

RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement (this "Agreement") is made and entered into as of March 23, 2022, by and between Costello, Inc. a Texas Corporation (the "Owner"), and the City of San Marcos, Texas (the "City").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 55.344 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto (the "Property").

B. Owner and the City desire to subject the Property to the terms of this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner and the City do hereby agree as follows:

1. Establishment of Restrictive Covenant. The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenants:

a. There shall be a 15-foot buffer and building setback indicated on the subdivision plat between development on the Property and the adjacent cemetery.

b. A plat note indicating the requirement of a 15-foot buffer and building setback and the construction of an eight-foot-high privacy wall between the CD-3 zoned development and the adjacent cemetery will be required. A permit for the privacy wall and construction of the eight-foot-high privacy wall, at the owner's expense shall be completed prior to the recordation of the final subdivision plat.

2. No Consent Required. The Owner and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. Remedies. The City may pursue any remedies available at law or in equity to enforce the provisions of this Agreement, including the recovery of reasonable attorney's fees and court costs.

4. No Waiver. The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies

hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. Modification. This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing approved by the city council of the City and signed by all of the then-existing owners of the Property or portions thereof, and by the City, and has been recorded in the Official Public Records of Hays County, Texas.

6. Binding Effect. The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. Partial Invalidity. If any provision of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[SIGNATURES ON NEXT PAGE]

COSTELLO, INC:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me on _____, 2022, by _____, _____ of Costello, Inc., a Texas corporation, in such capacity, on behalf of said corporation.

Notary Public, State of Texas

CITY:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me on _____, 2022, by _____, _____ of the City of San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

EXHIBIT A
[TO FORM OF RESTRICTIVE COVENENT]

TRACT 1: 50.320 ACRES
HAYS COUNTY, TEXAS

A DESCRIPTION OF 50.320 ACRES (APPROXIMATELY 2,191,933 SQ. FT.) IN THE HENRY WARNELL SURVEY, ABSTRACT NO. 492 IN HAYS COUNTY, TEXAS, BEING A PORTION OF A 50.6354 ACRE TRACT CONVEYED TO JAMES M. SIMS, III, IN A SPECIAL WARRANTY DEED DATED FEBRUARY 9, 1999 AND RECORDED IN DOCUMENT NO. 9911994 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 50.320 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the westernmost corner of a stone column found in the northeast right- of-way line of Posey Road (right-of-way width varies) as described in Document No. 05036207 of the Official Public Records of Hays County, Texas and as shown on Posey Road Ranch Estates Subdivision, Phase 1, a subdivision of record in Volume 8, Page 259 of the Plat Records of Hays County, Texas, being the southernmost corner of the said 50.6354 acre tract, being also the westernmost corner of two acres described in Volume 105, Page 375 of the Deed Records of Hays County, Texas;

THENCE North 46°07'39" West with the northeast right-of-way line of Posey Road and crossing the said 50.6354-acre tract, a distance of 1750.45 feet to a 1/2" rebar with "Capital" cap found in the northwest line of the said 50.6354-acre tract, being in the southeast line of Lot 10, of said Posey Road Ranch Estates Subdivision, Phase 1;

THENCE North 43°12'30" East with the northwest line of the said 50.6354 acre tract, the southeast line of said Lot 10 and the southeast line of Lots 11-18, Posey Road Ranch Estates Subdivision, Phase II, a subdivision of record in Volume 9, Page 23 of the Plat Records of Hays County, Texas, a distance of 1296.98 feet to a 5/8" rebar found for the northernmost corner of the said 50.6354 acre tract, being the easternmost corner of said Lot 18, being also in the southwest line of a 3.01 acre tract described in Document No. 06038881 of the Official Public Records of Hays County, Texas;

THENCE South 46°43'13" East crossing the said 50.6354 acre tract and with the southwest line of the said 3.01 acre tract, the southwest line of a 3.00 acre tract described in Volume 2525, Page 454 of the Deed Records of Hays County, Texas and the southwest right-of-way line of Horace Howard Drive (50' right-of-way width) as described in Volume 244, Page 861 of the Deed Records of Hays County, Texas, a distance of 1611.43 feet to a 1/2" rebar found for the northernmost corner of a 0.893 acre tract described in Volume 1121, Page 673 of the Deed Records of Hays County, Texas, from which a 5/8" rebar with aluminum "Swart" cap found for the easternmost corner of the said 50.6354-acre tract, bears North 37°27'41" West, a distance of 9.91 feet;

THENCE South 37°26'41" West with the northwest line of the said 0.893-acre tract which varies from the southeast line of the said 50.6354-acre tract, a distance of 300.23 feet to a 1/2" rebar

found for the westernmost corner of the said 0.893-acre tract, being the northernmost corner of a 3.34-acre tract described in Volume 2332, Page 427 of the Deed Records of Hays County, Texas;

THENCE South 37°35'29" West with the northwest line of the said 3.34 acre tract which varies from the southeast line of the said 50.6354 acre tract, a distance of 416.32 feet to a 5/8" rebar with aluminum "Swart" cap found in the southeast line of the said 50.6354 acre tract, being the westernmost corner of the said 3.34 acre tract, being also the northernmost corner of the said two acre tract, from which the easternmost corner of a stone column found for the southernmost corner of the said 3.34 acre tract, bears South 47°05'52" East, a distance of 286.50 feet;

THENCE South 36°45'58" West with the southeast line of the said 50.6354-acre tract and the northwest line of the said two-acre tract, a distance of 606.06 feet to the **POINT OF BEGINNING**, containing 50.320 acres of land, more or less.

**TRACT 2: 1.393 ACRES
HAYS COUNTY, TEXAS**

A DESCRIPTION OF 1.393 ACRES (APPROXIMATELY 60,661 SQ. FT.), BEING A PORTION OF HORACE HOWARD DRIVE (50' RIGHT-OF-WAY WIDTH) AS DESCRIBED IN VOLUME 244, PAGE 861 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 1.393 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar found for an angle point in the southwest right-of-way line of Horace Howard Drive, being the northernmost corner of a 0.893-acre tract described in Volume 1121, Page 673 of the Deed Records of Hays County, Texas,

- from which a 1/2" rebar found for the westernmost corner of the said 0.893-acre tract, being the northernmost corner of a 3.34-acre tract described in Volume 2332, Page 427 of the Deed Records of Hays County, Texas, bears South 37°26'41" West, a distance of 300.23 feet;
- from which a 5/8" rebar with aluminum "Swart" cap found for the easternmost corner of a 50.6354-acre tract described in 9911994 of the Official Public Records of Hays County, Texas, bears North 37°27'41" West, a distance of 9.91 feet;

THENCE North 46°43'13" West with the southwest right-of-way line of Horace Howard Drive and crossing the said 50.6354 acre tract, a distance of 1179.98 feet to a calculated point, from which a 5/8" rebar found for the northernmost corner of the said 50.6354 acre tract, being the easternmost corner of Lot 18, Posey Road Ranch Estates Subdivision, Phase 1, a subdivision of record in Volume 8, Page 259 of the Plat Records of Hays County, Texas, bears North 46°43'13" West, a distance of 431.46 feet;

THENCE North 25°26'38" East with the northwest right-of-way line of Horace Howard Drive and crossing a 3.00-acre tract described in Volume 2525, Page 454 of the Deed Records of Hays County, Texas, a distance of 38.47 feet to a calculated point;

THENCE South 64°33'22" East crossing Horace Howard Drive and the said 3.00-acre tract, a distance of 50.00 feet to a calculated angle point in the northeast right-of-way line of Horace Howard Drive, being in the southeast line of the said 3.00-acre tract, being also the westernmost corner of a 6.0194-acre tract described in Document No. 17025732 of the Official Public Records of Hays County, Texas;

THENCE South 46°39'22" East with the northeast right-of-way line of Horace Howard Drive and the southwest line of the said 6.0194-acre tract, a distance of 198.91 feet to a 1/2" rebar found for the southernmost corner of the said 6.0194-acre tract, being in the northwest line of a 5.15-acre tract described in Volume 3186, Page 328 of the Deed Records of Hays County, Texas;

THENCE South 46°39'22" East with the northeast right-of-way line of Horace Howard Drive and crossing the said 5.15-acre tract, a distance of 739.71 feet to a 1/2" rebar found in the southeast

line of the said 5.15-acre tract, being also in the northwest line of a 1.74-acre tract described in Volume 1125, Page 656 of the Deed Records of Hays County, Texas;

THENCE South $46^{\circ}39'22''$ East with the northeast right-of-way line of Horace Howard Drive and crossing the said 1.74-acre tract, a distance of 208.88 feet to a calculated angle point in the northeast right-of-way line of Horace Howard Drive;

THENCE South $47^{\circ}02'14''$ West crossing Horace Howard Drive and the said 1.74-acre tract, a distance of 50.75 feet to the **POINT OF BEGINNING**, containing 1.393 acres of land, more or less.

**TRACT 3: 3.631 ACRES
HAYS COUNTY, TEXAS**

A DESCRIPTION OF 3.631 ACRES (APPROXIMATELY 158,174 SQ. FT.), BEING A PORTION OF POSEY ROAD (RIGHT-OF-WAY WIDTH VARIES) AS SHOWN ON PLAT RECORDED IN VOLUME 8, PAGE 259 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS AND AS DESCRIBED IN DOCUMENT NOS. 05036207, 06014801, 17043141, 19036046 AND 21022529 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 3.631 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the westernmost corner of a stone column found in the northeast right-of-way line of Posey Road (right-of-way width varies) as shown on plat recorded in Volume 8, Page 259 of the Plat Records of Hays County, Texas and as described in Document Nos. 05036207, 06014801, 17043141, 19036046 and 21022529 of the Official Public Records of Hays County, Texas, being the southernmost corner of a 50.6354-acre tract described in Document No. 9911994 of the Official Public Records of Hays County, Texas, being also the westernmost corner of two acres described in Volume 105, Page 375 of the Deed Records of Hays County, Texas;

THENCE South $43^{\circ}34'11''$ West crossing Posey Road, a distance of 90.07 feet to a calculated point in the southwest right-of-way line of Posey Road, being in the northeast line of a 417.630-acre tract described in Document No. 16010858 of the Official Public Records of Hays County, Texas;

THENCE with the southwest right-of-way line of Posey Road and the northeast line of the said 417.630-acre tract, the following two (2) courses and distances:

1. With a curve to the right, having a radius of 14862.04 feet, an arc length of 75.24 feet, a delta angle of $00^{\circ}17'24''$, and a chord which bears North $46^{\circ}17'07''$ West, a distance of 75.24 feet to a 1/2" rebar with "BCG" cap found;
2. North $46^{\circ}07'59''$ West, a distance of 187.72 feet to a 1/2" rebar with "BCG" cap found for the easternmost corner of Lot 5, Block E, Trace Subdivision, PA 2B Section C, a subdivision of record in Document No. 21022529 of the Official Public Records of Hays County, Texas;

THENCE North $46^{\circ}07'59''$ West with the southwest right-of-way line of Posey Road, the northeast line of Lot 5, Block E, of said Trace Subdivision, PA 2B Section C and the northeast line of Lot 5, Block E, Trace Subdivision, PA 2B Section B, a subdivision of record in Document No. 19036046 of the Official Public Records of Hays County, Texas, a distance of 415.38 feet to a 1/2" rebar with "BCG" cap found at the intersection of the southwest right-of-way line of Posey Road and the southeast right-of-way line of Lt. John Decker Drive (52' right-of-way width) as shown on said Trace Subdivision, PA 2B Section B, being also the northernmost corner of Lot 5, Block E, of said Trace Subdivision, PA 2B Section B;

THENCE North 46°07'59" West with the southwest right-of-way line of Posey Road and the northeast terminus of Lt. John Decker Drive, a distance of 52.09 feet to a 1/2" rebar with "BCG" cap found at the intersection of the southwest right-of-way line of Posey Road and the northwest right-of-way line of Lt. John Decker Drive, being the easternmost corner of Lot 50, Block B, of said Trace Subdivision, PA 2B Section B;

THENCE North 46°07'59" West with the southwest right-of-way line of Posey Road and the northeast line of said Lot 50, a distance of 985.74 feet to a 1/2" rebar with "BCG" cap found for the northernmost corner of said Lot 50, being the easternmost corner of Lot 28, Block B, Trace Subdivision, Section A, PA 2A, Phase A, a subdivision of record in Document No. 17043141 of the Official Public Records of Hays County, Texas;

THENCE North 46°07'59" West with the southwest right-of-way line of Posey Road and the northeast line of said Lot 28, a distance of 34.76 feet to a calculated point;

THENCE North 43°52'01" East, a distance of 90.44 feet to a 1/2" rebar with "Capital" cap found for an angle point in the northeast right-of-way line of Posey Road, being in the northwest line of the said 50.6354-acre tract, being in the southeast line of Lot 10, of Posey Road Ranch Estates Subdivision, Phase 1, a subdivision of record in Volume 8, Page 259 of the Plat Records of Hays County, Texas;

THENCE South 46°07'39" East with the northeast right-of-way line of Posey Road and the crossing the said 50.6354-acre tract, a distance of 1750.45 feet to the **POINT OF BEGINNING**, containing 3.631 acres of land, more or less.

NOTE TO CITY CLERK: Upon recording of restrictive covenant, Planning staff to provide date and recording information (county and document number or volume and page) to City Clerk. City Clerk, please add such date and recording information below in order to memorialize effective date of ordinance, which shall be the date recorded.

Date restrictive covenant recorded: _____

County in which recorded: _____

Official Public Record
document number: _____