

After Recording, Return to:  
Kevin B. Laughlin  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

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STATE OF TEXAS	§	RIGHT OF WAY USE LICENSE AND
	§	HOLD HARMLESS AGREEMENT
COUNTY OF COLLIN	§	

**THIS RIGHT OF WAY USE LICENSE AND HOLD HARMLESS AGREEMENT** ("Agreement") is made by and between the **City of Allen**, (hereinafter called "**City**"), a Texas Home Rule Municipality, and the **Lost Creek Ranch Homeowners Association, Inc.** (hereinafter called "**Licensee**"), a Texas non-profit corporation, whose address is c/o Community Management Association, Inc., 1800 Preston Park Boulevard, Suite 101, Plano, Texas 75093.

**WHEREAS**, City is the owner of an existing public street right-of-way, generally located along Country Brook Drive located west of the intersection of Angel Parkway as part of the Lost Creek Ranch, Phase 2A subdivision, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded as Document Number 2001-0150495, Plat Records, Collin County, Texas, (the "Right-of-Way"); and

**WHEREAS**, Licensee desires to maintain a privately-owned subdivision entry monument sign (the "Private Improvements") within the Right-of-Way as depicted at the location described in Exhibit "A" attached hereto and incorporated herein by reference ("the Licensed Premises"); and

**WHEREAS**, City has reviewed Licensee's request and recommend approval of the location of the Private Improvements within the Licensed Premises subject to the provisions of this Agreement;

**NOW THEREFORE**, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City, City hereby grants to Licensee a non-exclusive license authorizing placement of the Private Improvements within the Licensed Premises, subject to the following:

1. The Term of this Agreement is perpetual; provided, however, this Agreement may be terminated as provided herein.
2. **Licensee agrees to promptly defend, indemnify and hold City harmless from and against all damages, costs, losses, and expenses, including reasonable attorneys' fees:**
  - (a) **for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be**

**defective as a result of the acts or omissions of Licensee, its officers, directors, employees, agents contractors, subcontractors, tenants, partners, or members; and**

**(b) from and against any and all claims, demands, suits, causes of action, and judgments for (i) damage to or loss of the property of any person (including, but not limited to Licensee, its agents, officers, employees, contractors, subcontractors tenants, partners, or members, City's agents, officers, and employees, and third parties); and/or (i) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to the agents, officers and employees of Licensee, Licensee's contractors or subcontractors, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of Licensee, its agents, employees, officers, contractors and/or subcontractors, in the performance of activities pursuant to this Agreement.**

**This indemnity provision shall not apply to any liability resulting from the sole negligence of City, its officers, employees, agents, contractors, or subcontractors. The provisions of this section are solely for the benefit of City and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.**

3. During the Term of this Agreement, Licensee agrees to maintain in full force and affect the following insurance:

(a) A policy of comprehensive general liability insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the use of the Licensed Premises by Licensee pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage with an aggregate of not less than \$1,000,000; and

(b) During any period of construction activity with the Right of Way, a policy of automobile liability insurance covering any vehicles owned and/or operated by Licensee, its officers, agents, and employees with a minimum of \$1,000,000 combined single limit.

Notwithstanding the above limits, the amount of insurance coverage set forth herein to be purchased by Licensee shall at all times be not less than twice the amount of the maximum liability for City per occurrence as set forth in the Texas Tort Claims Act, as amended (Tex. Civ. Prac. & Rem. Code §101.001, et.seq. as amended or succeeded). Such insurance shall be endorsed to (i) name City as an additional insured, (ii) provide for a waiver of subrogation in favor of City, and (iii) provide for not less than thirty (30) day notice to City in the event of termination for non-payment or reduction of limits below the required minimums. A certificate of insurance in a form that complies with applicable law indicating the above coverage and endorsements are in effect shall be provided to City prior to Licensee commencing work to locate the Private Improvements in the Right-of-Way.

4. Licensee acknowledges and agrees that Licensee is not released by City from the responsibility or liability for damage to the Right-of-Way or City's property or facilities located

within the Right-of-Way that may result from the construction, placement, operation and/or existence of the Private Improvements within the Licensed Premises.

5. If City determines, in its sole discretion, that in order for City to repair, replace, maintain, or alter the Right-of-Way or City's property or facilities located on, over, or beneath the Right-of-Way, including the widening of any street or relocation of related curbs and/or sidewalks, and that it is reasonably necessary for Licensee to alter, relocate, or remove the Private Improvements within or from the Right-of-Way as the result of City's actions, Licensee shall solely bear the cost of repairing, replacing, or otherwise reconstructing any portion of the Private Improvements that may need to be relocated, altered, or removed by Licensee, with such relocations being at a place required by City.

6. If City determines in its sole discretion and upon reasonable engineering standards that the Private Improvements pose a hazard to the public or may interfere or impede traffic safety in any way, the Private Improvements, at the sole cost of Licensee, must be modified, relocated, or removed upon written notice from City, and this Agreement shall terminate.

7. The Private Improvements shall be designed substantially to the requirements set forth in Exhibit "B," attached hereto and incorporated herein by reference. No other private improvements, permanent or temporary, shall be allowed within the Right-of-Way unless written permission from City is granted to Licensee.

8. It is understood that by execution and granting of this License, City does not impair or relinquish City's right to use the Right of Way for any other purpose, nor shall use of the Right of Way by Licensee under this License ever be construed as abandonment by City of the Right of Way. Licensee understands, acknowledges, and agrees that City does not by this Agreement grant or convey any real property interest in the Right of Way but merely consents to such use by Licensee to the extent City's authority and title permits

9. This Agreement shall terminate upon the removal of the Private Improvements from the Right-of-Way for more than six (6) consecutive months.

10. Notwithstanding this grant of the license to Licensee to use the Right-of-Way as provided in this Agreement, Licensee shall continue to be obligated to comply with any law, regulation, or ordinance governing construction and the placement of the Private Improvements within the Right-of-Way. To the extent that any provisions of any conflict between this Agreement and any law, regulation, or ordinance governing construction and the placement of the Private Improvements within the Right-of-Way, the more stringent requirement shall control.

11. This Agreement shall be binding upon Licensee and Licensee's successors and assigns.

12. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

13. Licensee may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Licensee to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

14. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in a state court of competent jurisdiction in Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

15. This Agreement may be amended only by the mutual written agreement of the parties.

16. When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or on the date when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the parties at the address set forth below. Either party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

**If intended for Licensee, to:**

Lost Creek Ranch Homeowners Association, Inc.  
Attn: President  
c/o Community Management Association, Inc.  
1800 Preston Park Blvd.  
Suite 101  
Plano, Texas 75093

**In intended for City to:**

City of Allen  
Attn: City Manager  
305 Century  
Allen, Texas 75013

**With Copies to:**

City of Allen  
Attn: City Attorney  
305 Century  
Allen, Texas 75013

17. In the event 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 provisions, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

18. Nothing in this Agreement, or in any exhibit or attachment hereto, shall be construed to affect, alter, or modify the immunity of City under the Texas Civil Practice and Remedies Code §§101.001 et seq. It is expressly understood and agreed that in the execution of this Agreement, City does not waive, nor shall be deemed to waive, any immunity or defense that would otherwise be available to City against claims arising in the exercise of governmental powers and functions.

19. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**(signatures on following page)**

**SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

**City of Allen, Texas**

**By: \_\_\_\_\_**  
**Peter H. Vargas, City Manager**

**ATTEST:**

\_\_\_\_\_  
**Shelley B. George, City Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
**Kevin B. Laughlin, City Attorney**

**SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

**LICENSEE:**

**LOST CREEK RANCH HOMEOWNERS  
ASSOCIATION, INC, a Texas non-profit  
corporation**

**By: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**Its: \_\_\_\_\_**

**CITY'S ACKNOWLEDGMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF COLLIN**   §

This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Peter H. Vargas, City Manager, City of Allen, Texas, a Texas home rule municipality, for and on behalf of said municipality.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My Commission Expires:** \_\_\_\_\_

