

LICENSE TO ENCROACH AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This is a license agreement for the use of certain right-of-way (Exhibit A) for a 0.223 acre tract of Building Block BLK 4 W Water ST, also known as 910 and 912 Water Street, Bastrop, TX 78602, encroachments of Galleries is allowed in the Place type Five zoning designation (Exhibit B) between the City of Bastrop, acting by and through its Public Works Director (hereinafter “City”) and Howard Designs Limited, LLC., (hereinafter “Licensee”). Collectively, City and Licensee will be referred to as the “Parties.”

RECITALS

The Parties acknowledge and agree on the following:

1. City is the owner of the public right-of-way as described on Exhibit A (“the Property”).
2. The encroachment is located adjacent to the parcel on which Licensee conducts activities.
3. It is in the best interests of City and the utility to have access to the existing and future infrastructure while allowing for encroachment of private property into the right-of-way.
4. The City finds that there are negligible negative impacts from this Agreement will have on the public’s use of the right-of-way for the allowed encroachments.
5. This Agreement is supported by full and adequate consideration.

TERMS OF THE AGREEMENT

In consideration of the recitals and mutual covenants and agreements contained in this Agreement, the Parties agree to the following terms:

ARTICLE 1

PREMISES AND PRIVILEGES

For and in consideration of the terms, conditions, and covenants of this Agreement to be performed by Licensee, all of which Licensee accepts, City authorizes and permits Licensee to have the non-exclusive use of the right-of-way for the encroachment as shown in Exhibit B. The herein described privileges are transferable and shall convey with the sale of the property for the term of the agreement described in Article 2. Licensee accepts the condition of the Property as is, where is, in its condition as of the effective date of this Agreement with no expectation that City will incur any expense in connection with the Property.

ARTICLE 2

TERM

The term of this Agreement shall be for a period of one year, beginning on the effective date of this Agreement. Unless and until the Agreement is terminated, this Agreement will renew itself automatically on each anniversary of the Agreement for an additional one-year term.

A. The City may terminate this agreement without cause.

ARTICLE 3

OBLIGATIONS OF LICENSEE

In addition to any other obligations imposed by this Agreement, Licensee accepts and will perform the following obligations:

1. Licensee shall not deny access to utility or tele-communication providers.
2. Licensee shall neither construct nor permit any buildings, structures or improvements other than those listed in this agreement without approval of the city of Bastrop in writing.
3. Licensee shall maintain the Property that is encroaching or remove if not maintained.
4. Licensee agrees all future work within the right-of-way will require a request in through the permit process, and approval by the Public Works Director
5. Licensee acknowledges that City may desire to repair, repave or otherwise improve the right-of-way. In this event, Licensee shall allow the City access for such period of time as is necessary. The City also retains the right to access the property for all other rights incidental to and necessary in connection with any utility lines or facilities which may be located on or under the Property.

ARTICLE 4

NOT A CONVEYANCE OF REAL PROPERTY INTEREST

The Parties agree and acknowledge that this Agreement is not a conveyance or transfer of any tenancy, leasehold, or ownership interest of any kind in the Right-of-Way.

ARTICLE 5

NO LIABILITY FOR CITY

The Parties agree that City shall have no liability for any losses or damages, direct or consequential, resulting from the loss of any things on the Property, real or personal, whether by theft, vandalism, negligence, act of God, or other event or occurrence.

ARTICLE 6

NO ASSIGNMENT

Licensee shall not assign this Agreement without the prior written consent of the City.

ARTICLE 7

TERMINATION

This Agreement shall terminate upon the occurrence of any of the following:

1. Either the City or the Licensee may terminate this Agreement without cause by submitting 30 (thirty) days written notice of such to the other Party.
2. Licensee defaults in the performance of its obligations under this Agreement, if such default continues for a period of ten (10) days after written notice to Licensee by City of the default.

Upon termination of this Agreement, Licensee shall remove all things placed within the right-of-way by Licensee or its agents, servants, or employees. Licensee shall restore the right-of-way as nearly as practical to its condition prior to the initial execution of this Agreement.

The failure of City to declare this Agreement in default shall not operate to bar or waive the right of City to terminate this Agreement because of any subsequent violation of the Agreement.

ARTICLE 8

MISCELLANEOUS GENERAL PROVISIONS

- A. Attorney's Fees. In any action brought for the enforcement of the obligations in this Agreement, the prevailing party shall be entitled to recover interest and reasonable attorney's fees.
- B. Misrepresentation. All terms and conditions with respect to this Agreement are expressly contained in this document. Licensee agrees that no representative or agent of the City has made any representation or promise with respect to this Agreement not expressly contained in the Agreement.
- C. Paragraph Headings. The paragraph headings are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
- D. Notices. Notices that are sent pursuant to any provision of this Agreement, at a minimum, shall be sent to the following:

City:

The City of Bastrop
ATTN: City Secretary
1311 Chestnut Street
Bastrop, TX 78602

Licensee:
Howard Designs Limited, LLC.
405 S. Jackson Street
Bastrop, TX 78602

- E. Choice of Law and Venue. This Agreement is made and entered into by the Parties in Bastrop, Bastrop County, Texas, and is intended to be performed in Bastrop. This Agreement shall be construed in accordance with the laws of the State of Texas and the venue of any suits arising from this Agreement shall be Bastrop County, Texas.

- F. Entire Agreement Amendment: This Agreement including all exhibits constitutes the full and entire understanding and agreement between the Parties and supersedes any prior or contemporaneous written or oral agreements between the Parties. This Agreement may not be amended except by a written instrument signed by both Parties.
- G. Rights and Remedies Cumulative: The rights and remedies provided by this Agreement are cumulative; and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided in this Agreement are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.
- H. Agreement Approval: Each Party represents and warrants that all necessary approvals for this Agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this Agreement on behalf of the Parties indicated.
- I. Originals: This Agreement may be executed in multiple or duplicate originals. A duplicate original or copy of this Agreement is as fully enforceable as an Original, whether the document is “hard copy” or electronic. This Agreement may be signed and a pdf copy of the document transmitted electronically which shall then constitute an original signature on the document.
- J. Effective Date: The effective date of this Agreement shall be on the date last signed by a Party.

SIGNATURE PAGE TO FOLLOW.

AGREED:

City of Bastrop, Texas

By: _____ Date: _____
Curtis Hancock, Public Works Director

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on this the ____ day of _____, 20____, by _____, the _____ and the duly authorized representative of the City of Bastrop.

Notary Public, State of Texas

My Commission Expires: _____

AGREED:

By: _____
 Jamie Howard

Date: _____

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This instrument was acknowledged before me on this the ____ day of _____, 20____, by _____, the _____ and the duly authorized representative of the City of Bastrop.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021

Notary Public, State of Texas

My Commission Expires: _____