

## **RESTRICTIVE COVENANT AGREEMENT**

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Highlander SM One, LLC, a Texas limited liability company ("**Highlander**"), and Donald W. Tuff and Germaine Tuff ("**Tuffs**", and together with Highlander, the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

### **RECITALS:**

A. Highlander is the owner of a tract of land totaling approximately 135.912 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto, and the Tuffs are the owner of a tract of land totaling approximately 63.578 acres situated in Hays County, Texas, more particularly described in Exhibit "A-1", attached hereto (collectively, the "**Property**").

B. Owner submitted an application to the City on September 17, 2025 for the rezoning of the Property to Light Industrial pursuant to Zoning Request ZC-25-02 (the "**Zoning Case**").

C. A data center is expected to be built on the Property. For purposes of this Agreement, a "data center" is a property classification, which means a building or buildings primarily used to house computer systems and associated components, such as telecommunications and storage system.

D. The City has required this Agreement in connection with the Zoning Case in order to permit the development of a data center on the Property, and the Owner desires 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.** All of the recitals above are incorporated herein. The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following:

(A) The following uses and activities are prohibited on the Property:

- (i) Warehouse and Distribution\*
- (ii) Waste-Related Service\*

*\* As such uses are defined in the 2025 San Marcos Development Code.*

(B) If a data center is constructed on the Property, the data center will utilize a closed-loop, non-evaporative cooling system or similar system to cool the technology assets in the

data center. Regardless, water usage at the data center will not exceed 235 LUEs or 75,000 gallons per day.

(C) If a data center is constructed on the Property, drainage facilities shall be designed and constructed so that the rate of runoff from a site after construction shall be ten percent (10%) less than the runoff prior to construction for the two (2), ten (10), twenty five (25), and one hundred (100) year storm frequencies.

(D) If a data center is constructed on the Property, water quality facilities will be constructed that meet a Total Suspended Solid (TSS) removal requirement of at least 80% for the site.

(E) If a data center is constructed on the Property, the impervious cover for a data center will be no more than 70% of the Property.

(F) If a data center is constructed on the Property, Owner will pursue a LEED (Leadership in Energy and Environmental Design) certification for the buildings within twelve (12) months from the date of the final certificate of occupancy and commissioning of building systems for the last building to be constructed on the Property and a copy of the submitted application will be made available to the City of San Marcos for inspection.

(G) If a data center is constructed on the Property, then the noise level maximums set forth in Section 7.4.2.1(A) of the City of San Marcos Land Development Code as in effect on the date hereof shall be 75 decibels as measured from either the closest public right-of-way to the Property or from the property line of the complainant per Section 7.4.2.1(B) of the City of San Marcos Land Development Code in effect on the date hereof.

(H) If a data center is constructed on the Property, during construction the following requirements will be met and reasonable signage on the jobsite in both English and Spanish will list these standards:

- Compliance with all relevant local, state, and federal safety laws;
- All construction workers on the project will be paid by check or direct deposit, or other commercially used payment method, including electronic or other payment methods that are customary in the industry;
- All construction workers on the project will be covered by workers' compensation insurance as required by state or federal law;
- All construction workers on the project will receive personal protective equipment, free of charge if not already provided by the employer as required by state or federal law;
- All safety supervisors on the project will be current on their 30-hour, OSHA approved construction worker safety class prior to commencing construction work as

required by state or federal law.

2. **Remedies.** The City and Owner 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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **Term.** Unless earlier terminated as provided herein, this Agreement shall be in effect for a period of twenty (20) years from the date hereof, i.e. this Agreement shall expire on the 20<sup>th</sup> anniversary of the date of this Agreement set forth above. Upon expiration of the twenty (20) year term, this Agreement shall automatically expire and be of no further force or effect.

8. **Misc. Provisions.** This Agreement may only be enforced by the Owner and the City. The City may not assign this Agreement. Owner may assign this Agreement. There are no third party beneficiaries to this Agreement. Upon Owner's request and within thirty (30) days of the request, the City agrees to provide Owner written confirmation that Owner is not in violation of any provision in this Agreement. If as part of that written confirmation the City believes Owner is not in compliance with any provision, City will state with specificity the details related to the lack of compliance and specifically how Owner does not comply. Lenders and Tenants may rely on City's confirmation.

9. **Chapter 245.** This Agreement establishes vested rights of Owner pursuant to Chapter 245 of the Texas Local Government Code.

10. **Condition Precedent.** It is a condition precedent to the effectiveness of this Agreement that the rezoning of the Property pursuant to the Zoning Case has been fully and finally approved by the San Marcos City Council on or before March 18, 2026. If such rezoning is not

fully and finally approved by the San Marcos City Council by such date for any reason, then this Agreement shall expire on such date and thereafter shall be of no force or effect.

**11. Default.** If any party defaults under this Agreement, then the non-defaulting party will not exercise any remedies for such default unless the defaulting party fails to cure such breach within thirty (30) days following the non-defaulting party's delivery of written notice of such breach to the defaulting party by hand delivery or overnight mail; provided, however, that if the particular default cannot reasonably be cured within thirty (30) days, then such 30-day cure period will be extended for up to two (2) additional thirty (30) day periods to allow the defaulting party a reasonable opportunity to cure its breach, so long as the defaulting party commences the required cure within such 30-day period and thereafter diligently pursues the same to completion.

**12. No Dedication.** Nothing in this Agreement shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

[SIGNATURES ON NEXT PAGE]

***Preliminary Draft – For Discussion Purposes***

**HIGHLANDER:**

Highlander SM One, LLC  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ of Highlander SM One, LLC, a Texas limited liability company, in such capacity, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of Texas

**TUFFS:**

\_\_\_\_\_  
Donald W. Tuff

\_\_\_\_\_  
Germaine Tuff

ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                      §  
COUNTY OF \_\_\_\_\_ §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Donald W. Tuff and Germaine Tuff.

\_\_\_\_\_  
Notary Public, State of Texas

***Preliminary Draft – For Discussion Purposes***

**CITY:**

City of San Marcos, Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

THIS INSTRUMENT was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, \_\_\_\_\_ of the City of San Marcos, Texas, in such capacity, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

CONSENT AND SUBORDINATION

First Financial Bank (“Lienholder”), as the holder of certain lien(s) on the Property set forth in deed of trust recorded as Document No. \_\_\_\_\_, Official Public Records, Hays County, and other liens and security interests in the Property (collectively, the “Liens”), consents to this Restrictive Covenant Agreement. Lienholder subordinates the Liens to this Restrictive Covenant Agreement, so that a foreclosure of the Liens will not extinguish the Restrictive Covenant Agreement.

WITNESS MY HAND this \_\_\_\_ day of \_\_\_\_\_, 2025.

**LIENHOLDER:**

First Financial Bank

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was executed before me on this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ of **FIRST FINANCIAL BANK**, on behalf of said bank.

(SEAL)

\_\_\_\_\_  
Notary Public Signature



EXHIBIT A

**Description of the Property (Highlander)**

DESCRIPTION OF 135.96 ACRES MORE OR LESS OF LAND AREA BEING A 136.96 ACRE TRACT LESS AND EXCEPT A ONE ACRE TRACT RESERVED FOR CEMETERY PURPOSES BEING A PORTION OF LOTS 148 149 AND 167 OF THE DIVISION OF THE AM ESNAURRIZAR SURVEY HAYS COUNTY TEXAS AS SHOWN ON THE PLAT OF SUBDIVISION DATED MARCH 1848 AND RECORDED IN VOLUME 84 PAGE 471 OF THE HAYS COUNTY DEED RECORDS AND BEING ALL OF THAT TRACT DESCRIBED AS 136.96 ACRES IN A DEED JAMES W RAGSDALE TO HAYS ENERGY LIMITED PARTNERSHIP DATED AUGUST 9,1999 AND RECORDED IN HAYS COUNTY DOCUMENT NO 9918986 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (BEING RESERVED IN PREVIOUS DEED A ONE ACRE TRACT OF LAND FOR A CEMETERY PURPOSES)

DRAFT

EXHIBIT A-1

**Description of the Property (Tuffs)**

**BEING** A 63.578 ACRE (2,769,448 SQUARE FEET) TRACT OF LAND SITUATED IN THE ANTONIO MARIA ESNAURIZAR SURVEY, ABSTRACT NO. 6 HAYS COUNTY, TEXAS, AND BEING A PORTION OF A.M. ESNAURIZAR ELEVEN LEAGUE GRANT SUBDIVISION 149, PLAT OF WHICH IS RECORDED IN VOLUME 34, PAGE 303, DEED RECORDS COMAL COUNTY, AND CONTAINING ALL OF THAT CERTAIN TRACT 50.00 ACRE TRACT A, AND A PORTION OF THAT CERTAIN 50.00 ACRE TRACT B, BOTH DESCRIBED IN INSTRUMENT TO DONALD W. TUFF AND GERMAINE TUFF IN VOLUME 312, PAGE 837, DEED RECORDS HAYS COUNTY, AND VOLUME 802, PAGE 397, DEED RECORDS COMAL COUNTY; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A 6-INCH WOOD FENCE POST FOUND ON THE SOUTHWESTERLY LINE OF THAT CERTAIN 4.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO HAYS ENERGY LIMITED PARTNERSHIP IN VOLUME 1512, PAGE 495, OFFICIAL PUBLIC RECORDS HAYS COUNTY, MARKING THE NORTH CORNER OF SAID 50.00 ACRE TRACT A, AND THE EAST CORNER OF THAT CERTAIN 0.80 ACRE TRACT DESCRIBED IN INSTRUMENT TO HAYS ENERGY LIMITED PARTNERSHIP IN VOLUME 1648, PAGE 485, OFFICIAL PUBLIC RECORDS HAYS COUNTY; AND MARKING THE NORTH CORNER OF THE HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 60°09'54" EAST, 2.99 FEET ALONG THE SOUTHWESTERLY LINE OF SAID 4.56 ACRE TRACT TO A 1/2-INCH IRON ROD FOUND MARKING THE WEST CORNER OF THAT CERTAIN 136.912 ACRE TRACT DESCRIBED IN INSTRUMENT TO HIGH ANDER SM, LLC IN DOCUMENT NO. 22004858, OFFICIAL PUBLIC RECORDS HAYS COUNTY;

**THENCE**, ALONG THE COMMON LINE OF SAID 136.912 ACRE TRACT AND SAID 50.00 ACRE TRACT A THE FOLLOWING THREE (3) CALLS:

1. SOUTH 45°04'42" EAST, 413.36 FEET TO A WOOD POST FOUND FOR CORNER;
2. SOUTH 45°21'46" EAST, 733.15 FEET TO A WOOD POST FOUND FOR CORNER;
3. SOUTH 45°19'47" EAST, AT 256.73 FEET PASSING A 60D-NAIL WITH WASHER STAMPED "BYRN SURVEY" FOUND MARKING THE SOUTHWEST CORNER OF SAID 136.912 ACRE TRACT; CONTINUING FOR A TOTAL DISTANCE OF 262.16 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "KHA" SET ON THE NORTHWESTERLY LINE OF THAT CERTAIN 75.9 ACRE TRACT ONE, DESCRIBED IN INSTRUMENT TO JOHN D. DOSTER AND EVA J. DOSTER, RECORDED IN VOLUME 265, PAGE 178, DEED RECORDS HAYS COUNTY, AND MARKING THE EAST CORNER OF HEREIN DESCRIBED TRACT;

**THENCE**, SOUTH 44°24'42" WEST, 1736.82 FEET ALONG THE COMMON LINE OF SAID 50.00 ACRE TRACT A, AND SAID 75.9 ACRE TRACT TO A FOUND 1-INCH IRON PIPE CALLED FOR AS THE WEST CORNER OF SAID 75.9 ACRE TRACT, AND THE NORTHEAST CORNER OF THAT CERTAIN 46.8 ACRE TRACT THREE, RECORDED IN SAID IN VOLUME 265, PAGE 178;

**THENCE**, ALONG THE COMMON LINE OF SAID 46.8 ACRE TRACT, AND AFORESAID 50.00 ACRE TRACT A, THE FOLLOWING TWO (2) CALLS:

