

ORDINANCE NO. 28988

An ordinance granting a revocable license to Wal-Mart Stores Texas, LLC, to occupy, maintain, and utilize portions of Greenville Avenue and Belmont Avenue rights-of-way located near the intersection of Richmond Street and Greenville Avenue, adjacent to City Block 17/1901 within the limits hereinafter more fully described, for the purpose of installing, using and maintaining landscaping; providing for the terms and conditions of this license; providing for the annual compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That a revocable license, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to Wal-Mart Stores Texas, LLC, a Delaware limited liability company, its successors and assigns, hereinafter referred to as "**GRANTEE**" to occupy, maintain, and utilize for the purpose set out hereinbelow the tracts of land described in Exhibit A, hereinafter referred to as "licensed area" which is attached hereto and made a part hereof.

SECTION 2. That this license is granted for a term of eighteen (18) years, unless sooner terminated according to other terms and provisions herein contained.

SECTION 3. That **GRANTEE** shall pay to the City of Dallas the sum of **ONE THOUSAND (\$1,000.00) DOLLARS** for the license herein granted during the term hereof; provided however, that the first payment due hereunder in the sum of **ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS** shall become due and payable upon the final passage of this ordinance shall be a one-time fee that covers the consideration in accordance with special fees established by Section 43-115.1 of the Dallas City Code. Such consideration shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to pay the above stated annual fee within sixty (60) days of the due date, the Director of Department of Sustainable Development and Construction may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the City Controller of

the City of Dallas and deposited in Fund 0001, Dept. DEV, Unit 1181, Revenue Source 8428. In the event **GRANTEE's** check for the license fee is dishonored, **GRANTEE** shall pay to the City a processing fee of \$25.00 for each dishonored check. Additionally, all monies owed to the City under this license shall be subject to the assessment of interest at a rate of 10% a year from the day after any monies become due until it is paid in full, in accordance with Section 2-1.1 of the Dallas City Code.

SECTION 4. That the licensed area shall be used by **GRANTEE** for the following purpose under the direction of the Director of Department of Sustainable Development and Construction of the City of Dallas: installing, using and maintaining landscaping within the public right-of-way.

SECTION 5. That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

SECTION 6. That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. The Governing Body of the City of Dallas reserves the right to terminate and cancel this license, at will, by Resolution passed by said Governing Body. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming any rights under this instrument shall remove, to the extent required by the Director of Department of Sustainable Development and Construction, any improvements and encroachments from the licensed area at **GRANTEE's** expense. Failure to do so shall subject **GRANTEE** to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Department of Sustainable Development and Construction.

SECTION 7. That the license is subject to the following conditions, terms and reservations:

- a) **GRANTEE** shall call 1-800-DIG-TESS prior to excavation or underground installation or maintenance.
- b) **GRANTEE** shall acknowledge the rights of all utility areas and ensure that these areas are protected (Exhibit B) and each utility company must be contacted to determine the precise location of their facilities.
- c) **GRANTEE** shall obtain a street cut permit. Please call 214-948-4042 at least 48 hours prior to work performed in the City's right-of-way.
- d) **GRANTEE** shall comply with the 45 x 45 visibility triangle as shown on the submitted plans to the Sustainable Development and Construction Department Engineering Division.
- e) **GRANTEE** shall install ornamental trees only and provide final site plans to Peer Chacko in Strategic Planning for approval. Please call 214-670-3972.
- f) **GRANTEE** shall ensure that tie-in-drains from planter boxes to the back of the inlet. Care should be taken to minimize runoff to the sidewalks and streets. Street curb/gutter may be used to convey runoff provided the curb/gutter does not, itself, drain into a travel lane.
- g) **GRANTEE** shall take caution with AT&T's underground conduits that travel north and south on Greenville Avenue (which is on the eastern side of the street with a portion of it under the sidewalk). Also, the underground conduit lateral tee's off from Greenville Avenue and extends to the east along Richmond Avenue.

