

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made on the 15 day of October, 2012, by SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the fee simple owner of that certain real property, consisting of approximately 3.616 acres located at 809-905 South Lamar, Austin, Travis County, Texas, as further described and/or depicted on Exhibit "A" attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Declarant currently intends to develop a 340 unit multifamily vertical mixed use project (the "Project") on the Property, and is seeking a zoning change from the City of Austin (the "City") to MF-6 on those portions of the Property as shown on Exhibit "B" (City of Austin Case Numbers C14-2011-0153 and C14-2011-0154);

WHEREAS, Declarant has requested support from the Zilker Neighborhood Association ("ZNA") for the zoning changes to MF-6 shown on Exhibit "B" attached hereto;

WHEREAS, Declarant has agreed to establish certain other restrictive covenants, which are described herein, in connection with the development of the Property;

WHEREAS, all references to the "Code" shall mean the City of Austin Land Development Code as of the date hereof; and

WHEREAS, as of the date of this Declaration, it is hereby acknowledged that with respect to that portion of the Property that is zoned CS-V as shown on Exhibit "C", the VMU affordability requirements of Section 4.3.3.F.2 of Subchapter E of the Code shall apply and the CS-V portion of the Property shall be subject to the ZNA neighborhood affordability customization, which dictates that that ten percent (10%) of the residential units are to be rented at rates established by the US Secretary of Housing and Urban Development ("HUD") for residential households earning no more than sixty percent (60%) of the annual median family income ("AMFI"), as adjusted for family size, as is published from time to time by the Austin Housing Finance Corporation ("AHFC"), for a minimum of forty (40) years following the issuance of a certificate of occupancy.

NOW, THEREFORE, for and in consideration of the zoning change as described above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and in accordance with the doctrines of restrictive covenants and

implied equitable servitude, Declarant, intending to bind itself, its assigns and successors, does hereby declare, impose and subject the Property to the following restrictions:

I. Restrictions

1.1 Affordable Units.

(a) Twenty (20) residential units specified by Declarant in the overall Project will be leased at rates established by HUD to residential households whose income is no more than 60% AMFI for the City, as published from time to time by AHFC (the "60% AMFI Units"). The base rent charged by the owner of the Project for the 60% AMFI Units shall be equal to the rent limit for 60% AMFI households as established by HUD and published by the City or AHFC from time to time under the TDHCA rent limits (Austin) by unit size; provided, however, "base rent" for purposes of this Section 1.1(a) shall be defined as only the base rent for the 60% AMFI Unit itself and does not include any utilities or additional rent or other charges that may be included in rent for premium parking, storage space or other special amenities that may be available or apply generally to all residents of the Project for an additional charge. Attached hereto as Exhibit "D" is the current (effective as of July 13, 2011) rent limits established by HUD and published by AHFC. For purposes of determining the number of 60% AMFI Units, the number of such residential units is equal to the product of (x) the total number of residential units contained in the Project multiplied by (y) 0.10, and multiplied by (z) 0.60; and

(b) Fourteen (14) residential units specified by Declarant in the overall Project will be leased at rates established by HUD to residential households whose income is no more than 80% AMFI for the City, as published from time to time by AHFC (the "80% AMFI Units"). The base rent charged by the owner of the Project for the 80% AMFI Units shall be equal to the rent limit for 80% AMFI households as established by HUD and published by the City or AHFC from time to time under the TDHCA rent limits (Austin) by unit size; provided, however, "base rent" for purposes of this Section 1.1(b) shall be defined as only the base rent for the 80% AMFI Unit itself and does not include any utilities or additional rent or other charges that may be included in rent for premium parking, storage space or other special amenities that may be available or apply to all residents of the Project for an additional charge. For purposes of determining the number of 80% AMFI Units specified above, the number of such residential units is equal to the product of (x) the total number of residential units contained in the Project multiplied by (y) 0.10, and multiplied by (z) 0.40.

The calculations described in (a) and (b) above determine the total number of 60% AMFI Units and 80% AMFI Units to be included in the Project, however the 60% AMFI Units and 80% AMFI Units can be located anywhere in the Project (i.e. the 60% AMFI Units do not have to be located in the CS-V portion of the Project and the 80% AMFI Units do not have to be located in the MF-6 portion of the Project). Declarant will use good faith efforts to avoid clustering all 60% AMFI Units and all 80% AMFI Units in only one location within the Project.

The restrictions set forth in this Article I shall run with the land for a period of forty (40) years from the date of issuance of the first certificate of occupancy for the residential portion of the Project.

1.2 Prohibited Uses – CS-V Zoning. The following uses shall be prohibited on the portion of the Property currently zoned CS-V as shown on Exhibit “C” for a period of twenty (20) years after the date hereof: Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing (of any type), Bail Bond Services, Convenience Storage, Drive-Thru Services, Outdoor Entertainment, Outdoor Sports and Recreation, Pawn Shop Services, Service Station, Vehicle Storage as primary uses, as such uses are defined in the Code.

1.3 Heritage Trees. Declarant hereby agrees to comply with City of Austin Permit Number/ROW I.D. 10672949 (the “Heritage Tree Permit”) in connection with construction of the Project including the requirement for a 5 (five) year tree care plan as required by the Heritage Tree Permit.

1.4 Active Public Uses. With respect to construction and operation of this Project, Declarant agrees to include uses ancillary to multifamily use (e.g., a fitness center, amenity center, leasing office or clubhouse) on the first floor of the building facing South Lamar in that portion of the Property being rezoned MF-6 pursuant to Austin City Case Number C14-2011-0153 as shown on Exhibit “B”, for at least 75% of the total building frontage of this area.

II. General

2.1 Enforcement of Declaration. If Declarant shall violate this Declaration, it shall be lawful for the Board of Directors of ZNA (the “Executive Committee”) as its sole and exclusive remedy, to enforce this Declaration through a claim for actual damages or injunctive relief against the Declarant. Notwithstanding the foregoing, the Executive Committee may not enforce its remedies until after it has delivered a written notice to the Declarant, informing Declarant of the alleged violations of this Declaration. Within thirty (30) days after receiving such a notice of violation, the Declarant shall send a written response to the Executive Committee informing them of what actions, if any, Declarant plans to take in order to remedy the alleged violation(s). If the Declarant notifies the Executive Committee that Declarant intends to cure the alleged violation, then the Declarant shall have a reasonable period of time, not to exceed ninety (90) days from the date of notice (or if such violation can not be cured within ninety (90) days despite the Declarant’s commercially reasonable efforts, then as long as reasonably necessary) in which to cure the alleged violation, during which period, if the Declarant timely commences the cure and is using commercially reasonable efforts to cure the violation, then the Executive Committee shall not enforce any remedy. If the Declarant fails to send written notice of intent to cure within the above-prescribed 30-day period, or fails to cure the default within the 90-day or extended period, as applicable, then the Executive Committee may enforce its remedies as provided herein. The prevailing party in any litigation hereunder shall be entitled to reasonable attorney’s fees actually incurred in the enforcement or defense of this Declaration. Except for Declarant and the Executive Committee and their respective successors and assigns, this Declaration shall not be enforceable by any other person or entity. Notwithstanding anything in this Section 2.1 to the contrary, Declarant shall have the right to retain, at Declarant’s sole cost and expense, an independent, third party accounting or auditing firm to examine or audit the books and records of Declarant to determine Declarant’s compliance

with this Declaration. By execution below, the Executive Committee agrees that the determination of any such independent, third party accounting or auditing firm shall be conclusive evidence of Declarant's compliance with this Declaration.

2.2 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by either facsimile, with verification that the facsimile has been received, or mailed by certified or registered mail, postage prepaid, overnight delivery by a national delivery company, or express mail, addressed as follows:

If to Declarant: South Lamar Apartments Limited Partnership
5847 San Felipe, Suite 3600
Houston, Texas 77057
Attn: Kathy K. Binford

If to ZNA: Zilker Neighborhood Association
c/o Andy Elder, President
1818 Treadwell St.
Austin, Texas 78704

2.3 Binding Effect. It is intended that the provisions of this Declaration shall run with the land and be binding upon Declarant, and its successors and assigns, for the periods of time expressly provided herein.

2.4 Modification. This Declaration may be modified, amended, or terminated only by joint action of both (a) a majority of the Executive Committee of ZNA, or its successors and assigns, and (b) by the fee simple owner(s) of at least sixty percent (60%) of the gross land area of the Property at the time of such modification, amendment or termination.

2.5 Partial Invalidity. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.

2.6 Controlling Law. This Declaration has been made and entered into under the laws of the State of Texas, and said laws shall control the interpretation thereof.

2.7 Public Restrictive Covenant. In the event any of the restrictions set forth in Section I of this Declaration are placed in an ordinance or public restrictive covenant (enforceable by the City) or covered by conditional overlays in any subsequent zoning changes, then this Declaration will be of no further force and effect as to any such restrictions covered thereby, and if requested by Declarant, the Executive Committee shall execute a release of such restrictions in recordable form for recordation by Declarant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date and year first above written.

DECLARANT:

SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership

By: SLJV G.P. LLC, a Delaware limited liability company, its general partner

By: Kathy K. Binford
Kathy K. Binford
Vice President

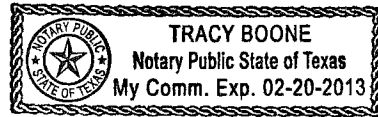
STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on this the 15 day of October, 2012, by Kathy K. Binford, Vice President of SLJV G.P. LLC, a Delaware limited liability company, as general partner of South Lamar Apartments Limited Partnership, a Delaware limited partnership, on behalf of said partnership.

Tracy Boone
Notary Public, State of Texas



AGREED TO AND ACCEPTED:

ZILKER NEIGHBORHOOD ASSOCIATION

By: *William Andrew Old*
Name: William Andrew Old
Title: President, Zilker Neighborhood Assn
Date: 10/12/12

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 12 day of October, 2012, by William Andrew Old as President of the Zilker Neighborhood Association, a Texas nonprofit corporation, on behalf of said corporation.

Robbie A. Billig
Notary Public, State of Texas

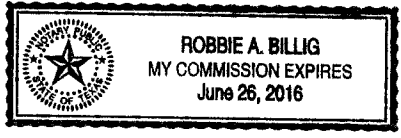


EXHIBIT "A"

Property



DESCRIPTION
(809 SOUTH LAMAR BLVD.)

A 1.106 ACRE TRACT OF LAND OUT OF THE ISAAC DECKER LEAGUE ABSTRACT NO. 8, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 1.105 ACRE TRACT OF LAND CONVEYED TO LAMAR BUILDING PARTNERS, L.P. BY DEED OF RECORD IN DOCUMENT NO. 2007132902 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.106 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an iron pipe found in the curving easterly right-of-way line of South Lamar Boulevard (R.O.W. varies), being the northwesterly corner of that certain 0.504 acre tract of land conveyed to Lamar Building Partners, L.P. by deed of record in Document No. 2011109173 of said Official Public Records and the southwesterly corner of said 1.105 acre tract of land, for the southwesterly corner hereof;

THENCE, along said curving easterly right-of-way line of South Lamar Boulevard, being the westerly line of said 1.105 acre tract of land, for the westerly line hereof, the following two (2) courses and distances:

- 1) Along a curve to the right, having a radius of 1393.47 feet, a central angle of $03^{\circ}04'19''$, an arc length of 74.71 feet and a chord which bears, $N45^{\circ}27'24''E$, a distance of 74.70 feet to an "X"-cut found at the end of said curve;
- 2) $N47^{\circ}13'11''E$, a distance of 100.35 feet to a 1/2 inch iron rod found at the southwesterly corner of that certain 0.378 acre tract of land conveyed to 801, Ltd. by deed of record in Document No. 2002207417 of said Official Public Records, being the northwesterly corner of said 1.105 acre tract of land and for the northwesterly corner hereof;

