements may be placed within any portion of the Public Parkland 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

1.2 The recitals set out above in this instrument are hereby adopted in whole as each were set out herein.

2. PUBLIC PARKLAND

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 construct, install, place, operate, maintain, repair, upgrade, replace and remove trees, shrubs, plants, grasses, ground cover and other landscaping, and water pipes, lines, sprinklers and other irrigation equipment, and to mow the grass and maintain the landscaping, including the right to trim and prune trees, plants and ground cover, and other public parkland improvements that may be placed within the Public Parkland as of the date of this Agreement and set forth on Exhibit A attached hereto.

2.2 Review and approval. The ASSOCIATION is not authorized to, and shall not install any landscaping or other public parkland improvements, within the Public Parkland, for any purpose under this License, without submitting all plans for landscaping or other improvements to the CITY and obtaining approval of said plans. In some cases, proposed improvements will be subject to the City's Site Development Process. The plans shall be submitted to the CITY in such form as required by the CITY to assure that the proposed Landscaping 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 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 the Public Parkland, 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 Parkland from time to time.

2.4 Maintenance. The ASSOCIATION shall be solely responsible for the maintenance of the landscaping improvements, irrigation systems and public parkland improvements including, but not limited to, sidewalks, benches, structures, playground equipment, and fall zone protection areas around playground equipment. 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 1st and February 28th of the following year, the ASSOCIATION shall turn off the irrigation systems timers and shall only operate the irrigation system manually.

3. CITY RIGHTS TO LICENSED PROPERTY

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, or franchised public utilities, beneath or above the surface of the Licensed Property.

3.2 The CITY shall take reasonable measures to prevent damage to any Improvements 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 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 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 Villages of Hidden Lake Public Parkland 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 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 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:

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 fire legal liability 	<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"> 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>

* May be waived by City Manger 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 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. The LICENSEE shall pay any costs incurred resulting from said changes.

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

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 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, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LICENSEE's authorization under this agreement should there be a lapse in coverage at any time during this contract. 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 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 Pflugerville 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 THE 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 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 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, (the city may remove landscaping installed by the Association without terminating this Agreement pursuant to Section 3.4 herein.)
- (c) Despite 30 days written notice, the ASSOCIATION fails to maintain or make necessary alterations to prevent deterioration of the aesthetic integrity of the landscaping; or

- (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 at the election of the City, the CITY shall assume all rights, title and ownership to the Improvements.

6.4 Once the agreement has been terminated by either party, the City will perform maintenance on the public parkland consistent with the level of maintenance of other City parkland, consisting of, but not limited to, no irrigation of grass areas

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. 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.

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

8.3 No Waiver. 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.

8.4 Severability. 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.

8.5 Notice. Any notices required or appropriate under this LICENSE shall be given in writing to LICENSEE 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 LICENSE

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 LICENSE shall be in Travis County, Texas. This LICENSE 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 LICENSE for LICENSEE hereby represents that he or she has full authority to execute this LICENSE on behalf of LICENSEE.

8.9 Entire Agreement. 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.

EXECUTED the dates of the parties' respective acknowledgements below.

CITY:

CITY OF PFLUGERVILLE

By: _____
Name: _____
Title: _____

ASSOCIATION:

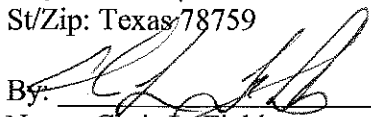
VILLAGES OF HIDDEN LAKE HOMEOWNERS

ASSOCIATION, INC.

Address: c/o Goodwin Management, Inc.

Address: 11149 Research, Suite 100

City: Austin
St/Zip: Texas 78759

By:  _____
Name: Chris L. Fields
Title: President

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2015, by _____ as _____ of THE CITY OF PFLUGERVILLE, TEXAS, a home rule city, on behalf of said city.

Notary Public, State of Texas

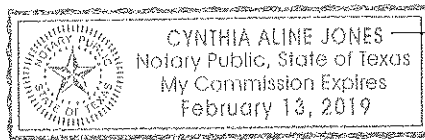
STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 9th day of November, 2015, by Chris L. Fields as President of VILLAGES OF HIDDEN LAKE HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said non-profit corporation.

C. Jones

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

DESCRIPTION OF LICENSED AREAS

Lot 7, Block S of the Villages of Hidden Lake, Phase 3B, according to the map or plat of record under Document No. 200500163 of the Official Public Records of Travis County, Texas, June 30, 2005.