

WHEN RECORDED RETURN TO:

Nichols, Jackson, Dillard, Hager & Smith, LLP
Attention: Robert E. Hager
500 N. Akard, Suite 1800
Dallas, Texas 75201

(Space Above For Recorder’s Use Only)

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

STATE OF TEXAS §
 § **RESTRICTION AGREEMENT**
COUNTY OF DALLAS § **(With Option to Repurchase and Right of First Refusal)**

This **RESTRICTION AGREEMENT** (“Restriction Agreement”) is made and entered into as of the Effective Date by and between the **Wilson Family Trust, by William Harlin Wilson, Trustee** (“Wilson”), and **City of Coppell, Texas**, (“City”) a Texas Home Rule Municipality (Wilson and City sometimes hereafter collectively referred to as “Parties” or separately as “a Party” or “the Party”)

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Agreement, City has purchased the Land from Wilson; and

WHEREAS, Wilson has, as a condition of the conveyance of the Land to City, restricted the use of the improvements and required City to maintain the Land with the Improvements in accordance with the terms and conditions set forth herein; and

WHEREAS, City desires to grant Wilson (i) an option to repurchase the Land in the event City fails to utilize the improvements (hereinafter defined) of the Improvements in accordance this Restriction Agreement and (ii) a Right of First Refusal (“ROFR”), in such case subject to the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Article I
Land Subject to Restrictions

For the term specified in Section 6.2, the Land shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by City and any subsequent owners of all or any part of the Land (as hereinafter defined), subject to the terms of this Restriction Agreement.

Article II
Definitions

For purposes of this Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

“City” means the City of Coppell, a Texas Home Rule Municipality located in Dallas County, Texas.

“Effective Date” means the date City acquires fee simple title to the Land from Wilson pursuant to the Purchase Agreement.

“Force Majeure” shall mean (i) acts of war or terrorism, (ii) fire or other similar casualty or unusual and extraordinary occurrence, (iii) explosion, (iv) riot or civil commotion or acts of public enemy, (v) judicial or administrative writ, order or decree, (vi) legislative decisions or actions of, or delays by, applicable local, state or Federal governments, including delays by the City and/or Dallas County (and their respective political subdivisions), but only to the extent such delays occur notwithstanding that City and its contractors and consultants have provided timely responses to all requests and inquiries of the City and/or Dallas County arising during the zoning and platting processes, (vii) strikes, lockouts or labor difficulty (including jurisdictional union labor disputes), (viii) casualty at the job site or resulting in direct physical damage to the Property, or occurring off-site but only if directly disrupting or delaying the supply chain of labor or materials to the Property, (ix) moratoria on the issuance of permits or other governmental approvals affecting construction projects generally in the Dallas-Fort Worth-Arlington Metropolitan Statistical Area, and/or (x) inclement weather of sufficient severity as to reasonably cause a delay in performance of the obligation to be performed.

“Improvements” collectively means the Wilson residential structure, curtilage, garage structure thereto and on the eastern portion of the Land, not otherwise including the Minyard store, Kirkland house, Windmill and public restrooms.

“Land” shall mean the real property being Lot 1R, Block A of the Wilson-Kirkland-Minyard Addition an addition to the City of Coppell, Dallas County Texas, and any and all improvements.

“Parking Area” means a surface designed for parking of motor vehicles.

“Property” collectively means the Land and any Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Agreement” shall mean that certain *Purchase and Sale Agreement* by and between Wilson Family Trust, and City of Coppell, Texas.

“Repurchase Price” means an amount equal to the price per square foot for the Land at the closing of the transactions contemplated in the Purchase Agreement, which is _____ square foot.

“Required Use” means use of the Improvements as defined herein, to be used and maintained as a historical residence museum and/or heritage park as permitted pursuant to the City of Coppell Old Town Zoning and land use regulations, as codified and/or adopted, as amended.

Article III Repurchase Option

3.1 **Grant of Repurchase Option.** In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by Wilson to City and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by City, and subject as hereinafter provided, City hereby grants to Wilson an option to repurchase the Property upon the terms and conditions set forth in this Article III (the “Option”).

3.2 **Option to Repurchase for Failure to Comply with the Required Use.** If City fails to comply with the required use or causes the improvements to become substandard or otherwise desires to sell the Improvements on or before **October 1, 2037**, subject to extension for events of Force Majeure as set forth in Section 3.4 below, then Wilson shall have the right, but not the obligation, to exercise the Option to repurchase the Improvements for the Repurchase Price. If Wilson desires to exercise the Option, then Wilson shall give written notice of same to City and City shall have an additional period of thirty (30) days following receipt of such written notice within which to cause Commencement of Construction to occur. If City fails to comply within such thirty (30) - day period, then Wilson may proceed to repurchase the Land for the Repurchase Price in accordance with the provisions of Article V below.

3.3 **Force Majeure Events.** In the event restriction or required use results by events of Force Majeure, City shall have additional time to cause Commencement of Construction to occur so long as City is diligently and faithfully pursuing the same to the extent reasonably possible given the nature of the applicable Force Majeure event(s) and presents such documentation as may be reasonably required by Wilson to support the extension of the deadline for Commencement of Construction. Any delay relating to the time for Commencement of Construction shall be the same number of days in which the conditions causing the Force Majeure event(s) were in existence.

3.4 **Sole Remedy.** Wilson’s sole and exclusive remedy for City’s failure to comply with the required use restriction set forth herein shall be the exercise of the Option and repurchase of the Property in accordance with Article V, below.

Article IV
Right of First Refusal

4.1 **Grant.** Subject to the terms and conditions hereinabove and hereinafter set forth, City hereby agrees that Wilson shall have, and hereby grants to Wilson, during the period commencing upon the Effective Date and ending upon the Commencement of Construction (“the ROFR Period”), a right of first refusal (the “ROFR”) to purchase the Property, or portion thereof, on the terms and conditions set forth herein. Notwithstanding the foregoing, the ROFR shall not apply to any sale or transfer of the Property to (i) any entity wholly owned by or under common control with City or (ii) by foreclosure or deed in lieu of foreclosure (collectively, an “Excluded Transfer”); provided, however, the ROFR shall survive any Excluded Transfer and shall be binding upon the party or parties acquiring title by way of such Excluded Transfer.

4.2 **Notice of Third-Party Offer.** If (i) City receives a bona fide offer for the purchase of any portion of Property that it intends to accept, or (ii) City receives any offer to purchase the Property or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Property, City shall give notice thereof in writing to Wilson (the “Third Party Notice”). The Third Party Notice shall include a copy of any offer to be made or any offer received by City, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

4.3 **Wilson’s Exercise of ROFR.** For a period of thirty (30) days after receipt by Wilson of the Third Party Notice, Wilson shall have the right to repurchase the Property or portion thereof which is the subject of the Third Party Notice, upon the same terms and price as set forth in the Third Party Notice or for the Repurchase Price, whichever is deemed by Wilson to be more favorable to Wilson (the “ROFR Price”). The ROFR may be exercised by Wilson by providing written notice to City not later than thirty (30) days after Wilson’s receipt of the Third Party Notice. Wilson’s notice shall indicate acceptance of the terms set forth in the offer as recited in the Third Party Notice, and whether or not the repurchase will be subject to the price set forth in the Third Party Notice or the Repurchase Price.

4.4 **Wilson Fails to Exercise ROFR.** In the event Wilson does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third Party Notice:

(a) City may sell the Property, or portion thereof, at the price and on the terms and conditions described in the Third Party Notice during the one hundred eighty (180) day period following the date of the Third Party Notice; and

(b) Wilson shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. City agrees not to sell the Property, or portion thereof, during the ROFR Period at any price less than ninety-five percent (95%) of the price reflected in the Third Party Notice, on any terms or conditions materially more favorable to the buyer than those set forth in the Third Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving Wilson the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time.

4.5 **No Release of Restrictions Required.** Wilson’s failure to exercise the ROFR shall not constitute a release of the Option, Wilson’s rights to repurchase the Property pursuant to the Option, or the obligations of any subsequent owner of the Land to comply with the obligations of this Restriction Agreement.

Article V
Terms of Sale Upon Exercise of Right

5.1 **Effect of Exercise of the Right.** Upon any timely exercise of the Option or ROFR (collectively, “the Right”) by Wilson in accordance with the foregoing provisions, the conveyance of the Property, or portion thereof, to Wilson shall be in accordance with the provisions in this Article V.

