

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2022, by and between NP San Marcos Holdings, LLC., (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 165.82 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto (the "**Property**").

B. Owner acknowledges an approximate 45.76 acre portion of the Property has been provided to the City of San Marcos as a Clear Zone Easement described in Vol. 509, Pg. 641, Real Property Records of Travis County, Texas and amended in Vol. 509, Pg. 651, Real Property Records of Hays County, Texas (the "**Easement Property**").

C. Owner and the City desire to subject the Property, SAVE AND EXCEPT the Easement Property, (the "**Restricted Property**"), to the terms of this Declaration.

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 Restricted Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenants. The following use is a prohibited use on the Restricted Property:

- i. **Waste-Related Service Use Category** - 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.
 - a. Animal waste processing.
 - b. Landfill.
 - c. Manufacture and production of goods from composting organic material.
 - d. Outdoor collection and storage of recyclable material.
 - e. Scrap Materials (indoor storage).
 - f. Solid or liquid waste transfer station, waste incineration.

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 Declaration 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]

NP San Marcos Holdings, LLC.:

By: _____

Name: _____

Title: Manager _____

ACKNOWLEDGMENT

STATE OF TEXAS §

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COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this _____ day of _____, 2022, 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 A Legal Description

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FIELD NOTE DESCRIPTION of a 165.82 acre tract of land situated within the Juan Martin ~~Veramendi~~ Survey, Abstract No. 17, and the Thomas G. McGehee Survey, Abstract No. 11, Hays County, Texas, being a portion of the tracts conveyed in Document No. 21046352, Hays County Official Public Records, and Volume 965, Page 376, said Official Public Records, being out of the residue of a called 100.0 acre tract of land described in Vol. 154, Pg. 503, Hays County Deed Records and the residue of a called 132 and 60/100 acres of land described in Book E, Page 203, said Deed Records; in all, said 165.82 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2" iron rod found w/ illegible cap on the northwest right-of-way line of State Highway 21, a/k/a Airport Highway or Old San Antonio Road, a variable width state highway right-of-way recorded in Volume 117, Page 501, said Deed Records, for the south corner of Tract 1, Dove Meadow, recorded in Volume 7, Page 347, Hays County Plat Records, coincident with the east corner of said residue of 132 and 60/100 acres and the east corner and **POINT OF BEGINNING** of the herein described tract of land, from whence another 1/2" iron rod found bears North 45° West, 2.0 feet;

THENCE, along the northwest line of said State Highway 21, South 50° 22' 50" West, 1201.21 feet to an iron rod with aluminum cap found for the east corner of a called 2.923 acre tract acquired by the City of San Marcos through eminent domain, recorded in Volume 509, Page 641 and Volume 509, Page 651, said Deed Records;

THENCE, with the boundary of said 2.923 acre tract, the following courses:

North 47° 41' 04" West, 102.90 feet to an iron rod with aluminum cap found,
South 42° 18' 56" West, 175.00 feet to an iron rod with aluminum cap found,
North 47° 41' 04" West, 1300.00 feet to an iron rod with aluminum cap found,
South 42° 18' 56" West, 75.00 feet to an iron rod with aluminum cap found,
South 47° 41' 04" East, 1300.00 feet to an iron rod with aluminum cap found,
South 42° 18' 56" West, 150.00 feet to an iron rod with aluminum cap found, and
South 47° 41' 04" East, 46.22 feet to an iron rod with aluminum cap found on the northwest right-of-way line of State Highway 21 for the south corner of said 2.923 acre tract;

THENCE, along the northwest line of said State Highway 21, South 50° 22' 50" West, 1396.63 feet to a TxDOT type I concrete monument found for an angle point;

THENCE continuing along said northwest line of State Highway 21, South 48° 53' 58" West, 276.47 feet to a 1/2" iron rod with orange "WESTWOOD 6530" cap set at the intersection of said State Highway 21 and FM Highway 110 (not yet constructed) for the east corner of a called 0.018 acre tract of land conveyed unto Hays County known as Parcel 14N, Part 2, recorded in Document No. 17041297, said Official Public Records, from whence a 1/2" iron rod found bears South 84° East, 1.3 feet;

THENCE, along the north cutback line of the intersection of said State Highway 21 and FM Highway 110, North 86° 42' 11" West, 58.89 feet to a 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" found on the northeast line of a called 3.346 acre tract of land conveyed unto Hays County known as Parcel 24N,

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recorded in Document No. 17039462, said Official Public Records, for the west corner of said 0.018 acre tract and an angle point of the herein described tract of land;

THENCE, along the northeast line of said FM Highway 110, North 46° 36' 46" West, passing at 795.06 feet a 1/2" iron rod with cap stamped "JE GARON RPLS 4303" found for the common north corner of said 3.346 acre tract and east corner of a called 2.830 acre tract conveyed unto Hays County known as Parcel 15N, recorded in Document No. 17027886, said Official Public Records, and continuing in all a total distance of 920.55 feet to a found 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" for the south corner of a called 19.065 acre tract conveyed unto Hays County known as Parcel 14N, Part 1, recorded in Document No. 17041297, said Official Public Records, for an angle point of said FM Highway 110 and the herein described tract of land;

THENCE along the east line of said FM Highway 110 and said 19.065 acre tract, the following courses:

North 27° 28' 44" West, 360.55 feet to a 1/2" bent iron rod,

North 06° 21' 14" East, 392.47 feet to a set 1/2" iron rod with cap stamped "WESTWOOD 6530" for the beginning of a tangent curve to the right,

Along the arc of said curve, having an arc length of 665.31 feet, a radius of 3275.00 feet, a delta of 11° 38' 23", and a chord bearing and distance of North 12° 10' 25" East, pass the approximate common northwest line of said residue of 132 and 60/100 acres and southeast line of said residue of 100.0 acres, and continuing in all a total distance of 664.17 feet to a found 1/2" iron rod for a point of tangency,

North 16° 34' 01" East, 290.02 feet to a set 1/2" iron rod with cap stamped "WESTWOOD 6530" for the beginning of a tangent curve to the right

Along the arc of said curve, having an arc length of 588.46 feet, a radius of 3295.00 feet, a delta of 10° 13' 57", and a chord bearing and distance of North 28° 09' 28" East, 587.68 feet to a found 1/2" iron rod for a point of tangency, and

North 33° 16' 27" East, 1551.31 feet to a found 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" for the west corner of a called 97.04 acre tract conveyed unto Harris Hill Residential Land Holdings LLC, recorded in Document No. 20032223, said Official Public Records, coincident with the south corner of a called 11.736 acre tract conveyed unto Hays County known as Parcel 13N, recorded in Document No. 16008150, said Official Public Records, for the north corner of the herein described tract of land;

THENCE, along the northeast line of the herein described tract of land, South 45° 24' 07" East, pass at 1593.39 feet a 1" bent iron pipe (0.7 feet right of line) at the common southeast line of said 97.04 acre tract and northwest line of said Dove Meadow, pass at 2161.86 feet a 3/8" iron rod found with cap stamped "BYRN SURVEY" (0.7 feet right of line) at the common southeast line of Tract 2 and northwest line of Tract 1, Dove Meadow, and continuing in all a total distance of 2837.11 feet to the **POINT OF BEGINNING**.

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Containing, in all, 165.82 acres or 7,223,000 square feet of land, more or less. Bearings based on the Texas State Plane Coordinate System for the South Central Zone, 4204 (NAD83, 2011 Adjustment).

