

After recording, return to:

City Secretary  
City of McKinney  
P.O. Box 517  
McKinney, Texas 75070

### **REVOCABLE LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this "Agreement"), is made as of the \_\_\_ day of July , 2016, by and between the **CITY OF MCKINNEY, TEXAS** (the "City") and **EASTSIDE SD1 , LLC**, a Texas limited liability company ("Applicant") witnesseth that:

WHEREAS, Applicant is the owner of the real property located on Block 2, Lots 1-12, H & T C Railroad Addition, in McKinney, Collin County, Texas, (hereinafter called the "Property ") as more particularly described on Exhibit "A" attached hereto and incorporated by reference herein;

WHEREAS, the City has a pre-existing 90' public right-of-way easement and a pre-existing 80' public right-of-way easement abutting and upon over and across a portion of the Property as recorded in Volume W, Page 64 of the Deed Records of Collin County, Texas, (the "Right-of-Way Area");

WHEREAS, Applicant has requested permission to maintain concrete barriers and an existing building (the "Improvements") that encroach into the Right-of-Way Area; and

WHEREAS, this License Agreement allows the Improvements to encroach into the City's right-of-way provided that such Improvements strictly conform with all provisions of the City's Code of Ordinances and Applicant obtains all such permits and variances as may be required to place the Improvements at the location specified in Exhibit "B" attached hereto and incorporated by reference herein; and

WHEREAS, City Staff has reviewed Applicant's request and recommends approval thereof, subject to Applicant's agreement to be solely responsible for the construction, maintenance, removal and replacement of the Improvements as set forth herein, and Applicant's further agreement to hold the City harmless with respect to any damage to, or necessary removal or relocation of, the Improvements and to indemnify the City from and against any and all claims or causes of action arising out of or related to Applicant's installation, use, maintenance and operation of the Improvements in said Right-of-Way Area.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and the mutual covenants herein contained, and for other valuable and good

consideration in hand paid by Applicant to the City at or before the sealing of these presents, the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, the parties hereby agree as follows:

1. **Installation and Maintenance of Improvements; Permitted Encroachment.** The City does hereby agree that, notwithstanding any contrary provision in any document granting, dedicating or conveying the Right-of-Way Area to the City, Applicant may install and maintain at Applicant's sole cost and expense the Improvements in the Right-of-Way Area as specifically described and depicted in Exhibit "B," subject to the terms of Paragraph 2, below. In connection with the foregoing, the City specifically consents to the encroachment of the Improvements upon the Right-of-Way Area. In the event the City grants any rights in the Right-of-Way Area to third parties, such third parties' rights shall not interfere with those granted under this Agreement.
2. **City Ordinances.** This Agreement is not intended to and it does not waive or grant a variance from any requirements of the City's Code of Ordinances that must be met for the Improvements to be constructed and installed in the Right-of-Way Area as specifically described and depicted in Exhibit "B." Applicant expressly acknowledges that by entering into this Agreement, Applicant, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the requirements of the City's Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City, as applicable. **Applicant shall strictly conform to all provisions of the City's Code of Ordinances and Applicant shall obtain all such permits and variances as may be required to place the Improvements at the location specified within the Right-of-Way Area BEFORE constructing and installing such Improvements.**
3. **Hold Harmless; Relocation.** Applicant agrees to hold the City harmless from and against (a) any financial responsibility for removing or relocating the Improvements, if the City determines, in its sole discretion, that the then-current location of the Improvements will unreasonably prevent the City's use and enjoyment of the Right-of-Way Area for the purposes contemplated therefor, and (b) any damage to the Improvements. In the event the City determines that the Improvements must be removed or relocated from the position described and depicted in Exhibit "B" to allow the City full use and enjoyment of the Right-of-Way Area for its intended purpose(s), the City agrees that, if requested by Applicant, the City will allow the Improvements to be relocated (at Applicant's sole cost and expense) within the Right-of-Way Area if reasonably practicable and to the extent only that such relocation strictly conforms with all provisions of the City's Code of Ordinances and Applicant obtains all such additional permits and variances as may be required to remove and relocate the Improvements in a location acceptable to and approved by the City Engineer.

In the absence of an emergency, the City will provide Applicant ten (10) days written notice of the need to remove the Improvements from the Right-of-Way Area.

Applicant shall have thirty (30) days from the date it is provided such written notice to remove the Improvements from the Right-of-Way Area. However, in case of an emergency, which necessitates the immediate removal of the Improvements for access to such public improvements, the City shall have the right to remove the Improvements and any associated appurtenances thereto and shall not be responsible for any damages incurred to such Improvements and associated appurtenances.

