

License Agreement

This License Agreement is entered into on this the ____ day of _____, 2017 by and between West 209 Investments, LLC, (“Licensee”) 130 S. Seguin, Ave., Suite 100, New Braunfels, Texas 78130 and the City of New Braunfels (“Licensor”) acting herein through its duly authorized City Manager, 550 Landa Street, New Braunfels, Texas 78130.

Recitals

WHEREAS, the City is the owner of the public right of way described as the sidewalk along “Castell Avenue near its southeast corner intersection with W. San Antonio Street” as is more fully shown on the attached Exhibit “A”; and

WHEREAS, Licensee is the owner of the commercial structure existing at 209 West San Antonio Street in New Braunfels, Texas. Historically, there was light access to a basement of the structure through three sections of vault lights located in the sidewalk and physical access through steel basement access doors. Currently, the steel access doors remain in place, but the sections of vault lights have been covered with wire and asphalt over the years; and

WHEREAS, Licensee, in conjunction with City’s reconstruction of the downtown sidewalk project, desires to improve, maintain and rehabilitate the above described sidewalk lights and doors at its own expense by incorporating new vault lighting sections in the sidewalk and replacing the steel access doors with additional vault lights that allow natural light into the basement; and

WHEREAS, the Licensor, is agreeable to Licensee’s improvements, maintenance, and rehabilitation of these discrete segments of the sidewalk along Casteel Avenue and adjacent to, or above the basement of the structure existing at 209 West San Antonio Street, with the understanding that; (a) the City incurs no liability or maintenance obligations from such improvements, (b) the City is not required to pay any money for the purchase or the removal of such improvements; and (c) the improvements do not interfere with previously established easements.

NOW, THEREFORE, in consideration of the promises contained herein, Licensor does hereby grant a license to Licensee for the purpose of rehabilitating, improving, and maintaining the sidewalk vault lights and steel doors in the City sidewalk adjacent to Licensee’s structure. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be

considered part of the mutual covenants, consideration and promises that bind the parties.

A. Licensee shall abide by the following terms:

1. Licensee at its expense shall prepare plans for said sidewalk improvements and said plans must be approved by the City of New Braunfels' City Engineer. Notwithstanding the foregoing, Licensor acknowledges and agrees that Licensee's improvements will be constructed of standard cast iron framework with sealed, solid glass, bullet inserts that meet typical load capacity for standard public sidewalk use (100lb/sf live load capacity).
2. Licensee shall timely construct pursuant to approved plans so as not to interfere with the City's current downtown sidewalk construction project. Said improvements shall be constructed on or before _____. However, if it is agreed that the City's contractor for the downtown sidewalk project shall install Licensee's improvements, then Licensee shall prepay the estimated cost of the installation of the improvements and provide the improvements on or before _____. Failure to make such estimated payment shall constitute an immediate breach of this agreement and the City is not obligated to install any such improvements and may remove current improvements at its sole discretion.
3. Licensee agrees that it will not construct or cause to be constructed or erected any other structure or improvement upon the sidewalk, without the express, written approval of the City Manager of Licensor;
4. Licensor grants this License solely to the extent of its right, title and interest in the sidewalk property without express or implied warranties;
5. The improvements installed by Licensee will not interfere with any established drainage and must comply with requisite safety regulations for the sidewalk and Castell street including but not limited to any accessibility requirements under state or federal law;
6. Licensor will incur no liability or maintenance obligations from such improvements;
7. Licensor reserves the right to enter Licensee's property to inspect same at any

time;

8. Licensee shall be responsible for maintenance of Property and Licensee shall have the right to access Property for maintenance purposes. However, Licensors retain the right to perform maintenance in the event Licensee does not perform such maintenance and charge same to Licensee;
9. The improvements shall be fully constructed by Licensee or their agents and Licensee releases Licensors from any and all liability associated with such improvements. Licensee agrees to comply with all federal, state and local laws, construction and safety codes, and other regulations in the construction and maintenance of the improvements;
10. Sole ownership of the improvements and their maintenance shall remain with Licensee, its successors or assigns unless otherwise agreed to in writing;
11. For an initial period of ten years, Licensors shall have the right to terminate this agreement and request removal of the improvements only in the event that the improvements cause an unanticipated conflict with the Licensors' construction of city infrastructure. Further, during the initial ten year period, if Licensors need to construct improvements or modifications in the public right of way including the subject sidewalk area herein described, then Licensee shall be solely responsible for repairing and replacing any such sidewalk improvements damaged during such construction. After this initial ten year period, Licensors shall have the right, at the sole discretion of the Licensors to terminate this agreement with or without cause and require removal of the improvements at Licensee's sole expense upon sixty (60) days written notice to Licensee. The Licensors, in lieu of termination, may request that Licensee perform certain alterations, modifications or improvements to the improvements, at the sole expense of Licensee. However, if such alterations, modifications or improvements are not performed to the satisfaction of the Licensors, Licensors shall be entitled to exercise its right to terminate this agreement; and
12. This Agreement until its revocation, shall bind each party's successors and

assigns. Licensee and its successors and assigns, much notify Licensor of any change of Licensee or address to the Licensor within thirty (30) days of any such change.

