

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.

DECLARATION OF DRAINAGE EASEMENT AND UNIFIED DEVELOPMENT AGREEMENT WITH MAINTENANCE OF DRAINAGE FACILITIES

This Declaration of Drainage Easement and Unified Development Agreement with Maintenance of Drainage Facilities Restrictive Covenant (the “**Restrictive Covenant**”) for _____, is executed effective the Date, by _____, (“**Grantor**”) and is as follows:

DEFINITIONS

Grantor: Grantor and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns; individually, the “**Grantor**”

Grantor's Address: _____
Austin, _____ County, Texas _____

Grantee: **CITY OF AUSTIN, TEXAS**, a Texas home-rule municipal corporation situated in the counties of Hays, Travis, and Williamson

Grantee's Address: P.O. Box 1088
Austin, Travis County, Texas 78767-1088

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Property: Tract One and Tract Two; collectively, the “**Tracts**,” individually, a “**Tract**”

Tract One: All that parcel of land described as Lot ____ Block ____ of the ____ Subdivision according to the plat recorded as Document No. ____ of the Official Public Records of ____ County, Texas

Tract Two: All that parcel of land described as Lot ____ Block ____ of the ____ Subdivision according to the plat recorded as Document No. ____ of the Official Public Records of ____ County, Texas

City Permit: The approved and released City of Austin Site Plan No. ____ as the site plan is amended, revised, or corrected from time to time

Easement Tract: All that parcel of land situated in ____ County, Texas, described in the attached **Exhibit A**

Easement Duration: Perpetual

Easement Purpose: To access, install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, remove, and decommission the Facilities

Facilities: Drainage channels, drainage conveyance structures, stormwater quality controls, and detention and water quality controls with all associated roads, gates, bridges, culverts, erosion control structures, and other appurtenances

Maintenance Obligations: Continuous maintenance of the Facilities to a good, functioning, and safe condition in compliance with all applicable laws and in accordance with the requirements of the Grantee as determined by the Grantee in its sole discretion

Joint Access Area: The area generally depicted in the attached **Exhibit B**

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Non-Permitted Activity: Installation, construction, operation, use, maintenance, repair, modification, upgrade, relocation, or replacement of any structure, building, retaining wall not associated with the Facilities, or other similar improvement in the Easement Tract that Grantee does not consider to be Facilities

Permitted Encumbrances: Any easements, liens, encumbrances, and other matters of record in the Real Property Records of the Texas county in which the Easement Tract is located as of the Date that are valid, existing, and affect the Easement Tract

RECITALS

Grantor has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Grantor declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of Grantor. Each contract, 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 the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals and Definitions Incorporated. The above Recitals, Definitions, and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Unified Development. For purposes of site plan review, modification, or approval by Grantee, the Property will be constructed as a unified development/single site. Any proposed modifications to any of the Tracts or any portion of any Tract will be construed as a modification to a single site, requiring review of all the Property in accordance with the provisions of the Austin City Code. This section applies to, but is not limited to, the extent of impervious coverage, parking, and landscaping of the Property.

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3. Easement to Grantor.

Grantor hereby grants and conveys and by these presents does GRANT AND CONVEY unto Grantor, an easement to install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, remove, and decommission, as applicable, the Facilities in, upon and across the Easement Tract.

TO HAVE AND TO HOLD the same perpetually to Grantor and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose to install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, remove, and decommission as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

4. Easement to Grantee.

Grantor, for **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid to Grantor, the receipt and sufficiency of which is acknowledged by Grantor, **GRANTS, SELLS, AND CONVEYS** to Grantee an easement in, over, under, on, and across the Easement Tract as may be necessary or desirable, together with (i) the right of free and uninterrupted ingress and egress at all times over, on, and across the Easement Tract for use of the Easement Tract for the Easement Purpose, (ii) the right to eliminate any encroachments or obstructions in the Easement Tract that interfere in any material way or are inconsistent with the rights granted Grantee under this instrument for the Easement Purpose as determined by Grantee in its sole discretion, and (iii) any and all rights and appurtenances pertaining to use of the Easement Tract (collectively, the "**Easement**").

TO HAVE AND TO HOLD the Easement to Grantee and Grantee's successors and assigns for the Easement Duration; provided, however, Grantor reserves the right to enter upon and use any portion of the Easement Tract, but in no event shall Grantor enter upon or use any portion of the Easement Tract for any Non-Permitted Activity or in any other manner that interferes in any material way or is inconsistent with the rights granted Grantee under this Easement for the Easement Purpose as determined by Grantee in its sole discretion. Grantor binds Grantor and Grantor's heirs, successors, and assigns to **WARRANT AND FOREVER DEFEND** the title to the Easement, subject to the Permitted Encumbrances, to Grantee against every person whomsoever lawfully claiming or to claim the Easement Tract or any part of the Easement Tract. Grantor covenants that Grantor and Grantor's heirs, successors, and assigns shall not convey any other easement, license, or right to use the Easement Tract (or any portion thereof) for any Non-

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Permitted Activity or for any use that may interfere in any material way or may be inconsistent with the rights granted to Grantee under this Easement, as determined by the Grantee in its sole discretion.

5. Maintenance. Grantor shall continuously maintain the Facilities in accordance with the requirements of Grantee and in accordance with the Maintenance Obligations. **Grantor is obligated to perform the Maintenance Obligations, and in the event that Grantor does not perform the Maintenance Obligations, agrees (i) Grantee at is option may perform the Maintenance Obligations, and (ii) ot indemnify Grantee for all Grantee’s costs necessary to perform the Maintenance Obligations, and (iii) that Grantee has a judicially enforceable lien on the Property to secure the payment of all Grantee costs necessary to perform the Maintenance Obligations.** Grantor may enter into an agreement with a third party regarding any of the maintenance obligations, but in no such event shall the agreement with the third-party release Grantor from the maintenance obligations to Grantee under this Easement.
6. Joint Access. Joint access must be provided between the Tracts as depicted on the City Permit over the Joint Access Area. The joint access must allow pedestrian and/or vehicular traffic to move freely to the adjacent public right-of-way, or between the Tracts, or both. Any change of any aspect of a Tract may not interfere with this joint access. Grantor is responsible and liable for maintaining the Owner’s property contained within the Joint Access Area in such a manner as to provide the required joint access.
7. Parking. All parking for developments depicted on the City Permit must be reciprocal. In this Restrictive Covenant, “**reciprocal parking**” means that the parking depicted on the City Permit must serve all Tracts. Any change of any aspect of any Tract may not interfere with the reciprocal parking agreement between the Tracts. Grantor is responsible and liable for maintaining the Grantor’s property to allow the required reciprocal parking.
8. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles Grantor to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which Grantor may have hereunder by reason of any breach of this Restrictive Covenant.

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9. Excusable Delays. Whenever performance is required of Grantor, Grantor shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform within a reasonable time; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of Grantor (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
10. General Provisions.
- A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Grantor, and their successors and assigns. When a Grantor conveys all or any portion of the Property, that former Grantor will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Grantor from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- B. Duration. Unless modified, amended, or terminated in accordance with Paragraph 10.K., this Restrictive Covenant remains in effect in perpetuity.
- C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Grantor.

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- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the Texas county in which the Property is located.
- H. Notices. Any Notice to Grantor or Grantee must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among Grantor or Grantee in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for Grantee, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate this Restrictive Covenant. The failure at any time to enforce this Restrictive Covenant by Grantee, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Restrictive Covenant, but not the grant of Easements, may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Real Property Records of the Texas county in which the Property is located, executed, acknowledged and approved by (a) the Director of Austin Development Services, or successor department, of the City of Austin; (b) all of the owners of the Property at the time of the modification, amendment, or termination; and (c) any mortgagees holding first lien security interests on any portion of the Property.

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Executed to be effective on _____, 20__.

GRANTOR:

_____,
A _____

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

Before me, the undersigned notary, on this day personally appeared _____ of _____, a _____, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____ 20__.

[Seal]

Notary Public, State of _____

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APPROVED AS TO FORM:

CITY OF AUSTIN, TEXAS
AUSTIN CITY ATTORNEY'S OFFICE

By: _____
Name: _____
Title: Assistant City Attorney

REVIEWED:

CITY OF AUSTIN, TEXAS
AUSTIN DEVELOPMENT SERVICES

By: _____
Name: _____
Title: _____

REVIEWED:

CITY OF AUSTIN, TEXAS
AUSTIN TRANSPORTATION AND PUBLIC WORKS

By: _____
Name: _____
Title: _____

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**AFTER ATTACHING THE REQUIRED EXHIBITS TO THIS INSTRUMENT,
THE FOLLOWING APPROPRIATE DOCUMENTS ALSO NEED TO BE ATTACHED:**

- A. Determine whether the instrument is executed by an individual or a legal entity

Affidavit of No Liens (entity)
Affidavit of No Liens (individual)

- B. Determine whether there is a lien holder by providing an Ownership and Lien search certificate from a Title Company, that is current within 30 days, that shows:

1. All owners of record
2. All lienholders of record, which hold current liens OR a statement that there are no liens
3. A property legal description

Lien Holder Consent

- C. Determine whether there is a tenant on the property:

Consent by Tenant

- D. Provide the following recording page:

Recording Page

- E. Signature/corporate authority that is current within a year

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