

**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.**

**DOWNTOWN DENSITY BONUS  
RESTRICTIVE COVENANT**

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Owner:** \_\_\_\_\_, a \_\_\_\_\_

**Owner's Address:** \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_

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

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

**Project:** All that parcel of land situated in \_\_\_\_\_ County, Texas, described in the attached **Exhibit A**

**Duration:** Perpetual, unless modified, amended, or terminated in accordance with Section 2 (Modification and Amendment) or Section 3 (Termination)

**RECITALS**

- A. Owner is applying for a density bonus under Section 25-2-586 (*Downtown Density Bonus Program*) of the Austin City Code (the "DDBP").

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- B. The Gatekeeper Requirements in Subsection (C) (1) of the DDBP require the Owner to execute a restrictive covenant committing to (1) provide streetscape Improvements along all public street frontages, consistent with the City’s Great Streets Standards and (2) achieve a minimum two-star rating under the Austin Energy Green Building (the “AEGB”) program.

**NOW, THEREFORE,** it is declared that the Owner, for and in consideration of the sum of Ten and No/100 (\$10.00) and other good and valuable consideration paid to the Owner, the receipt and sufficiency of which is hereby acknowledged, agrees that the property shall be held, developed, used, sold and conveyed subject to the following covenants and restrictions impressed upon the Property by this Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the owners of the Property, their heirs, successors and assigns.

### **SPECIFIC AGREEMENTS AND RESTRICTIONS:**

1. Development Restrictive Covenants. Development of the Project shall provide the following:
  - a. Green Building. The Project shall achieve a minimum two-star rating under the AEGB program using the ratings in effect at the time the Project is registered with the AEGB program.
  - b. Great Streets. The Project shall provide streetscape improvements along the Property’s public street frontages consistent with the City’s Great Streets Standards.
2. Modification and Amendment. This Restrictive Covenant may only be modified, amended, or terminated upon the filing of a written modification, amendment, or termination in the Official Public Records of Travis County, Texas, executed, acknowledged, and approved by (a) all the owners at the time of the modification, amendment, or termination; (b) the Director of Austin Planning, or successor department, of the City of Austin, and (c) any mortgagees holding first lien security interests on any portion of the Property.
3. Termination. Notwithstanding the foregoing, in the event any of the following events occur (a) the City fails to grant the Project bonus area pursuant to the DDBP; (b) Site Plan No. SP-\_\_\_\_\_ for the Project is withdrawn, expires or is denied; or (c) the development of the Property changes to a development that does not utilize the Density Bonus area; the City of Austin through the Director of the Austin Planning, or successor department, and Owner shall record a termination in the Official Public Records of Travis County, Texas.

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4. Violation. If any person, persons, corporation, or entity of any character, violates or attempts to violate this Restrictive Covenant, it shall be lawful for the City to prosecute proceedings at law or in equity against the person or entity violating or attempting to violate this Restrictive Covenant to prevent the person or entity from violating or attempting to violate this Restrictive Covenant by the City whether any violations hereof are known or not, does not constitute a waiver or estoppel of the rights to do so.
5. No Waiver. The failure to enforce any provision of this Restrictive Covenant at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Restrictive Covenant. A violation of any provision of this Restrictive Covenant shall never be grounds for, nor give rise to the modification, amendment or termination of any provision of this Restrictive Covenant.
6. Governing Law: Place of Performance. This Restrictive Covenant and all rights and obligations hereunder shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county where the Property is located.
7. Severability. The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion does not affect the validity or enforceability of any other provision.
8. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contains all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter. Any prior correspondence, memoranda, or agreements are superseded in total by this Restrictive Covenants 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 owner.
9. Counterparts. This Restrictive Covenant may be executed in any number of counterparts which will, together, be deemed to constitute one document.
10. Interpretation. Regardless of which party prepared the initial draft of this Restrictive Covenant, this Restrictive Covenant and exhibits shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

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**OWNER:**

\_\_\_\_\_,  
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 \_\_\_\_\_

**APPROVED AS TO FORM:**  
CITY OF AUSTIN, TEXAS  
AUSTIN CITY ATTORNEY'S OFFICE

**REVIEWED:**  
CITY OF AUSTIN, TEXAS  
AUSTIN PLANNING

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

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 as to Debts, Liens, and Occupancies [Ownership Type – Individuals]  
Affidavit as to Debts, Liens, and Occupancies [Ownership Type – Entity]  
Lien Holder Consent

- B. Determine whether there is a lien holder by providing to the City 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

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

Consent and Subordination by Tenant

- D. Provide the following recording page:

Recording Page

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

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