

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.

THE STATE OF TEXAS §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF COLLIN §

ASSIGNMENT AND ASSUMPTION OF ENTRY LICENSE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF ENTRY OF LICENSE AGREEMENT (this "Assignment") is made as of August 15, 2016 by MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD., a Texas limited partnership ("MIDW" or "Assignor") and DARLING HOMES OF TEXAS, LLC, a Texas limited liability company ("Darling" or "Assignee").

WHEREAS, the City and MIDW entered into that certain Entry License Agreement, executed December 14, 2005, as amended by the First Amendment to License Agreement, executed November 11, 2015 ("Entry License Agreement"). A true and correct copy of the First Amendment to License Agreement, which includes a copy of the initial Entry License Agreement is attached hereto and incorporated herein as Exhibit A and

WHEREAS, in connection with the transfer and conveyance of certain real property affected by the Entry License Agreement to Darling, MIDW has agreed to assign its rights and obligations under the Entry License Agreement to Darling.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment of Entry License Agreement. Effective as of the date hereof, MIDW hereby conveys and assigns to Darling all of MIDW's rights and obligations as Licensee under the Entry License Agreement.

2. Assumption of Entry License Agreement. Effective as of the date hereof, Darling hereby accepts the rights under the Entry License Agreement and assumes and agrees to perform all obligations of MIDW under and in connection with the Entry License Agreement.

3. Obligations of MIDW. MIDW shall continue to be responsible for all its obligations incurred prior to the date of this Assignment, and Darling is not by this Assignment assuming, and it expressly disclaims, any obligations, debts, or responsibilities

incurred by MIDW prior to the date of this Assignment, which such obligations, debts, and responsibilities shall remain with and be the sole responsibility of MIDW.

4. Warranties and Representations of MIDW. MIDW represents and warrants to Darling that MIDW has not assigned any right under the Entry License Agreement to any third party. Darling shall be entitled to enforce all remedies available at law or in equity for MIDW's breach of the warranties and representations contained in this paragraph.

5. Further Cooperation. MIDW agrees to reasonably cooperate with Darling in executing any further consents and documents that may be requested by Darling from time to time to more effectively carry out the terms of this Assignment.

6. Miscellaneous. All capitalized terms used but not defined herein shall have the same meaning as provided in the Entry License Agreement. All recitals are incorporated herein as if fully set forth.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

MIDW:

**MONTGOMERY IMPROVEMENT DISTRICT WEST,
LTD., a Texas Limited Partnership**

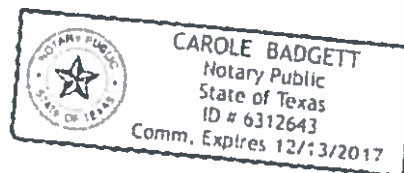
By: Emerson Partners, Inc., a Texas corporation, its
General Partner

By: 
Name: Philip L. Williams
Its: President

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on August 10 2016, by Philip L. Williams, President of Emerson Partners Inc., a Texas corporation, in its capacity as the general partner of MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD., a Texas limited partnership, on behalf of said limited partnership.


Notary Public in and for the State of Texas



DARLING:

DARLING HOMES OF TEXAS, LLC,
a Texas limited liability company

By: [Signature]
Name: Ryan Huey
Title: VP-Land Acquisition

By: [Signature]
Name: Andrew Green
Its: VP-Finance

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 12 day of August, 2016,
by Ryan Huey, VP-Land Acquisition of Darling Homes of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

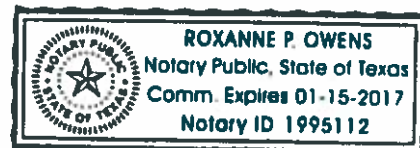
[Signature]
Notary Public in and for the State of Texas

STATE OF Texas §
§
COUNTY OF Collin §



This instrument was acknowledged before me on the 12 day of August, 2016,
by Andrew Green, VP-Finance of Darling Homes of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

[Signature]
Notary Public in and for the State of Texas



By its signature below, the City of Allen, Texas consents to the foregoing assignment from Montgomery Improvement District West, Ltd. to Darling Homes of Texas, LLC of the Entry License Agreement dated December 14, 2005, executed by and between Montgomery Improvement District West, Ltd. and the City of Allen, Texas, as amended by the First Amendment to License Agreement, dated November 11, 2015.

