

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LICENSE TO ENCROACH AGREEMENT

Date: March 15, 2016

Licensor: City San Marcos, Texas, a home rule municipal corporation, 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Licensee: Woodlands of San Marcos, L.L.C., 155 Timothy Road, Suite 203, Athens, Georgia 30606

Property: Lot 1 of the Woodlands of San Marcos, a subdivision in San Marcos, Hays County, Texas, as recorded in Volume 17, Page 349 of the Plat Records of Hays County, Texas, commonly known as the Woods of San Marcos, 650 River Road, San Marcos, Texas 78666

License Area: As described in Exhibit "A," attached hereto and made a part hereof.

Consideration: Ten dollars (\$10.00), other good and valuable consideration and the faithful performance of the covenants and conditions established in this License Agreement.

1. Purpose. The License Area is located within a public drainage easement (the "Easement") granted to Licensor through the plat of the Property. Licensee is the owner of the Property and seeks to maintain certain balcony improvements within the License Area related to an adjacent residential building. The purpose of this License Agreement is to establish terms and conditions under which Licensee may maintain such improvements within the Easement.

2. Grant of License. For the Consideration, Licensor hereby grants a non-exclusive License to the Licensee to maintain three balcony support posts and footings, together with a balcony overhang within the License Area, the locations of which are shown in Exhibit "A" and which are also shown in Exhibit "B," attached hereto and made a part hereof (the "Improvements"). Neither the granting of the license, nor any related permit, constitutes an abandonment by Licensor of the Easement or any other rights in and to the Easement.

3. No Enlargement of Improvements. The license granted herein is subject to the requirement that the Improvements shall not expanded or altered beyond their existing condition, except ordinary maintenance may be performed on the Improvements.

4. Right of Use of Property by Licensor. The Licensor reserves the right at all times, to use and maintain the Easement for public drainage purposes, to perform related construction, maintenance and operation activities on, under or above the Easement, including those that involve excavation and trenching, or other activities that may affect the Improvements. The

Licensors will endeavor to notify the Licensee in advance of any construction or maintenance activities, but makes no commitment to do so.

5. Indemnity and Release.

a. Licensee covenants and agrees to indemnify, hold harmless and defend Licensor, its officers, agents, contractors, and employees, from and against any and all claims, losses, causes of action or suits for property damage (including damage to improvements) or loss and/or personal injury, including death, including all costs, attorneys' fees, expert fees or other related costs and fees to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of or in connection with, directly or indirectly, the construction, maintenance, occupancy, use, existence or location of the Improvements, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of the Licensor; and Licensee hereby assumes all liability and responsibility for such claims or suits. Licensee shall likewise assume all liability and responsibility and shall indemnify Licensor for any and all injury or damage to Licensor's property arising out of or in connection with any and all acts or omissions of Licensee, its officers, agents, servants, employees, contractors, subcontractors, licensees, invitees, or trespassers.

b. Licensee hereby releases, relinquishes, and discharges the Licensor, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of Licensor, its employees, agents, contractors, lessees or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Licensor's rights in, use or maintenance of the Easement and the performance of any maintenance, construction, reconstruction, repair, relocation, expansion, or removal of any of Licensor's facilities on, above or under the Easement. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Licensee, any subcontractor, or any person or organization directly or indirectly employed by any of them. This release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the Licensor.

6. Maintenance. Licensee shall operate and maintain the Improvements and the License Area in a clean, safe and sanitary condition at all times in accordance with applicable laws and ordinances. If Licensee fails to maintain the Improvements and License Area in the manner provided herein such that the Improvements are in violation of applicable City of San Marcos ordinances, e.g., unsafe structure presenting danger to passersby, Licensor, after written notice to Licensee and an opportunity to cure as provided in such notice, may undertake such maintenance activities and bill Licensee for the costs of such activities. If Licensee fails to pay such costs within 30 days after receipt of an invoice from Licensor, Licensor may file a lien

against the Property adjacent to the License Area in the amount of the invoice, plus interest accruing at the rate of 10 percent per annum until paid.

7. Extra Costs. In the event that any installation, reinstallation, relocation or repair of any existing or future public drainage improvements within the Easement is made more costly by virtue of the construction, maintenance or existence of the Improvements, Licensee shall, within 30 days of receipt of an invoice from the City, pay to Licensor an amount equal to such additional cost as determined by the Licensor. If Licensee fails to timely pay such invoice, Licensor may file a lien against the Property in the amount of the invoice, plus interest accruing at the rate of 10 percent per annum until paid.

8. Insurance. This License Agreement shall not be effective unless and until Licensee files with Licensor a certificate of liability insurance or other proof of insurance in a form acceptable to Licensor's risk manager confirming that the Licensee has procured a policy of commercial general liability insurance issued by an insurance company authorized to do business in the state of Texas. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the city, its officers, agents or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The policy of insurance shall name both Licensee and Licensor as insured parties to the full amount of the policy limits. If the policy is not kept in full force and effect throughout the term of this License Agreement, the License Agreement may be terminated by Licensor upon providing written notice of termination to Licensee.

9. Compliance with Laws and Regulations. Licensee agrees to comply with all laws and ordinances in the construction, repair and maintenance of the Improvements.

10. Removal of Improvements. If Licensor, in its sole discretion, determines that temporary or permanent removal of all or portions of the Improvements is necessary for exercising Licensor's rights or duties in regard to the Easement, or for protecting persons or property, Licensor will provide written notice thereof to Licensee and, within the time specified in such written notice, Licensee shall remove the Improvements or such portions thereof. If Licensee fails to undertake such removal within the time specified in the written notice, Licensor retains the right to enter upon the License Area and, at Licensee's expense, undertake such removal. As to the portions of the Improvements removed, other than a temporary removal requested and approved by Licensor, this License Agreement shall automatically expire and the License Area be reduced accordingly. If the entirety of the Improvements are permanently removed, then this License Agreement shall automatically expire.

11. Assignment; Binding on Successors. Subject to providing written notice of assignment to Licensor, Licensee may assign this License Agreement to subsequent purchasers of the Property. This License Agreement shall be binding upon subsequent owners of the Property. This License Agreement shall be filed in the Official Public Records of Hays County Texas.

12. Revocation or Termination of License. In addition to any other rights of termination herein or remedies available at law or in equity, Licenser may revoke or terminate this License Agreement upon the occurrence of any of the following conditions or events:

- a. Licensee or its successors or assigns have failed to comply with the terms of this License;
- b. the Improvements or any portion of them interfere with the rights of the Licenser or the public in or to the Easement;
- c. the Improvements or a portion of them constitute a danger to the public which is not remediable by maintenance or alteration of the Improvements;
- d. the Improvements or a portion of them have expanded; or
- e. maintenance or alteration of the Improvements necessary to alleviate a danger to the public has not been made within a reasonable time after the dangerous condition has arisen.

Upon termination of this License Agreement, Licensee, at its own expense, shall remove such components of the Improvements that Licenser requests to be removed and restore the areas where such components are removed to such condition as existed prior to installation of the Improvements.

13. Integration; Amendments. This License Agreement constitutes the entire agreement between Licenser and Licensee on this subject, and it may be amended only by written instrument executed by both parties.

14. No Real Property Interest. This license does not constitute an interest in real property, and Licensee fully accepts the risks associated with incurring expenses with regard to the Improvements while having only a revocable right to use the License Area.

15. Venue. Exclusive venue for any legal dispute under this agreement is in the state court in Hays County, Texas having jurisdiction over the dispute, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of the date first written above.

LICENSEE:
WOODLANDS OF SAN MARCOS, L.L.C.

LICENSOR:
CITY OF SAN MARCOS, TEXAS

By: _____

By: _____
Jared Miller, City Manager

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF HAYS)

This instrument was acknowledged before me on the ____ day of March, 2016, by Jared Miller, City Manager of the City of San Marcos, a Texas municipal corporation, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

STATE OF GEORGIA)
)
COUNTY OF CLARKE)

This instrument was acknowledged before me on the ____ day of March, 2016, by _____, _____ of Woodlands of San Marcos, L.L.C., a _____ limited liability company, in such capacity, on behalf of said limited liability company.

Notary Public, State of Texas

EXHIBIT A

Description of License Area and Location of Improvements
(next page)

EXHIBIT B

Description of Improvements
(next page)