4. **Indemnification.** Applicant hereby assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the City and its officers, agents, servants and employees from and against all claims, suits, judgments, demands, damages, losses and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, Applicant's use of the Right-of-Way Area that forms the basis of this License specifically including but not limited to the construction, maintenance, operation and use of the Improvements in the Right-of-Way Area. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

5. **Notices.** All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) transmitted by facsimile (with proof of confirmed transmission) to the respective parties hereto as follows:

To Applicant: Eastside SD1, LLC  
300 Throckmorton Street, Bldg A  
McKinney, Texas 75069  
Attention: Larry Crosby

To the City: City Manager  
222 N. Tennessee  
P.O. Box 517  
McKinney, Texas 75070

6. **Binding Effect.** The benefits and burdens of this Agreement shall be exclusive to Applicant and shall benefit and bind Applicant and the City and their respective successors, successors-in-title, legal representatives and assigns as provided herein.

7. **Assignability.** This Agreement shall not be assignable by Applicant without the prior written consent of the City, and such consent shall not be unreasonably withheld, conditioned or delayed.

8. **Waiver.** The failure of the City or Applicant to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.
9. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Texas. Venue shall be exclusive in Collin County, Texas.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

***CITY OF MCKINNEY***

By: \_\_\_\_\_  
TOM MUEHLENBECK  
Interim City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

**EASTSIDE SD1 , LLC**

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

LARRY CROSBY  
Managing Member

Date Signed: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 by **TOM MUEHLENBECK**, Interim City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, on behalf of said municipal corporation.

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **LARRY CROSBY**, Manager/President of Eastside SD1 , LLC for the purposes and consideration herein-above set forth.

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

PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

EXHIBIT "A"  
Property Description

TRACT 1 (PART OF MAIN & VIRGINIA STREETS)

All that certain lot, tract or parcel of land situated in the William Davis Survey, Abstract No. 248, City of McKinney, Collin County, Texas, and being part of Main Street of Virginia Street of the H & T C Railroad Addition to said city as recorded in Vol. W, Page 64 of the Deed Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for corner at the Southeast corner of Lot 1, Block 2 of said addition and being at the intersection of the North line of Virginia Street and the West line of Main Street;

THENCE N. 01 deg. 32 min. 52 sec. E. with West line of Main Street, a distance of 380.59 feet to a point for corner at the Northeast corner of Lot 12, Block 2 of said addition;

THENCE S. 15 deg. 35 min. 44 sec. E. a distance of 92.85 feet to a point for corner on a wall;

THENCE S. 09 deg. 40 min. 36 sec. E. a distance of 53.77 feet to a point for corner on a wall;

THENCE S. 00 deg. 15 min. 09 sec. E. a distance of 232.79 feet to a point for corner on a wall;

THENCE S. 38 deg. 45 min. 16 sec. W. a distance of 19.33 feet to a point for corner on a wall within Virginia Street;

THENCE S. 89 deg. 44 min. 06 sec. W. a distance of 143.53 feet to a point for corner;

THENCE N. 01 deg. 32 min. 52 sec. E. a distance of 10.00 feet to a point for corner at the Southwest corner of said Lot 1;

THENCE N. 89 deg. 44 min. 06 sec. E. a distance of 110.06 feet to the POINT OF BEGINNING and containing 0.329 acres of land more or less.

TRACT 2 (PART OF HUNT STREET)

All that certain lot, tract or parcel of land situated in the William Davis Survey, Abstract No. 248, City of McKinney, Collin County, Texas, and being part of Hunt Street of the H & T C Railroad Addition to said city as recorded in Vol. W, Page 64 of the Deed Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point for corner at the Southwest corner of Lot 1, Block 3 of said addition and being in the North line of Hunt Street;

THENCE N. 89 deg. 44 min. 06 min. E. with the North line of Hunt Street, a distance of 60.10 feet to a point for corner at a wall;

THENCE S. 32 deg. 25 min. 15 sec. E. a distance of 49.10 feet to a point for corner on a wall;

THENCE S. 29 deg. 14 min. 37 sec. E. a distance of 43.93 feet to a point for corner at the Northeast corner of Lot 12, Block 2 of said addition and being at the intersection of the South line of Hunt Street and the West line of Main Street;

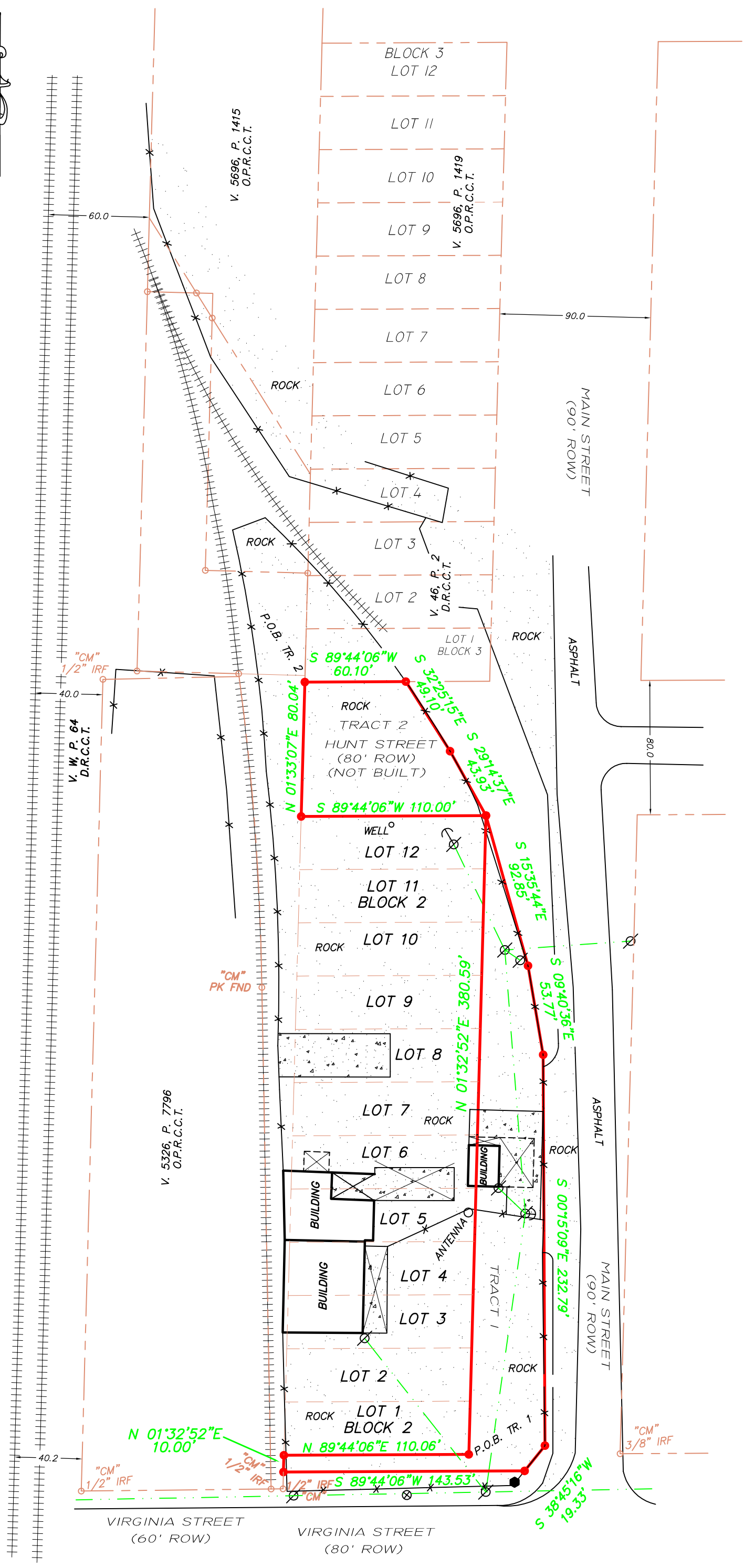
THENCE S. 89 deg. 44 min. 06 sec. W. with the South line of Hunt Street, a distance of 110.00 feet to a point for corner at the Northwest corner of said Lot 12, Block 2;

THENCE N. 01 deg. 33 min. 07 sec. E. a distance of 80.04 feet to the POINT OF BEGINNING and containing 0.1567 acres of land more or less.

EXHIBIT "B"

Map Depicting Location of Encroaching Improvements  
(To Scale with Engineering Certainty)





# EXHIBIT "A"

**DAVID FITE SURVEYING**

SCALE: 1" = 60'    DATE: 4-8-2013  
 JOB NO. DE130094    GP. NO. \_\_\_\_\_  
 DRAWN: D.W.F.    CHECK: D.W.F.

PH. NO. 903-355-8178  
 3480 COUNTY ROAD 3307  
 GREENVILLE, TX 75402  
 E-MAIL: davidfite@wilddblue.net

LEGEND	
	POWER POLE
	LIGHT POLE
	ANCHOR
	ELEC. METER
	GAS METER
	WATER METER
	WATER VALVE
	FIRE HYDRANT
	TELEPHONE PEDESTAL
	CABLE PEDESTAL
	SUBSURFACE UTILITY BOX
	ELECTRIC TRANSFORMER