5.2. **Title, Survey, and Environmental Reports.**

(a) Not later than the twentieth (20th) day after the exercise of the Right, City shall, at City’s expense, deliver to Wilson (collectively, “Title Commitment”):

(i) a current commitment for an Owner’s Policy of Title Insurance from the Title Company for the portion of the Property to be conveyed to Wilson, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible (to the extent available) copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that City may have in its possession with respect to the Property;

(iv) copies of all leases and rental agreements creating a leasehold interest in any portion of the Property, if any; and

(v) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, Wilson shall have the right, at its sole option, to cause a boundary or “as-built” survey of the Property (“Survey”) to be made by a registered professional land surveyor selected by Wilson. Such Survey shall be made at the sole cost and expense of Wilson.

(c) Wilson shall, not later than twenty (20) days after Wilson’s receipt of the last of the Survey and Title Commitment, notify City and Title Company of any objections to the Survey or Title Commitment. If there are objections by Wilson, City shall in good faith attempt to satisfy them prior to Closing, but City shall not be obligated to incur any cost in doing so. If City delivers

written notice to Wilson not later than the tenth (10th) day after City's receipt of Wilson's objections that City is unable to satisfy such objections, Wilson may either waive such objections and accept title as City is able to convey or terminate the exercise of the Right by written notice to City and the Title Company.

5.3 **Closing.**

(a) The closing of the sale of the Property or portion thereof identified in the notice exercising the Right shall occur not later than sixty (60) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of City and Wilson.

(b) At the closing, City shall deliver to Wilson:

(i) a special warranty deed in form and substance substantially similar to the form used to convey the Land, or portion thereof, and related rights and appurtenances to City, conveying good and indefeasible fee title to the described in the notice exercising the Right and/or the Survey (whichever is the most accurate description) to Wilson, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors; and

(ii) possession of the portion of the Property described in the notice of the exercise of the Right, free of parties in possession (except for any third party possessory leases for the Building in existence as of such date).

(c) At closing, Wilson shall pay in cash or by certified or cashier's check the Repurchase Price or the ROFR Price as determined by Section 4.3, whichever is applicable, out of which shall be paid, first, the outstanding balance of any loan secured by a deed of trust lien on any portion of the Property until such loan is paid in full, and thereafter, all closing costs and other costs and expenses to be paid by City pursuant to this Article.

5.4 **Taxes.** Ad valorem taxes, assessments, and any other charges against the Property and/or Improvements conveyed to Wilson pursuant to this Article V shall be prorated as of the Closing Date for the current year, such that City will be responsible for all such items which accrue prior to the Closing Date during its tenure of ownership, and Wilson will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years for City's tenure of ownership shall be paid by City.

5.5 **Closing Costs.**

(a) City will pay and be responsible for the following closing costs, unless and to the extent any Third Party Notice provides for the purchaser thereunder to pay such closing costs, in which event Wilson, on the exercise of the ROFR, shall pay and be responsible for such closing costs:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

- (ii) all fees and premiums for Basic Owner's Title Policy, excluding any deletions from, or modifications of or endorsements to the Basic Owner's Title Policy;
- (iii) one-half (½) of the Title Company's escrow fees;
- (iv) all recording fees;
- (v) all costs and expenses incurred by or on behalf of City, including City's attorney's fees;
- (vi) all costs related to obtaining any releases of liens on the portion of the Property conveyed relating to any loans secured by a deed of trust lien on said property; and
- (vii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) Wilson hereby agrees to pay and be responsible for the following closing costs:

- (i) all fees and premiums for the Survey;
- (ii) one-half (½) of the Title Company's escrow fees;
- (iii) all fees and premiums for any deletions from, or modifications of or endorsements, to the Basic Owner's Title Policy;
- (iv) all costs and expenses incurred by or on behalf of Wilson, including Wilson's attorneys' fees; and
- (v) such other incidental costs and fees customarily paid by purchasers of property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

5.6 **Permitted Exceptions.** Wilson acknowledges and agrees that the Property conveyed pursuant to this Article V will be conveyed by City at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by Wilson, including; (i) those matters of record in existence and applicable to the Property upon City's acquisition of the Property; (ii) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by City; and (ii) such other matters as Wilson may waive, or as City is not otherwise obligated to cure or remove.

