

125/126

Late Backup

Zoning Case No. C14-2010-0053
Zoning Case No. C14-2010-0054

RESTRICTIVE COVENANT

OWNER: Lack and Hurley Incorporated, a California corporation
ADDRESS: P.O. Box 1742, Austin, Texas 78767
OWNER: Finley Company, a Delaware corporation
ADDRESS: P.O. Box 2086, Austin, Texas 78768
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 1-4, the south 14.7 feet of Lot 5, and Lots 7-12, Block 18, 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 ("Agreement"). 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 with a hotel-motel use with a minimum of 700 rooms and exceeds a floor-to-area ratio of 8.0 to 1.0, the following applies:
 - a) All redevelopment shall comply with Austin Energy Green Building Program (GBP) for a minimum two-star rating.
 - b) The Owner shall design and construct public streetscape improvements in full compliance with the City of Austin Great Streets design criteria as it exists June 2010. Design, permitting and construction of public streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the public streetscape improvements with the Urban Design Section of the Planning and Development Review Department. The Urban Design Section shall inspect and approve the public streetscape improvements prior to issuance of a certificate of occupancy.
 - c) Green roofs. At least five percent of the total square feet of the roof area of a building shall incorporate green roof design as a means to improve the quality of the air, reduce stormwater runoff and improve energy efficiency of the structure beneath. The green roof system shall be designed according to City approved requirements and standards.

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- d) Not later than 60 days prior to submittal of the site plan for the redevelopment of the Property for such hotel-motel use, the Owner shall cause an access management plan for vehicles entering and exiting the Property to be submitted to the Transportation Review Section of the Planning and Development Review Department, or its successor section or department, for consideration in review of the site plan.
 - e) At the time of site plan for the redevelopment of the Property for such hotel-motel use, the Owner shall cause a limited traffic impact analysis to be submitted for the sole purposes of analyzing and determining (i) whether traffic signals are necessary to be installed as a result of the redevelopment of the Property at any of the following intersections for which traffic signals have not already been installed at the time the site plan is filed: (A) 3rd and Brazos streets, (B) 3rd and San Jacinto streets, (C) 4th and Brazos streets and (D) 4th and San Jacinto streets, and (ii) if traffic signals are required to be installed at any one of such four intersections, what is the proportionate share of the cost to install such traffic signals to be paid by the developer based on the vehicle trips generated by the redevelopment of the Property and the total estimated vehicle trips through such intersections.
 - f) Service vehicles (e.g. delivery trucks, trash collection, etc.) shall access the Property from 3rd Street or alley only.
- 2. If any person or entity shall violate or attempt to violate this Agreement, 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, to prevent the person or entity from such actions, and to collect damages for such actions.
 - 3. If any part of this Agreement 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, or a portion 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:

Lack & Hurley Incorporated,
a California corporation

By: _____
T.J. Finley, President

OWNER:

Finley Company,
a Delaware corporation

By: _____
Timothy J. Finley, Vice President

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS

COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the ____ day of _____, 2010, by T.J. Finley, President of Lack & Hurley Incorporated, a California corporation, on behalf of the corporation.

Notary Public, State of Texas

THE STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the ____ day of _____, 2010, by Timothy J. Finley, Vice President of Finley Company, a Delaware corporation, on behalf of the corporation.

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