MURAL EASEMENT AGREEMENT

STATE OF TEXAS	**§**	
COUNTY OF TRAVIS	**§**	**KNOW ALL MEN BY THESE PRESENTS:**
CITY OF PFLUGERVILLE	**§**	

This Mural Easement Agreement (this "Agreement") is made and entered into this _____day of _____, 202____ (the "Effective Date") by and between the City of Pflugerville (the "Grantee"), a Texas home-rule municipality, and Two Brews Holdings LLC (the "Grantor"). Grantor and Grantee may each be referred to herein as a "Party" or collectively as the "Parties".

RECITALS

A. The City of Pflugerville has adopted a program for the placement of art in and on public and private locations throughout the City of Pflugerville.

B. Grantor is the owner of the real property located at and legally described and depicted in Exhibit A, attached hereto and incorporated herein by reference (the "Property"). Grantor is willing to make a portion of the Property available to the Grantee for the placement of public art. Said artwork is described or depicted in Exhibit B, attached hereto and incorporated herein by reference (the "Artwork"). The location Grantee seeks to place the Artwork is generally depicted on Exhibit C, attached hereto and incorporated herein by reference (the "Artwork Location").

IN CONSIDERATION of the mutual promises and performances set forth herein, the Parties agree as follows:

1. Grant of Easement; Use. Grantor conveys, grants and warrants to Grantee, its successors and assigns, a non-exclusive Easement (the "Easement") for the purpose of installing, maintaining, and exhibiting the Artwork at the Artwork Location, including any building and structure as indicated on Exhibit C (the "Easement Tract"). The Easement may be used by: (a) the general public solely for the purpose of pedestrian ingress and egress over and across the Easement Tract for the viewing and enjoyment of the Artwork; and (b) as specifically stated in Section 4(a). The Easement may be accessed seven days a week during the hours of 7 a.m. to 7 p.m. Grantor assumes responsibility for making any separate agreements with the Artist for their separate use or reproduction of the Artwork for their own purposes. Grantee is not liable for any violation of Copyright or intellectual property laws by the Grantor either during or after the term of the Easement.

2. Term of Easement. The Easement shall be for a period of five (5) years from the date of execution of this Agreement. Unless terminated as provided in Section 3, below, the Easement shall automatically renew thereafter for additional terms of five (5) years each and shall remain in full force and effect unless and until terminated.

3. Termination.

a) At the expiration of the initial five (5) year Easement term, either Party may terminate the Easement upon thirty (30) days written notice to the other. If within one year of such termination the Grantor intends to undertake any activity that would result in the removal or alteration of the Artwork, the Grantor shall notify the City within thirty (30) days written notice of such undertaking to allow the City an opportunity to make recommendations to the Grantor regarding such undertaking. Upon such termination, the Grantor shall be responsible for compliance with applicable ordinances regarding graffiti abatement and property maintenance.

b) The Grantor may terminate the Easement at any time at its sole discretion upon thirty (30) days' advance written notice to Grantee, should Grantee, in the sole judgment of the Grantor, fail to substantially perform Grantee's obligations under Section 4, below. Should the Grantor elect to exercise this right of termination, Grantor shall be responsible for the maintenance or removal of the Artwork, at their sole cost, consistent with Section 4 of this Agreement.

c) Upon any appropriate method of termination following the expiration of the initial five (5) year Easement term, Grantor shall become the sole and rightful owner and possessor of the Artwork. Grantor agrees to take full physical ownership of the Artwork or grant of authority over the Artwork from the Artist. Upon such termination, Grantee is relieved of any liability to ANY party regarding the Artwork and Grantor agrees to assume all liability and responsibility.

4. Maintenance, Removal and Modification of Artwork.

a) Grantee shall be responsible for maintaining and, if necessary, repairing the Artwork during the existence of the Easement. The Grantee may remove the Artwork from the property if, in the sole judgment of the Grantee, the Artwork is suffering damage or deterioration to the extent that sufficient repair and restoration is of such a prohibitive or excessive nature so as to make such repair or restoration impracticable. If the Grantee removes the Artwork from the property, the Grantee will restore the property to its original condition, normal wear and tear excepted. Such restoration shall include painting a solid white color over the mural, unless the Grantor provides the Grantee with precise paint color specifications. However, the Grantor and Grantee may mutually agree, in writing, to an alternative restoration solution. This Agreement shall terminate once such restoration has been completed to the satisfaction of the Parties. Grantor shall make no modifications to the Artwork or damage the Artwork. If maintenance of any surface adjacent to the Artwork is necessary during the term of the Easement, the Grantor shall be responsible for any such maintenance and shall commence such maintenance as Grantor, in its sole judgment, deems necessary.

b) Grantor shall promptly notify the Grantee, in writing, of maintenance issues (e.g., graffiti, excessive damage, etc.). Upon notification, the Grantee shall inspect the Artwork and notify the Grantor within seven (7) days of the Grantee's maintenance plan to resolve such issues. In cases of significant damage or deterioration, the Grantee may, in its sole discretion, attempt to restore the Artwork within ninety (90) days. The presence of graffiti may be considered an urgent maintenance concern, and whereby prompt interim maintenance solutions may be required, as determined by the Grantee.

c) Minor wear and tear of the Artwork may not warrant maintenance by the Grantee under this Agreement.

d) Grantor is not responsible for damage as a result of fire, act of God, emergency or any other means outside of their control.

e) In the event the surface of any portion of the Property is damaged by Grantee's exercise of its easement rights under Section 4, such area shall be restored to the condition in which it existed as of the commencement of such activity. Grantee hereby assumes the obligation, including all costs and expenses, to maintain and repair the Easement Tract in such instances.

5. Damage to the Artwork. Any damage to the Artwork found to be a result of criminal mischief, reckless damage, graffiti, or other property damage offenses, whether in violation of City ordinance or state law governing same, shall be prosecuted by Grantee to the fullest extent under the law.

6. Grantor's Representations. Grantor shall not interfere with the appearance or artistic impression of the Artwork by placing obstructions on or in front of it, by erecting structures adjacent to, above or below the Artwork or by undertaking other measures that would detract from enjoyment and visibility of the Artwork.

7. Grantee's Ownership of Artwork; License. Pursuant to a separate contract with the Artist, the Grantee shall have absolute, unrestricted rights incidental to its full ownership of the final artistic work to alter, change, modify, destroy, remove, move, replace, transport, or transfer in whole or in part, the final artistic work when the Grantee deems necessary within its discretion in order to exercise the City's powers and responsibilities in regard to public works and improvements, in furtherance of the Grantee's operations or for any other good cause. The Artist shall retain copyright and other intellectual property rights in and to the final design and the final artistic work itself but waives any rights against the Grantee provided by the 1990 Visual Artists Rights Act under 17 U.S.C. §106A(a) and §113. The Artist shall grant to the Grantee a perpetual, irrevocable license to graphically depict or display the artistic design and final artistic work for any purpose whatsoever.

8. Grantor's License. The Grantor shall be responsible for a separate license agreement with the Artist if the Grantor desires to reproduce the Artwork for marketing and promotional purposes.

9. Right of Entry. Throughout the term of the Easement or any extension thereof, the Grantee shall have the right to access the Easement Tract during the hours specified in Section 1 for the administration of the Easement as stated in Section 4(a). Notwithstanding the foregoing, any access by the Grantee shall not interfere with the Grantor's, or any other occupant's, use and enjoyment of the Property.

10. Binding Effect. The Easement granted in this Agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the Grantee, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property. Notwithstanding the foregoing, Grantee acknowledges that the rights granted to and duties assumed by Grantee under this Agreement may not be assigned or delegated by Grantee without the prior written consent of Grantor, which consent may be given or withheld in Grantor's sole and absolute discretion. Any attempted assignment or delegation by Grantee without the prior written consent of the Grantor shall be void ab initio.

11. Notice. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered five (5) calendar days after the

date upon which such notice is deposited with a nationally recognized overnight courier company or the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at their respective address:

If to the Grantor:
Mary Foss
West Pecan Coffee + Beer
100 West Pecan Street
Pflugerville, Texas 78660

If to the Grantee:
City Manager
P.O. Box 589
Pflugerville, Texas 78691

Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

12. 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 both Parties.

13. Remedies. The Parties agree that the prevailing party in an action for the breach of this Agreement shall be entitled to reasonable attorney's fees and 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.

14. Recording. The Grantee shall record this Agreement in executed, recordable format in the Official Public Records of Travis County, Texas, at its sole expense.

15. 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.

16. 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.

17. Costs/Lien-Free Construction. Grantee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of the Property, all costs and expenses incurred by Grantee in connection with this Agreement.

18. Reservation of Rights. All rights, title, and interest in and to the Easement granted under this Agreement, which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor.

19. Limitation of Damages. IN NO EVENT SHALL GRANTOR BE LIABLE FOR ANY

DAMAGE TO, OR LOSS OF PERSONAL PROPERTY OR EQUIPMENT SUSTAINED BY GRANTEE WITHIN THE PROPERTY, WHETHER OR NOT IT IS INSURED. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT BY GRANTOR HEREUNDER, OR FOR ANY OTHER REASON, GRANTOR SHALL NOT BE LIABLE TO GRANTEE FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.

20. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF TEXAS, COUNTY OF TRAVIS.

21. Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument.

22. Further Cooperation. Each of the Parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed intent and purpose of this Agreement.

23. Surviving Rights. Any rights or obligations of the parties in this Agreement which, by their nature, should survive termination or expiration of this Agreement will survive any such termination or expiration.

24. Force Majeure. Any destruction, damage, or any other factor caused by Act of God, revolution, political or economic disaster, national emergency or any other means which are outside of the control of either party that render the performance of either Party's obligation impossible or impracticable will result in immediate termination of liability of both parties and result in this Agreement being voidable unless Parties agree in writing within thirty (30) days of such event on another solution.

IN WITNESS WHEREOF, this Agreement is executed this ____ day of _____, 20__ (the "Effective Date")

GRANTOR:

By: _____
Mary Foss

Name & Address:
Two Brews Holdings LLC
100 W Pecan Street
Pflugerville, TX 78660-2746

By: _____
Josh Foss

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of said entities.

GIVEN UNDER MY HAND AND SEAL of office this _____day of _____, 20_____.

_____
Notary Public in and for the State of Texas

AGREED AND ACCEPTED:

CITY OF PFLUGERVILLE, TEXAS,
a Texas home-rule municipality

By:_____
Sereniah Breland, City Manager

ATTEST:

_____
Trista Evans, City Secretary

EXHIBIT A
Property Description and Depiction

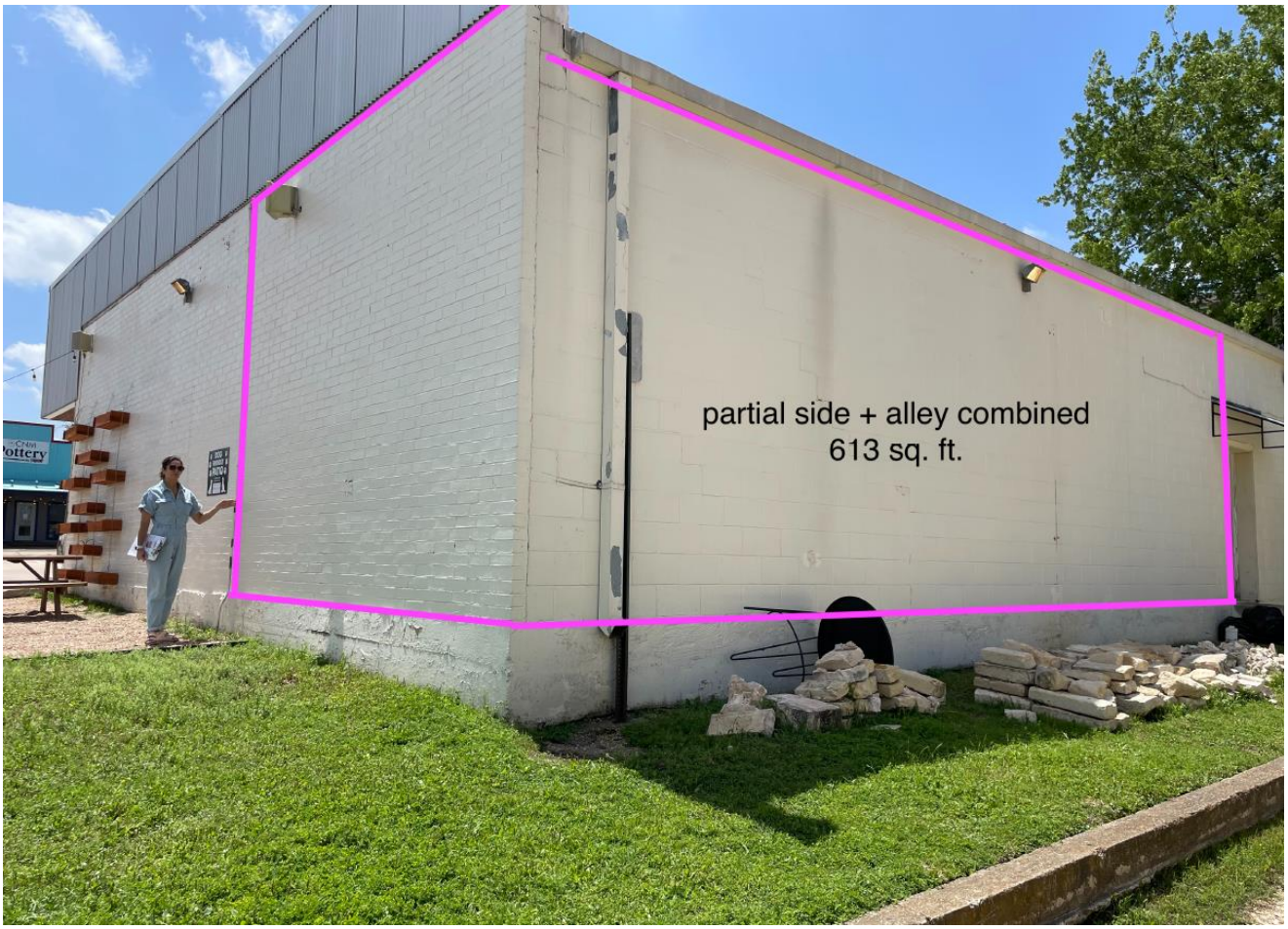
Lots 1, 2 and 3, Block 2 Town of Pflugerville Subdivision, recorded in Volume 2, Page 156, Plat Records, Travis County, Texas.

EXHIBIT B

Artwork Description and Depiction

EXHIBIT C
Artwork Location and Easement Tract

PARTIAL SIDE OF BUILDING (with picnic tables); from pipe to edge
12.5' tall x 15.5' wide = 194 sq. ft.
+
BACK ALLEY (from edge to door)
11.5' tall x 36.5' wide = 419 sq. ft.
= 613 total sq. ft.



Surface Access

Extending perpendicular from the walls to the public street and alley rights-of-way, as shown below.