

LICENSE AGREEMENT

This LICENSE AGREEMENT (“Agreement”) is made and entered into by and between Hanalei Texas, LLC, Colton Tapp, President (“Licensor”), and the CITY OF WYLIE, TEXAS, a home-rule municipality (“Licensee”), on the terms and conditions set forth herein. Licensor and Licensee are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, Licensor is the owner of that certain tract of land located at 104 S. BALLARD BLOCK 4, LOT 3 KELLER’S ADDITION NORTH-FACING EXTERIOR WALL (“Licensed Property”); and

WHEREAS, Licensee desires to enter onto and use the Licensed Property for those uses described in Exhibit A, attached hereto and incorporated herein for all purposes (“Permitted Uses”); and

WHEREAS, Licensor agrees to grant Licensee a non-exclusive license for the purpose of entering onto and using the Licensed Property for the Permitted Uses on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Licensor and Licensee agree as follows:

ARTICLE 1 - LICENSE

1.1 **Grant of License.** Licensor hereby grants Licensee a temporary, non-exclusive license for the Permitted Uses on the Property during the Term (hereinafter defined) of this Agreement. Licensee’s right to enter on and use the Licensed Property shall be limited to the Permitted Uses.

1.2 **Non-Exclusive License.** This License is non-exclusive and is subject to (a) any existing utility, drainage, communication or other public facility located in, on or under the Licensed Property owned by Licensor or any utility or communication company, public or private; and (b) any existing lease, license or other interest in the Licensed Property granted by Licensor to any individual, corporation or other entity, public or private.

1.3 **Consideration.** In exchange for the rights granted herein, Licensee shall cause a mural to be painted and installed on the northern exterior of the building located on the Licensed Property. The parties agree that Licensee has the sole right, but not any obligation of any kind, to perform maintenance of the mural, to perform any work after the initial completion of the mural and/or to remove the mural upon the termination or expiration of this Agreement. Licensor agrees that Licensee shall have sole discretion over all aspects of the mural and the work related thereto, including the design, painting, completion, maintenance and removal thereof.

ARTICLE 2 – MAINTENANCE

2.1 **Maintenance.** Licensee shall use reasonable care during the use of the Licensed Property to avoid damaging any existing improvements, equipment and vegetation on or about the Licensed Property and any adjacent property owned by or under the control of Licensor, except as expressly provided herein.

2.2 **No Alterations.** Licensee shall not make, nor allow to be made, any alterations of any kind to the Licensed Property, except as provided herein and except as otherwise approved in writing by Licensor. Licensee shall not injure or damage in any manner the Licensed Property and shall not cause or permit anything to be done whereby the Licensed Property shall be in any manner injured or damaged.

ARTICLE 3 – TERM AND TERMINATION

3.1 **Term.** Licensee’s right to enter onto and use the Licensed Property under this Agreement shall commence on the Effective Date (hereinafter defined) and shall expire ten (10) years thereafter (“Term”), at which time this Agreement shall terminate, unless terminated earlier as provided herein.

3.2 **Termination on Default.** Notwithstanding the foregoing, Licensor shall have the right to terminate this Agreement if Licensee fails to perform its obligations under this Agreement by providing thirty (30) days written notice of termination and an opportunity to cure any such default.

3.3 **Condition on Termination.** On termination of this Agreement, Licensee shall surrender the Licensed Property to Licensor.

ARTICLE 4 – NOTICE

4.1 **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee’s receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or to any courier service that provides a return receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective on receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Licensee, addressed to it at:

Chris Holsted, City Manager
Carole Ehrlich, Public Arts Coordinator
City of Wylie
300 Country Club Road, Bldg. 100
Wylie, Texas 75098

If to Licensor, addressed to it at:

Hanalei Texas, LLC

Attn: Colton Tapp
2250 Sachse Road
Wylie, TX 75098
Telephone: _____
Email: _____

ARTICLE 5 – MISCELLANEOUS PROVISIONS

5.1 **Relationship of Parties.** The parties do not intend that this Agreement be construed as creating a principal and agent relationship, partnership, joint venture or any association between the parties, it being understood and agreed that none of the provisions contained herein or any acts of the parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the parties other than the relationship of licensor and licensee. It is understood and agreed that this Agreement does not appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

5.2 **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

5.3 **Governing Law; Venue.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

5.4 **Consideration.** This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

5.5 **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail signature will also be deemed to constitute an original if properly executed.

5.6 **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined) of this Agreement.

5.7 **Savings/Severability.** In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder

of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

5.8 **Representations**. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

5.9 **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

5.10 **Waiver**. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

5.11 **Immunity**. The parties acknowledge and agree that, in executing and performing this Agreement, Licensee has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

5.12 **Miscellaneous Drafting Provisions**. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

LICENSEE:
CITY OF WYLIE, TEXAS,
a Texas home-rule municipality

By: _____
Chris Holsted, City Manager
Date: _____

LICENSOR:
By: _____
Printed Name: Colton Tapp
Title President-Hanalei Texas, LLC
Date: _____

EXHIBIT A
Permitted Uses

Painting, fabrication, installation and maintenance of a painted mural and all necessary appurtenances thereto and placement and use of equipment, tools, labor and related uses in connection therewith.