SECTION 8. That the license granted hereby shall not become effective until and unless **GRANTEE** files a final acceptance, in writing, to the terms and conditions of this ordinance with the Director of Department of Sustainable Development and Construction and said written acceptance shall be forwarded to the City Secretary of the City of Dallas. In the event said written final acceptance is not filed within six (6) months after the passage of this ordinance as provided for herein, then the Director of Department of Sustainable Development and Construction, or her designee, may terminate this license.

SECTION 9. That upon receipt of **GRANTEE's** final written acceptance, the Director of Department of Sustainable Development and Construction, or her designee, is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County, Texas. Additionally, the Director of Department of Sustainable Development and Construction, or her designee, is hereby authorized to execute a cancellation of Notice of License upon termination by the City or **GRANTEE** and to file such cancellation of Notice of License in the deed records of Dallas County, Texas.

SECTION 10. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 11. That this license may not be assigned without prior written approval from the Director of Department of Sustainable Development and Construction, or her designee. Such assignment shall recite that it is subject to the terms, restrictions, and conditions contained in this ordinance. The assignee shall deliver evidence of ownership of property abutting the licensed area, and a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Director of Department of Sustainable Development and Construction within 10 days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should **GRANTEE** fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Director of Department of Sustainable Development and Construction, or her designee, may terminate this license.

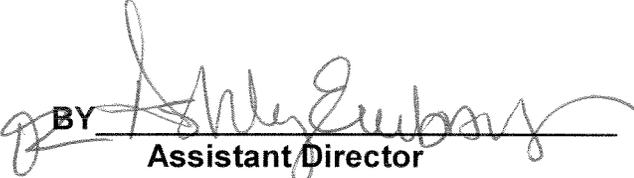
SECTION 12. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or her designee. Upon receipt of the fee for the year 2013, an acceptable certificate of insurance, and the fee for publishing this ordinance which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or her designee, shall deliver to **GRANTEE** the certified copy of this ordinance. The Director of Department of Sustainable Development and Construction, or her designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION 13. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

THERESA O'DONNELL
Director of Department of Sustainable
Development and Construction

BY 
Assistant City Attorney

BY 
Assistant Director

Passed MAY 22 2013 .

LICENSE AGREEMENT
ADJACENT TO BLOCK 17/1901, BELMONT ADDITION
ROBERT RAY SURVEY, ABSTRACT NO. 1242
CITY OF DALLAS, DALLAS COUNTY, TEXAS

EXHIBIT A

BEING a 11,587 square foot (0.266 acre) tract of land situated in the Robert Ray Survey, Abstract No. 1242, City of Dallas, Dallas County, Texas, being adjacent to City of Dallas Block No. 17/1901, a part of a tract of land described in Deed to the City of Dallas, recorded in Volume 3578, Page 98 and in in Volume 3578, Page 107, Deed Records of Dallas County, Texas, being part of Belmont Avenue created in Volume 124, Page 16, Deed Records of Dallas County, Texas and part of Greenville Avenue (by said deeds to City of Dallas and created in Volume 124, Page 116, Deed Records of Dallas County, Texas) and being more particularly described as follows:

BEGINNING at a 1/2" iron pipe found at the intersection of the south right-of-way line of Belmont Avenue (a 90-foot wide right-of-way) and the east right-of-way line of Greenville Avenue (a 70-foot wide right-of-way); said point also being the northwest corner of a tract of land described in Special Warranty Deed to Mitchell Rasansky & the Hymie Schwartz Trust (hereafter referred to Rasansky tract), recorded in Volume 2002004, Page 9525, Official Public Records of Dallas County, Texas and in the north line of Lot 1, Block 17/1901, Belmont Addition, an addition to the City of Dallas, Texas according to the plat recorded in Volume 124, Page 16, Deed Records of Dallas County, Texas;

THENCE with said east right-of-way line being the east line of said City of Dallas tracts and the west line of said Rasansky tract, South 0°42'04" East, a distance of 267.00 feet to a "PK" nail set for corner;

THENCE departing said east right-of-way line, South 89°17'56" West, a distance of 15.00 feet to a "X" cut in concrete set for corner generally in the east curb line of Greenville Avenue;

