

AFTER RECORDING, RETURN TO:

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

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“License”) is entered into on this ____ day of _____, 2019 (“Effective Date”), by and between **Pecan Grove Memorial Park, Inc.**, doing business as Pecan Grove Cemetery, a Texas corporation and cemetery association (“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 Council of the City has adopted a Public Art Program for the placement of art in and on public and private locations throughout the City on December 6, 2011; and

WHEREAS, the City’s Arts Commission (“McKinney Arts Commission” or “Arts Commission”) administers the Public Art Program; and

WHEREAS, the City Council of the City adopted the City of McKinney Public Art Master Plan and Guidelines on April 2, 2013; and

WHEREAS, Owner owns the historic Pecan Grove Cemetery that dates back to its opening in 1870 (the “Cemetery”); and

WHEREAS, Owner is also the owner of the real property situated within the Cemetery (“Property”) that is legally described in Exhibit A, attached hereto and incorporated herein by reference, 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 use said Property for the placement of certain “public art,” as that term is used in the City of McKinney Public Art Master Plan and Guidelines, (the “Artwork”); and

WHEREAS, Owner has sponsored a program entitled “Art Without Walls” on the second Sunday of each month that encouraged the public to paint, draw or photograph the images at the Cemetery; and

WHEREAS, said Artwork is a memorial to Jeff Hull who was very involved in and dedicated to the City’s public art program and the Art Without Walls program, and includes an original outdoor cast-bronze sculpture bench that is more particularly described in Exhibit B, attached hereto and incorporated herein for all purposes; and

WHEREAS, the Arts Commission recommended that the City enter into this License with Owner in furtherance of the City's public art program; and

WHEREAS, the City Council of the City finds it to be in the best interest of the citizens of the City of McKinney, Texas, to enter into this License.

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 hereby 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. The specific location and placement of the Artwork shall be as approved by the Arts Commission.
2. Initial Term of License; Renewal. This License shall be effective for a period of five (5) years from the Effective Date ("Term"). The License shall expire on October 1, 2025 and shall remain in full force and effect unless and until terminated as provided in section 3, below.
3. Termination.
 - a) On October 1, 2025, the License shall be terminated by the City and the Artwork de-commissioned; and, provided that Owner has properly maintained and repaired the Artwork as necessary and is not then in default under this License the Artwork will be conveyed to Owner in exchange for the amount of One Dollar (\$1.00) and other good and valuable consideration.
 - b) The License may be terminated by Owner with the City's written consent before the completion of the Term upon Owner's showing to City of any one or more of the following:
 - i) the Property is to be sold or transferred and the buyer requires termination of the License as a condition of the purchase and sale; or
 - ii) the Property is to be refinanced and the lender requires termination 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.

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

4. Maintenance, Repair, and Removal of Artwork; Cost.
 - a) Owner shall be responsible, at its sole cost, for maintaining, and if necessary, repairing the Artwork during the term of this Agreement. The City may remove the Artwork from the Property during the Term of this License 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 this Agreement expires, the City, at its cost, will restore the Property as close as is possible to its prior condition. The City's obligations under this paragraph shall be subject to the availability of funds.
 - b) The City will not be responsible for the cost of removing the Artwork from the Property 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 such removal or restoration is undertaken.
5. Release of Claims. Owner hereby releases the City from any and all claims Owner might have against the City, now and in the future, 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 negligent acts or omissions or wrongful intentional conduct 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 or within which the Artwork is placed without notifying the City at least sixty (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 by 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 make or constitute either party as the agent or legal representative of the other party for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility for or on behalf of the other party or to bind the other party in any manner whatsoever. The parties shall not assign this Agreement without the prior written consent of the other party.
10. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of McKinney

City of McKinney
 Attn: City Manager's Office
 PO Box 517
 McKinney, TX 75070

Owner (name and mailing address)

Cameron Chandler, President
 Pecan Grove Memorial Park
 2803 Stonepointe
 McKinney, TX 75070
 Phone: 972.489.5082
 cfchandler@tx.rr.com

With a copy to:

McKinney Arts Commission
 PO Box 517
 McKinney, TX 75070

AND with a copy to:

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 cause 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 any action for the breach of this License shall be entitled to a) liquidated damages in an amount of \$2,500 per material breach; b) specific performance of the terms of this License, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The rights under this License are

cumulative. The failure of either party to exercise on any occasion any right under this License shall not operate to forfeit the right of such party to exercise its rights on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another remedy.

13. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this License or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this License 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 License.
15. Governing Law; Venue. This License shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Texas. Exclusive venue shall lie in Collin County, Texas.
16. Counterparts. This License 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.

**Pecan Grove Memorial Park,
Inc.**, doing business as Pecan
Grove Cemetery, a Texas
corporation and cemetery
association

By: _____
CAMERON CHANDLER
President

CITY OF MCKINNEY, TEXAS, a Texas
municipal corporation

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

Empress Drane
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
Office of the City Attorney

STATE OF TEXAS
COUNTY OF COLLIN

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared PAUL G. GRIMES, City Manager of the City of McKinney, a Texas municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on the City's behalf.

Notary Public in and for State of Texas

My Commission Expires:

STATE OF TEXAS
COUNTY OF COLLIN

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared CAMERON CHANDLER, President of Pecan Grove Memorial Park, Inc., doing business as Pecan Grove Cemetery, a Texas cemetery association, on behalf of said corporation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

Notary Public in and for State of Texas

My Commission Expires:

Exhibit A

Legal Description of Property

Abs A0558 S Mcfarland Survey, Tract 73, 49.0055 Acres

Exhibit B

Memorial Sculpture Bench

