

**Property Encroachment
License Agreement No.
_____**

The City of Pflugerville, a home-rule municipal corporation located in Travis County, State of Texas (the “**CITY**”), acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement (as hereinafter defined) is the Officer, Office of Planning and Development, City of Pflugerville (the “**PROPERTY MANAGER**” or “**City**”), and Camp Doublecreek, LLC, a Texas limited liability company (“**LICENSEE**”)(hereinafter referred to respectively as “Party” or “Parties”), enter into this License Agreement (this “**AGREEMENT**”), effective upon final signature under the terms and conditions set forth below.

WHEREAS, the City owns land identified as Kelly Lane Park (TCAD #028055051) and adjacent property containing a public wastewater lift station (TCAD # 0278550277)(together, the “Licensed Property”)

WHEREAS, Licensee owns property adjacent to the Licensed Property (the “Adjoining Property”) and needs to install and maintain, temporarily, a private wastewater force main to serve its property and tie into the City’s public wastewater lift station and system; and

WHEREAS, the closest connection point for this tie in is across the City’s Licensed Property adjacent to the Licensee’s Adjoining Property; and

WHEREAS, the City is working on a public works project that will construct a public wastewater interceptor pipe adjacent to Licensee’s property which can be utilized by the Licensee in conformance with the City’s utility policies; and

WHEREAS, when that project is complete, Licensee will no longer be required to utilize the private wastewater force main to connect to the public wastewater system and such use will be discontinued and Licensee will not be allowed to continue to use the Licensed Property; and

WHEREAS, the Parties agree that the best option is for the City to allow a temporary license across the Licensed Property and to enter into a License Agreement for said purpose.

NOW Therefore, the Parties agree as follows:

- 1. Premises.** The City grants Licensee the right to use ____ acres out of the Licensed Property, for the benefit of Licensee’s Adjoining Property, as both the Licensed Property and the Adjoining Property are more particularly shown and described on the attached and incorporated **Exhibit “A”**.

The City makes this grant solely to the extent of its right, title, and interest in the Licensed Property, without any express or implied warranties.

2. **Purpose.** The City grants Licensee permission to use the Licensed Property solely to install, repair, maintain, and remove a private wastewater force main and related improvements of the size and in the locations shown on the attached and incorporated Site Plan Set attached as **Exhibit “B”** (collectively, the **“IMPROVEMENTS”**), which Improvements shall be connected to the City’s existing lift station located on the Licensed Property as shown and labeled on **Exhibit “B”**.

3. **Consideration.** In consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, Licensee covenants to properly and timely maintain the Improvements and the Licensed Property, as specifically provided herein and subject to the limitations hereof.

4. **Damages and Destruction.** The City’s uses of the Licensed Property shall not substantially interfere with or destroy Licensee’s use of the Licensed Property, or any Improvements placed thereon or therein by Licensee.

The parties agree the City is not obligated to restore or repair the Improvements that may be removed, altered, damaged or destroyed as a result of the City’s use and maintenance of any portion of the Licensed Property, as limited hereby.

If the City causes damage to or destruction of Licensee’s Improvements, Licensee covenants not to sue the City, or pursue other remedies, legal or equitable, against the City to recover costs of repairing or replacing the Improvements.

5. **Term.** This Agreement begins on the execution date and continues thereafter for so long as the Licensed Property is used solely for the purposes set out in this Agreement and until such time as Licensee has tied into the City’s public wastewater interceptor pipe after having received and complied with notice of such required discontinuance, subject to earlier termination as set out in this Agreement.

6. **Limits on License.** The existence of this Agreement is expressly subordinate to the present and future rights of the City, its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, transportation facilities, franchised public utilities, rights-of-way, roadways, sidewalks, or streets, recreational or park structures and trail improvements (the **“FACILITIES”**), provided, however, only to the extent such Facilities do not substantially interfere with or destroy Licensee’s use of the Improvements.

The City may enter the Licensed Property without giving notice and without incurring any obligation to Licensee and remove the Improvements or any alteration thereof. Such removal will occur only if the Property Manager deems it is necessary: (a) to exercise the City’s rights or duties with respect to the Licensed Property; (b) to protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

