

MURAL EASEMENT AGREEMENT

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KNOW ALL MEN BY THESE PRESENTS:

This Mural Easement Agreement (this “Agreement”) is made and entered into this _____ day of _____, 2020 (the “Effective Date”) by and between the City of Georgetown (the “Grantee”), a Texas home-rule municipality, and MBGH Properties, LLC, a Texas Limited Liability Company, (the “Grantor”). Grantor and Grantee may each be referred to herein as a “Party” or collectively as the “Parties”.

RECITALS

A. The City of Georgetown 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 located at 702 E University Ave and legally described in **Exhibit A**, attached hereto and incorporated herein by reference (“the Property”). Grantor is willing to make a portion of said 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.

2. Term of Easement. This easement shall be for a period of five (5) years from the date of execution. 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) At 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 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. The Grantee may remove the Artwork from the property if, in the sole judgment of the City, the Artwork is suffering excessive damage. If the Grantee removes the Artwork from the property, the Grantee will 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, the Grantee shall be responsible for any such maintenance.

5. Grantor's Representations. Grantor not to interfere with the appearance or artistic impression of the Artwork by placing obstructions on or in front of it, by erecting structures adjacent to, above or below the Artwork or by undertaking other measures that would detract from enjoyment of the Artwork. If 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. City 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, films or videotapes of the Property to the extent that the Property is an incidental part of advertising for a business conducted by Owner or a tenant of Owner in the Building.

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

8. Binding Effect. The easement granted in this Easement Agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the Grantee, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property, excepting therefrom those conditions set forth in Section 3b above.

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 the City and the Owner:

If to the Grantor:

MBGH Properties, LLC.
Mark Bradley
702 E University Ave
Georgetown, Texas 78626

If to the Grantee:

City Manager
City of Georgetown
113 E 8th Street
Georgetown, Texas 78626

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 Easement Agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this Easement Agreement shall be effective unless in writing and signed by authorized representatives of the parties.

12. Remedies. The parties acknowledge that breaches of this Easement 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 Easement Agreement shall be entitled to a) specific performance of the terms of this Easement 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 Easement 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. The City 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 Easement Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Easement 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 Easement Agreement.

GRANTOR:

MBGH Properties, LLC., a Texas
Limited Liability Company

By: _____ Dated: _____
Garth A. Hinze, Manager of MBGH Properties
LLC, a Texas Limited Liability Company

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

BEFORE ME, a Notary Public, on this day personally appeared, Garth A. Hinze, as Manager of MBGH Properties LLC, a Texas Limited Liability Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this _____ day of _____, 20____.

Notary Public in and for the State of Texas

ACCEPTED:
City of Georgetown, Grantee

Dale Ross, Mayor

Dated: _____

ATTEST:

Robyn Densmore, City Secretary

Dated: _____

APPROVED AS TO FORM:

Dated: _____

_____, Assistant City Attorney

Consent and Subordination by Lienholder

Commercial Bank of Texas, N.A., of 215 East Main St., Nacogdoches, Nacogdoches County, Texas 75961("Lienholder"), as the holder of [a] lien[s] on the Property subject to the Easement, consents to the above grant of an Easement, including the terms and conditions of the grant, and Lienholder subordinates its lien[s] to the rights and interests of Grantee, so that a foreclosure of the lien[s] will not extinguish the rights and interests of Grantee.

Commercial Bank of Texas, N.A., Lienholder

By_____

Name: Raymond H. Rust, III

Title: Trustee

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared Raymond H. Rust, III, known to me to be the person whose name is subscribe to the foregoing instrument, and acknowledged to me that he executed the same as Trustee, on behalf of Commercial Bank of Texas, N.A.

GIVEN UNDER MY HAND AND SEAL of office this _____ day of _____, 20____.

Notary Public in and for the State of _____

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EXHIBIT A

Being 0.36 of an acre of land out of Block No. 1 of Snyder's Addition to the City of Georgetown recorded in Volume 67, Page 502 of the Plat records of Williamson County, Texas and being those tracts described in Exhibit "H" and "B" in that instrument to The Steenken Family Partnership as recorded in Volume 1853, Page 421 of the Official Records of Williamson County Texas, as surveyed on the ground March 19, 2018 by Texas Land Surveying, Inc. and further described by metes and bounds as follows:

BEGINNING at ½ inch iron rod found in the south line of East University Avenue, also known as State Highway No. 29, the north line of said block 1 for the northwest corner of that tract J.M. Daniel Trustee of the J.M. Daniel Living Trust recorded in Document No. 2012068906 of the Official Public Records of Williamson County, Texas, being the northeast corner of said Steenken Family Partnership Exhibit "B: tract and this tract, from which a ½ inch iron rod found for the northeast corner of said Daniel Trust tract bears N 87° 43' 48" E 59.94 feet;

THENCE, S 01° 58' 53" E at 120.2 feet pass a ½ inch iron rod found for the southwest corner of said Daniel Trust tract, the northwest corner of that tract to Craig s. Crossman and Emily J. Crow recorded in Document No. 2017035390 of said official public records continuing 130.00 feet in all to a ½ inch iron rod with a pink stamp TLS INC set in the west line of said Crossman/Crow tract for the northeast corner of that tract described in Exhibit "J" of that same Steenken Family Partnership tract in Volume 1853, Page 421, for the southeast corner of said Steenken Family Partnership Exhibit "B" tract and this tract;

THENCE, S 88° 28' 47" W 120.78 feet with the north line of said Steenken Family Partnership Exhibit "J" tract to a ½ inch iron rod with a pink cap stamped TLS INC set in the east line of Walnut Street, the west line of said Block 1, for the northwest corner of said Steenken Family Partnership Exhibit "J: tract being the southwest corner of that tract described in Exhibit "H: in that same instrument to The Steenken Family Partnership in Volume 1853, Page 421, and this tract, from which a 60D nail found for the southwest corner of said block and said Steenken Family Partnership Exhibit "J" tract bears S 01° 38' 09" E 110.00 feet;

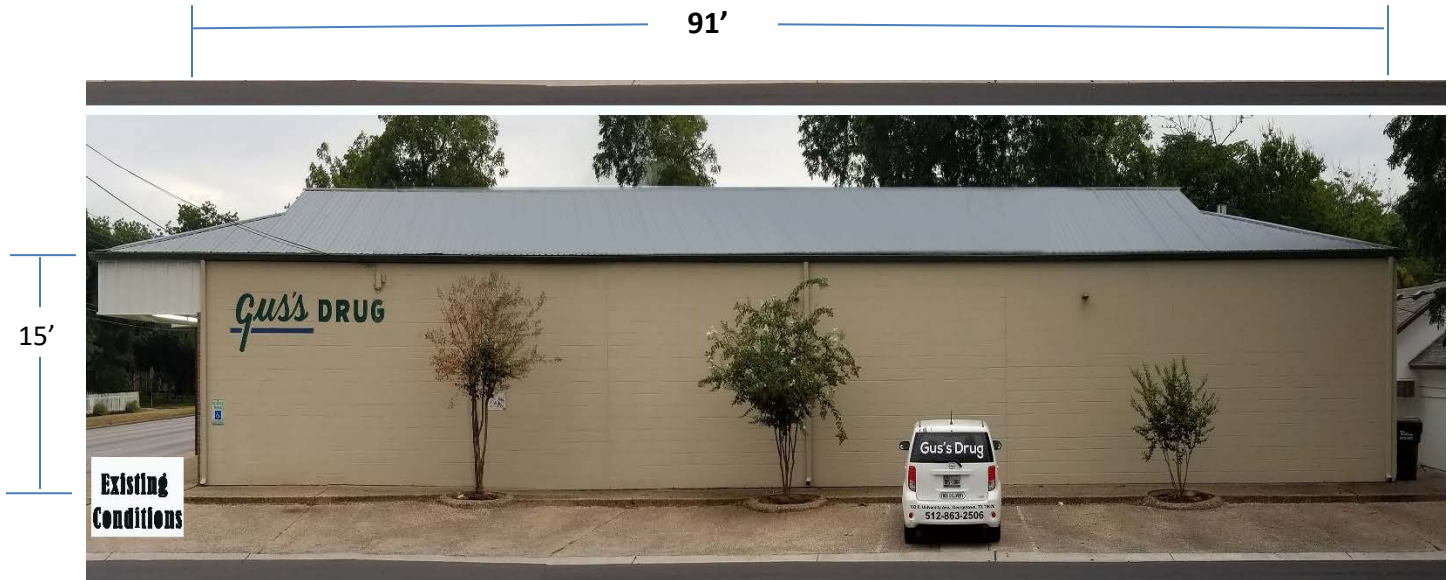
THENCE, N 88° 28' 54" E 120.00 feet with the south line of University Avenue to the point of BEGINNING and containing 0.36 of an acre more or less.

EXHIBIT B



EXHIBIT C

Mural at 702 E. University Ave., Georgetown, Texas 78626



Cinder Block Exterior West