

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2023, by and between _____, (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 16.234 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 upon the successful zoning change request associated with case number ZC-23-04.

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 covenants and restrictions running with the land here-in:

- a) Prohibited Uses as defined in Section 5.1.1.2: Land Use Matrix and Division 7: Industrial Uses in the San Marcos Unified Development Code adopted on April 17, 2018 to include:
 - i) Gasoline Sales
 - ii) Truck Stop
 - iii) Vehicle Services including car wash, minor and major vehicle repair)
 - iv) Waste Related Services (including animal waste processing, landfill, Manufacture and production of goods from composting organic material, outdoor collection and storage of recyclable material, scrap materials, solid or liquid waste transfer state, waste incineration
- b) The property shall provide a Type C Protective Yard as described and identified in Exhibit B.
- c) Buildings on the site will not exceed 40 feet in height.

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 _____ 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]

[INSERT OWNER NAME]:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this _____ day of -
_____, 2023, by _____, _____ of
_____, in such capacity, on behalf of said entity.

Notary Public, State of Texas

CITY:

By: _____

Name:_____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

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COUNTY OF HAYS §

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

Notary Public, State of Texas

Exhibit B (Residential Buffer)



TABLE 7.8 TYPE C AND D PROTECTIVE YARD STANDARDS

	TYPE C	TYPE D
Depth (min)	30 ft 20 ft	35 ft.
Fence Height (min)	Not Allowed	6 ft.
Wall Height (min)	8 ft 6 ft	Not Required
Shade Trees (min per 100 ft.)	5 4	6
Undersory Trees (min per 100 ft.)	4	6
Shrubs (min per 100 ft.)	40	60

