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Dyana Limon-Mercado

Dyana Limon-Mercado, County Clerk
Travis County, Texas

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is entered into by and between **OP 8200 MOPAC PROPERTY LLC**, a Texas limited liability company, its successors or assigns ("OP 8200"), **OP 8300 MOPAC PROPERTY LLC**, a Texas limited liability company, its successors or assigns ("OP 8300") (OP 8200 and OP 8300 being collectively referred to herein as, "Owner"), and **NORTHWEST AUSTIN CIVIC ASSOCIATION** ("NWACA"), as of the 19 day of August, 2024.

RECITALS

WHEREAS, Owner owns the tracts of land described in City of Austin Zoning Case No. C14-2024-0054, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Owner intends to redevelop the Property as a vertical mixed use development (the "Project"), and, in order to do so, has made application to rezone the Property to Community Commercial Services- Mixed Use-Vertical Mixed Use Building-Density Bonus 90 (GR-MU-V-DB90) Combining District Zoning from the City of Austin ("City") in Zoning Case No. C14-2024-0054 (the "Zoning Case"). The current zoning, Limited Office (LO) and Neighborhood Commercial (LR) allows commercial uses, but does not allow for residential uses or a vertical mixed use development as may be permitted by approval of the Zoning Case;

WHEREAS, Owner and NWACA have agreed that if the Zoning Case is approved and signed into ordinance by the City and is no longer appealable ("Zoning Approval"), the Property shall be restricted by these covenants that are important to NWACA and its members, 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 its successors and assigns, and restrict the use of the Property as described herein, and such restrictions shall be made enforceable by NWACA and its members through this Declaration;

WHEREAS, upon the effective date of the Zoning Approval of the Zoning Case, 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; and

WHEREAS, the Owner may, subsequent to the date of this Restrictive Covenant, abandon the proposed Project, sell, or re-develop the Property.

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 Utilization of Zoning Entitlements. Owner may only utilize the entitlements made applicable to the Property by the Zoning Case if the Project contains the conditions expressed in this covenant.
- 1.2 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.
- 1.2.1 Additional Prohibited Uses. The following uses shall be additional prohibited uses on the Property: Community Recreation – Private, Community Recreation – Public, Hospital Services – General, Hospital Services – Limited, Alternative Financial Services, Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing of any Type, Bail Bond Services, Commercial Off Street Parking, Off-Site Accessory Parking, Outdoor Entertainment, Outdoor Sports and Recreation, Pawn Shop Services, Pedicab Storage and Dispatch, Plant Nursery, Service Station, and Custom Manufacturing.
- 1.2.2 Pedestrian-Oriented Commercial Space. Should the Property redevelop utilizing either the Vertical Mixed Use Building (V) or Density Bonus 90 (DB90) designations, the Property shall be subject to City of Austin Land Development Code (“City Code”) Section 25-2, Subchapter E, 4.3.3.C regarding ground floor dimensional requirements and pedestrian oriented space percentage requirements.
- 1.2.3 Bent Tree Road Setback. The Project shall provide a seventy-five foot (75’) building setback from the existing residential lots located across Bent Tree Road. Such building setback shall be measured from the boundary line of the residential lots abutting Bent Tree Road and extending 75’ across said right-of-way perpendicularly towards the northwestern boundary line of the Property. No buildings shall be allowed in the setback area except as otherwise required by the building placement requirements of City Code.
- 1.2.4 Vehicular Access to Bent Tree Road. Vehicular access onto Bent Tree Road shall be limited to the number of access points existing as of the Effective Date of this Declaration. Owner shall not seek additional access points unless required by the

City of Austin.

- 1.2.5 Building Height. Building height on the property shall not exceed 890 feet Mean Sea Level (“MSL”). For the purposes of measuring height on the Property, Owner and NWACA agree that the high point of the Property is 800 feet MSL and the low point of the property is 765 feet MSL, therefore the median measuring point for purposes of this subsection is 782.5 feet MSL; provided, however, Owner reserves the rights to adjust the aforementioned elevation measurements in the event, at the time of Site Development Permit, a certified civil engineer conducting a survey on the Property determines such measurements to be inaccurate. Notwithstanding the foregoing, the provisions of City Code Section 25-2-531 (Height Limit Exceptions) are not subject to this subsection and may exceed the height limitation.
- 1.2.6 Welcome Monument Signage. Upon redevelopment of the Property, and prior to issuance of the first Certificate of Occupancy for a vertical mixed use building, Owner shall erect a monument sign that reads “Welcome to Northwest Hills/Westover Hills” located on Steck Avenue in such specific location as determined by Owner.
- 1.2.7 Bird Friendly Materials. Owner shall utilize best practices and comply with all City-adopted measures to ensure a bird-friendly design of the Project. At the time of Site Development Permit, Owner will meet with NWACA to determine current adopted regulations and best practices for implementation into Project.
- 1.2.8 Open Space. At the time of Site Development Permit, Owner will make reasonable effort to preserve the wooded area located on the north side of the Property for preservation or onsite parkland. The location and size of the proposed open space shall be determined, in Owner’s sole and reasonable discretion, at the time of Site Development Permit and is subject to acceptance by the City of Austin.
- 1.2.9 Traffic. At the time of Site Development Permit for each phase of the Project, Owner shall incorporate and take into account background traffic of previous phases to ensure that vehicle trips are not lost in the development process and that Transportation Demand Management practices can be accomplished in whole, as each new phase develops.
- 1.3 Terms of Support. All items listed in Section 1.2 above are enforceable by NWACA only under the condition that NWACA positively supports the Zoning Case during the Austin City Council meetings in which votes for the Zoning Case take place. This support may be in the form of a letter to the Mayor of Austin and the Austin City Council Members or by a public statement by an authorized representative of NWACA during such Land Use

Commission and/or City Council meetings. To the extent that any action is taken, or statement is made, contrary to this paragraph by an authorized representative of NWACA prior to the City granting the Zoning Approval, this Declaration shall be deemed null and void.

II. DEFAULT AND REMEDIES

- 2.1 **Remedies.** Following the occurrence of a breach of (i) Owner's obligations under Section 1.2 of this Declaration or (ii) NWACA's obligations under Section 1.3 of this Declaration, only Owner, including its successors and assigns, and NWACA, or its board members, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If Owner or NWACA party to this Declaration (a "Defaulting Party") 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 Defaulting Party shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from a person or entity with the right hereunder to seek relief for such breach (a "Non-Defaulting Party") to the Defaulting Party of such failure, the Non-Defaulting Party 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, including without limitation, the City of Austin, 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 and NWACA 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 NWACA's address for notice is as follows:

OWNER:

OP 8200 MOPAC PROPERTY LLC

OP 8300 MOPAC PROPERTY LLC

8200 N. Mopac Expressway, Suite 115

Austin, Texas 78759

Attn: _____

With a copy to:

Drenner Group, P.C.

2705 Bee Cave Road, Suite 100

Austin, Texas 78746

Attn: Stephen O. Drenner

NWACA: Northwest Austin Civic Association

c/o President

P.O. Box 26654

Austin, Texas 78755

- 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. Reference to "Owner" includes the future owners of their respective portions of the Property, including any portions of the Property that may in the future be created as separate tracts pursuant to a resubdivision of any portion of the Property. The singular number includes the plural, and the masculine gender includes the feminine and neuter.
- 3.8 Estoppel Certificates. Either Owner or NWACA (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 the zoning ordinance issued by the City of Austin in connection with the Zoning Case, 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 (i.e., third reading) of the Zoning Case by the City of Austin City Council, with no subsequent appeal, and in a form and on terms and conditions acceptable to Owner in its sole discretion. If the Zoning 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) NWACA fails to give its support in accordance with Section 1.3 hereof, 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, NWACA shall execute and acknowledge a counterpart to such Termination Affidavit.

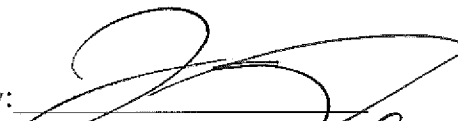
- 3.12 Effective Date. This Declaration shall become effective upon the final effective date of the Zoning Case by the City of Austin in a form acceptable to Owner. If the Zoning Case is not approved in a form acceptable to Owner, then, consistent with Section 3.11 above, this Declaration shall be void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

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

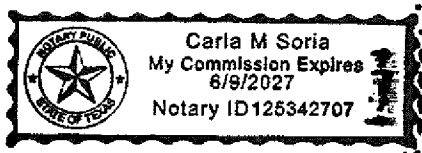
OWNER:

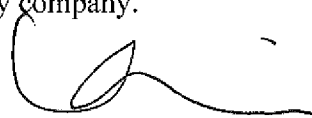
OP 8200 MOPAC PROPERTY, LLC,
a Texas limited liability company

By: 
Name: Luke Wood
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 19 day of August, 2024, by LUKE WOOD, the MANAGER of OP 8200 MOPAC PROPERTY LLC, a Texas limited liability company, on behalf of the limited liability company.






Notary Public, State of Texas

OWNER:


OP 8300 MOPAC PROPERTY, LLC,
a Texas limited liability company

By: 
Name: Luke Wood
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 19 day of August, 2024, by LUKE WOOD, the Manager of OP 8300 MOPAC PROPERTY LLC, a Texas limited liability company, on behalf of the limited liability company.





Notary Public, State of Texas

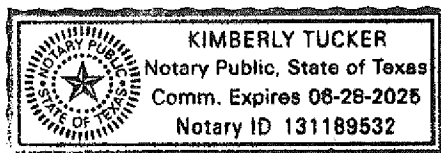
NWACA:

NORTHWEST AUSTIN CIVIC ASSOCIATION

By: Joyce Statz
Name: Joyce Statz
Title: President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 12 day of August, 2024 by Joyce Statz, the President of NORTHWEST AUSTIN CIVIC ASSOCIATION, a Texas non-profit corporation, on behalf of the non-profit corporation.



Kimberly Tucker
Notary Public, State of Texas

Exhibit A
Property

Lot 1, PARK NORTH, an addition to the City Austin, Travis County, Texas, according to the map or plat of record in Plat Book 82, page 375, Plat Records of Travis County, Texas.

Lot 2, Sharmark West, a subdivision in Travis County, Texas, according to the map or plat recorded in Volume 77, Page 267, plat records of Travis County, Texas.