THENCE, $S60^{\circ}31'10''E$, leaving the easterly right-of-way line of South Lamar Boulevard, along the southerly line of said 0.378 acre tract of land, being the northerly line of said 1.105 acre tract of land, for the northerly line hereof, a distance of 253.55 feet to an iron pipe found in the westerly right-of-way line of the International and Great Northern Railroad (100' R.O.W.), for the southeasterly corner of said 0.378 acre tract of land and the northeasterly corner of said 1.105 acre tract of land, and for the northeasterly corner hereof;

THENCE, $S25^{\circ}40'49''W$, along the westerly right-of-way line of said Railroad, being the easterly line of said 1.105 acre tract of land, for the easterly line hereof, a distance of 170.14 feet to a 1/2 inch iron rod with cap set for the northeasterly corner of said 0.504 acre tract of land, and for the southeasterly corner of said 1.105 acre tract of land and for the southeasterly corner hereof;

THENCE, $N60^{\circ}05'26''W$, along the northerly line of said 0.504 acre tract of land, being the southerly line of said 1.105 acre tract of land, for the southerly line hereof, a distance of 315.97 feet to the **POINT OF BEGINNING**, and containing 1.106 acre (48,169 square feet) of land, more or less, within these metes and bounds.

**DESCRIPTION
(811 SOUTH LAMAR BLVD.)**

A 0.506 ACRE TRACT OF LAND OUT OF THE ISAAC DECKER LEAGUE ABSTRACT NO. 8, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 0.504 ACRE TRACT OF LAND CONVEYED TO LAMAR BUILDING PARTNERS, L.P. BY DEED OF RECORD IN DOCUMENT NO. 2011109173 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.506 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an iron pipe found in the curving easterly right-of-way line of South Lamar Boulevard (R.O.W. varies), being the southwesterly corner of that certain 1.105 acre tract of land conveyed to Lamar Building Partners, L.P. by deed of record in Document No. 2007132902 of said Official Public Records and the northwesterly corner of said 0.504 acre tract of land, for the northwesterly corner hereof;

THENCE, S60°05'26"E, leaving the easterly right-of-way line of South Lamar Boulevard, along the southerly line of said 1.105 acre tract of land, being the northerly line of said 0.504 acre tract of land, for the northerly line hereof, a distance of 315.97 feet to a 1/2 inch iron rod with cap set in the westerly right-of-way line of the International and Great Northern Railroad (100' R.O.W.), for the southeasterly corner of said 1.105 acre tract of land and the northeasterly corner of said 0.504 acre tract of land, for the northeasterly corner hereof;

THENCE, S25°40'49"W, along the westerly right-of-way line of said Railroad, being the easterly line of said 0.504 acre tract of land, for the easterly line hereof, a distance of 68.50 feet to a 1/2 inch iron rod with cap set for the northeasterly corner of that certain 0.421 acre tract of land conveyed to Mervyn Fatter, Jr. and Barnaby Evans by deed of record in Document No. 2000204366 of said Official Public Records, being the southeasterly corner of said 0.504 acre tract of land, for the southeasterly corner hereof;

THENCE, N59°50'53"W, along the northerly line of said 0.421 acre tract of land and the northerly line of that certain 3,234 square foot tract of land conveyed to Mervyn Fatter, Jr. and Barnaby Evans by deed of record in Document No. 2012141443 of said Official Public Records, being the southerly line of said 0.504 acre tract of land, for the southerly line hereof, a distance of 335.98 feet to a nail found in said curving easterly right-of-way line of South Lamar Boulevard, being the northwesterly corner of said 3,234 square foot tract of land and the southwesterly corner of said 0.504 acre tract of land, for the southwesterly corner hereof;

THENCE, along said curving easterly right-of-way line of South Lamar Boulevard, being the westerly line of said 0.504 acre tract of land, for the westerly line hereof, along a curve to the right, having a radius of 1393.47 feet, a central angle of 02°49'07", an arc length of 68.55 feet and a chord which bears, N42°30'41"E, a distance of 68.55 feet to the **POINT OF BEGINNING**, and containing 0.506 acre (22,060 square feet) of land, more or less, within these metes and bounds.

