

DECLARATION OF RESTRICTIVE COVENANTS

OWNER: Bobbie Jack Lemmond ("Owner")

ADDRESS: 1109 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 (hereinafter referred to as the "Neighborhood Association"), the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY: Lot Numbers Nineteen (19) and Twenty (20), in Block No. Eighteen (18), in South Heights, an Addition in the City of Austin, Travis County, Texas, according to the map or plat recorded in Volume 1, Page 112, of the Plat Records of Travis County, Texas, less however, and save and except that portion of said lots conveyed to the City of Austin, by deed recorded in Volume 529, Pages 20-21 and by deed recorded in Volume 530, Pages 186-187 of the Deed Records of Travis County, Texas, and being the same property conveyed to B.H. Reissig, et al, by deed from Thomas A. Evans, et al, recorded in Volume 831, Page 247, of the Deed Records of Travis County, Texas. (the "Property").

RECITALS

A. Bobbie Jack Lemmond is the owner of the Property; and

B. The Property is 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. C14-05-0137) to change the zoning on the Property to CS-1-CO Commercial Liquor Sales Conditional Overlay combining district zoning (the "Zoning Case"); and

C. Owner now desires, in connection with the re-zoning of the Property pursuant to the Zoning Case, to impress the Property with this Declaration of Restrictive Covenants.

NOW, THEREFORE, for the consideration recited above, Owner and the Neighborhood Association 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 Covenants for the benefit of the Neighborhood Association and its members. 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. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, live outdoor music shall be prohibited on the Property.
2. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, all exterior lighting on the Property shall be hooded, diffused, or otherwise designed and arranged to:
 - a. avoid glare on adjacent properties and public streets;
 - b. prevent the light source from being directly visible from adjacent property and public streets; and
 - c. minimize glare and light trespass onto adjacent property and public streets.
3. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, all lighting used on the Property to illuminate any off-street parking or loading areas shall be designed and arranged so as to be confined within and directed onto that parking or loading area only.
4. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business and live indoor music is performed, then commercially reasonable efforts shall be taken to prevent the release of noise from the building including the closing of all doors and windows, as well as the installation of additional insulation, as necessary.
5. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, neither Owner nor any tenant of the Property shall seek a variance from the parking requirements as provided in the City Code of the City of Austin.
6. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, then sound levels at the boundary lines of the Property shall not exceed the decibel levels as provided by the applicable City of Austin noise ordinance found in the City Code (the "Noise Ordinance"). Notwithstanding the foregoing, sound levels at the eastern boundary line of the Property shall not exceed the higher of the Noise Ordinance or the ambient background decibel levels as measured by a private consulting acoustical engineer.

SECURITY FOR PERFORMANCE

Owner agrees, in exchange for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Neighborhood Association, the receipt and sufficiency of which is hereby acknowledged and confessed by owner, to provide, within ninety (90) days following Council of Austin approval of the Zoning Case, a Letter of Credit ("LOC") from an FDIC insured financial institution with a branch office located in Travis County, Texas, issued to the Neighborhood Association, in the amount of \$10,000.00. The LOC shall have a term of 3 years from the earlier to occur of (a) June 1, 2006 and (b) the third anniversary date of the date of issuance by the City of Austin of the first Certificate of Occupancy after the approval of the Zoning Case (as the term "Certificate of Occupancy") is defined in the City Code of the City of Austin for the Property. The LOC shall provide that it may be presented to any branch of the issuing financial institution, including, but not limited to those in Travis County, Texas. The only documentation that may be required to be presented with the LOC to draw upon the LOC shall be an affidavit executed by an officer of the Neighborhood Association stating that (1) Owner is in default in performance of the restrictions, covenants and conditions set out in this Declaration and (2) Owner had been given notice of such default as required by this Declaration and the default continued after the cure period provided in this Declaration.

Within ten (10) days of receipt the monies received by the Neighborhood Association from drawing upon the LOC shall be delivered to a third party escrow agent selected by the Neighborhood Association ("Escrow Agent"). The Neighborhood Association may draw on such funds from time to time thereafter to pay invoices for actual out of pocket costs incurred directly or indirectly as a result of actions taken by the Neighborhood Association to enforce this Declaration, including all attorneys' and other consultants' fees and court costs by submitting a written request for payment to the Escrow Agent along with copies of such invoices for expenses.

Any funds remaining in the Escrow Agent's account on the third anniversary date of being deposited into such account shall be delivered by Escrow Agent to Owner.

MISCELLANEOUS PROVISIONS

1. **Enforcement.** The Neighborhood Association, or its successors, as authorized by a majority vote of the Executive Council at open meeting of the Executive Council 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 ten days Notice and an opportunity to present its case, 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. The Neighborhood Association shall be entitled to exercise all or any of the following remedies:

(a) **Specific Performance.** Neighborhood Association may enforce specific performance of the Owner's obligations hereunder and recover from the Owner all costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcing specific performance.

(b) **Injunctive Relief.** Owner acknowledges that any violation of this Declaration may cause irreparable harm to Neighborhood Association and that monetary damages are not an adequate remedy. Therefore, Neighborhood Association shall be entitled to seek a restraining order, temporary injunction and a permanent injunction in the event there is any violation of this Declaration. In the event Neighborhood Association seeks injunctive relief, Neighborhood Association 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 Neighborhood Association 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 shall send Owner Notice of such breach and Owner shall have ten (10) days from the date of sending of such notice to cure such breach

2. **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.

3. **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.

4. **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:

Bobbie Jack Lemmond
1109 South Lamar Blvd.
Austin, Texas 78704

If to the Neighborhood Association, to:

Zilker Neighborhood Association
Attn. President
2008 Rabb Glen St.

Austin, Texas 78704

5. 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 portions of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.

6. 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.

7. 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 _____ day of _____, 2006.

OWNER:

Bobbie Jack Lemmond

AGREED AND ACCEPTED:

ZILKER NEIGHBORHOOD ASSOCIATION

By: _____
Name: _____
Title: _____

[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this _____ day of _____, 2006,
by Bobbie Jack Lemmond, for the purposes herein expressed.

Notary Public, State of Texas

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this _____ day of _____, 2006,
by _____, President of Zilker Neighborhood Association, on behalf of
said Association and for the purposes herein expressed.

Notary Public, State of Texas

After Recording, Return To:

Kareem Hajjar
Hajjar Sutherland, PLLC
1105 South Lamar Blvd
Austin, TX 78704