



RESOLUTION NO. 2021-1

WHEREAS, Luby's Fuddrucker's Restaurants, LLC (Luby's) owns that certain tract of real property located at 8176 N. MoPac Expressway; and,

WHEREAS, Luby's has filed a zoning application with the City of Austin under File No. C14- 2021-0100 to rezone the Property to permit development and use of the Property for a multifamily residential apartment project; and,

WHEREAS, The service area of the Northwest Austin Civic Association (NWACA) is a diverse mixed use neighborhood with a range of low and moderate density housing options; and

WHEREAS, Suitably located and designed higher density multi-family housing that also provides significant public benefit is compatible with the neighborhood character of Northwest Hills; and

WHEREAS, the site proposed for multi-family housing at 8176 North MoPac Expressway is at the intersection of an arterial road and an expressway, is served by existing transit, is near existing employment and shopping areas, and meets City of Austin compatibility standards

WHEREAS, In consideration of NWACA's support of the Zoning Case, Luby's executed a Restrictive Covenant Agreement on July 20, 2021 with NWACA to impose upon the Property covenants and conditions for the benefit of NWACA, provided the final approval of the Zoning Case; and,

WHEREAS, One of the Restrictive Covenant conditions is that Luby's will support NWACA's efforts to have Parks and Recreation (PARC) fees spent within NWACA boundaries instead of being directed to the General Parks and Recreation Fund.

THEREFORE, BE IT RESOLVED BY THE NORTHWEST AUSTIN CIVIC ASSOCIATION (NWACA) Board of Directors THAT:

The NWACA Board of Directors supports Luby's re-zoning from LR to MF-6 as well as the conditions of the Restrictive Covenants Agreement.

ADOPTED: August 12, 2021

ATTEST:

Robert Nash, President



## **RESTRICTIVE COVENANT**

**C14-2021-0100**

**8176 N. MoPac Expressway**

This Restrictive Covenant (“**Restrictive Covenant**”), is executed as of \_\_\_\_\_, 2021, by **Luby’s Fuddruckers Restaurants, LLC**, a Texas limited liability company, successor by conversion to Luby’s Restaurants Limited Partnership, a Texas limited partnership (“**Declarant**”) and its successors and assigns, for the benefit of Northwest Austin Civic Association, a Texas nonprofit corporation (“**NWACA**”) and is as follows:

### **RECITALS**

- A. Declarant owns that certain tract of real property located at 8176 N. MoPac Expressway, being more particularly described as Lot 1, J.V. WALDEN ADDITION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 77, Page 314, Plat Records of Travis County, Texas (the “**Property**”).
- B. Declarant has filed a zoning application with the City of Austin under in File No. C14-2021-0100 (the “**Zoning Case**”) to rezone the Property to permit development and use of the Property for a multifamily residential apartment project (the “**Multifamily Project**”).
- C. NWACA is a Texas nonprofit corporation which exists to preserve, promote, and enhance the exceptional and unique character of the neighborhood by monitoring key municipal and county issues and advocating for the neighborhood, addressing fire safety, transportation, crime prevention, oak wilt and other environmental concerns, wildlife management, zoning and planning, and other matters as they arise, keeping residents informed of relevant news and happenings, and sponsoring neighborhood events and working to build a strong sense of community.
- D. In consideration of NWACA’s support of the Zoning Case, Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of NWACA, provided that the effectiveness of this Restrictive Covenant shall be conditioned on final approval of the Zoning Case as set forth below.

### **AGREEMENT**

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, and agrees as follows:

- 1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
- 2. Multifamily Project. If the Multifamily Project is developed and constructed on the Property, Declarant agrees as follows:

- (a) **Exterior Materials.** The exteriors of the multifamily apartment buildings will primarily utilize materials such as brick, stone, stucco, glass and/or metal panels. Hardi-plank siding is prohibited.
  - (b) **Garage Screening.** Declarant will install vegetation and/or fencing to screen the Multifamily Project parking garage from view from public right of way, except where the parking garage is already screened from view by multifamily apartment buildings.
  - (c) **Building Height.** The building is expected to consist of five (5) stories of residential units plus three (3) levels of parking. Regardless, the height of the Multifamily Project will not exceed 860 feet above mean sea level.
  - (d) **Monument Sign.** Declarant, at its expense, will install a neighborhood entry monument sign on the Property facing the southwest corner of Steck Ave. and the MoPac Blvd southbound frontage road. The monument sign will display the words “Northwest Hills”. Declarant will be responsible for maintaining the sign in good condition and repair.
  - (e) **Affordable Housing.** The Multifamily Project will voluntarily include affordable housing (10% of the units at 80% MFI) for 40 years, which will be monitored and enforced by HomeBase Texas, a Texas nonprofit corporation.
  - (f) **Parks and Recreation Department (“PARD”) Fees.** Declarant will support NWACA’s efforts to have PARD fees spent within NWACA boundaries.
  - (g) **Water Quality.** The Multifamily Project will comply with applicable City of Austin code requirements for water quality and detention.
3. Term. Unless sooner terminated in accordance with Paragraph 8 below, the term of this Restrictive Covenant shall be a period of twenty (20) years commencing on the date hereof. Upon expiration of the term, this Restrictive Covenant shall expire and be of no further force or effect.
  4. Binding Effect; Enforcement. This Restrictive Covenant and the restrictions, covenants, benefits and obligations created hereby are benefits and servitudes running with the Property and are binding on future owners of all or any portion of the Property. However, the benefits hereunder (and the right to enforce this Restrictive Covenant) inure solely to the benefit of NWACA and are not assignable. This Restrictive Covenant may be enforced by NWACA by action at law or in equity, including, without limitation, action for specific performance or injunctive relief. In no event shall Declarant be liable for punitive or consequential damages resulting from any violation or breach of this Restrictive Covenant.
  5. No Dedication. Nothing in this Restrictive Covenant shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the

public any right whatsoever. The sole beneficiary of this Restrictive Covenant is NWACA.

6. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
7. Amendment; Modification. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of Travis County, Texas, executed, acknowledged and approved by the President of NWACA and the owner of the Property at the time of the modification, amendment, or termination.
8. Effectiveness. The effectiveness of this Restrictive Covenant is conditioned upon final approval of the Zoning Case by the City of Austin City Council with no additional restrictions not agreed to by Declarant. If such zoning approval does not occur, then this Restrictive Covenant shall expire and be of no further force or effect. An affidavit executed by the owner of the Property and recorded in the Official Public Records of Travis County, Texas, certifying the facts supporting the expiration or ineffectiveness of this Restrictive Covenant pursuant to this paragraph shall be prima facie evidence that this Restrictive Covenant has terminated and no longer encumbers the Property. Any potential purchaser, lender, investor or tenant of the Property and any other third parties shall have the right to rely on such affidavit without any further investigation or inquiry.

Executed to be effective as of \_\_\_\_\_, 2021.

EXECUTED to be EFFECTIVE as of the date first set forth above.

**Declarant:**

**Luby's Fuddruckers Restaurants, LLC**, a  
Texas limited liability company, successor  
by conversion to Luby's Restaurants  
Limited Partnership, a Texas limited  
partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_, \_\_\_\_\_ of Luby's Fuddruckers Restaurants, LLC, a  
Texas limited liability company, on behalf of said limited liability company.

(seal)

\_\_\_\_\_  
Notary Public, State of Texas