



## **LIMITED RIGHT OF ENTRY LICENSE AGREEMENT**

This LIMITED RIGHT OF ENTRY LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of February \_\_\_\_, 2018 (the “**Effective Date**”) by and between the CITY OF KYLE, TEXAS, a municipal corporation (the “**City**”), whose address is 100 West Center, Kyle, Texas 78640, and WALTON TEXAS, LP, a Texas limited partnership, in its capacity as owner and operator, as applicable (“**Walton**”), on behalf of itself in its capacity as an owner of the Property (defined below), and in its capacity as operator on behalf of all other owners of the Property (collectively, the “**Individual Owners**” and, together with Walton, the “**Owners**”), whose address is c/o Walton Development & Management TX, LLC, 9811 South IH 35, Suite 4-200, Austin, Texas 78744. At times in this Agreement, the City and the Owners are referred to each as a “party” and collectively as the “parties”.

### WITNESSETH:

WHEREAS, the Owners are the owners of certain real property located in Hays County, Texas as more particularly described and/or depicted on Exhibit “A” attached hereto (the “**Property**”).

WHEREAS, the City is planning certain improvements on a nature trail located adjacent to Plum Creek, as generally depicted on Exhibit “B” attached hereto (the “**Trail**”).

WHEREAS, the City’s planned improvements for the Trail include flagging and staking the boundaries of the Trail, clearing brush, trash and other debris from the Trail and the areas adjacent to the Trail, maintaining the Trail in a general, “native” state, constructing and installing barriers reasonably necessary to protect public users of the Trail from any and all identified hazards on or near the Trail, and continuously supervising and inspecting the condition of the Trail and promptly performing corrective measures as reasonably necessary to ensure the safety of public users (collectively, the “**Improvements**”).

WHEREAS, the City desires for its employees, staff, agents and invitees, including, without limitation, students of Hays High School (collectively, the “**Licensees**”), to access the Trail on March 3, 2018, to perform certain of the Improvements as part of a planned “*Clean-Up & Trail Building Day*”.

WHEREAS, a Licensee is not intended to include members of the general public who use the Trail Segment after completion of the Improvements;

WHEREAS, a portion of the Trail is located within the boundaries of Property (the “**Trail Segment**”).

WHEREAS, the City has requested that (i) the Owners authorize the Licensees to enter upon and access a limited portion of the Owners’ Property adjacent to the boundaries of the Trail Segment (the “**License Area**”), for the limited purpose of performing the Improvements, and (ii) after the Improvements have been completed and the City has confirmed the safety of the Trail Segment for use by the general public, the Owners authorize the City to permit the public to access the Trail Segment for recreational purposes (“**Recreation**”).

WHEREAS, the Owners have agreed (i) to provide a license in favor of the Licensees allowing the Licensees access upon the License Area in order to perform the Improvements, and (ii) to provide a license in favor of the City allowing the public to access upon the License Area for Recreation purposes, all subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Licenses. Owners hereby grant to Licensees and the City a limited right of entry license upon the License Area. The Licensees use of the License Area is expressly limited to performance of the Improvements, and the City's use of the License Area is expressly limited to Recreation by the public. Licensees and members of the public who access the License Area will at all times be deemed to be licensees pursuant to this Agreement, and nothing contained herein shall be construed to cause any Licensee or any member of the public to at any time be an invitee of the Owners. In no event shall the use of the License Area exceed the limited scope expressly authorized herein without the Owners' prior written consent. Without limiting the foregoing, the City shall cause the Trail Segment to be maintained in a "native" state, and the City shall not cause or permit the construction of an eight foot (8') recreational trail on any portion of Property unless and until the City and the Owners have entered into a written agreement regarding an easement or a dedication for such recreational trail.

2. Term. The term of this Agreement is planned to be twelve (12) months, commencing on the Effective Date and ending on the first anniversary thereof, subject to the Owners' right to terminate the license granted herein upon written notice to the City. The parties may, but shall have no obligation to, extend this Agreement at the end of such one-year period by mutual written agreement. For the avoidance of doubt, Owners reserve the right to terminate this Agreement and the limited right of entry license granted herein at any time for any reason or no reason at all.

3. Conditions to Use by Public. The City shall not permit any persons other than authorized Licensees to access the License Area until such time as: (i) the City has confirmed, after thorough inspection of the Trail Segment, that the Improvements have been fully completed (including without limitation, the construction and installation of barriers reasonably necessary to protect the public from any hazards on the Trail Segment), (ii) the City has confirmed, after diligent examination of both the Trail Segment and the surrounding real property, that the Trail Segment's condition can safely accommodate use by the public, (iii) the City has caused information and hazard signage with the Required Text (defined below) to be saliently and conspicuously located at all points of entry and access to the Trail Segment, and (iv) the City has delivered prior written notice to Walton of the date the City plans to make the Trail Segment available for Public use. After satisfaction of each of foregoing conditions, the City shall have the continuous obligation of thoroughly monitoring the Trail Segment and the public's use of the Trail Segment, including, without limitation, through diligent inspections and examinations, to ensure the Trail Segment is at all times safe for the public's use. If at any time the City discovers a hazardous or potentially hazardous condition on the Trail Segment, the City covenants and warrants that it will promptly take all corrective action to ensure the public's safety. Such corrective action shall include, when necessary, the closing of the Trail Segment so that it is unavailable for use by the public until such time as the City has confirmed all reasonably necessary corrective action has been completed and the Trail Segment is once again safe for the Public's use.