**LICENSEE'S ACKNOWLEDGMENT**

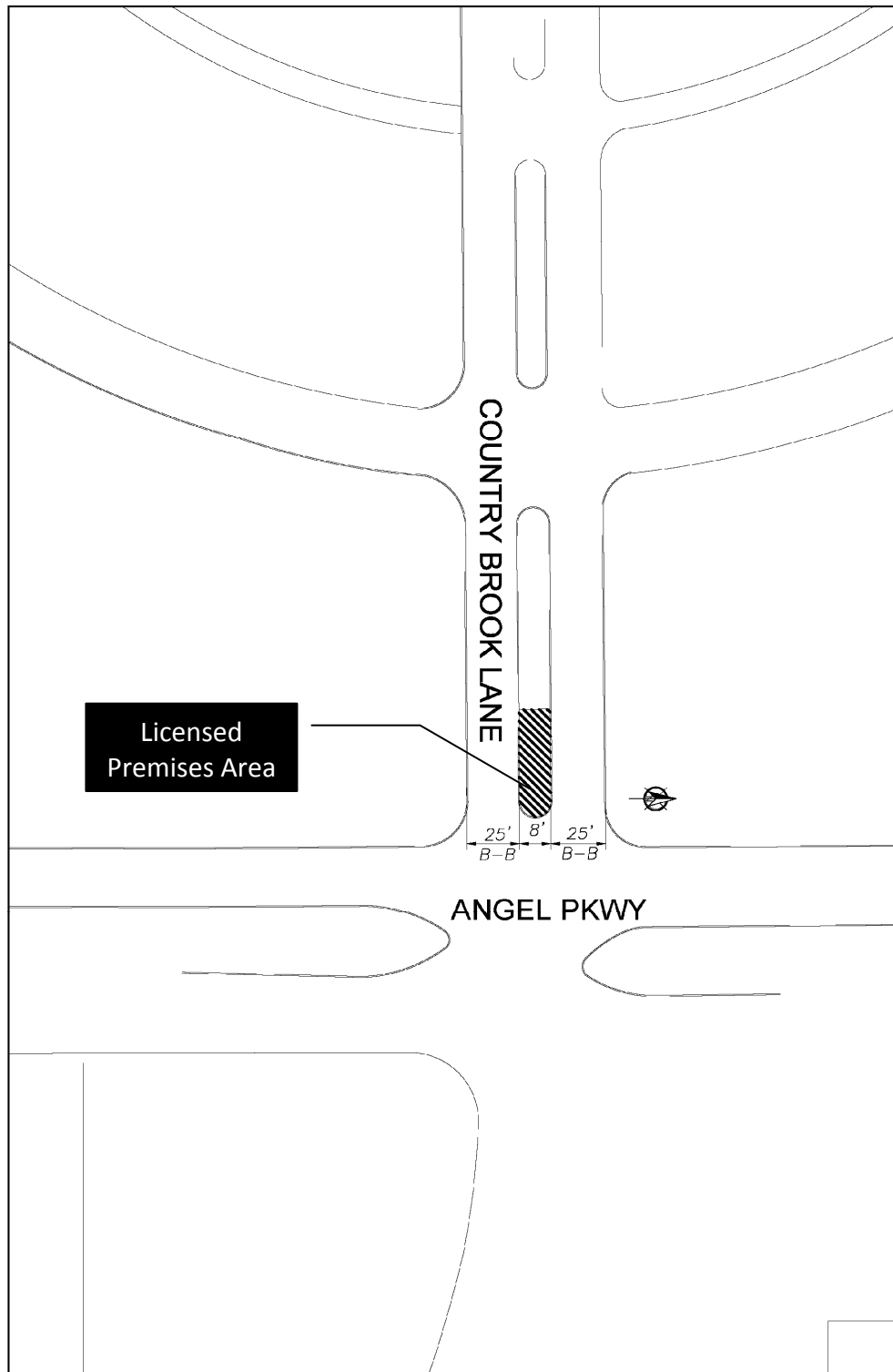
**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF COLLIN**   §

This instrument was acknowledged before me, the undersigned authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, the \_\_\_\_\_, of Lost Creek Ranch Homeowners Association, Inc., a Texas non-profit corporation, for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

**EXHIBIT "A"**  
**Description of Licensed Premises**





**EXHIBIT “B”**  
**REQUIREMENTS OF THE PRIVATE IMPROVEMENTS**

1. Before installing, altering, or repairing private improvements, a permit must be obtained from the Building Inspections, or any other applicable department.
2. Subdivision identification will be reviewed to Allen Land Development Code standards and All requirements set forth by City of Allen.
3. All improvements will conform to the requirements set forth in the Allen Land Development Code as they relate to sight visibility, required setbacks, and Building regulations.