CITY OF ALLEN, TEXAS
A Texas municipality

By: _____
Peter Vargas, City Manager

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2016, by _
Peter Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said
municipality.

Notary Public in and for the State of Texas

Exhibit A

Copy of First Amendment to License Agreement and the Entry License Agreement

[attached]

COPY

STATE OF TEXAS §
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COUNTY OF COLLIN §

**First Amendment
to
License Agreement**

This First Amendment ("Amendment") is made by and between City of Allen, Texas ("City") and Montgomery Improvement District West, Ltd. ("Licensee") acting by and through their authorized representatives, to be effective as of the date ("Amendment Effective Date") of execution by both City and Licensee. City and Licensee are hereafter collectively referred to as "the Parties" or individually as "Party."

WITNESSETH:

WHEREAS, City and Licensee executed the License Agreement ("2005 License Agreement") attached as Annex 1, pertaining and applicable to the rights-of-way of, and certain improvements above and across, Hanna Street (north of Bethany Drive) and Brett Drive (south of Bethany Drive); and

WHEREAS, City and MIDW desire to and do hereby amend the 2005 License Agreement so that, from and after the Amendment Effective Date: (i) the 2005 License Agreement as amended by this Amendment ("Amended License Agreement") continues to pertain and apply to the right-of-way of and certain improvements above and across Brett Drive; and (ii) the 2005 License Agreement no longer applies or pertains to the right-of-way of and certain improvements above and across Hanna Street;

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendments to 2005 License Agreement.** The 2005 License Agreement is hereby amended as follows:
 - A. Each and every reference to "Hanna Street" in the 2005 License Agreement is deleted and removed.
 - B. The definition of the term "Improvements" in Article I is amended by deleting the phrase "collectively mean an entry feature as depicted in Exhibit "B" above and across Hanna Street and..."
 - C. The word "Premises" wherever it appears shall read "Licensed Premises."
 - D. The definition of the term "Licensor" in Article I is deleted.

- E. Section 4.1 is amended by inserting the phrase "and the license granted herein" after the word "Agreement."
- F. Section 4.9(a) is amended by replacing the word "Licensor" with the word "City."
- G. Section 4.9 is amended by adding a new paragraph (i) to read as follows:
 - (i) In addition to any other remedies available to City pursuant to this Agreement, in the event Licensee fails to maintain the insurance required by this Agreement and to provide City proof of such coverage, City may purchase such insurance coverage at Licensee's expense. In the event City purchases insurance on behalf of Licensee pursuant to this Section 4.9(i), Licensee shall reimburse City for any amounts paid for the purchase of such insurance not later than five (5) days after receipt of written demand for such reimbursement. In the event Licensee fails pay such funds within the time required herein, City may seek to collect such funds from Licensee through any lawful means and all costs of collection related thereto, including, but not limited to, costs of court and reasonable attorneys fees. Licensee's failure to deliver to City a certificate of insurance as required by this Section 4.9 on or before the fifth (5th) day after delivery by City of written demand for proof that all required insurance is in effect shall create a presumption that Licensee has failed to purchase such insurance coverage.
- H. Section 4.14 is amended by adding the following at the end of the section:

Notwithstanding anything to the contrary herein, Licensee's obligation to restore the Licensed Premises following removal of the Improvements shall not include or require removal of any portion of the paved areas, curbs, sidewalks, paved trails located within the Licensed Premises which have been constructed since the effective date of this Agreement and which are owned and maintained by City, or to the extent otherwise agreed in writing by City prior to commencement of any work related to restoring the Licensed Premises.
- I. The address for Peter G. Smith in Section 4.17 is amended to read "500 North Akard, 1800 Ross Tower, Dallas, Texas 75201.
- J. The address for notices to Licensee as stated in Section 4.17 is amended to read:

to Licensee: Montgomery Improvement District West, Ltd.
c/o Emerson Partners, Inc.
1204 Old Bethany Road
Allen, Texas 75013

with a copy to: Gregg C. Davis
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201.

K. A new Section 4.26 is added and shall read as follows:

4.26 **No Property Interest:** The Parties acknowledge and agree that this Agreement and the license granted herein is merely contractual in nature and does not constitute a conveyance of any interest in real property by City to Licensee.

