

## RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

**CASE:** C14-2008-0159(RCA) 3<sup>rd</sup> & Colorado

**P. C. DATE:** 05/08/12

**ADDRESS:** 311 Colorado, 301 Colorado St.  
& 114 W. 3<sup>rd</sup> St.

**AREA:** 0.6759 acres

**APPLICANT:** S/H Austin Partnership  
(John Beauchamp)

**AGENT:** Winstead, PC.  
(Steve Drenner)

**NEIGHBORHOOD PLAN AREA:** Downtown

**CAPITOL VIEW:** No

**T.I.A.:** Waived – See the Transportation Reviewer's comments and Restrictive Covenant.

**HILL COUNTRY ROADWAY:** No

**WATERSHED:** Town Lake

**DESIRED DEVELOPMENT ZONE:** Yes

**CURRENT ZONING:** CBD-CURE – Central Business District – Central Urban Redevelopment District

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommendation is to amend the Restrictive Covenant as follows –

Number one – modify to reflect the anticipated new use of an office building.

Number one A – no change as this provision is for Great Streets.

Number one B – delete this provision as the TIA has been deferred to the Site Plan stage.

Number one C – modify to delete reference to LEED's and replace with Austin Green Building Program.

Number one D – modify to reflect the Transportation Reviewers comments.

Number one E – delete this provision.

Number one F – delete this provision.

Number one G – delete this provision.

Number one H- delete this provision.

### **PLANNING COMMISSION RECOMMENDATION:**

The motion to approve staff's recommendation to amend Section 1 of the restrictive covenant with added conditions of:

- Recommend a private restrictive covenant before 3<sup>rd</sup> reading;
- Require that it be a 3-Star Green Building;
- Applicant perform a TIA and carry out the requirements;

Motion made by Commissioner Richard Hatfield, Commissioner Dave Anderson seconded the motion on a vote of 9-0.

**DEPARTMENT COMMENTS:**

The subject property is currently developed with a surface parking lot. This property was granted Central Business District, Central Urban Redevelopment District (CBD-CURE) combining district zoning with case number C14-2008-0159. The ordinance for this property which granted the additional floor-to-area-ratio was written for a hotel use only. The applicant has indicated that the property now has prospective buyer that wants to develop the property as an office building and needs additional floor to area ratio to achieve the desired height. In addition to the ordinance for this property, there was a Restrictive Covenant that was executed that had additional conditions for the development of the property as a hotel. The applicant is requesting to modify the Restrictive Covenant to more accurately reflect the future use of the property as an office building.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<b>SITE</b>	<b>CBD-CURE-CO</b>	<b>Restaurant / Parking Lot</b>
<b>NORTH</b>	<b>CBD</b>	<b>Restaurant</b>
<b>SOUTH</b>	<b>CBD</b>	<b>Parking Lot</b>
<b>EAST</b>	<b>CBD</b>	<b>Parking Lot</b>
<b>WEST</b>	<b>CBD</b>	<b>Restaurant</b>

**CASE HISTORIES:**

<b>CASE NUMBER</b>	<b>REQUEST</b>	<b>PLANNING COMMISSION</b>	<b>CITY COUNCIL</b>
C14-2008-0143	From CBD to CBD-CURE	Approved CBD-CURE [Vote: 7-0]	Approved CBD-CURE [Vote: 7-0]
C14-2008-0144	From CBD-CURE to CBD-CURE	Approved CBD-CURE [Vote: 7-0]	Approved CBD-CURE [Vote: 7-0]
C14-00-2208	From CBD to CBD-CURE	Approved CBD-CURE [Vote: 6-1-1]	Approved CBD-CURE [Vote: 7-0]

**NEIGHBORHOOD ORGANIZATION:**

- Downtown Austin Neighborhood Coalition
- Pecan Street Owner's Association
- Downtown Austin Alliance
- Austin Warehouse District Association
- Old Pecan Street Association
- Sentral Plus East Austin Koalition
- Austin Neighborhood Council
- Downtown Austin Neighborhood Association
- Original Austin Neighborhood Assoc.

**SCHOOLS:**

Matthews Elementary School  
O' Henry Middle School  
Austin High School

**TRANSPORTATION:**

No additional right-of-way is needed at this time.

A traffic impact analysis was waived for this case because the applicant agreed to submit a limited TIA at time of site plan. If the zoning is granted then following should be met:

- Developer agrees to maintain off-street loading and unloading facilities for service and delivery vehicles in the existing alley and prohibiting facilities from 3<sup>rd</sup> and Colorado.
- Applicant will coordinate with the City of Austin on public parking opportunities as part of its site plan for a downtown way-finding system initiative.
- Developer agrees to cost participate in transportation improvements identified by Department of Public Works during site plan phase.
- Developer will coordinate with the city to address issues such as valet parking adjacent to the site.
- Developer shall provide an access study at the time of site plan application including information on loading and trash collection internal to the site and any on-street parking adjacent to the site.

