

AFTER RECORDING, RETURN TO:

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

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into on this 16th day of February, 2016 (“Effective Date”), by and between **DORMAN DAVID ERNST REVOCABLE LIVING TRUST** (“Owner”) and the **City of McKinney, Texas**, a Texas municipal corporation (“City”). Owner and the City may collectively be referred to herein as “parties,” or, individually, as a “party.”

RECITALS:

WHEREAS, the City has adopted a program for the placement of art in and on public and private locations throughout the City of McKinney. The McKinney Arts Commission (“Arts Commission”) administers the City’s art program; and

WHEREAS, Owner is the owner of the real property legally described in Exhibit A, attached hereto and incorporated herein, and is willing to grant to the City, subject to and in accordance with the terms, conditions, covenants, and provisions of this Agreement, a license to make said property available to the City for the placement of public art, as that term is used in the McKinney Code of Ordinances, Subpart A., Chapter 2, Article VI, Division 2, “Arts Commission” (hereinafter, “Artwork”). Said Artwork is described in Exhibit B, attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License. Owner conveys, grants and warrants to the City, its successors and assigns, a non-transferable license for the purpose of installing, maintaining, operating and exhibiting the Artwork described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“Property”). The location of the Artwork shall be as approved by the Arts Commission.
2. Initial Term of License; Renewal. This license shall be for an initial period of ten (10) years from the Effective Date (“Initial Term”). The license shall automatically renew thereafter for individual, consecutive, one-year terms, and shall remain in full force and effect unless and until terminated as provided in section 3, below.

3. Termination.

- a) At the expiration of the Initial Term, the license may be terminated by either party upon 30 days written notice to the other party, subject to the provisions of section 3(b), below. The Artwork shall be removed and the Property restored to its prior condition in accordance with the provisions of section 4, below.
- b) The license may be terminated by Owner with the City's written consent after the Initial Term expires upon Owner's showing of any of the following:
 - i) the Property is to be sold and the buyer requires removal of the license as a condition of the purchase and sale; or
 - ii) the Property is to be refinanced and the lender requires removal of the license as a condition of the refinancing; or
 - iii) the Property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Artwork; or
 - iv) circumstances have materially changed and the continued existence of the license or maintenance of the Artwork substantially impedes Owner's reasonable use and enjoyment of the Property.

The City shall not unreasonably withhold consent to termination upon Owner's satisfactory demonstration of any of the foregoing conditions of termination.

4. Maintenance, Repair and Removal of Artwork; Cost.

- a) The City shall be responsible, at its cost, for maintaining and if necessary repairing the Artwork described in Exhibit B during the existence of the license term or terms. The City may remove the Artwork from the Property during this period if, in the sole judgment of the City, the Artwork is being damaged or requires significant repair. If the City removes the Artwork from the Property before the license term expires, the City, at its cost, will restore the Property to its prior condition.
- b) The City and Owner agree that upon termination of the license by either party, the Artwork shall be removed by the terminating party and the Property restored, at the terminating party's cost, to its prior condition. Such removal shall occur within 30 days of the termination of the license, unless this period is extended in writing by the City. If the

license term expires and is not terminated by either party, the City, at its cost, will remove the Artwork and will restore the Property to its prior condition.

- c) The City will not be responsible for the cost of removal of the Artwork or the subsequent restoration of the Property if either the removal or restoration is effectuated by some party other than the City, including Owner; however, the City may elect to pay for removal or restoration costs under such circumstances if the City agrees to do so, in writing, before the removal or restoration is undertaken.
5. Release of Claims. The City is released from any and all claims by Owner for any damage or loss in value that may occur to the Artwork or the Property that is not directly caused by the City's actions in maintaining, restoring, or removing the Artwork, as described in sections 3 and 4, above.
6. Notice of Demolition; Permission by City. Owner shall not demolish, or cause or assist to be demolished, the building or structure on the Property on which the Artwork is placed without notifying the City 60 days before such demolition is to occur and without securing the City's written permission for the demolition, which permission shall not be unreasonably withheld, subject to the same considerations set forth in section 3(b), above.
7. Right of Entry. The City shall have the right to enter the Property during normal business hours, and at all other times with advance approval of Owner, for any and all of the purposes described in this Agreement.
8. Binding Effect. The license granted in this Agreement shall run with the land and shall be binding upon and inure to the benefit of Owner and the City, their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the Property.
9. Contractual Relationships; Assignment. This Agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other party or to bind the other in any manner whatsoever. The parties shall not assign this Agreement without the prior written consent of the other.

10. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of McKinney
City of McKinney
McKinney Arts Commission
PO Box 517
McKinney, TX 75070

Owner (name and mailing address)
Dorman David Ernst Trust
c/o Paula Dorman, Trustee
1408 Steepleview Ln.
McKinney, TX 75069

AND

Office of the City Attorney
Brown & Hofmeister, LLP
740 E. Campbell Road, Suite 800
Richardson, Texas 75081

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 effect 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) liquidated damages in an amount of \$2,500 per material breach; b) specific performance of the terms of this Agreement, and each of them; c) reasonable attorney's fees; and d) 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. 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.
14. 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.

15. Governing Law; Venue. This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Texas. Venue shall lie in Collin County, Texas.
16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In witness whereof, the parties hereto have set their hands by their duly authorized representatives effective on the day and year first written above.

CITY:

CITY OF MCKINNEY, TEXAS

By: _____
TOM MUEHLENBECK
Interim City Manager

STATE OF TEXAS
COUNTY OF COLLIN

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared TOM MUEHLENBECK, Interim City Manager of the CITY OF MCKINNEY, a Texas municipal corporation, on behalf of said municipal corporation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

Notary Public in and for State of Texas

My Commission Expires:

OWNER:

Dorman David Ernst Revocable Living Trust
Paula Faye Dorman Co. Trustees

Dorman David Ernst Revocable Living Trust
Trust
c/o Paula Dorman, Trustee
1408 Steeplechase Ln.
McKinney, TX. 75069

Printed Name: Paula Dorman
Title: Trustee

STATE OF TEXAS
COUNTY OF COLLIN

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared Paula Dorman, Trustee Dorman David Ernst Revocable Living Trust, on behalf of said Grantor, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

Notary Public in and for State of Texas

My Commission Expires:

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
Office of the City Attorney

Exhibit A

Legal Description of Property

112 S. Kentucky

McKinney, TX 75069

McKinney Original Donation, Blk 4, Lot 29c

Exhibit B

Artwork