7. Conditions.

- A. **Repair or Relocate Existing Facilities.** Licensee must pay all costs required to repair damage to or relocate existing Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by, or on behalf of, Licensee.
- B. **Covenant on Adjoining Property.** This Agreement, until its expiration or revocation, runs as a covenant on the Adjoining Property; therefore, the conditions set forth herein inure to and bind each party's successors and assigns. Licensee, and its assigns, if any, must notify any immediate successors-in-interest to the Adjoining Property about the existence of this Agreement.
- C. **Remove or Modify Improvements.** Licensee agrees to pay all costs required to remove or modify any Improvements now existing or to be replaced if the Property Manager determines that the Improvements need to be removed or modified. If Licensee voluntarily removes all Improvements, Licensee must provide at least thirty (30) days' written notice to the other owners of the Adjoining Property at the time, if any.
- D. **Maintenance.** Licensee must timely and properly maintain all Improvements. After any installation or repair of any Improvements is complete, Licensee must repair or replace any damaged Facilities such that accessibility within the Licensed Property, if applicable, is reestablished within forty-eight (48) hours.
- E. **Security Deposits.** Licensee is not required to post a security deposit.
- F. **Recording.** The City will file both this Agreement and an Affidavit of License in the applicable official public records to inform all future owners of any interest in the Adjoining Property of the existence of this Agreement and the obligations hereunder.
- G. **Construction of Improvements.** Licensee shall construct the Improvements such that the force main is installed inside a steel casing pipe on skids, allowing for, in the event of repair, the force main to be retracted from the casing pipe using an excavation pit on the Adjoining Property and limit any surface disruption or disturbance to the Licensed Property. No portion of the Improvements shall be above-ground within the Licensed Property, provided, however, the Improvements shall be allowed to breach the surface of the ground, where necessary, within the footprint of the Lift Station on the Licensed Property. Upon completion of construction of the Improvements, Licensee shall restore the Licensed Property to its previous condition.
- H. Upon the City's installation and completion of an operational wastewater interceptor pipe within the limits of the Adjoining Property (the

“**Interceptor**”), Licensee shall, at its sole cost and expense, abandon-in-place the existing private lift station connecting pipes located on the Licensed Property, and Licensee shall construct and connect its onsite gravity sewer system to the Interceptor. Upon Licensee’s connection to the Interceptor as provided above, and with prior plan approval by the City, which approval shall not be unreasonably withheld or denied, Licensee shall abandon-in-place the Improvements located within the Licensed Property as required by TCEQ and in accordance with City policies. Plans for this abandonment are required to be approved by the city as part of the infrastructure plans that are required for the property to tie into the interceptor.

- 8. Insurance.** Licensee, at its expense, shall provide a commercial general liability insurance policy with a combined single limit of not less than \$1,000,000, written by a company acceptable to the Property Manager and licensed to do business in Texas. The coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The insurance must cover all perils arising from the activities of Licensee, its officers, employees, agents, contractors, and invitees, related to the Improvements authorized to be placed on the Licensed Property by this Agreement. Licensee must pay all deductibles stated in the policy.

The insurance must specifically name the City of Pflugerville as an additional insured and provide a waiver of subrogation in favor of the City. A certificate of insurance evidencing coverage must be provided and delivered to the Property Manager with this executed Agreement.

Licensee must ensure that the Property Manager receives written notice of any cancellation, non-renewal, reduction, restriction or other limitation of the insurance policy. This notice is required to be provided thirty (30) days before any of the above actions are taken on the insurance policy. A substitute certificate of insurance evidencing equivalent substitute insurance must be received by the Property Manager prior to the date shown on the notice. All certificates must affirmatively show that the City of Pflugerville is named as an additional insured.

- 9. INDEMNIFICATION. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (THE “INDEMNIFIED PARTIES”), FROM ALL LIABILITY, LOSS, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHATSOEVER (“CLAIMS”) THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING TO THE USE OR OCCUPANCY OF THE LICENSED PROPERTY DURING THE TERM**

INCLUDING CLAIMS THAT ARISE OUT OF OR RESULT FROM THE ACTIVE OR PASSIVE NEGLIGENCE, OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR ALLEGED AGAINST SUCH INDEMNIFIED PARTIES, AND ALL LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS, PENALTIES, DAMAGES, AND EXPENSES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND OTHER ACTUAL OUT OF POCKET COSTS OF DEFENDING AGAINST, INVESTIGATING, AND SETTLING THE CLAIMS.

Licensee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Licensee of any obligations in this Agreement. In no event may Licensee admit liability on the part of an Indemnified Party without the written consent of the City Attorney.

Maintenance of the insurance referred to in this Agreement does not affect Licensee's obligations under this Section. Licensee shall be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Licensee and either (a) paid to City or (b) paid for City's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, City in connection with the Claims. Licensee may contest the validity of any Claims, in the name of the City, as the City may in good faith deem appropriate, provided that the expenses thereof are paid by Licensee, or Licensee shall cause the same to be paid by its insurer, and provided further Licensee maintains adequate insurance to cover any loss(es) that might be incurred if such contest is ultimately unsuccessful.

Licensee shall require its general partner, if applicable, and all subcontractors to indemnify City as provided in this Section.

Licensee accepts the Licensed Property "AS IS," and its duty to

indemnify extends to injuries caused by defective conditions present on the Licensed Property, INCLUDING DEFECTS ALLOWED TO EXIST BY THE CITY'S OWN NEGLIGENCE.

