

MURAL EASEMENT AGREEMENT

STATE OF TEXAS

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KNOW ALL BY THESE PRESENTS:

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COUNTY OF WILLIAMSON

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This Mural Easement Agreement (this "Agreement") is made and entered into this ___ day of ___, 20___, (the "Effective Date") by and between the City of Georgetown (the "Grantee"), a Texas home-rule municipality, and _____, a _____ (the "Grantor"). Grantor and Grantee may each be referred to herein as a "Party" or collectively as the "Parties".

RECITALS

A. Grantee has adopted a program for the placement of art in and on public and private locations throughout the City of Georgetown.

B. Grantor is the owner of the real property legally described in Exhibit A, attached hereto and incorporated herein by reference ("the Property"). Grantor is willing to make a portion of the Property available to the City for the placement of public art. Said artwork is described or depicted in Exhibit B, attached hereto and incorporated herein by reference ("the Artwork"). The location Grantee seeks to place the Artwork is generally depicted on Exhibit C, attached hereto and incorporated herein by reference.

IN CONSIDERATION of the mutual promises and performances set forth below, the Parties agree as follows:

1. Grant of Easement. Grantor conveys, grants, and warrants to Grantee, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Artwork on and in the Property, including any building and structure thereon (the "Easement").

2. Term of Easement. The Easement shall be for a period of five (5) years from the date of execution of this Agreement. Unless terminated as provided in Section 3, below, the Easement shall automatically renew thereafter for additional terms of five (5) years each, and shall remain in full force and effect unless and until terminated.

3. Termination.

a) After the expiration of the initial five (5) year easement term, either Party may terminate the Easement upon thirty (30) days' written notice to the other. Grantee expressly agrees and warrants that upon such termination, Grantee shall remove the Artwork and the Property shall be restored to its prior condition, normal wear and tear excepted. Such removal shall occur within thirty (30) days of the termination of the Easement, unless extended in writing by the Grantor.

b) The Grantor may additionally terminate the Easement at any time at its sole discretion, upon thirty (30) days' written notice to Grantee, should Grantee fail to substantially perform Grantee's obligations under Section 4, below. Should the Grantor elect to exercise this right of termination, Grantee expressly agrees and warrants that the Artwork shall be removed and the Property restored to its prior condition, normal wear and tear excepted. Such removal shall occur within thirty (30) days of the termination of the Easement, unless this period is extended in writing by the Grantor.

4. Maintenance, Removal and Modification of Artwork. Grantee shall be responsible for maintaining and if necessary repairing the Artwork during the existence of the Easement. Grantee may remove the Artwork from the property if, in the sole judgment of Grantee, the Artwork is suffering excessive damage. If Grantee removes the Artwork from the property, Grantee shall restore the property to its original condition, normal wear and tear excepted. Grantor shall make no modifications to the Artwork. If maintenance of surface adjacent to the Artwork is necessary during the term of the Easement, Grantee shall be responsible for any such maintenance.

5. Grantor's Representations. Grantor shall not interfere with the appearance or artistic impression of the Artwork by placing obstructions on or in front of the Artwork, or by erecting structures adjacent to, above, or below the Artwork, or by undertaking other measures that would detract from enjoyment of the Artwork. In a major renovation of the building or emergency occur as it relates to the location of the Artwork during the term of the agreement, the Artwork may be removed as agreed upon by both parties.

6. Ownership of Artwork. Grantee retains all ownership rights to the Artwork as an artistic work, including marketing, copyright and exhibition rights. Grantor shall be entitled to include the Artwork in photographs, film or videotapes of the Property to the extent that the Property is an incidental part of advertising for a business conducted by Grantor or a tenant of Grantor in the building.

7. Right of Entry. Throughout the term of this easement or any extension thereof, Grantee shall have the right to enter the Property during normal business hours, and at all other times with advance approval of Grantor, for any and all of the purposes described in this Agreement.

8. Binding Effect. The Easement granted in this Agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and Grantee, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.

9. Indemnification. To the fullest extent permitted by law, Grantee shall indemnify, save and hold harmless Grantor, its officers, employees and agents from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property, including reasonable attorney fees, arising from the acts or omissions of Grantee, its officers, agents, employees, guests and business invitees caused or incurred by Grantee, its officers, agents, employees, guests or business invitees, and not caused by or arising out of the tortious

conduct of the Grantor or its officer, agents, employees, guests or business invitees.

10. Notice. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) upon three (3) calendar days after the date upon which such notice is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the respective address for Grantee and the Grantor:

If to the Grantor:

If to the Grantee:

City Manager
City of Georgetown
P.O. Box 400
Georgetown, Texas 78627

Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

11. Amendments. The Parties expressly reserve the right to modify this Agreement from time to time, by mutual agreement. No modification or amendment of the provisions of this Agreement shall be effective unless in writing and signed by authorized representatives of the Parties.

12. Remedies. The Parties acknowledge that breaches of this Agreement will result in substantial harm to the public interest, which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this Agreement shall be entitled to a) specific performance of the terms of this Agreement, and each of them; b) reasonable attorney's fees; and c) any other remedies available at law or in equity. The rights under this Agreement are cumulative. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

13. Recording. Grantee shall record this Agreement in executed, recordable format in the Official Public Records of Williamson County, Texas, at its sole expense.

14. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

15. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Agreement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement effective as of the dates set forth below.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF _____

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COUNTY OF _____

This instrument was acknowledged before me on this the _____ day of _____, 20____, by _____, _____ of _____.

Notary Public, State of Texas

SAMPLE FOR M

GRANTEE:

City of Georgetown, Texas, a Texas home-rule municipal corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS

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COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the _____ day of _____, 20____, by _____, _____ of City of Georgetown, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO FORM:

SAMPLE FOR M

_____, Assistant City Attorney

AFTER RECORDING, RETURN TO GRANTEE:

City of Georgetown
Attn: Real Estate Services
P.O. Box 409
Georgetown, Texas 78627