As used herein, “**Required Text**” shall mean (i) all textual components (A) required by applicable laws and regulations to ensure the safety of public users of the Trail Segment, and (B) reasonably calculated to constitute valid, legal notice to all public users of the Trail Segment that the limited license provided herein expressly prohibits accessing any of the unmaintained real property abutting the Trail Segment’s boundaries (*i.e.*, accessing any portion of the Owners’ Property other than the License Area shall constitute trespass), and (ii) words communicating that hunting on the Trail Segment is at all times prohibited. For the avoidance of doubt, nothing in this Agreement shall be construed as an agreement by the Owners to make any improvements to either the Property generally or the Trail Segment specifically. The City, and the City alone, shall be responsible for the maintenance of the Trail Segment and for the safety of all persons the City allows to access the Trail Segment, including the License Area, pursuant to the terms of this Agreement.

4. Condition of Property. None of the Owners, the Owners’ affiliates or the officers, directors, tenants, employees, managers, operators or consultants of Owners or Owners affiliates (collectively, the “**Owner Parties**”) know the exact type of conditions that exist upon the License Area or the larger Property, and the Owner Parties specifically do not make any warranty or representation of any type, kind or character, whatsoever, as and to conditions existing or that may hereafter exist upon said License Area, the Property or any improvements thereto. The City understands and acknowledges that the Licensees shall enter upon said License Area at their own risk and that the Licensees shall specifically accept the License Area in the then existing condition thereof. The City further understands and acknowledges that members of the public shall enter upon said License Area at their own risk. Because the Owners are not responsible for the Improvements and are not participating in the decision of when the Trail Segment is safe for the public’s use, the City acknowledges and agrees that it is solely responsible for the condition of the Trail Segment during all times of use by the public.

5. Acknowledgments.

a. As a condition precedent to each Licensee accessing the License Area as contemplated in this Agreement, each such Licensee shall unconditionally agree to the unconditional release of the Owner Parties for, from and against all liabilities, costs, expenses, claims and damages for which the Owners and the Owner Parties might otherwise become liable by reason of any accidents or injuries to or death of any persons, damage to any property, or both, in any manner arising or resulting from, caused by, connected with or related to the presence of any such person or property upon such land and premises, regardless of how, where, or when such injury, death or damage occurs even if caused by the negligence of the Owners and/or the Owner Parties, or due to conditions on or defects in the premises. The City understands and acknowledges that the Owners do not know the identity of any of the individual Licensees and, consequently, the Owners are relying solely on the City’s agreement herein to inform all Licensees of the terms of this Agreement (including, without limitation, the foregoing release of the Owners and the Owner Parties) and to obtain all necessary acknowledgements and agreements from all Licensees necessary for Owners to enforce their rights hereunder (including, without limitation, with respect to the Licensees’ release of the Owners as provided for in this paragraph). The City represents and warrants that Owners reliance on the City to satisfy its obligations set forth in the immediately preceding sentence is reasonable.

b. Walton acknowledges and agrees to having read this Agreement and to understanding all of its terms, including, without limitation, the important rights that are released by this Agreement. Walton specifically acknowledges the sufficiency and receipt of the consideration provided by City for the purpose of this Agreement. Walton understands and asks that this Agreement be liberally construed at all times to provide effect to its intended purposes. Walton agrees to execute such further instruments as may be required in connection with the Trail Segment and the proposed Improvements as contemplated herein.

6. Compliance with Law. The City shall cause all Licensees to comply at all times with all applicable federal, state and local laws and regulations, including applicable environmental laws and regulations relating to the License Area and this Agreement. The City shall at all times monitor the actions of all Licensees present upon the License Area, and the City covenants and warrants that no Licensees shall conduct any operations on the License Area that exceed the scope of this Agreement.

7. Damages. The City shall cause any damage to the License Area arising out of or contributed to by the Licensee's activities and/or public users of the Trail Segment to be promptly repaired by exercising at least the same level of diligence and care as the City exercises when causing the repair of its own property.

8. Firearms. Firearms are strictly prohibited on the License Area only to the extent authorized by state law. Neither the Licensees nor any persons on the License Area by reason of this Agreement may have firearms on the License Area at any time, unless state law authorizes Licensees or other persons to carry or possess firearms on the License Area.

9. Use by Owners. Nothing contained herein shall be construed as to limit in any way the right of the Owners, its successors, assigns, tenants, agents, managers, guests, invitees or other licensees to use of the License Area.

10. Applicable Law; Venue. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED ACCORDING TO THE LAWS OF STATE OF TEXAS, WITHOUT REGARD OR REFERENCE TO THE APPLICATION OF ITS RULES, AND DETERMINATIONS OR APPLICATION OF ITS CONFLICTS OF LAW. SELLER AND BUYER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. PROPER VENUE FOR ANY DISPUTE WILL BE IN HAYS COUNTY.

11. Partial Invalidity. If any term, covenant, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, provided the material benefit of the party's bargain intended under this Agreement is still obtainable by such party after giving effect to the application of such determination.

12. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures to this Agreement shall be acceptable and binding.

[Signatures appear on following page]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first above written.

**OWNER:**

WALTON TEXAS, LP,  
a Texas limited partnership,  
in its capacity as owner and  
operator, as applicable

By: Walton Texas GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Walton International Group, Inc.,  
a Nevada corporation,  
its Manager

By: \_\_\_\_\_  
Name: John Vick  
Title: Vice President

**CITY:**

CITY OF KYLE, TEXAS  
a municipal corporation

By: \_\_\_\_\_  
Name: J. Scott Sellers  
Title: City Manager

EXHIBIT "A"

THE PROPERTY

[see attached]

EXHIBIT "B"

THE TRAIL