10. Termination.

A. Termination by Licensee. Licensee may terminate this Agreement by delivering written notice of termination to the Property Manager not later than 30 days before the effective date of termination. Licensee shall abandon-in-place all Improvements on the Licensed Property, including, where applicable, filling the pipes with grout and capping the pipes on either end, within the 30-day notice period at its sole cost and expense. Failure to do so constitutes a breach of this Agreement and authorizes the Property Manager to notify Licensee of the cost of such filling and capping, and Licensee shall pay such costs within 30 days of such notice. The Property Manager may file a lien against the Adjoining Property and the cost of such removal and disposal if the Licensee fails to timely pay these costs.

B. Termination by City. Subject to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the Property Manager if any of the below conditions are met and the Property Manager receives no substantive response within thirty (30) days, unless another timeframe is specifically identified:

1. The Improvements, or a portion of them, interfere with the City's rights in the use of the Licensed Property, as limited hereby
2. Exclusive use of the Licensed Property becomes necessary for a public purpose;
3. Immediately, if the Improvements, or a portion of them, constitute a danger to the public, which the Property Manager deems not to be remediable by alteration or maintenance of such Improvements;
4. Despite forty-eight (48) hours' prior notice to Licensee, maintenance or alteration to the Improvements necessary to alleviate a danger to the public has not been made;
5. Despite thirty (30) days' written notice to Licensee, Licensee has not provided certificates of insurance to the Property Manager;
6. Licensee fails to properly and timely maintain the Improvements as set out herein; or
7. Except as provided for above, City provides ninety-one (91) days' prior written notice of such termination for any reason.

C. Termination by Abandonment. If Licensee abandons or fails to maintain the Licensed Property, and the Property Manager receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all Improvements. Licensee covenants to pay the City's actual expenses incurred in connection therewith within 30 days after being billed therefor. All of Licensee's

Improvements not removed are deemed property of the City when abandoned by Licensee.

11. **Eminent Domain.** If eminent domain is exerted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to affect the removal of Licensee's affected Improvements thereon, at Licensee's sole expense. Licensee may retain all monies paid by the condemning authority for Licensee's Improvements taken, if any.
12. **Venue/Controlling Law.** Venue for all claims, actions, lawsuits, or damages of any kind arising under this Agreement shall lie exclusively in Travis County, Texas. This Agreement shall be subject to and construed under Texas law.
13. **Assignment.** Licensee shall not assign, sublet, or transfer its interest in this Agreement without the prior written consent of the Property Manager. Such consent shall not be unreasonably withheld, subject to the assignee's compliance with the insurance requirements set forth herein, if any and the assignee's promise to comply with all covenants and obligations herein. Licensee shall provide the Property Manager a copy of any such proposed assignment or transfer of any of Licensee's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.
14. **Notice.** Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the third day after deposit if sent certified mail. Notice must be sent as follows:

If to City:

**Office of Development Services
100 W. Main Street
Pflugerville, TX 78660
Phone: 512-990-6300
Fax: 512-990-4374**

If to Licensee:

**Camp Doublecreek, LLC
3503 and 3311 Kelly Lane
Pflugerville, TX 78660
Phone: ###-###-####**

15. **Default.** If Licensee fails to provide certificates of insurance, maintain the Licensed Property or Improvements as provided herein, comply with the insurance requirements of this Agreement, or otherwise comply with the terms or conditions herein, then the Property Manager shall give Licensee written notice as set forth herein. Licensee will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required,

and, if Licensee does not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default. However, if the default is a monetary default, Licensee must cure that within ten (10) business days' of notice. Licensee covenants to pay within ten (10) days of written demand by the Property Manager, all reasonable costs expenses incurred by the City in remedying the default.

Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

- 16. Compliance with Laws.** Licensee covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.
- 17. Interpretation.** This Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

Terms and Conditions Accepted on _____, 2023.

**CITY OF PFLUGERVILLE, a Texas home
rule municipal corporation**

By: _____
Sereniah Breland, City Manager
City of Pflugerville

**LICENSEE:
CAMP DOUBLECREEK, LLC**

By: _____
Jane Lester Neal, Trustee of ILIT Jane
Trust

THE STATE OF TEXAS

**§
COUNTY OF TRAVIS**

§

This instrument was acknowledged before me on _____, 2023,
by Sereniah Breland, City Manager, City of Pflugerville, a Texas municipal corporation,
on behalf of said corporation.

Notary Public, State of Texas

**STATE OF TEXAS §
COUNTY OF TRAVIS §**

Before me, the undersigned Notary Public of the State of Texas, on this day
personally appeared Jane Lester Neal, Trustee of ILIT Jane Trust, of Camp Doublecreek,
LLC, a Texas limited liability company, known to me to be the person whose name is
subscribed to the foregoing instrument and acknowledged to me that he executed the
same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, A.D. 2023.

Notary Public, State of Texas

After recording, return to:

City of Pflugerville
Office of Development Services
100 W. Main Street
Pflugerville, TX. 78660
Attn: Jeremy Frazzell

Camp Doublecreek, LLC
3503 and 3311 Kelly Lane
Pflugerville, TX 78660

Attn: Dan Neal

With a copy to:

Drenner Group, PC
2705 Bee Caves Road, Suite 100
Austin, TX 78746

Attn: Katie Ogden