

LICENSE AGREEMENT

This Agreement is made and entered into by and between the City of Pflugerville (“CITY”), and Cambridge Heights Owners Association, Inc., a Texas non-profit corporation (“LICENSEE”), hereinafter collectively referred to as the “Parties,” for the purposes and consideration described herein.

WITNESSETH:

WHEREAS, the CITY is the owner of the real property (the “Licensed Property”) as further described in Exhibit A attached hereto and made a part hereof for all pertinent purposes; and

WHEREAS, the LICENSEE desires to exercise certain rights and privileges upon the Property, including the construction, maintenance and repair of irrigation, landscaping and signs improvements (the “Improvements”) in the right-of-way of West Pflugerville Parkway on the north side between the limits from Zola Lane to 726 feet East of Marfa Lights.

NOW, THEREFORE, the CITY and the LICENSEE agree as follows:

I. Grant

Subject to the conditions in this Agreement and to the extent of the right, title, and interest of the CITY in and to the Licensed Property and without any express or implied warranties, the CITY grants to the LICENSEE a license and permission to use the Licensed Property (the “License”) to construct, operate, maintain, and repair the Improvements.

II. Consideration

The LICENSEE shall pay the CITY \$10.00 in exchange for the rights granted under this License. The CITY and the LICENSEE each acknowledges the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

1. The beautification to be afforded to the community by the Improvements; and
2. The agreement by the LICENSEE to provide the below-specified insurance and indemnification in favor of the CITY.

III. CITY’s Rights to Licensed Property

A. This Agreement is expressly subject and subordinate to the present and future right of the CITY, its successors, assigns, leasees, grantees, and LICENSEE, to construct, install, establish, maintain, use, operate, and renew any public utility facilities, franchised public facilities, roadways, or streets on, beneath, or above the surface of the Licensed Property. The CITY shall take reasonable measures to

prevent damage to any Improvements on the Licensed Property; however, any damage to or destruction of the LICENSEE'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. 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; provided, however, that the CITY shall provide the LICENSEE with at least thirty (30) days prior written notice of any such contemplated action.

- B. Notwithstanding any provisions in this Agreement to the contrary, the CITY retains the right to enter upon the Licensed Property, at any time and without notice, assuming no obligation to the LICENSEE, to remove any of the improvements or alterations thereof, whenever such removal is deemed necessary for (1) exercising the CITY's rights and duties with respect to the Licensed Property, (2) protecting persons or property, or (3) the public health or safety with respect to the Licensed Property.

IV. Conditions

- A. The LICENSEE agrees that all construction, maintenance, and repair permitted by this Agreement shall be done in compliance with all applicable City, County, State, and Federal policies and traffic, building, health, and safety ordinances, laws, and regulations.
- B. The LICENSEE agrees that all construction in the CITY's right-of-way will be subject to inspection and approval by the CITY.
- C. The LICENSEE must provide a landscape plan to the CITY for approval prior to the commencement of improvements within the Public Utility Easement. This includes any future installation of landscaping materials within the licensed area.
- D. The LICENSEE must provide an irrigation plan to the CITY for approval and permitting prior to the commencement of improvements within the Public Utility Easement.
- E. LICENSEE'S Responsibilities.
 - 1. The LICENSEE agrees that any damage done to the Licensed Property or other CITY property will be repaired within 10 days at no cost to the CITY. If repairs are not made within 10 days of the date the damage occurs, the CITY may repair the damage, and the LICENSEE shall reimburse the CITY within 10 days of the date the CITY mails notice of such costs for all reasonable costs incurred by the CITY in replacing or repairing any property of the CITY or of others which is damaged or

destroyed as a result of the LICENSEE'S activities under this Agreement, plus an administrative penalty equal to 10% of the repair cost.

2. The LICENSEE shall hold harmless, defend, and indemnify the CITY against any suits, liabilities, claims, demands, or damages, including but not limited to personal injuries and attorneys' fees, arising from the LICENSEE's exercise of the License under this Agreement.