2. **Use of Defined Terms.** Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the 2005 License Agreement.
3. **Amended License Agreement.** This Amendment amends and is incorporated as part of the 2005 License Agreement, and each and all references to the "Agreement" or the 2005 License Agreement are hereafter deemed to be references to the Amended License Agreement.
4. **Effective Date.** This Amendment shall become effective upon the later of (i) the date this Amendment bears the signatures of the authorized representatives of all of the Parties and (ii) the effective date of a license agreement between City and the Montgomery Park HOA, Inc. ("MPHOA") granting a license to the MPHOA providing access to and for the purpose of maintaining, repairing, replacing and removing certain improvements constructed over City's Hanna Street right-of-way and originally constructed pursuant to the 2005 License Agreement ("the Hanna Street Improvements"). Licensee understands, acknowledges, and agrees that until the foregoing described license agreement between City and MPHOA is effective, Licensee remains obligated to the City to maintain, repair, replace, and/or remove the Hanna Street Improvements to the extent required by the provisions of the 2005 License Agreement without consideration to any amendments as stated in this Amendment.

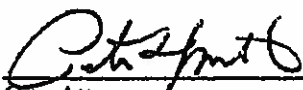
[Remainder of page intentionally left blank; signatures follow]

EXECUTED this 11 day of November, 2015.


CITY OF ALLEN, TEXAS

By: 
Peter H. Vargas, City Manager

APPROVED AS TO FORM:


City Attorney

MONTGOMERY IMPROVEMENT DISTRICT
WEST, LTD.

By: 
Philip L. Williams, President

By: 
Richardson Beard, Senior Vice President

LICENSEE'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 26 day of October, 2015, by Philip L. Williams, President, and Richardson Beard, Senior Vice President, of Montgomery Improvement District West, Ltd., a Texas limited partnership, on behalf of said limited partnership.



Brenda W. Moore
Notary Public, State of Texas

My Commission expires:

9-10-19

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 11 day of November, 2015, by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas home rule municipality, on behalf of said municipality.



Y. Linette Magana
Notary Public, State of Texas

My Commission Expires:

06.04.17

ANNEX 1
2005 LICENSE AGREEMENT
[See Attached]

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

License Agreement

This Agreement ("Agreement") is made by and between City of Allen, Texas ("City") and Montgomery Improvement District West, Ltd. ("Licensee") acting by and through their authorized representatives.

WITNESSETH:

WHEREAS, City owns the street rights-of-way known as Hanna Street and Brett Drive; and

WHEREAS, Licensee desires to construct an entry feature above and across Hanna Street and an entry feature above and across Brett Drive as depicted in Exhibit "A" (the "Improvements"); and

WHEREAS, Licensee has requested the City allow the use and occupancy of (including access to) the air space above Brett Drive and Hanna Street as described and depicted in Exhibit "B" (the Licensed Premises") for the purpose of Licensee constructing, installing, maintaining, repairing, replacing and removing the Improvements in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I
Definitions**

For the purposes of this Agreement, each of the following shall have the meanings set forth herein unless the context clearly requires otherwise:

"Approved Plans" shall mean the design and construction plans for the Improvements approved by the City Engineer, or designee.

"City" shall mean the City of Allen, Texas.

"Commencement Date" means the last date on which each of the following has occurred: (i) preparation and approval of the approved plans for the Improvements; (ii) issuance by all applicable governmental authorities of necessary permits for the construction of the Improvements; (iii) commencement of grading for the Improvements pursuant to Approved Plans; (iv) commencement of construction of the Improvements pursuant to Approved Plans; and

(v) issuance by all applicable governmental authorities of the necessary permits and approvals for construction of the Improvements pursuant to the Approved Plans.

"Completion of Construction" shall mean the last date on which the following has occurred: (i) the construction of the Improvements have been substantially completed; and (ii) the City has conducted a final inspection of the Improvements.

"Effective Date" shall mean the last date of execution hereof.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action or omission (unless caused by acts of omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Improvements" shall mean collectively mean an entry feature as depicted in Exhibit "B" above and across Hanna Street and an entry feature as depicted in Exhibit "B" above and across Brett Drive and the Licensed Premises, as more fully described in the Approved Plans and submittals filed with the City.

"Licensed Premises" shall mean the street right-of-way, real property and the air space above and across as described in Exhibit "B".

"Licensee" shall mean Montgomery Improvement District West, Ltd, or permitted assignee.

"Licensor" shall mean the City of Allen, Texas.

Article II

Purpose

Purpose: City hereby grants Licensee a license, pursuant to the terms of this Agreement, for the purpose of having access to and constructing, installing, maintaining, repairing replacing and removing the Improvements within the Licensed Premises.

Article III

Term

Term: The term of this Agreement shall be perpetual, subject, however, to termination by the parties as provided herein.

Article IV
Miscellaneous

4.1 **Non-exclusive:** This Agreement is nonexclusive and is subject to any existing public or private utility, drainage or communications easement and/or facility located in, on, under, above, across or upon the Licensed Premises, to all vested rights presently owned any utility or communication company, public or private for the use of the Licensed Premises for facilities presently located within the boundaries of the Licensed Premises and to any existing lease, license, or other interest in the Licensed Premises granted by City to any individual, corporation or other entity, public or private now or hereafter.

4.2 **Environmental Protection:** Licensee shall not use or permit the use of the Licensed Premises for any purpose that may be in violation of any laws pertaining to the health of the environment, including without limitation, the comprehensive environmental response, compensation and liability act of 1980 ("CERCLA"), the resource conservation and recovery act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. Licensee warrants that the permitted use of the Licensed Premises will not result in the disposal or other release of any hazardous substance or solid waste on or to the Licensed Premises and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the property or adjoining property by Licensee. The terms "hazardous substance" and "release" shall have the meaning specified in CERCLA and the term "solid waste" and "disposal (or dispose)" shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, to the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. Except for the sole negligence or willful conduct of the City, its officers, agents and employees, the Licensee shall indemnify and hold City harmless from and against all costs of environmental clean up to the Licensed Premises and contiguous City property resulting from Licensee's use of the Licensed Premises under this Agreement.

4.3 **Licensee to Make Repairs.** Licensee, at Licensee's own cost and expense, at all times during the Term, agrees to keep and maintain, or cause to be kept and maintained, the Licensed Premises and the Improvements in a good state of appearance and repair, reasonable wear and tear and casualty excepted. Licensee shall perform such maintenance and repair as may be necessary. Without limiting the generality of the foregoing provisions of this Section, it is understood that Licensee's obligations with respect to the maintenance and repair of the Licensed Premises and the Improvements include the repair and replacement of all structural items, including the foundation, lighting, in, under, across and above the Licensed Premises and the Improvements, and all paving, driveways, and sidewalks constructed in connection with the Improvements. Except for the sole negligence or willful conduct of the City, its officers, agents and employees, the City shall have no duty, obligation or liability to make any repairs, replacements, or alterations to the Improvements or the Licensed Premises, or any portion

thereof, at any time during the Term. Without limiting the generality of the foregoing provisions of this Section, Licensee shall: (i) conduct regular inspections of the Improvements and of the Licensed Premises for compliance with applicable state and local laws and regulations, for health and safety standards, cleanliness, good order, condition, and repair; (ii) periodically paint and refurbish the Improvements; and (ii) cause the Improvements to be repaired and maintained in good condition.

4.4 **Mechanic's liens not permitted:** Licensee shall fully pay all labor and materials used in, on or about the Licensed Premises and will not permit or suffer any mechanic's or material man's liens of any nature be affixed against the Licensed Premises by reason of any work done or materials furnished to the Licensed Premises at Licensee's instance or request.

4.5 **Future City Use:** This Agreement is made expressly subject and subordinate to the right of City to use the Licensed Premises for any public purpose whatsoever or to grant the right to use the Licensed Premises to others. In the event that City shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation or removal of the Improvements shall be necessary or convenient for City's use of the Licensed Premises, Licensee shall at its sole cost and expense make or cause to be made such modifications, removal or relocation of the Improvements as is required so as to not interfere with the City's or City's assigns' use of the Licensed Premises. A minimum of three (3) months written notice for the exercise of the above action shall be given by City and Licensee shall commence to make the required modification, relocation or removal within thirty (30) days after receipt of such notice and to complete the same within ninety (90) days thereafter. The Licensee shall be responsible for and shall promptly pay any reasonable expenses incurred by the City for the modification, relocation or removal of the Improvements in the event the Licensee fails to timely take the required actions.

4.6. **Construction of Improvements,** Licensee shall be required to obtain all permits and approvals from all governmental agencies having jurisdiction for the design, construction and installation of the Improvements. Prior to application for the necessary permits and approvals from the City the Licensee shall submit detailed plans and specifications, including elevations and architectural renderings for the Improvements for review and approval by the City. The Licensee agrees to cause Commencement of Construction to begin on or before February 1, 2006 and to cause Completion of Construction of the Improvements to occur on or before December 31, 2006, subject to events of Force Majeure.

4.7 **Compliance with laws:** Licensee agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensee.

4.8 **Release and Indemnification:** Licensee shall defend, protect and keep City, its officers, agents, employees and invitees forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the construction, installation, maintenance, repair and use of the

LICENSE AGREEMENT - Page 4 76173

Licensed Premises and Improvements by the Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, contractors or assigns or those holding under Licensee. Licensee shall at all times defend, protect and indemnify and it is the intention of the parties hereto that Licensee hold City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including attorney's fee, arising out of or from any accident or other occurrence on or about the Licensed Premises causing personal injury, death or property damage resulting from use of the Improvements or Licensed Premises by Licensee, its agents, employees, customers and invitees, except when caused by the negligence or willful misconduct of City, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against City for its willful misconduct. Licensee shall at all times defend, protect, indemnify and hold the City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including attorney's fees arising out of, or from any and all claims or causes of action resulting from any failure of Licensee, its officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof. Licensee hereby releases and waives all claims against the City, its officers, agents, employees and invitees for damages, court costs, attorney fees, expenses and actions of any kind arising or allegedly to arise by reason of this Agreement including the repair, damage, destruction, relocation and removal of the Improvements by Licensee; does further agree to indemnify and hold harmless the City, its officers, agents, employees and invitees from and against any such claims, damages, attorney fees and expenses.

4.9 **Insurance.** Throughout the Term, Licensee shall, at Licensee's expense obtain and maintain the following insurance policies and in accordance with the following terms and conditions:

- (a) Commercial general liability insurance for bodily injury, death or property damage, insuring Licensee and naming Licensor as an additional insured, against all claims, demands, or actions relating to the Premises on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use. In addition to other remedies provided in this Lease, if Licensee fails to maintain the insurance required by this Section, City may, but is not obligated to, obtain such insurance and Licensee shall pay to City upon demand as additional rental the premium cost thereof plus interest at the Maximum Rate from the date of payment by City until repaid by Licensee.
- (b) Worker's Compensation and Employer's Liability insurance.
- (c) Commercial General Liability insurance insuring operations hazard, independent contractor hazard, contractual liability and products and completed operations liability, in limits not less than \$2,000,000.00 combined single limit for each occurrence for bodily injury, personal injury and property damage liability.

- (d) Insurance covering all Improvements located or being constructed on the Licensed Premises against loss or damage from perils covered by an all risk or special form policy. This insurance is to be carried by insurance companies authorized or admitted to transact business in Texas with a Best's Insurance Rating of A or A+ or better, selected by Licensee and approved by City, which approval shall not be unreasonably withheld. The insurance shall be in amounts not less than eighty (80%) percent of the full insurable value of the Improvements and any other improvements included on the Licensed Premises.
- (e) Construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Premises. This insurance must be carried by insurance companies authorized or admitted to transact business in Texas with a Best's Insurance Rating of A or A+ or better, selected by Licensee and approved by City, which approval shall not be unreasonably withheld. The insurance will have limits of not less than \$100,000.00 for property damage and \$300,000.00 for one person and \$2,000,000.00 for one accident for personal injury and must protect Licensee and City, as well as any other person or persons Licensee may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the Premises.
- (f) Prior to any use of the Licensed Premises and prior to Commencement of Construction, the Licensee shall furnish to City certificates of insurance showing that the Licensee is in compliance with the insurance coverage requirements of this Section and indicating the exclusions from coverage, if any. All insurance required by this Section shall be primary and noncontributing with any insurance that may be carried by City. City reserves the right, from time to time throughout the Term, to increase the minimum insurance limits set out herein to ensure that adequate insurance is being maintained.
- (g) All insurance and certificate(s) of insurance shall contain the following provisions: (i) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (ii) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (iii) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (h) The City may during the Term reasonably increase and/or modify the types and amounts insurance upon thirty (30) days prior written notice to Licensee.

right to enter upon the Improvements in order to (a) inspect the Improvements thereon; and (b) confirm that Licensee is compliance with the terms and conditions of this Agreement.

4.11 Damage to Premises. If, during the Term, the Improvements are wholly or partially destroyed or damaged by fire, or any other casualty whatsoever (collectively called a "Casualty"), Licensee shall immediately take such action as may be required to remove the Improvements, or portion thereof and any trash from the Licensed Premises so as to not interfere with the public use the street right-of-ways, or other public ways within the Licensed Premises. Licensee shall within thirty (30) days after such Casualty provide the City with written notice of Licensee's intent to restore, reconstruct, replace or remove the Improvements and the estimated time period for commencement and completion of such work. The Licensee shall commence such work within sixty (60) days after such Casualty. In the event the Improvements are wholly destroyed or damaged by a Casualty the Licensee may at its option terminate this Agreement and remove the Improvements and restore the Licensed Premises to the its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted.

4.12 Payment of Insurance Proceeds. In the event that proceeds of insurance are to be used to repair, replace, restore or reconstruct the Improvements destroyed by Casualty ("Restoration"), the following provisions shall pertain:

- (a) Prior to the commencement of such Restoration, the plans and specifications for the Restoration must be approved by City (such approval not to be unreasonably withheld or delayed).
- (b) If, in the reasonable judgment of City, the costs of the Restoration will exceed the amount of the Insurance Proceeds, Licensee may: (i) terminate this Agreement and remove the Improvements and restore the Licensed Premises to the its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted; or (ii) give satisfactory proof or assurances to City that the funds required to meet such deficiency (such funds to be provided by Licensee) are or will be available for such purpose;
- (c) If at the time of the occurrence of the Casualty, or at any time thereafter during Restoration, there exists a default by Licensee, or any circumstance which, with the giving of notice or the passage of time, or both, would constitute such a default, then Licensee shall, if demanded by City, deliver the Insurance Proceeds to a third party escrow agent designated by City. In such event, the Insurance Proceeds will be advanced by the Escrow Agent in installments during the period of the Restoration, except for a final installment to be advanced following the period of the Restoration. Each installment (except the final installment) is to be advanced by the Escrow Agent in an amount not to exceed ninety percent (90%) of the value of the work completed since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by an independent supervising architect selected and paid by City, together with a

reasonable showing of bills for labor and material, and evidence satisfactory to CITY that no lien affidavit has been filed in the records where the filing of liens for any labor or material in connection with such work are to be filed. The final payment or disbursement of the Insurance Proceeds deposited shall be in an amount sufficient to make the total advance equal to the entire cost of any Restoration, and shall be made upon a proper certificate of completion by an independent architect, but in no event shall the Escrow Agent be required to advance more than the balance of the Insurance Proceeds on deposit. It is expressly agreed that if this Agreement shall be terminated for Licensee's default at any time prior to release or payment to Licensee of any of the Insurance Proceeds as provided in this Section, all of the Insurance Proceeds not therefore paid to Licensee shall be the sole property of Licensee, and shall be delivered by the Escrow Agent to Licensee no later than 180 days after termination of this Agreement provided the Licensee has removed the Improvements from the Licensed Premises and restored the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted. In the event the Licensee has not removed the Improvements from the Licensed Premises and restored the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted, then the Escrow agent shall first pay to the City the actual costs or if not yet incurred by the City the estimated reasonable cost for the removal of the Improvements from the Licensed Premises and restoration of the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises; and the remaining balance of the Insurance Proceeds, if any shall be paid to Licensee and shall be the sole property of Licensee. The City shall have the right until 180 days after termination of this Agreement to declare the Improvements to be abandoned by Licensee and to become the property of the City, and to use any remaining Insurance Proceeds to repair and rebuild, or to remove, the Improvements.

4.13 Eminent Domain. If all or part of the Improvements and/or the Licensed Premises is taken under power of eminent domain (which term as used in this Agreement shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Agreement shall terminate as of the date of taking, or possession by the condemning authority.

4.14 Action upon termination: At such time as this Agreement may be terminated for any reason whatsoever, Licensee shall, at its sole expense and costs, remove the Improvements and appurtenances owned or leased by it, situated in, under or attached to the Licensed Premises and shall restore the Licensed Premises to the condition of the Licensed Premises prior to Licensee's use of the Licensed Premises wear and tear excepted.

4.15 Assignment: Property Owner Association: Licensee shall not assign or transfer its rights under this Agreement to any other person or entity without the prior written consent of
LICENSE AGREEMENT – Page 8

City, which consent will not be unreasonably withheld. Notwithstanding, the foregoing Licensee may, in connection with the transfer of ownership of the Improvements, assign its rights under this Agreement to a property owners association incorporated as a Texas non-profit corporation for the purpose of owning and maintaining the Improvements provided: (i) the City Attorney has reviewed and approved the property owners association agreement, covenants and restrictions, the articles of incorporation and by laws; and (ii) the Licensee has provided sufficient proof of the valid existence and operation of the property owners association as a Texas non-profit corporation to the City Attorney. Prior to the conveyance of the Improvements to the property owners association the Licensee must provide a reserve fund equivalent to two months' dues based on full property owners' association membership. At a minimum, the property owner association agreements, covenants and restrictions establishing and creating the property owner's association required herein shall contain and/or provide for the following: (i) provisions acceptable to the city attorney for the establishment and organization of the property owners' association and the adoption of bylaws for said property owners' association, including provisions requiring that the owner(s) of any lot or lots within the applicable subdivision and any successive purchaser(s) to automatically and mandatorily become a member of the property owners' association; (ii) the initial term of the agreement, covenants and restrictions establishing and creating the property owners' association shall be for a 25-year period and shall automatically renew for successive ten-year periods, and the property owners' association may not be dissolved without the prior written consent of the city; (iii) provisions acceptable to the city attorney to ensure the continuous and perpetual use, operation, maintenance and/or supervision of the Improvements and to establish a separate reserve fund for the capital repair and replacement of the Improvements prior to the conveyance of the Improvements by the Licensee; (iv) provisions prohibiting the amendment of any portion of the property owner's association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of the Improvements without the prior written consent of the city; (v) the right and ability of the city or its lawful agents, after due notice to the property owners' association, to maintain, repair, and remove the Improvements and to perform the responsibilities of the property owners' association and its board of directors if the property owners' association fails to do so in compliance with any provisions of the agreements, covenants or restrictions of the property owner's association or of any applicable city codes or regulations; to assess the property owners association for all costs incurred by the city in performing said responsibilities if the property owner's association fails to do so; and/or to avail itself of any other enforcement actions available to the city pursuant to state law or city codes or regulations; and (vi) provisions indemnifying and holding the city harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney's fees and costs of suit, incurred or resulting from the city's maintenance, repair or removal of the Improvements.

4.16 Termination: This Agreement may be terminated in any of the following ways:

- a. Written Agreement of both parties;
- b. By City giving Licensee six (6) months prior written notice;
- c. By City upon failure of Licensee to perform its obligations as set forth in this Agreement, subject to events of Force Majeure, if Licensee has not cured any

failure within thirty (30) days of written notification by City of such failure or if such failure cannot be cured within such 30-day period, Licensee has not cured such failure within a reasonable period of time thereafter, not to exceed ninety (90) days, so long as Licensee is diligently prosecuting the same;

d. As set forth in Sections 4.11, 4.12, and 4.13 herein.

4.17 **Notice:** 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.

to City: Peter H. Vargas
City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

with a copy to: Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
500 North Akard
1800 Lincoln Plaza
Dallas, Texas 75201

to Licensee: Montgomery Improvement District West, Ltd.
% Emerson Partners, Inc.
10005 Technology Blvd. West,
Suite 151
Dallas, TX 75220

with a copy to: William S. Dahlstrom
Jackson Walker, L.L.P.
901 Main Street
Suite 6000
Dallas, Texas 75202

4.18 **Governing law:** This Agreement is governed by the laws of the State of Texas; and venue for any action shall be in the state district court of Collin County, Texas. The parties agree to submit to the jurisdiction of said court. ~~as set forth below~~

4.19 **Binding effect:** This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.
LICENSE AGREEMENT - Page 10 76175

4.20 **Entire Agreement:** This Agreement embodies the entire Agreement between the parties and supersedes all prior Agreements, understandings, if any, relating to the property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

4.21 **Recitals:** The recitals to this Agreement are incorporated herein by reference.

4.22 **Exhibits:** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made in this Agreement.

4.23 **Counterparts:** 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.

4.24 **Headings:** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.

4.25 **Survival of Covenants:** Any of the representatives, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

EXECUTED this 14th day of December, 2005.

City of Allen, Texas

By: 
Peter H. Vargas, City Manager

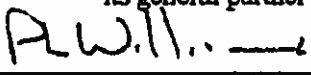
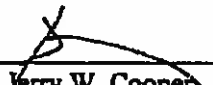
Approved as to Form:


Peter G. Smith, City Attorney

MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD.,

a Texas limited partnership

By: Emerson Partners, Inc., a Texas Corporation,
its general partner

By:  or 
Philip L. Williams President or Jerry W. Cooper Executive Vice President

LICENSEE'S ACKNOWLEDGMENT

STATE OF TEXAS

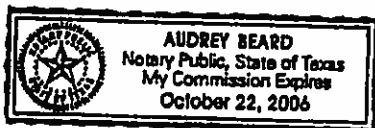
§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on the 7th day of December, 2005, by Philip L. Williams, the President of Emerson Partners, Inc., a Texas Corporation, general partner of Montgomery Improvement District West, Ltd., on behalf of said limited partnership.



Audrey Beard
Notary Public, State of Texas

My Commission expires:

10-22-06

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on the 14th day of December, 2005, by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said municipality.

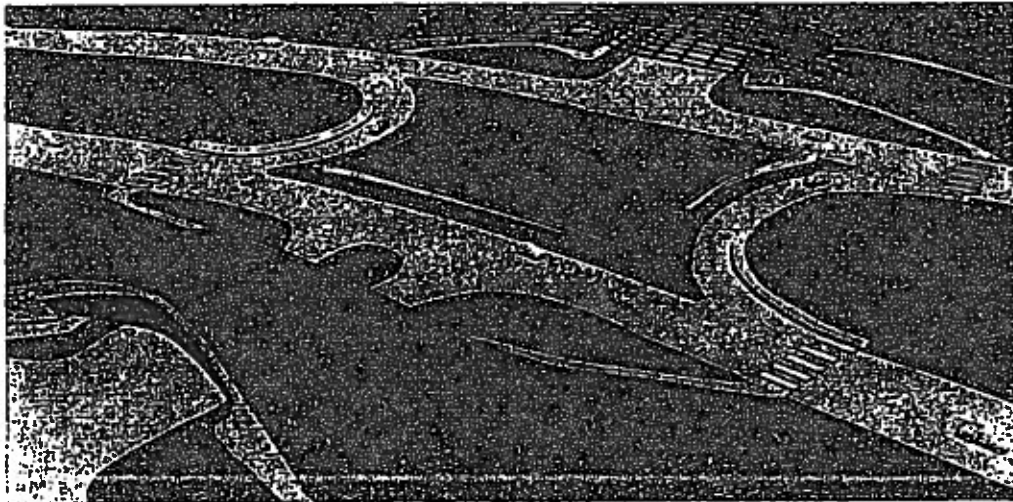


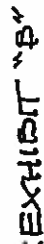
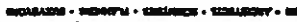
Shelley B. George
Notary Public, State of Texas

My Commission Expires:

03-20-09

Exhibit "A"
Description of Entry Features





THIS IS NOT A CLEAN WATER POLLUTION PLAN. THE CONTRACTOR MUST PROVIDE ALL RELEVANT DOCUMENTS, INCLUDING CREATION SPECIFIC INFORMATION FOR THE TOWN. FROM PRESENT NO TOWNSHIPS INCLUDING ALL DOCUMENTATION & CERTIFICATIONS AND NO TOWNSHIPS FROM THE PRESENT.

[illegible]

East, Western Gas, Ocala, Energy, for 1986.
In The Area, Use Extraordinary and Common
While working in The Area.

ANY POLYMER
OFER. CONSTRUCTION