THENCE generally along said east curb line of Greenville Avenue and the south curb line of Belmont Avenue, the following courses and distances:

North 0°42'04" West, a distance of 280.00 feet to a "V" cut in concrete set at the beginning of a tangent curve to the right having a central angle of 89°58'30", a radius of 15.00 feet, a chord bearing and distance of North 44°17'11" East, 21.21 feet;

In a northeasterly direction, with said curve to the right, an arc distance of 23.56 feet to a "X" cut in concrete set at the end of said curve;

North 89°16'26" East, a distance of 257.50 feet to a "X" cut in concrete set for corner;

THENCE South 0°43'34" East, a distance of 28.00 feet to a 5/8" iron rod with "KHA" cap set in said south right-of-way line of Belmont Avenue and in the north line of Lot 6, Block 17/1901, from said point a 1/2" iron pipe found at the northeast corner of Lot 6, Block 17/1901 bears North 89°16'26" East, a distance of 32.49 feet;

THENCE with said south right-of-way line and the north line of said Block 17/1901, South 89°16'26" West, a distance of 257.51 feet to the **POINT OF BEGINNING** and containing 11,587 square feet or 0.266 acres of land.

Bearings are expressed as grid bearings (Texas Coordinate System of 1983, Zone 4202, NAD 83 Datum), as determined by GPS observations, resulting in a bearing of North 89°16'26" East, for the south right-of-way line line of Belmont Avenue.

DANA BROWN
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 5336
 12750 MERIT DRIVE, SUITE 1000
 DALLAS, TEXAS 75251
 PH. 972-770-1300
 dana.brown@kimley-horn.com



(For SPRG use only)

Reviewed By: DBF
 Date: 11-19-2012
 SPRG NO: 2493

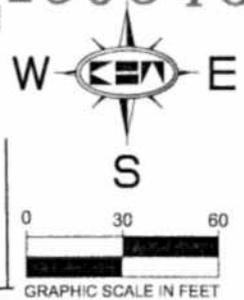
		12750 Merit Drive, Suite 1000 Dallas, Texas 75251		Tel. No. (972) 770-1300 Fax No. (972) 239-3820	
		Kimley-Horn and Associates, Inc.			
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SRD	DAB	NOV. 2012	063362207	1 OF 2

28988

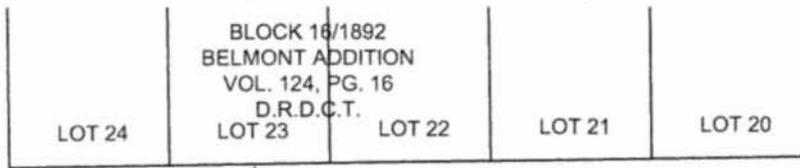
EXHIBIT A

130848

LICENSE AGREEMENT
 ADJACENT TO BLOCK 17/1901, BELMONT ADDITION
 ROBERT RAY SURVEY, ABSTRACT NO. 1242
 CITY OF DALLAS, DALLAS COUNTY, TEXAS



BLOCK 2067
 BELMONT TOWERS
 CONDOMINIUMS
 VOL. 84001, PG. 3168
 D.R.D.C.T.



BELMONT AVENUE
 (VOL. 124, PG. 16)

0.266 ACRES
 11,587 SQ. FT.

90' R.O.W.

$\Delta=89^{\circ}58'30''$
 $R=15.00'$
 $L=23.56'$
 $CB=N44^{\circ}17'11''E$
 $C=21.21'$

$N89^{\circ}16'26''E$ 257.50'

$S0^{\circ}43'34''E$ 28.00'

$S89^{\circ}16'26''W$ 257.51'

32.49'

1/2" IPF
 (C.M.)

SNELL POST
 SUBDIVISION

70' R.O.W.

P.O.B.

20' FIRELANE EASEMENT
 VOL. 68237, PG. 1932
 D.R.D.C.T.

LOT B

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

BLOCK 17/1901
 BELMONT ADDITION
 VOL. 124, PG. 16
 D.R.D.C.T.

