

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is entered into by and between **H. DALTON WALLACE**, an individual ("Owner"), and the **CITY OF AUSTIN, TEXAS**, a Texas home-rule municipal corporation situated in the counties of Hays, Travis, and Williamson (the "City"), as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

**WHEREAS**, Owner own the tracts of land generally described as 907, 909 and 911 Congress Avenue, Austin, TX 78701, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property");

**WHEREAS**, Owner intends to redevelop the Property (the "Project"), and, in order to do so, has made application to the City of Austin Historic Landmark Commission (the "Commission") to allow for demolition and reconstruction of the building facades now existing on the Property (the "Permit Application");

**WHEREAS**, Owner has agreed that if the Permit Application is approved by the Commission (the "Permit Approval"), the Property shall be restricted by these covenants, and that these conditions shall be filed of record with the Official Public Records of Travis County, Texas, and shall henceforth bind the Owner and his successors and assigns, and restrict the use of the Property as described herein, and such restrictions shall be made enforceable by the City through this Declaration, except where specifically stated otherwise;

**WHEREAS**, upon the effective date of the Permit Approval of the Permit Application, and subject to all of the terms and conditions of this Declaration, Owner has voluntarily agreed to henceforth restrict the Property with certain restrictive covenants, which are described herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to all of the terms and conditions of this Declaration, the undersigned shall hold, sell and convey the Property subject to the following covenants, conditions and restrictions, which are impressed upon the Property by this Declaration.

**I. DECLARATIONS AND AGREEMENTS**

- 1.1 Covenants, Conditions and Restrictions upon Property. Owner declares that the Property is subject to the following covenants, conditions and restrictions, which shall run with the Property and bind all parties having right, title, or interest in or to the Property or any part, their respective heirs, successors, and assigns. Each deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed,

delivered, and accepted subject to these covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in the deed or conveyance.

- 1.1.1 Façade Reconstruction. Owner shall deconstruct the building façades pursuant to the Permit Approval such that, to the extent reasonably possible, the façades are protected and stored for their later reconstruction at the Property. Owner shall have three (3) years from the date that the façade materials are removed from the Property to begin reconstruction of the façades, either as part of a larger project or by themselves.

## II. DEFAULT AND REMEDIES

- 2.1 Remedies. Following the occurrence of a breach of Owner's obligations under Section 1.1 of this Declaration, only the City shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If Owner shall fail to comply with any term, provision or covenant of this Declaration and shall not cure such failure within thirty (30) days after receipt of written notice (or if the default is of such character as to require more than thirty (30) days to cure and the Owner shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from the City to the Owner of such failure, the City shall have the option of pursuing any remedy it may have at law or in equity, including, without limitation, specific performance or injunctive relief from a court of competent jurisdiction.

## III. GENERAL PROVISIONS

- 3.1 No Third-Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the parties hereto, and their successors and assigns, and not for the benefit of any third person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.
- 3.2 No Dedication. No provision of this Declaration shall ever be construed to grant or create any rights whatsoever in or to any portion of the Property other than the covenants, conditions and restrictions specifically set forth herein. Nothing in this Declaration shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.
- 3.3 Notice. All notices required or permitted to be given hereunder, or given in regard to this Declaration, shall be in writing and the same shall be given and be deemed to have been

served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Owner or the City may change their respective addresses for notices by giving five (5) business days' advance written notice to the other in the manner provided for herein. Until changed in the manner provided herein, Owner and the City's address for notice is as follows:

Owner:

H. Dalton Wallace  
9505 Johnny Morris Rd.  
Austin, TX 78724

With a copy to:

Drenner Group, P.C.  
200 Lee Barton Drive, Suite 100  
Austin, Texas 78704  
Attn.: Charley Dorsaneo

The City of Austin  
301 W 2<sup>nd</sup> St.  
Austin, TX 78701  
Attn: \_\_\_\_\_

- 3.4 Attorneys' Fees. The unsuccessful party in any non-appealable and final action brought to enforce this Declaration shall pay to the prevailing party a reasonable sum for costs incurred by the prevailing party in enforcing this Declaration, including reasonable attorneys' fees and court costs.
- 3.5 Entire Declaration. This Declaration constitutes the entire agreement between the parties hereto regarding the matters set forth herein. The parties do not rely upon any statement, promise or representation with respect to the matters set forth herein that is not herein expressed, and, except in accordance with Section 3.11 below, this Declaration once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.
- 3.6 Severability. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent

jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision or agreement of this Declaration that is held invalid, illegal or unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid and enforceable.

- 3.7 Rights of Successors; Interpretation of Terms. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration shall bind and inure to the benefit of the parties and their respective successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.
- 3.8 Estoppel Certificates. Owner (or any mortgagee holding a first lien security interest in any portion of the Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of its tract, or in connection with the financing or refinancing of its tract by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to the other party requesting that such party execute a certificate, in a form reasonably acceptable to such party, certifying that, to such party's then current actual (not constructive) knowledge, (a) the other party is not in default in the performance of its obligations to or affecting such party under this Declaration, or, if in default, describing the nature and amount or degree of such default, and (b) such other information regarding the status of the obligations under this Declaration as may be reasonably requested. A party shall execute and return such certificate within twenty (20) days following its receipt of a request therefor.
- 3.9 Counterparts; Multiple Originals. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 3.10 Conflict with Ordinance. To the extent that any of the covenants, conditions and restrictions contained within this Declaration conflict with terms or conditions addressed in connection with the Permit Application, or any supporting materials, for purposes of this Declaration the terms and conditions of this Declaration shall control.
- 3.11 Approval of the City Applications. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Owner reflected herein are conditioned upon final approval by the Commission of the Permit Application, with no subsequent appeal, and in a form and on terms and conditions acceptable to Owner in its sole discretion. If the Permit Approval is not granted in a form acceptable to Owner, the covenants, conditions and restrictions contained within this Declaration shall not be applicable and shall be terminated. To the extent that (i) this Declaration is not deemed

applicable and terminated pursuant to the immediately preceding sentence, or (ii) at any time following completion of the reconstruction contemplated in Section 1.1, this Declaration shall be deemed of no further force and effect and shall terminate and an affidavit executed by Owner and recorded in the Official Public Records of Travis County, Texas, certifying the facts supporting and evidencing the termination of this Declaration (a "Termination Affidavit") shall be deemed sufficient to release this Declaration from the Official Public Records of Travis County, Texas, such that this Declaration shall no longer encumber the Property. Third parties shall have the right to rely on such Termination Affidavit, provided, however, at Owner's request and expense, the City shall execute and acknowledge a counterpart to such Termination Affidavit. The Termination Affidavit shall be sufficient evidence for Escrow Agent to terminate the Escrow Agreement and release any Escrowed Funds previously delivered into escrow to Owner without further action or consent by the City.

- 3.12 Effective Date. This Declaration shall become effective upon the final effective date of the Permit Approval by the Commission in a form acceptable to Owner. If the Permit Application is not approved in a form acceptable to Owner, then, consistent with Section 3.11 above, this Declaration shall be void and of no effect.

*[The Remainder of This Page Is Intentionally Left Blank. Signature Pages Follow.]*

**EXECUTED**, effective as of the Effective Date as provided herein above.

**OWNER:**  
**H. DALTON WALLACE**

Name: \_\_\_\_\_

Title: Owner

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2021, by H. Dalton Wallace, known to me through \_\_\_\_\_ and acknowledged to  
me that he executed the same for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of Texas

**DRAFT**

**CITY OF AUSTIN:**

**City of Austin,**  
a home-rule municipal corporation and  
political subdivision of the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE STATE OF TEXAS** §

**COUNTY OF TRAVIS** §

This instrument was acknowledged before me on \_\_\_\_\_, 2021, by  
\_\_\_\_\_, \_\_\_\_\_ of the Development Services Department  
of the City of Austin, a home-rule municipal corporation and political subdivision of the State of  
Texas, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**APPROVED AS TO FORM:**  
CITY OF AUSTIN, TEXAS  
LAW DEPARTMENT

**REVIEWED:**  
CITY OF AUSTIN, TEXAS  
DEVELOPMENT SERVICES DEPARTMENT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***DRAFT***

**Exhibit A**  
**Property**

[Inserty Property Descriptions]