

RESTRICTIVE COVENANT

OWNER: John C. Horton III

OWNER: Bennie C. Downing, Independent Executor of the Estate of Wilmot R. Horton, Deceased

ADDRESS: 903 Nueces Street, Austin, Texas 78701

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Lots 7-10, Block 44, Original City of Austin, Travis County, Texas, according to the map or plat of record on file in the General Land Office of the State of Texas.

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. If the Property is redeveloped for a hotel-motel use that exceeds a floor-to-area ratio of 8.0 to 1.0, the following applies:
 - a. The Owner shall design and construct streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on December 10, 2009. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Planning and Development Review Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
 - b. All commercial development shall be designed and built according to the US Green Building Council's Leadership in Energy and Environmental Design ("LEED™") Green Building Rating System, Certified Level. Prior to issuance of a certificate of occupancy by the City, certification must be provided by a LEED™ certified consultant showing that the project has been designed and constructed consistent with LEED™ Silver guidelines. If development of the project does not achieve a LEED Silver certification within 18 months from the date of issuance of a certificate of occupancy, the project must be certified to meet the City's 2-Star Green Builder program within three months from the expiration of the 18-month deadline.
 - c. The following design criteria shall be incorporated into the project.
 - i) At curb cut areas of the sidewalks the pedestrian pathway will be clearly indicated.

- ii) A pool and amenity deck will be located on all or a portion of the southern edge of the project at a maximum height of 60 feet above grade.
 - iii) The northern façade of the project will contain an architectural delineation between the podium and the tower at an approximate height of 40 feet above grade. The architectural delineation may contain columns and extend vertically to approximately 20 feet.
 - d. Above-ground parking structures are not permitted. All parking provided on the Property shall be underground.
 - e. Bicycle parking shall be provided in the underground parking garage.
- 2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
 - 3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
 - 4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
 - 5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2010.

OWNER:

John C. Horton III

Estate of Wilmot R. Horton, Deceased

By: _____
Bennie C. Dowling,
Independent Executor of the Estate of
Wilmot R. Horton, Deceased

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2010, by John C. Horton III.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2010, by Bennie C. Dowling, as Independent Executor of the Estate of Wilmot R. Horton, deceased.

Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-1088
Attention: Diana Minter, Paralegal