

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this “**Agreement**”) is made and entered into as of the 19th day of August, 2022, by and between San Marcos Hampton LLC, a Texas limited liability company (the “**Owner**”), and the City of San Marcos, Texas (the “**City**”).

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 37.674 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 Relating to Waste Related Services.

The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenant: For so long as the Property is zoned “HI” Heavy Industrial, “LI” Light Industrial or “HC” Heavy Commercial, it shall be prohibited to use the Property for Waste-Related Services as defined in the two succeeding sentences. For purposes of this Agreement the term “Waste Related Services” means characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material. Waste related service includes the following uses:

1. Animal waste processing.
2. Landfill.
3. Manufacture and production of goods from composting organic material.
4. Outdoor collection and storage of recyclable material.
5. Scrap Materials (indoor storage).
6. Solid or liquid waste transfer station, waste incineration.

2. Establishment of Restrictive Covenant Relating to Noise. The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenant: No activity on the Property shall produce sound:

1. In excess of 85 decibels between the hours of 10:00 a.m. and 10:00 p.m.

2. In excess of 75 decibels between the hours of 10:00 p.m. and 10:00 a.m.

Noise shall be measured as provided by Section 7.4.2.1 of the San Marcos Land Development Code.

3. **Establishment of Restrictive Covenant Relating to Odor.** The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenant: No use shall be located or operated which involves the emission of noxious and odorous matter from a source of operation where the noxious and odorous matter is clearly detectable at the bounding property line or any point beyond the tract on which such use or operation is located

4. **Establishment of Restrictive Covenant Relating to Electric Charging Stations.** Owner shall include one or more electric vehicle charging stations within the development on the Property.

5. **Automatic Termination.** This Agreement shall terminate automatically if the Property has not been zoned "HI" Heavy Industrial, "LI" Light Industrial and "HC" Heavy Commercial by the City prior to the first anniversary of the date this Agreement is recorded in the real property records of Hays County.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. 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]

SAN MARCOS HAMPTON LLC
A Texas Limited Liability Company

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF Harris §

THIS INSTRUMENT was acknowledged before me this 19th day of August 2022, by Manager, of San Marcos Hampton LLC, a Texas limited liability company, on behalf of said company.



S. Allayev

Notary Public, State of Texas

CITY:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this _____ day of _____, 202_, by _____, of the City of San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this “**Agreement**”) is made and entered into as of the 19th day of August, 2022, by and between CCM San Marcos, LLC, a Texas limited liability company (the “**Owner**”), and the City of San Marcos, Texas (the “**City**”).

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 35.249 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 Relating to Waste Related Services.

The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenant: For so long as the Property is zoned “HI” Heavy Industrial, “LI” Light Industrial or “HC” Heavy Commercial, it shall be prohibited to use the Property for Waste-Related Services as defined in the two succeeding sentences. For purposes of this Agreement the term “Waste Related Services” means characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material. Waste related service includes the following uses:

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6. **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.

7. **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.

8. **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.

9. **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.

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parties hereto and their respective successors, heirs and assigns.

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[SIGNATURES ON NEXT PAGE]

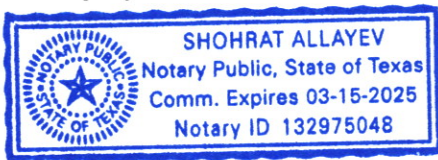
CCM SAN MARCOS, LLC
A Texas Limited Liability Company

By: [Signature]
Name: Alp Yilmaz
Title: Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Harris §

THIS INSTRUMENT was acknowledged before me this 19th day of August 2022, by Manager, of CCM San Marcos, LLC, a Texas limited liability company, on behalf of said company.



[Signature]
Notary Public, State of Texas

CITY:

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this _____ day of _____, 202_, by _____, of the City of San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas