

**Zoning Case No. C14-2014-0081**

**RESTRICTIVE COVENANT**

**OWNER:** South IH 35 Investors, LP., a Texas limited partnership

**ADDRESS:** 4131 Spicewood Springs Road, Suite C-5, Austin, Texas 78759

**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:** 58.3885 acre tract of land out of the Santiago Del Valle Grant, the 58.3885 acre tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant (the "Property"),

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. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by JM Engineering, LLC and Robert J. Halls & Associates, dated August 7, 2014, or as amended and approved by the Director of the Planning and Development Review Department. All development on the Property is subject to the Planning and Development Review Department, Transportation Review Section's staff memorandum ("memorandum"), and any amendments to the memorandum that address subsequent TIA updates for the Property. The TIA and memorandum shall be kept on file at the Planning and Development Review Department.
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 \_\_\_\_\_, 2014.

**OWNER:**

SOUTH IH 35 INVESTORS, LP, a Texas limited partnership,

By: HETHERLY INVESTMENTS, INC., a  
Texas corporation, its general partner

By: \_\_\_\_\_  
C.W. HETHERLY, JR.  
President

**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 \_\_\_\_\_, 2014, by C.W. Hetherly, Jr., President, of Hetherly Investments, Inc., a Texas corporation, general partner of South IH 35 Investors, LP, a Texas limited partnership, on behalf of the partnership.

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Notary Public, State of Texas

**After Recording, Please Return to:**  
**City of Austin**  
**Law Department**  
**P. O. Box 1088**  
**Austin, Texas 78767**  
**Attention: J. Collins, Paralegal**

58.3885 Acres

Santiago Del Valle Grant  
September 20, 2006

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

FIELDNOTE DESCRIPTION of a tract or parcel of land containing 58.3885 acres situated in the Santiago Del Valle Grant, Travis County, Texas; being the same 58.46 acres described in a special warranty deed to George C. Conn Trustee recorded in Document No. 2000080218 of the Official Public Records of Travis County, Texas, and conveyed to Nancy Scanlan and Renate Conn, Co-Trustees, by the deed recorded in Document No. 2005136378, of the Official Public Records of Travis County, Texas, the said 58.3885 acre tract more particularly described by metes and bounds as follows;

BEGINNING at a calculated point in the intersection of the east right-of-way line of State Highway IH35 with the northeast line of the above said 58.46 acre tract, and the southwest line of Lot 1, "St. Alban's Addition", a subdivision of record in Book 86, Page 88-C of the Plat Records of Travis County, Texas; Said point of intersection bears S66°13'01"E, 1.16 feet from a ½" iron rod found for the common west corner of said Lot 1 and the 58.46 acre tract;

THENCE, S66°13'01"E, leaving the east line of State Highway IH35, at a distance of 1011.15 feet pass a ½" iron rod found 0.43 feet to the southwest for the southeast corner of above said "Lot 1" and the most westerly corner of a 8.17 acre tract conveyed to Protestant Episcopal Church Council by the deed recorded in Document No. 1999161671 of the said Official Public Records; and for a total distance of 1591.62 feet to a ½" iron rod found (marked "M&S 1838") for the northeast corner of the said 58.46 acre tract in the west line of a 27.0 acre tract, conveyed to Richard Spillman et al, by the deed recorded in Volume 6287, Page 218 of the Deed Records of Travis County, Texas; for the beginning of a boundary line agreement recorded in Volume 7640, Page 122 of the said Deed Records;

THENCE, in a southerly direction, with the common line between the 58.46 acre tract and the Spillman tract along the said boundary line agreement recorded in Volume 7640, Page 122 of the said Deed Records, with the following nine (9) courses:

1. S19°38'09"W, 419.23 feet to a 3/8" iron rod found;
2. S17°49'27"E, 176.11 feet to a ½" iron rod set with a plastic cap stamped "Capital Surveying Company, Inc.";
3. S27°39'33"E, 18.22 feet to a ½" iron rod set with a plastic cap stamped "Capital Surveying Company, Inc." for the north corner of a 0.138 acre tract conveyed to Richard Spillman by the deed recorded in Volume 7640, Page 122 of the said Deed Records;
4. S18°40'08"W, 135.04 feet to a ½" iron rod found (marked 'M&S 1838'), for the south corner of the said 0.136 acre tract
5. S78°33'28"W, 4.54 feet to a ½" iron rod found (marked "M&S 1838");

58.3885 Acres

Santiago Del Valle Grant  
September 20, 2006

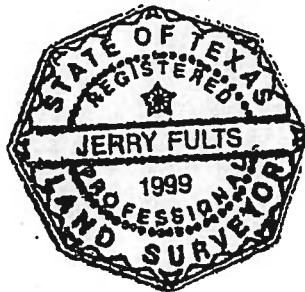
6. S00°42'24"E, 227.38 feet to a 1/2" iron rod found (marked "M&S 1838");
7. S45°58'10"W, 143.14 feet to a 3/8" iron rod found;
8. S25°24'11"W, 207.00 feet to a 3/4" iron rod found;
9. S07°45'17"E, 418.85 feet to a 5/8" iron rod found for the southeast corner of the said 58.46 acre tract and the end of the said boundary line agreement, being in the northeast line of a 449.05 acre tract described in a deed to Turnersville Development LTD recorded in Document No. 2000089761 of the said Official Public Records, said iron rod bears N62°13'05"W, 209.78 feet from a 100-D nail found in a 20" hackberry for an east corner of the 449.05 acre tract;

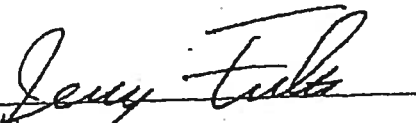
THENCE, N62°11'08"W, with the common line between the 449.05 acre tract and the 58.46 acre tract 1773.60 feet to the calculated point of intersection of this common line with the east right-of-way line of said State Highway IH35, said intersection point bears S62°11'08"E 1.78 feet from an iron pipe found for the southwest corner of the 58.46 acre tract;

THENCE, N18°15'36"E, with the east right-of-way line of said State Highway IH35; 1527.53 feet to the POINT OF BEGINNING, and CONTAINING within these metes and bounds 58.3885 acres of land area.

That I, Jerry Fults, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 20th day of September, 2006.



  
Jerry Fults  
Registered Professional Land Surveyor  
No. 1999 - State of Texas

