



MEMORANDUM

TO: Mayor and Council

FROM: Greg Guernsey, Director
Planning and Development Review Department

DATE: September 19, 2013

SUBJECT: C14-2013-0088
1300 Plaza II

Attached is a private Declaration of Restrictive Covenants that memorializes agreements reached between the property owner of the subject tract of the zoning case, the Mary Lee Foundation, and the Zilker Neighborhood Association. Typically such documents, to which the City is not a party, are not included in back up materials for Council.

However, this case is different in two significant ways: first, when the requested rezoning was recommended for approval by the Planning Commission, their recommendation came with the recommendation that Council not act on the request until the private restrictive covenant had been finalized. Second, because there are multiple parties to the restrictive covenant, PDR staff has acted as the coordinator, or escrow agent, to help facilitate the document's execution and recordation.

Inclusion of this document in backup materials assures all interested parties that the document has been drafted as in the process of being executed. PDR staff fully expects all parties will have executed the document prior to Council consideration of the case, and will duly record the document with the Travis County Clerk upon the rezoning ordinance taking effect.

Greg Guernsey, Director
Planning and Development Review Department

x: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager

DECLARATION OF RESTRICTIVE COVENANTS

OWNER: 1300 Lamar Plaza, LLC

ADDRESS: 1300 South Lamar Blvd., Austin Texas 78704

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Zilker Neighborhood Association and the Mary Lee Foundation (hereinafter referred to as the "Neighborhood Association and the Foundation"), the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY: Lot 21-B, Block "A", Resubdivision of Lots 17, 20,21 &22 South Lamar Square.

RECITALS

- A. The owner of the Property is 1300 Lamar Plaza, LLC; and
- B. Portions of the Property are zoned CS Commercial Services district zoning according to a City of Austin ordinance. Owner filed an application with the City of Austin (referenced in the City of Austin files as case no. C14-2013-0088) to change the zoning on portions of the Property to CS-1 Commercial Liquor Sales district zoning (the "Zoning Case"); and
- C. The owner now desires to impress the Property with this Declaration of Restrictive Covenants.

NOW, THEREFORE, for the consideration recited above, Owner and the Neighborhood Association and the Foundation agree that the Property shall be held, developed, used, sold, and conveyed subject to the following covenants and restrictions impressed upon the Property by this Declaration of Restrictive Covenant for the benefit of the Neighborhood Association and its members and the Foundation and its residents. This Declaration shall run with the Property and shall be binding on Owner, his heirs, his successors, and his assigns.

RESTRICTIVE COVENANT

Owner agrees to hold, sell, and convey the Property subject to the following restrictive covenants:

1. No amplified sound above 70 db as measured at the rear property line on Lamar Square Drive shall be produced from the Property.
2. No live outdoor music shall be performed on the Property.
3. No outdoor events requiring temporary permits shall take place on the Property.

4. No events involving amplified sound other than background music shall take place on the rooftop or in other outdoor areas of the Property.

5. The Owner shall provide a sign restricting left turns onto Lamar Square Drive from any parking lots that connect with South Lamar Boulevard.

6. The Owner shall establish a process and standards by which the Mary Lee Foundation can communicate with businesses occupying the property to resolve complaints from the Foundation's residents or mutual problems affecting the Foundation.

ENFORCEMENT

The Neighborhood Association or the Foundation, or the successors of the Neighborhood Association or the Foundation, shall have the right to enforce the restrictions, conditions, covenants, and other terms imposed by this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future. Enforcement may be by a proceeding at law or in equity.

Enforcement by the Neighborhood Association, or its successors, shall be as authorized by a majority vote of the Executive Council at an open meeting of the Executive Committee of the Neighborhood Association whereby a quorum as defined by the bylaws or regulations or other document of the Neighborhood Association was present, and whereby Owner was given 10 days' Notice and an opportunity to present its case.

The Neighborhood Association or the Foundation shall be entitled to exercise all or any of the following remedies:

1. **Specific Performance.** The Neighborhood Association or the Foundation may enforce specific performance of the Owner's obligations hereunder and recover from Owner all costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcing specific performance.
2. **Injunctive relief.** Owner acknowledges that any violation of this Declaration may cause irreparable harm to the Neighborhood Association or the Foundation and that monetary damages are not an adequate remedy. Therefore, the Neighborhood Association or the Foundation shall be entitled to seek a restraining order, a temporary injunction, or a permanent injunction in the event there is any violation of this Declaration. In the event the Neighborhood Association or the Foundation seeks injunctive relief, the Neighborhood Association or the Foundation shall not be required to post a bond or bonds in excess of \$2,500.00 in the aggregate.

The foregoing recitation of potential remedies shall not be construed from prohibiting the Neighborhood Association or the Foundation from pursuing any other remedy that may be available at law or in equity to enforce the provisions of this Declaration.

Notwithstanding the foregoing, before instituting any action as a result of a breach of this Declaration by Owner, the Neighborhood Association or the Foundation shall send Owner Notice of such breach. Owner shall have 10 days from the date of the sending of such Notice to cure such breach.

SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other person or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire agreement between the parties hereto. Therefore, any previous written or oral agreements are replaced by this Agreement. This Agreement may be amended or modified at any time only if all of the parties hereto agree to such amendment or modification in writing.

NOTICE

Any notice required hereunder shall be sent by personal service and e-mail or by certified or registered mail, return receipt requested, and e-mail, at the address set forth below or as subsequently provided to the other party in writing.

If to Owner, to:

Scott Trainer
900 Bluebonnet Lane
Austin, Texas 78704

If to the Neighborhood Association, to:

Dr. Gardner Sumner
President, Zilker Neighborhood Association
1610 Treadwell Street
Austin, TX 78704

If to the Foundation, to:

Mary Lee Foundation
P.O. Box 3174
Austin, TX 78704

RIGHTS OF SUCCESSORS

The restrictions, benefits, and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration of Restrictive Covenants shall bind and inure to the benefit of the parties and their respective heirs, representatives, lessees, successors, and assigns. References to "owner," "Owner," "owners," and "Owners" include the future owners of their respective interests in portions of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.

GOVERNING LAW

This Agreement shall be subject to, and governed by, the laws of the State of Texas. Venue for any action brought under this Agreement shall be exclusively Travis County, Texas.

HEADINGS

The headings to this Agreement are inserted for convenience only and shall not be considered in construing the terms of this Agreement.

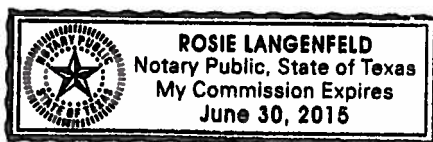
EXECUTED this 18 day of September, 2013.

OWNER

By: 

COUNTY OF TRAVIS

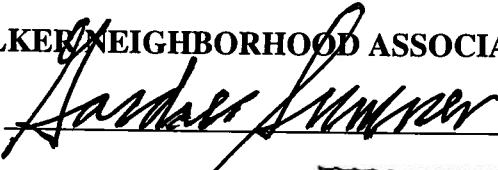
This instrument was acknowledged before me this 18 day of September, 2013, by Rosie Langenfeld, for the purposes herein expressed.

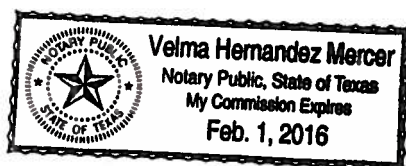



Notary Public, State of Texas

AGREED AND ACCEPTED

ZILKEE NEIGHBORHOOD ASSOCIATION

By: 




9/19/13

Name: GARDNER SUMNER

Title: PRESIDENT,
ZILKER NEIGHBORHOOD ASSN

MARY LEE FOUNDATION

By: Charlene Crump

Name: CHARLENE CRUMP

Title: EXEC DIR Mary Lee Foundation

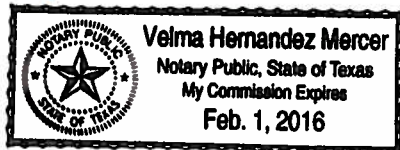
[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me this 18th day of September, 2013, by
Charlene Crump, for the purposes herein expressed.



Velma Hernandez Mercer
Notary Public, State of Texas

After Recording, Return To: