

**LANDSCAPE MAINTENANCE LICENSE AGREEMENT
(Right-of-Way)**

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 VERONA RESIDENTIAL COMMUNITY, INC., a Texas non-profit corporation (the “**Association**”).

RECITALS:

WHEREAS; Verona is a master-planned development located within the corporate limits of the City consisting of residential lots and associated improvements;

WHEREAS; the Association was created to administer the affairs of Verona pursuant to the terms of the Verona Master Covenant (the “**Restrictions**”) recorded on March 24, 2016, under Document No. 2016043728 of the Official Public Records of Travis County, Texas, as amended and/or supplemented, and has the authority to levy assessments against the lots within Verona to provide a permanent source of funding for the Association to pay for, among other things, maintenance of landscaping improvements within the public rights-of-way of Verona;

WHEREAS; the rights-of-way in Verona have been dedicated to the City in trust for the public within those portions of Verona that are included within the subdivision plats that have been approved by the City of Pflugerville in accordance with Texas Local Government Code Section 212.005 and more particularly described as follows: (i) Verona Section 1, a subdivision in the City of Pflugerville, Travis County, Texas, according to the map or plat thereof recorded as Document No. 201600055, Official Public Records of Travis County, Texas; Verona Section 2, a subdivision in the City of Pflugerville, Travis County, Texas, according to the map or plat thereof recorded as Document No. 201700101, Official Public Records of Travis County, Texas; and Verona Section 3, a subdivision in the City of Pflugerville, Travis County, Texas, according to the map or plat thereof recorded as Document No. 201800098, Official Public Records of Travis County, Texas;

WHEREAS; in accordance with the Restrictions, the Association is authorized to maintain and irrigate all landscaping improvements within the Verona rights-of-way dedicated to the public;

WHEREAS; in accordance with the First Amended and Restated Development Agreement for New Cele Subdivision (Creekside Park) dated effective May 15, 2007, the Association is required to maintain the landscape portion of the Verona rights-of-way;

WHEREAS; the Association acknowledges and agrees that the City has exclusive jurisdiction and control of the public rights-of-way in Verona;

WHEREAS; the Association has requested that the City grant it a license in order to maintain the landscaping improvements within the public rights-of-way in Verona approved by the City for the beautification of Verona; and

WHEREAS; the Association acknowledges and agrees that no landscaping improvements may be placed within any portion of the public right-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

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

2. PUBLIC RIGHT-OF-WAY

2.1. 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 improvements that may be placed within the Verona rights-of-way dedicated to the City as of the date of this Agreement (the “**Licensed Property**”), which Licensed Property is more particularly depicted on Exhibit “A” attached hereto. The license granted herein 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 The Association is not authorized to, and shall not install, any landscaping or other improvements within Verona, for any purpose under this Agreement, without submitting all plans for 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 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 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 Licensed Property, 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 Licensed Property from time to time.

2.4 The Association shall be solely responsible for the maintenance of the landscaping improvements, irrigation systems and related improvements within the Licensed Property. 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. 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 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 landscaping improvements within 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 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 Licensed Property 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 the 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 the City may incur increased risk.

4.3 A licensee's financial integrity is of interest to the City; therefore, subject to the Association's right to maintain reasonable deductibles in such amounts as are approved by the City, the Association shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the 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
3. Commercial General Liability Insurance to include coverage for the following: 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	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
4. Business Automobile Liability a. Owned/leased vehicle b. Non-owned vehicle c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

* May be waived by City Manager if not applicable to activities performed by the Association

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 the 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 The 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 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 the City. The City shall have the option to suspend the Association's authorization under this Agreement should there be a lapse in 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 the Association's or its subcontractors' performance of the work covered under this Agreement.

4.8 It is agreed that the 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 THE ASSOCIATION COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF THE 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 THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE ASSOCIATION'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF THE ASSOCIATION, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBASSOCIATION OF THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE 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. THE ASSOCIATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR THE ASSOCIATION KNOWN TO THE ASSOCIATION RELATED TO OR ARISING OUT OF THE ASSOCIATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ASSOCIATION'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ASSOCIATION OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

5.2 IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE, IS AN INDEMNITY EXTENDED BY THE ASSOCIATION TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE

RESULTANT INJURY, DEATH OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. THE ASSOCIATION FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE 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 thirty (30) 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 landscape 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 landscape improvements.

6.4 Once this Agreement has been terminated by either party, the City will perform maintenance on the Licensed Property consistent with the level of maintenance of other similar City public right-of-way, 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.** The shall not do, nor suffer to be done, 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 the City.

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

8.3 **No Waiver.** No waiver by the 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 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 the 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 contains 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.

[Remainder of page intentionally left blank. Signature pages follow.]

EXECUTED the dates of the parties' respective acknowledgements below and EFFECTIVE as of _____, 2020.

CITY:

CITY OF PFLUGERVILLE

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2020, by _____ as _____ of THE CITY OF PFLUGERVILLE, TEXAS, a home rule city, on behalf of said city.

Notary Public, State of Texas

ASSOCIATION:

VERONA RESIDENTIAL COMMUNITY, INC.,
a Texas non-profit corporation

By: _____

Name: _____

Title: _____

c/o Preferred Association Management Company
P.O. Box 200145
Austin, Texas 78720

STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____,
2020, by _____ as _____ of VERONA 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"

Exhibit "A" Licensed Property