B. Indemnification: In consideration of the permission extended to the Licensee by the City of New Braunfels, its officers, agents, employees, servants, successors or assigns, to use the City's Property identified in this Agreement for any or all of the purposes listed in this Agreement. Licensee does hereby agree to INDEMNIFY, REIMBURSE, DISCHARGE, and RELEASE the City and its officers, agents, employees, servants, successors, and assigns and HOLD THEM HARMLESS from and against any and costs, expenses, reasonable attorney fees, claims, suits, losses or liability for injuries including death, to persons and from any other costs, expenses, reasonable attorney fees, claims, suits, losses or liabilities or any and every nature whatsoever arising in any manner, directly or indirectly, out of or in connection with the Licensee's presence or activities on the City's Property identified herein by the Licensee, his agents, employees, servants, successors, assigns, contractors or subcontractors.

C. Liability Insurance: Licensee shall, at its own expense, purchase, maintain and keep in force liability insurance and shall protect Licensee and Licensor from claims which may arise out of or in connection with any operations at the Premises, whether the operations be by the Licensee or by anyone directly or indirectly employed or contracted by the Licensee, guest, invitee, volunteer, agent, or by anyone for whose acts Licensee may be liable. The minimum amounts of liability insurance required are as follows:

Bodily Injury:

Per Person	\$300,000.00
Per Accident	\$500,000.00

Property Damage Liability.

Per Accident	\$100,000.00
Aggregate	\$100,000.00

Insurance required by this section shall be written so that the Licensee will be notified in writing in the event of cancellation, restrictive amendment or non-renewal at least thirty (30) days prior to the action. Certificates of Insurance shall be filed with the Licensor's Risk Manager.

1. All insurance required under this section shall be written with the City as an additional insured. In any event, Licensee is solely responsible for all losses arising out of, resulting from or connected with operations under this agreement whether or not the losses are covered by insurance. The City's acceptance of Certificates of Insurance that in any respect do not comply with the city's requirement does not release the Licensee from compliance within.
 2. All insurance required under this section shall be primary over any other insurance coverage the City may hold.
 3. The parties intend that the Licensee maintain liability insurance coverage not less than amounts prescribed in Section 101.023 of the Texas Civil Practice and Remedies Code as it may be amended from time to time. In the event such amounts increase beyond the limits set forth herein, the Licensee shall obtain such increased coverage and provide the City with certificate therefore. The burden of maintaining proper insurance coverage and compliance with this subsection lies solely with the Licensee. Failure to maintain such insurance coverage is a breach of this Agreement.
- D. This license constitutes the entire agreement between Licensor and Licensee on this subject, and it may be amended only by written instrument executed by both parties. The license runs with ownership of the property and structure located at 209 W. San Antonio Street, New Braunfels, Texas, currently owned by Licensee.
- E. The Licensor may terminate this license immediately upon Licensee's breach of any term in this agreement.

All notices, requests and other communications dealing directly or indirectly with this license shall be in writing and shall be hand delivered by messenger or carrier service, telecommunicated or mailed by registered or certified mail (postage prepaid, return receipt

requested, addressed to:

As to Licensor: City Manager
City of New Braunfels Texas
550 Landa Street
New Braunfels, Texas 78130

Copy to: City Attorney
City of New Braunfels Texas
550 Landa Street
New Braunfels, Texas 78130

As to Licensee: West 209 Investments, LLC
130 S. Seguin Ave, Suite 100
New Braunfels, Texas 78130

IN WITNESS WHEREOF, the parties hereto execute this agreement in duplicate originals on this ____ day of _____, 2017.

City of New Braunfels Texas
550 Landa Street
New Braunfels, Texas 78130

BY: _____
Robert Camareno, City Manager

STATE OF TEXAS §
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COUNTY OF COMAL §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared Robert Camareno, City Manager., known to me to be the person whose name is subscribed to the foregoing contract and acknowledged that he has the authority and consent to bind the City of New Braunfels, Texas to this Agreement that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2017.

Notary Public, In and For
The State of Texas.

ATTEST:

Patrick D. Aten, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

West 209 Investments, LLC.
130 South Seguin Ave
New Braunfels, Texas 78130

By: _____
Name: Frederick C. Heimer
Title: Authorized Manager

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared Frederick C. Heimer, the authorized Manager of West 209 Investments, LLC., known to me to be the person whose name is subscribed to the foregoing contract and acknowledged that he has the authority and consent to bind West 209 Investments, LLC to this Agreement that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day
of _____, 2017.

Notary Public, In and For
The State of Texas.