5.7 **Conveyance As Is.** Wilson acknowledges and agrees that the Property conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by City

as set forth in the Special Warranty Deed, and in the bill of sale and assignment, Wilson acknowledges and agrees that City will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Wilson by City or any employee or agent of City, except as specifically set forth in this Restriction Agreement.

Article VI Restrictions

6.1 **Use of Property; Buildings.** The improvement must be used and maintained in conformance with definition of Required Use in Article IV hereof. The Improvements shall not be used for any purpose other than the Required Use.

6.2 **Term of Restrictions.** The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of twenty (20) years thereafter (the "Restriction Period").

Article VII Miscellaneous

7.1 **Enforcement.** Wilson shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Subject to the limitation set forth in Section 6.1, above, enforcement of the provisions set forth in Section 6.1 contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) consecutive thirty (30)-day notice and cure periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council of the City of Coppell to exercise its legislative duties and powers insofar as the Property is concerned. For further remedy, City, for itself, its successors, and assigns agrees that City, as a third party beneficiary to this Restriction Agreement, may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with the Required Use. Wilson's right to repurchase the Property pursuant to the exercise of the Right as set forth in this Restriction Agreement constitutes Wilson's sole and exclusive remedy for any failure by City use in conformance with Section 6.1 on the Land in accordance with this Restriction Agreement. The rights of Wilson under this Restriction Agreement may not be waived or released except pursuant to an amendment, termination or as provided in Article IV in accordance with the provisions hereof, except by expiration of the Restriction Period.

7.2 **Amendment.** No amendment or termination of this Restriction Agreement shall be effective unless and until approved by City and Wilson; provided, however, Wilson may, without the consent of City, terminate and release the restrictions set forth in Section 6.1. In the event City,

or subsequent owner of the Property, desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, City, or subsequent owner, as the case may be, shall file a written application for such change or amendment with Wilson, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by Wilson shall not be effective unless and until an instrument executed by Wilson's President is recorded in the Official Public Records in the office of the Dallas County Clerk in accordance with this Section.

7.3 **Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission, by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for Wilson, to:

With a copy to:

Wilson Family
417 West Bethel Road
Coppell, Texas 75019

If intended for the City, to:

With a copy to:

City of Coppell, Texas
Mike Land, City Manager
255 Parkway
Coppell, Texas 75019

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Facsimile No. (214) 965-0010

Any Party may at any time and from time to time by notice in writing to the other Party change the name or address of the person to who notice is to be given as hereinbefore provided.

7.4 **Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

7.5 **Governing Law.** This Restriction Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas. Venue for any action under this Restriction Agreement shall be in the state district court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.6 **Recording.** The Parties agree that Wilson may record this Restriction Agreement in the Official Public Records in the office of the Dallas County Clerk. Wilson agrees to execute and file a release of this Restriction Agreement, or the Option, ROFR or other applicable portion of this

Restriction Agreement, as appropriate, in said records upon request of City after the expiration or termination of this Restriction Agreement, or the Option, ROFR, or other applicable portion of this Restriction Agreement.

7.7 **Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property and accomplishing certain public purposes of the City of Coppell and, consequently, shall run with the Property and be binding on the City and all parties having all right, title, or interest in the Land, in whole or in part, and their heirs, successors and assigns. These covenants, conditions and restrictions shall be for the benefit of Wilson and the City of Coppell, Texas. This Restriction Agreement is binding upon City and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of Wilson, City, and their successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of City hereunder.

7.8 **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

7.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

7.10 **Counterparts.** This Agreement may be executed by the Parties in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties.

7.11 **Expiration of Rights.** At City's request, upon the expiration or termination of either of the Option or the ROFR, Wilson shall execute, in recordable form, a confirmation of the expiration or termination of same.

(Signatures on Following Page)

SIGNED AND AGREED on this _____ day of _____, 2017.

WILSON FAMILY TRUST

By: _____
William Harlin Wilson, Trustee

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2017, by William Harlin Wilson.

Notary Public, State of Texas

My Commission expires:

SIGNED AND AGREED on this _____ day of _____, 2017.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2017, by **Karen Selbo Hunt**, Mayor of the City of Coppel, Texas a Texas Home Rule Municipality.

Notary Public, State of Texas

My Commission expires:
