

Zoning Case No. C14-2013-0089RC

RESTRICTIVE COVENANT

OWNER: Ethos (Austin) LP, a Texas limited partnership

ADDRESS: 722 N. Main Street, Fort Worth, Texas 76164

OWNER: Kalogridis and Kalogridis Development, LLC, a Texas limited liability company

ADDRESS: 2110-B Boca Raton Drive, Suite 102, Austin, Texas 78747

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: 37.51 acre tract of land being a portion of Lot 2, Block A, Marbella Subdivision, the 37.51 acre tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant; and,

Lot 1, Block A, Marbella Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Document No. 201200065 of the Official Public Records of Travis County, Texas, hereinafter cumulatively referred to as 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 HDR, Inc., dated July 17, 2013 or as amended and approved by the Director of the Planning and Development Review Department. All development on the

Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Planning and Development Review Department, dated October 2, 2013. The TIA 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 _____, 2013.

OWNERS:

Ethos (Austin) LP,
a Texas limited partnership

By: **Ethos Austin Gen Par, LLC,** a
Texas limited liability company
its General Partner

By: _____
Donald L. Hudgins, Jr.
Sole Member

**Kalogridis and Kalogridis Development,
LLC**, a Texas limited liability company

By: _____
Mitchell Kalogridis
Governing Person

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 _____, 2013, by Donald L. Hudgins, Jr., Sole Member of Ethos Austin Gen Par LLC, a Texas limited liability company, general partner of Ethos (Austin) LP, a Texas limited partnership, on behalf of the partnership.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2013, by Mitchell Kalogridis, Governing Person of Kalogridis and Kalogridis Development, LLC, a Texas limited liability company, on behalf of the company.

Notary Public, State of Texas

DESCRIPTION

DESCRIBING A TRACT OF LAND CONTAINING 37.51 ACRES BEING A PORTION OF LOT 2, BLOCK A, MARBELLA SUBDIVISION, A SUBDIVISION RECORDED IN DOCUMENT NUMBER 201200065, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, SAID 37.51 ACRES BEING A PORTION OF THAT CERTAIN 178.38 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED TO KALOGRIDIS AND KALOGRIDIS DEVELOPMENT, LLC, EXECUTED ON NOVEMBER 5, 2009 AND RECORDED IN DOCUMENT NUMBER 2009186560, OFFICIAL PUBLIC RECORDS OF SAID COUNTY, SAID 37.51 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at point at the west corner of said Lot 2, same being at the north corner of Lot A, Resubdivision of Lot 4E of the subdivision of the Mrs. Rosa J. Spillmann Estate (hereinafter referred to as "Resubdivision"), a subdivision recorded in Book 75 Page 371, Plat Records of said County and in the southeast right-of-way line of IH 35 (R.O.W. varies);

THENCE, with the northwest line of said Lot 2, same being the southeast line of said IH 35, the following two courses:

- 1) N28°25'04"E, 338.80 feet to a point;
- 2) N35°34'09"E, 113.68 feet to a point at the northwest corner of said Lot 2, same being the southwest corner of Lot 1, Block A of said Marbella Subdivision;

THENCE, with the northeast line of said Lot 2, same being the southwest line of said Lot 1, the following twelve courses:

- 1) S61°56'38"E, 49.19 feet to a point;
- 2) S26°18'44"E, 244.72 feet to a point;
- 3) S39°17'53"E, 404.79 feet to a point;
- 4) S09°35'49"E, 254.58 feet to a point;
- 5) S49°09'00"E, 279.50 feet to a point;
- 6) S61°02'49"E, 178.30 feet to a point;
- 7) S22°53'06"E, 40.05 feet to a point;
- 8) N67°06'54"E, 62.10 feet to a point;
- 9) S62°58'52"E, 352.57 feet to a point;
- 10) S40°28'52"E, 46.41 feet to a point;
- 11) S67°07'26"E, 826.66 feet to a point;
- 12) S80°00'14"E, 275.69 feet to a point at an interior corner of said Lot 2, same being the southeast corner of said Lot 1;

THENCE, through the interior of said Lot 2, S00°08'59"W, 237.73 feet to a point in a south line of said Lot 2, same being the north line of Lot B, Southerland Addition, a subdivision recorded in Book 62 Page 67, Plat Records of said County;

SCANNED

FN #1163
UDG #12-692

MARBELLA
ZONING
TRAVIS COUNTY, TEXAS

THENCE, with a south line of said Lot 2, same being the north line of said Lot B, N89°51'01"W, 280.02 feet to a point at the northwest corner of said Lot B, same being a northeast corner of said 178.38 acre tract;

THENCE, with a south line of said Lot 2, same being a north line of said 178.38 acre tract, N89°49'23"W, 45.11 feet to a point at an interior corner of said 178.38 acre tract;

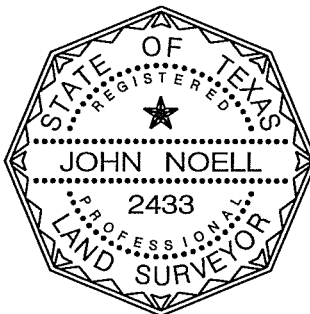
THENCE, with a south line of said Lot 2, same being through the interior of said 178.38 acre tract, S89°32'39"W, 572.82 feet to a point at an interior corner of said Lot 2, same being the northeast corner of that 43.541 acre tract of land described in a deed to Marbella Development as recorded in Document Number 2008049267, Official Public Records of said County;

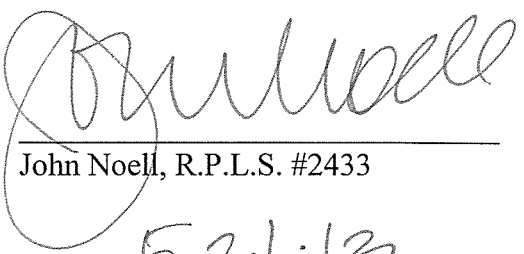
THENCE, with a south line of said Lot 2, same being the north line of said 43.541 acre tract, S89°56'27"W, 898.10 feet to a point at the southwest corner of said Lot 2, same being an east corner of Lot 3F of the subdivision of Mrs. Rosa J. Spillmann Estate, a subdivision recorded in Book 8 Page 15, Plat Records of said County;

THENCE, with a southwest line of said Lot 2, same being the northeast line of said Lot 4F, N24°55'29"W, 839.67 feet to a point at the north corner of said Lot 4F, same being the east corner of Lot B of said "Resubdivision";

THENCE, with a southwest line of said Lot 2, same being the northeast line of said "Resubdivision", N24°53'38"W, 819.94 feet to the POINT OF BEGINNING and containing 37.51 acres of land.

Field Notes Prepared by:
URBAN DESIGN GROUP
3660 Stoneridge Road, # E101
Austin, Texas 78746
(512) 347-0040




John Noell, R.P.L.S. #2433

Date: 5.21.13

Bearing Basis: Marbella Subdivision, Document Number 201200065, Official Public Records, Travis County, Texas.

SCANNED

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