1. SOUTH 44°40'50" WEST, 283.13 FEET TO A 6-INCH WOOD CORNER POST MARKING THE SOUTH CORNER OF HEREIN DESCRIBED TRACT, AND THE INTERIOR NORTH CORNER OF SAID 46.8 ACRE TRACT;
2. NORTH 29°48'52" WEST, 286.88 FEET TO A 8-INCH WOOD CORNER POST MARKING THE NORTHERN MOST NORTHWEST CORNER OF SAID 46.8 ACRE TRACT, AND A SOUTHEAST CORNER OF AFORESAID 50.00 ACRE TRACT B;

**THENCE**, NORTH 45°16'07" WEST, 1151.95 FEET CROSSING SAID 50.00 ACRE TRACT B TO A 1/2-INCH IRON ROD WITH CAP STAMPED "KHA" SET ON THE SOUTHEASTERLY LINE OF THAT CERTAIN CALLED 49.68 ACRE TRACT DESCRIBED IN INSTRUMENT TO CONNIE D. MARTIN IN DOCUMENT NO. 80031113, OFFICIAL PUBLIC RECORDS HAYS COUNTY, AND MARKING THE WEST CORNER OF HEREIN DESCRIBED TRACT; SAID SET ROD BEARS SOUTH 44°58'19" WEST, 687.46 FEET TO A 1/2-INCH IRON ROD WITH ILLEGIBLE CAP FOUND AT THE CALLED NORTH CORNER OF SUBDIVISION 124 OF ESNAURIZAR GRANT, AND MARKING:

1. THE SOUTH CORNER OF SAID 49.68 ACRE TRACT;
2. THE EAST CORNER OF THAT CERTAIN TRACT 3.02 ACRE TRACT DESCRIBED IN INSTRUMENT TO CONNIE MARTIN IN DOCUMENT NO. 2008-80031897, OFFICIAL PUBLIC RECORDS HAYS COUNTY, AND DOCUMENT NO. 20080604468 OFFICIAL PUBLIC RECORDS COMAL COUNTY;
3. THE NORTH CORNER OF THAT CERTAIN 2.54 ACRE TRACT OUT OF A 3.74 ACRE TRACT, DESCRIBED IN INSTRUMENT TO DONALD AND GERMAINE TUFF IN VOLUME 928, PAGE 471, DEED RECORDS COMAL COUNTY; SAID FOUND ROD BEARS: SOUTH 67°37'49" EAST, 36.85 FEET TO A FOUND 25" FALLEN LIVE OAK, CALLED 15" LIVE OAK IN VOLUME 312, PAGE 831, DEED RECORDS HAYS COUNTY (SHOT IN CENTER OF ROOT BALL), AND NORTH 11°50'10" WEST, 56.35 FEET TO A FOUND 22" FALLEN LIVE OAK, CALLED 15" LIVE OAK IN VOLUME 312, PAGE 831, DEED RECORDS HAYS COUNTY (SHOT IN CENTER OF ROOT BALL);

**THENCE**, ALONG COMMON LINE OF SAID 49.68 ACRE TRACT, AND OF SAID 50.00 ACRE TRACT A AND SAID 50.00 ACRE TRACT B, THE FOLLOWING THREE (2) CALLS:

1. NORTH 44°58'19" EAST, 1,073.33 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "ASH 5687" FOUND FOR CORNER;
2. NORTH 44°53'34" EAST, 869.27 FEET TO THE **POINT OF BEGINNING**, AND CONTAINING 63.578 ACRES OF LAND IN HAYS COUNTY, TEXAS. THE BASIS OF BEARING FOR THIS DESCRIPTION IS THE TEXAS STATE PLANE COORDINATE SYSTEM GRID SOUTH CENTRAL ZONE (FIPS 4204) (NADD'83). ALL DISTANCES ARE ON THE GRID AND SHOWN IN U.S. SURVEY FEET. THIS DESCRIPTION WAS GENERATED ON 8/28/2024 AT 2:31 PM, BASED ON GEOMETRY IN THE DRAWING FILE K:\SNA\_SURVEY\HIGHLANDER REAL ESTATE PARTNERS\068727800-FRANCIS HARRIS\DWG\FRANCIS HARRIS BASE.DWG, IN THE OFFICE OF KIMLEY-HORN AND ASSOCIATES IN SAN ANTONIO, TEXAS.