**Existing Street Characteristics:**

Name	ROW	Pavement	Classification	Bicycle Plan	Sidewalks	Capital Metro
Colorado St	85'	57'	Arterial	Yes	Yes	Yes
3rd Street	80'	57	Collector	No	No	Yes

**CITY COUNCIL DATE:** June 7<sup>th</sup>, 2012  
 August, 2<sup>nd</sup>, 2012  
 August 16<sup>th</sup>, 2012  
 October 11<sup>th</sup>, 2012  
 November 8<sup>th</sup>, 2012  
 December 13<sup>th</sup>, 2012  
 January 31<sup>st</sup>, 2013  
 March 21<sup>st</sup>, 2013  
 April 11<sup>th</sup>, 2013  
 April 25<sup>th</sup>, 2013  
 May 9<sup>th</sup>, 2013

**ACTION:** Postponed to Aug. 2<sup>nd</sup>, App.  
 Postponed to Aug. 16<sup>th</sup>, Staff.  
 Postponed to Oct. 11<sup>th</sup>, App.  
 Postponed to Nov. 8<sup>th</sup>, Staff  
 Postponed to Dec. 13<sup>th</sup>, App.  
 Postponed to Jan. 31<sup>st</sup>, App.  
 Postponed to March 7<sup>th</sup>, App.  
 Postponed to April 11<sup>th</sup>, App.  
 Postponed to April 25<sup>th</sup>, App.  
 Postponed to May 9<sup>th</sup>, App.

**ORDINANCE READINGS:** 1<sup>ST</sup> 2<sup>ND</sup> 3<sup>RD</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Clark Patterson  
Clark.patterson@ci.austin.tx.us

**PHONE:** 974-7691











RESTRICT 2009063957

3 PGS

Zoning Case No. C14-2008-0159

AUSTIN CITY CLERK  
POSTING: DATE/TIME

RESTRICTIVE COVENANT

2009 MAY 22 AM 10 00

OWNER: S/H AUSTIN PARTNERSHIP, a Texas general partnership  
ADDRESS: 315 East Commerce St., Suite 300, San Antonio, Texas 78205  
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 9, 10, 11, and 12, Block 29, Original City of Austin, as more particularly described in the map or plat 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 compliance with the City of Austin Great Streets design criteria as the criteria existed on March 1, 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 Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
  - b) Owner agrees to cost participate for traffic improvements identified by the Public Works Department during the site plan review process.
  - c) 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.
  - d) The following shall be submitted to the Transportation Review Section of the Watershed Protection and Development Review Department of the City.
    - i) An access study for any proposed project on the Property; and
    - ii) Information on loading facility provisions and trash collection for the project.

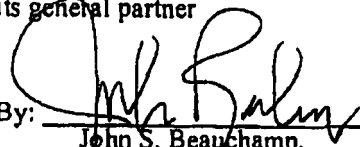
- e) Above-ground parking structures are not permitted. All parking provided on the Property shall be underground.
  - f) Reasonable sound mitigation for a hotel room must be included in the building design that is appropriate for the location of a hotel in the warehouse district of the City.
  - g) Balconies located on the second floor of the building at the corner of Colorado Street and 3<sup>rd</sup> Street shall be constructed for outdoor use, provided that the City allows the construction of such balconies over a City sidewalk.
  - h) A vehicle drop-off area with porte-cochere shall be provided along Colorado Street.
- 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 2<sup>nd</sup> day of April, 2009.

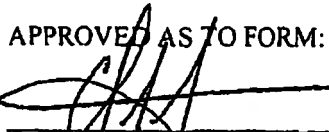
OWNER:

**S/H AUSTIN PARTNERSHIP,**  
a Texas general partnership

By: HPI-Austin Properties, Inc.,  
a Delaware corporation,  
its general partner

By:   
John S. Beauchamp,  
Vice President

APPROVED AS TO FORM:



Assistant City Attorney  
City of Austin

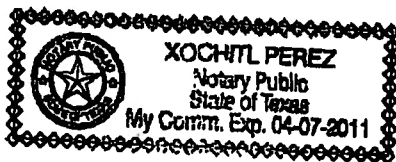
THE STATE OF TEXAS

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COUNTY OF BEXAR

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This instrument was acknowledged before me on this the 2<sup>ND</sup> day of April, 2009, by John S. Beauchamp, Vice President of HPI-Austin Properties, Inc., a Delaware corporation, general partner of S/H Austin Partnership, a Texas general partnership, on behalf of the corporation and the partnership.



  
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

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



2009 Apr 22 11:20 AM 2009063957

GONZALES \$24.00

DANA DEBEAUVOIR COUNTY CLERK  
TRAVIS COUNTY TEXAS