

AGREEMENT FOR FOREBEARANCE OF FORECLOSURE OF CLAIM OF LIEN

THIS Agreement is made and entered into on this ____ day of _____, 2019 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Dalton Land, LLC, a Georgia domestic limited liability company, hereinafter referred to as "OWNER".

WHEREAS, OWNER owns certain real property known as 2007 Tampico Way located in Dalton, Georgia and identified as Whitfield County Map Parcel No.: 12-158-03-000, hereinafter referred to as "PROPERTY"; and

WHEREAS, the CITY filed a Complaint In Rem For Nuisance Abatement in the Municipal Court of the City of Dalton on June 5, 2018 against said PROPERTY and OWNER; and

WHEREAS, the Municipal Court issued its Order declaring that a public nuisance existed on the PROPERTY and authorized the CITY, through its agents, to demolish the structure(s) located on the PROPERTY to abate the nuisance; and

WHEREAS, the CITY, through its agents, did demolish the structure(s) on the PROPERTY and did incur costs of demolition and related expense in the amount of \$322,817.16; and

WHEREAS, the CITY filed its Claim Of Lien for said demolition costs in the Whitfield County Land Records on May 15, 2019 as provided by O.C.G.A. §41-2-9(a)(7); and

WHEREAS, the OWNER desires to pay the cost of demolition over a period of time in lieu of the CITY foreclosing its Claim Of Lien; and

WITNESSETH: That the parties hereto for the considerations provided for herein hereby mutually agree as follows

1. PREMISES: The subject PROPERTY is known as 2007 Tampico Way located in Dalton, Georgia and identified as Whitfield County Map Parcel No.: 12-158-03-000.

2. USE OF PREMISES: OWNER shall be entitled to use and occupy the PROPERTY in conformity with all law, statutes, ordinances, rules, restrictions and orders of the federal, state or municipal governments or agencies thereof having jurisdiction over the use of the PROPERTY.

3. TERM: The term of this Agreement shall be for one (1) year

commencing on the date of approval and execution of this Agreement by the Mayor and Council of the City of Dalton.

4. PAYMENT OF DEMOLITION COSTS: OWNER shall pay to the CITY the sum of \$322,817.16. Said sum shall be paid in twelve equal installments of \$26,901.43. The first installment shall be due and payable on the date of execution of this Agreement by OWNER. All subsequent installment payments shall be due and payable every 30 days thereafter. All payments shall be made by cashier's check payable to the City of Dalton.

5. CITY COVENANTS: CITY shall forebear proceeding with the foreclosure of the CITY'S Claim Of Lien during the term of this Agreement.

6. OWNER CONVENANTS: OWNER agrees that said Claim Of Lien is valid and hereby waives any and all defenses to said Claim Of Lien and the CITY's right to foreclose said Claim Of Lien pursuant to applicable law.

7. OWNER'S DEFAULT: The occurrence of any one or more of the following events shall be a default and breach of this Agreement by OWNER: (a) OWNER fails to pay as due any installment payment by the due date or (b) OWNER breaches any of its obligations hereunder and fails to cure such breach within ten (10) days of written notice of breach from CITY.

Upon the occurrence of any event of default, CITY shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon LESSEE:

(a) CITY may immediately declare OWNER in default and immediately proceed with foreclosure proceedings to foreclose the subject Claim Of Lien. In that event, any payments made by OWNER shall be applied as a credit to the amount owed pursuant to said Claim Of Lien.

(b) CITY may declare OWNER in default and permit OWNER to pay a late fee equal to ten percent (10%) of the installment payment past due. CITY shall notify OWNER in writing of said late fee via email or overnight delivery as provided in Section 9 herein below. Said past due installment payment and late fee shall be due and payable within 5 days of said notice. In the event that OWNER fails to pay said past due installment payment and late fee as due, CITY may proceed as provide din Section 7(a) herein above.

(c) CITY may declare OWNER in default and immediately issue a stop work order by the City, its Departments, or agents on any work on the Property by OWNER, its agents, or assigns.

(d) CITY may declare OWNER in default and immediately revoke the Certificate Of Occupancy issued by the City, its Departments, or agents for the Property by

OWNER, its agents, or assigns.

8. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

9. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: G. Gargandi Vaughn
City Attorney
108 South Thornton Avenue
Dalton, GA 30720
gvaughn@mmfirmlaw.com

Such notice to OWNER shall be mailed to: Eric Niba, Esquire
Attorney for OWNER
5825 Glenridge Drive
Building 3, Suite 101
Atlanta, GA 30328
niba_and_associates@yahoo.com

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

10. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive all personal jurisdictional defenses pertaining to such venue.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. OWNER shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be

deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date and year first above written.

OWNER / Dalton Land, LLC:

Signature

By: (print name)

Title

Date

CITY OF DALTON, GEORGIA

By: _____
Dennis Mock, Mayor