MITCHELL RASANSKY & THE HYMIE
 SCHWARTZ TRUST
 VOL. 2002004, PG. 9525
 O.P.R.D.C.T.

LEGEND

- Δ = DELTA ANGLE OR CENTRAL ANGLE
- P.O.B. = POINT OF BEGINNING
- IRSC = IRON ROD W/ "KHA" CAP SET
- XS = "X" IN CONCRETE SET
- IRFC = IRON ROD W/CAP FOUND
- IPF = IRON PIPE FOUND
- C.M. = CONTROLLING MONUMENT
- D.R.D.C.T. = DEED RECORDS OF DALLAS COUNTY, TX
- O.P.R.D.C.T. = OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TX

NOTES

All corners of easement to be acquired are a 5/8" iron rod with "KHA" cap set unless otherwise noted.

Bearings are expressed as grid bearings (Texas Coordinate System of 1983, Zone 4202, NAD 83 Datum), as determined by GPS observations, resulting in a bearing of North $89^{\circ}16'26''$ East, for the south right-of-way line line of Belmont Avenue.

(For SPRG use only)

Reviewed By: DBF

Date: 11-19-2012

SPRG NO: 2493

DANA BROWN
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 5336
 12750 MERIT DRIVE, SUITE 1000
 DALLAS, TEXAS 75251
 PH. 972-770-1300
 dana.brown@kimley-horn.com



Kimley-Horn
 and Associates, Inc.

12750 Merit Drive, Suite 1000
 Dallas, Texas 75251

Tel. No. (972) 770-1300
 Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	SRD	DAB	NOV. 2012	063362207	2 OF 2

**EXHIBIT B
COMMERCIAL ENTITY
ADDITIONAL LICENSE PROVISIONS**

28908

That this license is granted subject to the following additional conditions, terms and reservations:

- (a) That at such time as this license is terminated or canceled for any reason whatsoever, **GRANTEE**, upon orders issued by the City acting through the Director of Sustainable Development and Construction, or designee, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the licensed area, and shall restore the premises to its former condition in accordance with the requirements of the Director of Sustainable Development and Construction at the sole cost of **GRANTEE**. In the event, upon termination of this license, **GRANTEE** shall fail to remove its installations, improvements and appurtenances and to restore the licensed area in compliance with orders issued by City, or such work is not done to the satisfaction of the Director of Sustainable Development and Construction, then in either event the City shall have the right to do all work necessary to restore said area to its former condition or cause such work to be done, and to assess the cost of all such work against **GRANTEE**; in neither event shall the City of Dallas be liable to **GRANTEE** on account thereof.
- (b) It is further understood that if and when the City of Dallas, in the exercise of its discretion, shall determine that the grade of any street, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the licensed area, and/or any of **GRANTEE's** installations and improvements thereon, any modifications or changes to **GRANTEE's** facilities in the licensed area or in construction or reconstruction of any public improvement attributable to **GRANTEE's** use of the licensed area and/or its installations and improvements thereon, shall be made at the sole expense of **GRANTEE** and to the satisfaction of the Director of Sustainable Development and Construction.
- (c) At such time as this license is granted, it is agreed, and a condition hereof, that **GRANTEE** shall procure and keep in full force and effect **Commercial General Liability Insurance** coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City of Dallas and issued in the standard form approved by the Texas Department of Insurance. The insured provisions of this policy must name the City of Dallas as an additional insured protecting the City of Dallas against any and all claims for damages to persons or property as a result of or arising out of the use, operation and maintenance by **GRANTEE** of the licensed area and **GRANTEE's** installations, improvements, landscaping and equipment in connection therewith and located therein. The Commercial General Liability coverage must include, but not limited to, Premises/Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of not less than \$500,000 per occurrence and \$500,000 annual aggregate. This insurance shall also include coverage for underground, explosion and collapse hazards (i.e. not excluded). If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than

**EXHIBIT B
COMMERCIAL ENTITY
ADDITIONAL LICENSE PROVISIONS**

28988

twelve (12) months following termination of this license and removal of the installations, improvements and appurtenances and restoration of the licensed area pursuant to paragraph (a) above. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this license. The City of Dallas reserves the right to review the insurance requirements set forth herein during the effective term of the license and to adjust insurance coverages and their limits when deemed necessary and prudent by the City of Dallas' Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the City of Dallas.

1. **GRANTEE** agrees that with respect to the above required insurance, all insurance contracts and certificates of insurance will contain and state, in writing, that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to Department of Sustainable Development and Construction.
 2. **GRANTEE** shall carry said insurance at its expense and shall furnish the City of Dallas proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or **GRANTEE** fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Director of Sustainable Development and Construction, or designee, may terminate the license granted herein.
- (d) **GRANTEE** is prohibited from using the licensed area in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including without limitation, those related to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City of Dallas. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the licensed area due to **GRANTEE's** use and occupancy thereof, **GRANTEE**, at its expense, shall be obligated to clean up the licensed area to the satisfaction of the City of Dallas and any governmental body having jurisdiction thereover. The City of Dallas may, at its option, clean the licensed area. If the City of Dallas elects to do so, **GRANTEE** shall promptly pay to the City of Dallas the reasonable cost of such cleanup upon receipt of bills therefore. **GRANTEE** agrees that the indemnity provisions contained in paragraph (g) herein shall be fully applicable to the requirements of this paragraph, in event of **GRANTEE's** breach of this paragraph, or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the **GRANTEE's** use of the licensed area.
- (e) This license is subject to all State laws, the provisions of the Charter of the City of Dallas as it now exists, or may hereafter be adopted or amended, and the ordinances of the City of Dallas now in effect or those which may hereafter be passed or adopted. The City of Dallas shall have the right to increase or decrease the compensation to be charged for the use contemplated by this grant in

**EXHIBIT B
COMMERCIAL ENTITY
ADDITIONAL LICENSE PROVISIONS**

28988

accordance with the provisions of the Dallas City Code as it now exists, or as may hereafter be adopted or amended.

- (f) The Governing Body of the City of Dallas reserves the right, at any time without notice, to terminate and cancel this license, by resolution, upon a finding by the Governing Body that this license is inconsistent with the public use of the property or whenever the purpose or use of the license is likely to become a nuisance and all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. The decision of the Governing Body of the City in this matter shall be final and binding upon all parties insofar as the City's determination as to whether the **GRANTEE's** use of this license constitutes a nuisance or is inconsistent with the public use of the property.
- (g) As a condition hereof, **GRANTEE** agrees and is bound to the extent allowed by law to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for bodily injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the licensed area or **GRANTEE's** installations and improvements within the licensed area, from any act or omission of any representative, agent, customer and/or employee of **GRANTEE**, or by **GRANTEE's** breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of **GRANTEE**, its officers, agents, employees or contractors in the use, occupancy and maintenance of **GRANTEE's** installations and improvements within the licensed area; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City of Dallas, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the **GRANTEE** and the City of Dallas, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City of Dallas under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of **GRANTEE's** use of the licensed area or **GRANTEE's** improvements and equipment located thereon. In addition to the foregoing, **GRANTEE** covenants and agrees never to make a claim of any kind or character whatsoever against the City of Dallas for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility on the licensed area, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of

**EXHIBIT B
COMMERCIAL ENTITY
ADDITIONAL LICENSE PROVISIONS**

28988

whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

- (h) This license is subject to any existing utilities or communication facilities, including drainage, presently located within the licensed area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, and to any vested rights presently owned by an utility or communications company, public or private, for the use of the licensed area for facilities presently located within the boundaries of said licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the licensed area for communication and utility purposes, both public and private, including drainage, over, under, through, across and along the licensed area. No buildings shall be constructed or placed upon, over or across the licensed area in such a manner as to interfere with the operation of any utilities and communication facilities. All and any communication company and utility, both public and private, shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within the licensed area. All communication companies and utilities, both public and private, shall have the full right to remove and keep removed all parts of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance and efficiency of its respective system and shall at all times have the full right of ingress and egress to or from and upon the licensed area for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.