

**Zoning Case No. C14-2014-0037**

**RESTRICTIVE COVENANT**

OWNER: Sealy Heatherwilde, L.P., a Georgia limited partnership

ADDRESS: 8401 North Central Expressway, Suite 150, Dallas, Texas 75225

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: 16.58 acre tract of land out of the L.C. Cunningham Survey, Abstract No. 163 the 16.58 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 Robert Halls & Associates, dated January 27, 2015, 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 \_\_\_\_\_, 2015.

**OWNER:**

SEALY HEATHERWILDE, LP, a Georgia limited partnership

SEALY GP HEATHERWILDE LP, a  
Georgia limited partnership, its general partner

HEATHERWILDE INVESTORS,  
LLC, a Georgia limited liability  
company, its general partner

By: \_\_\_\_\_  
MARK SEALY  
Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney  
City of Austin

**THE STATE OF TEXAS** §

**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2015, by Mark Sealy, Manager of Heatherwilde Investors, LLC, a Georgia limited liability company, general partner of Sealy GP Heatherwilde LP, a Georgia limited partnership, general partner of, Sealy Heatherwilde, LP, a Georgia limited partnership, on behalf of the partnership.

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Notary Public, State of Texas

## 16.58 ACRES ZONING

**DESCRIPTION OF A 16.58 ACRE TRACT LOCATED IN THE L.C. CUNNINGHAM SURVEY, ABSTRACT No. 163, LOCATED IN TRAVIS COUNTY, TEXAS, PREPARED BY DELTA SURVEY GROUP, INC. IN FEBRUARY 2014 FOR ZONING PURPOSES ONLY. SAID 16.58 ACRE TRACT BEING A PORTION OF THE REMAINDER OF A 43.906 ACRE TRACT DESCRIBED IN DOCUMENT NUMBER 2000101898 OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS. SAID 16.58 ACRE TRACT AS SHOWN ON THE ACCOMPANYING SKETCH BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at the northwest corner of said remainder tract, same being the northeast corner of the remainder of Lot 14, Wells Point Commercial, Section 7, a subdivision of record in Volume 86, Page 167A, Official Public Records, Travis County, Texas, also being in the south Right-of-way (ROW) line of Wells Branch Parkway (ROW varies) for the **POINT OF BEGINNING**;

**THENCE** with the south and west ROW line of said Wells Branch Parkway, same being the north and east line of the remainder of said 43.906 acre tract the following four (4) courses and distances:

1. S 56°19'30" E a distance of 454.13 feet to a 'X' found in a concrete sidewalk;
2. with a curve to the right with an arc length of 1098.07 feet, with a radius of 1999.93 feet, with a chord bearing of S 40°34'18" E, with a chord length of 1084.33 feet to a calculated point,
3. S 24°50'53" E a distance of 393.18 feet to an iron rod with "WATERLOO" cap found, and;
4. with a curve to the right with an arc length of 47.10 feet, with a radius of 30.00 feet, with a chord bearing of S 20°09'37" W, with a chord length of 42.41 feet to an iron rod with "WATERLOO" cap found in the north ROW line of Heatherwilde Boulevard (ROW varies), same being the south line of the remainder of said 43.906 acre tract,

**THENCE** continuing with said north ROW line, same being the south line of the remainder of said 43.906 acre tract the following two (2) courses and distances:

1. S 65°10'37" W a distance of 615.02 feet to an iron rod with "WATERLOO" cap found, and;
2. with a curve to the left with an arc length of 31.41 feet, with a radius of 1048.55 feet, with a chord bearing of S 64°19'27" W, with a chord length of 31.41 feet to a calculated point;

**THENCE** leaving said south line and crossing the remainder of said 43.906 acre tract the following six (6) courses and distances:

1. N 26°33'01" W a distance of 325.48 feet to a calculated point;
2. with a curve to the right with an arc length of 40.94 feet, with a radius of 1373.48 feet, with a chord bearing of N 64°18'16" E, with a chord length of 40.94 feet to a calculated point;

## 16.58 ACRES ZONING

3. N 65°09'04" E a distance of 320.31 feet to a calculated point;
4. N 24°48'49" W a distance of 96.47 feet to a calculated point;
5. with a curve to the left with an arc length of 920.94 feet, with a radius of 1674.86 feet, with a chord bearing of N 40°34'24" W, with a chord length of 909.38 feet to a calculated point, and;
6. N 56°19'30" W a distance of 415.27 feet to a calculated point in the west line of said 43.906 acre tract, same being the east line of Lot 13, of said Wells Point Commercial;

**THENCE** with the west line of said 43.906 acre tract, same being the east line of said Lot 13 and the east line of said Lot 14 N 26°55'48" E a distance of 327.26 feet to the **POINT OF BEGINNING** and containing 16.58 acres of land, more or less.

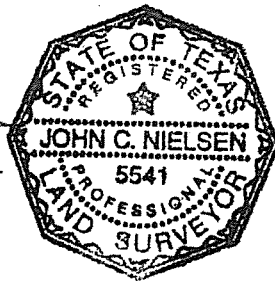
**BEARING BASIS:**

TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD83/HARN

Date: 2-20-14

*John C. Nielsen*

John C. Nielsen  
Registered Professional Land Surveyor  
No. 5541-State of Texas



Delta Survey Group, Inc.  
8213 Brodie Lane, Suite 102  
Austin, Texas 78745  
Firm No. 10004700



**After Recording, Please Return to:**

City of Austin

Law Department

P. O. Box 1088

Austin, Texas 78767

Attention: J. Collins, Paralegal