**PUBLIC ART EASEMENT AGREEMENT**

**Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security Number or your Driver’s License Number.**

STATE OF TEXAS §

 § KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MCLENNAN §

**Date:**

**Grantor:**

**Grantor's Mailing Address:**

**Grantee:**

**Grantee's Mailing Address:**

**Easement Property:** Being a portion of [surveyor description] and being more particularly described in the field notes and shown on the survey plat/drawing attached as Exhibit A.

**Public Art:** [title & description of art]

**Easement Duration:** The initial term of the Easement is for five years (“Initial Term”). The Easement automatically renews for one year terms after the Initial Term. After the Initial Term, either party may terminate the Easement with six months’ notice to the other party. The Easement shall automatically terminate and revert to Grantor, free and clear of any right, title or interest in Grantee, at such time as the Public Art is no longer intended by the Grantee to be permanently located on the Easement.

**Easement Purpose:** To locate, establish, construct, lay, install, use, maintain, inspect, protect, repair, restore, renew, reconstruct, replace, substitute, change, alter, convert, relocate, and exhibit within the Easement Property for the use and enjoyment of the public, and removing therefrom Public Art on, in, over, through and across the Easement Property. The Easement is exclusive. The public shall have the right of ingress and egress to and from Easement Property and to and from the Easement for the purpose of viewing and appreciating the Public Art.

**Consideration:** The sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor. The consideration recited herein shall constitute payment in full for all damages, including costs, sustained by Grantor resulting from the Easement and installation of the Public Art referred to herein.

**Grant of Easement:** Grantor, for the Consideration, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement in, over, under, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. This Easement shall constitute a conveyance and covenant running with the land for the benefit of Grantee, its successors and assigns.

Grantor covenants that s/he/it is the owner of the above-described land and that said land is free and clear from all encumbrances and liens, except for a lien with First National Bank of Central Texas (“Lienholder”). Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claims the Easement or any part of the Easement.

Grantee shall have such other rights as are necessary for the full enjoyment and use of the rights herein granted, including without limitation, to trim or remove trees, shrubbery, or undergrowth within, but not limited to, said Easement area, to the extent in the sole judgment of Grantee, as may be necessary to prevent possible interference with the construction, maintenance, inspection, operation, protection, use, repair, alteration, replacement, upgrading, relocation, or removal of the Public Art.

Grantor shall not make changes in grade, elevation, or contour of the land within the Easement area as described above without prior written consent of Grantee. The installation, construction, operation, use, maintenance, repair, modification, upgrade or replacement of any structure, fence, building, retaining wall, detention or water quality control, rainwater harvesting system, tree, or other similar improvement in the Easement Property must be approved in writing in advance by the City.

**Secondary Easement:** Grantee has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to maintain the Public Art within the Easement Property that is reasonably suited for the Easement Purpose. However, Grantee must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

**Grantee Withholding of Certain Taxes.**  The Internal Revenue Code provides that a Grantee of a real property interest in the United States must withhold tax if the Grantor is a foreign person. Grantor hereby certifies under oath and subject to penalties of perjury that such Grantor is not a foreign person, foreign corporation, foreign trust or foreign estate, for purposes of Internal Revenue Code compliance.

**Right of Assignment.**  The Parties shall not assign this Easement without the prior written consent of the other.

**Binding Effect**. The terms and conditions hereof shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.

**Entire Agreement.** Subject to the terms hereof, Grantee shall have all other rights and benefits necessary or useful for the full and complete enjoyment and use of the Easement for the purposes stated herein. This document fully sets forth the terms and conditions mutually agreed to by the parties and there are no other oral or written agreements between the Grantor and Grantee which modify, alter or amend this Easement.

**No Agency Created.** This Easement 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 or to bind the other in any manner whatsoever.

**Authority.** Each party covenants with the other that it has full power and authority to enter into and perform its obligations under this Easement and the persons executing it on their behalf are duly authorized to do so by all requisite action.

**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.

**Severability.** If any provision of this Easement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

**Notice.** All notices, requests, demands, and other communications that are required or permitted to be given under this Easement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

 Grantee: [Name] Assistant City Manager

 P.O. Box 2570

Waco, TX 76702-2570

 Grantor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_

**No Waiver of Immunity**. Nothing herein shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by Grantee as to any claim of any third party.

**Applicable Laws.** The laws of the State of Texas shall govern this Easement and the relationship created hereby. Venue for such action shall lie in a court of competent jurisdiction in McLennan County, Texas.

**Governmental Powers.** It is understood that by execution of this Easement, City does not waive or surrender any of its governmental powers.

TO HAVE AND TO HOLD the Easement together with all and singular the privileges and appurtenances thereto in anywise belonging unto Grantor, its successors and assigns. Grantor does hereby bind Grantor, Grantor’s heirs, successors and assigns to warrant and forever defend, all and singular, unless earlier terminated in accordance with the provisions herein, the Easement unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED to be effective on this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name]

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City Manager

ACKNOWLEDGEMENT

STATE OF TEXAS §

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COUNTY OF MCLENNAN §

 BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, known to me to be the person or officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as the act and deed of Roosevelt Tower LLC, for the purpose and consideration herein expressed and in the capacity therein stated.

 GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2019.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public in and for the State of Texas

STATE OF TEXAS §

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COUNTY OF MCLENNAN §

 BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the City of Waco, a municipal corporation of McLennan County, Texas, for the purpose and consideration therein expressed and in the capacity therein stated.

 GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2019.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public in and for the State of Texas

**CONSENT AND SUBORDINATION BY LIENHOLDER**

First National Bank of Central Texas (“Lienholder”), as the holder of a lien on the property upon which the Easement is granted, consents to the above grant of the Easement, including the terms and conditions of the grant, and Lienholder subordinates its lien to the rights and interests of Grantee, so that a foreclosure of the lien will not extinguish Grantee’s rights and interests.

*Signature*

Print Name:

Print Title: First National Bank of Central Texas

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**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_ §**

This instrument was acknowledged before me on the day of , 20\_\_\_\_, by .

Notary Public in and for the State of Texas

After recording, return to:

City Secretary

P.O. Box 2570

Waco, Texas 76702-2570