F. Site Specific Conditions:

1. The LICENSEE agrees that all irrigation main lines (those constantly under pressure) shall be located as close to private property lines as feasible; and at least 4 feet from the sidewalk along the north side of West Pflugerville Parkway.
2. The LICENSEE agrees that all spray or rotary heads shall be located at least 6 inches from impervious surfaces and direct water away from public infrastructure.
3. The LICENSEE agrees that their maintenance contract shall include a monthly inspection of all irrigation zones to check for broken heads, valves, pipes, other malfunctioning components, and to ensure that optimum system performance is achieved.
4. The LICENSEE agrees that all plant material (except turf grass) shall be planted at least 4 feet from the sidewalk along the north side of West Pflugerville Parkway.

- G. This License is personal to the LICENSEE. The License is not assignable, and any attempt to assign this License will terminate the License.

V. Commencement; Termination by Abandonment

This Agreement shall begin on the date of full execution and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein, unless terminated under other provisions of this Agreement. If the LICENSEE abandons the use of all or any part of the Licensed Property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days written notice by the CITY to the LICENSEE, if such abandonment has not been remedied by the LICENSEE within such period. The CITY shall thereafter have the same complete title to the Licensed Property so abandoned as though this Agreement had never been made and shall have the right to enter on the Licensed Property and terminate the rights of the LICENSEE, its successors and assigns

hereunder. All installations of the LICENSEE not removed shall be deemed property of the CITY as of the time abandoned.

VI. Termination

- A. This Agreement may be terminated by the LICENSEE by delivering written notice of termination to the CITY not later than thirty (30) days before the effective date of termination. If the LICENSEE so terminates, then any of the LICENSEE's improvements within the Licensed Property are agreed to be the property of the CITY.
- B. 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 thirty (30) days prior written notice to the LICENSEE. Subject to prior written notification to the LICENSEE or its successors in interest, this Agreement is revocable by the CITY if:
1. The Improvements or a portion of them interfere with the CITY's use of the Licensed Property;
 2. Excessive water accumulation or runoff on the sidewalk or street is not repaired in a timely manner;
 3. Site Specific Conditions as described in Section IV, Paragraph F are not observed;
 4. Use of the Licensed Property becomes necessary for a public purpose, as determined by the CITY in its sole discretion;
 5. The Improvements or a portion of them constitute a danger to the public which the CITY deems not to be remediable by alteration or maintenance of such Improvements;
 6. Despite thirty (30) days' written notice to the LICENSEE, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
 7. The LICENSEE fails to comply with the terms and conditions of this Agreement, including, but not limited to, the insurance requirements specified herein.

If the LICENSEE abandons or fails to maintain the Licensed Property, and the CITY receives no substantive response within thirty (30) days following written notification to the LICENSEE, then this Agreement shall terminate and the CITY may remove and/or replace all Improvements or a portion thereof.

VII. Eminent Domain

If eminent domain is exerted on the Licensed Property by paramount authority, other than the CITY, then the CITY will, to the extent permitted by law, cooperate with the LICENSEE to effect the relocation of the LICENSEE'S affected installations at the LICENSEE'S sole expense. The LICENSEE shall be entitled to retain all monies paid by the condemning authority for its installations taken, if any.

VIII. Interpretation

In the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for or against either party.

IX. Application of Law

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Agreement.

X. Venue

TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.

XI. Notice

Any notice and/or statement, required or permitted hereunder, shall be deemed to be given and delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such other addresses specified by written notice delivered in accordance herewith:

CITY:

Brandon Wade, CITY Manager
CITY of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691-0589

LICENSEE:

CAMBRIDGE HEIGHTS OWNERS ASSOCIATION, INC.
c/o Goodwin Management, Inc.
11149 Research Blvd., Suite #100
Austin, TX 78759-5227

EXECUTED AS OF THE DATES SET FORTH BELOW.

LICENSEE:

Cambridge Heights Owners Association, Inc.

By: _____

Printed Name: _____

Date: _____

CITY OF PFLUGERVILLE:

By: _____

Brandon Wade, CITY Manager
CITY of Pflugerville

Date: _____

THE STATE OF TEXAS §

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COUNTY OF TRAVIS §

THIS LICENSE AGREEMENT is acknowledged before me on this _____ day of
_____, 2011, by _____, _____ of
_____, a _____, on behalf of said _____.

Notary Public, State of Texas

Printed/Typed Name of Notary
My Commission Expires:

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS LICENSE AGREEMENT is acknowledged before me on this _____ day of _____, 2011, by Brandon Wade, CITY Manager of the CITY of Pflugerville, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

Printed/Typed Name of Notary
My Commission Expires: