

## RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between

C&G DEVELOPMENT, INC, (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

### **RECITALS:**

A. Owner is the owner of a tract of land totaling approximately 22.58 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 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 Prohibited Uses Restrictive Covenant.** The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the restrictive covenant that no truck stop or warehouse, as defined in sections 5.1.5.4 and 5.1.7.4 in the San Marcos Development Code adopted on April 17, 2018, be constructed on any portion of the 22.58 acre-tract. The Parties also agree that a hotel/motel, as defined in section 5.1.5.6 of the San Marcos Development Code (2018), will not be constructed on any part of the property within 200 feet of the property line shared with the senior center and church located on the western side of the 22.58-acre tract legally defined as Mockingbird Hills Annex No. One Revised and Lot 1 Block "A" of Mockingbird Hill Annex No. Two, as set out in Exhibit "A" attached.

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]

METES AND BOUNDS DESCRIPTION  
FOR A 22.588 ACRE TRACT OF LAND

Being a 22.588 acre tract located in the Barnett O. Kane Survey, A-281 and the Juan Martin Veramendi Survey, A – 17, Hays County, being a part of that same land described as a 1.19 acre tract and part of a called 27.11 acre tract, described in Volume 3114, Page 883 of the Hays County Deed Records. Said 22.588 acre tract being more particularly described as follows:

BEGINNING at a ½" iron rod with cap "HMT" set in the North margin of Wonderworld Drive for the Southwest corner of said 1.19 acre tract and the common corner of a 10' right of way dedication adjacent to Lot 1, Mockingbird Hill Annex No. 1 Revised Subdivision, recorded in Document No. 3060944 of the Hays County Deed Records;

THENCE with the Northwest line of said 1.19 acre tract the following four courses:

1. With the Southeast line of said Mockingbird Hill Annex No. 1 Lot, North 44°24'21"East, at a distance of 10 feet passing a ½" iron rod for the Southeast corner of said Lot 1 and continuing in all a total distance of 275.07 feet to a ½" iron rod with cap "HMT" set;
2. With said Mockingbird Hill Annex No. 1 and continuing with the Southwest line of Lot 1, Block A, Mocking Bird Hill Annex No. 2, a subdivision recorded in Volume 2, Page 179 of the Hays County Map Records, also continuing with the Southwest line of Suncrest Lane (60' right of way) dedicated in said subdivision, North 44°27'12"East, a distance of 579.37 feet to a ½" iron rod found for the Southeast corner of said Suncrest Lane and the Southwest corner of Lot 2, Central Texas Medical Center Business Park, a subdivision recorded in Volume 10, Page 100, Hays County Map Records;
3. Thence with the Southeast line of said Lot 2, North 44°19'03"East, a distance of 396.09 feet to a ½" iron rod found for the common of said Lot 2 and Lot 1 of the same subdivision;
4. Thence with the Southeast line of said Lot 1, North 43°51'57"East, a distance of 284.40 feet to a ½" iron rod found for in the North line of said 1.19 acre tract for the Northwest corner of a called 5.716 acre tract, conveyed to the State of Texas for right of way widening for State Highway 123, recorded in Volume 4893, Page 1-9, Hays County Deed Records;

THENCE with the West line of said 5.716 acre right of way taking for the new West line of State Highway 123 and into and across said 1.19 acre tract and said 27.11 acre tract, the following four courses:

1. South 04°23'56"West, a distance of 246.85 feet to a ½" iron rod with cap "HMT" set;
2. South 04°22'40"West, a distance of 900.12 feet to a ½' iron rod found;
3. South 04°23'04"West, a distance of 817.23 feet to a ½' iron rod with cap "HMT" set;
4. South 71°06'28"West, a distance of 52.20 feet to a ½" iron rod found for the Southwest corner of said 5.716 acre tract at the intersection of State Highway 123 and Wonderworld Drive, lying in the South line of said 27.11 acre tract;

THENCE with the Southwest line of said 27.11 acre tract and said 1.19 acre tract, along the Northeast line of Wonderworld Drive, the following three courses:

1. North 42°05'27"West, a distance of 244.75 feet to a TxDOT concrete monument found;
2. Along a curve to the left with a radius of 3869.72 feet, arc length of 251.07 feet, and a chord bearing and distance of North 44°15'48"West a distance of 251.02 feet to a TxDOT concrete monument found;
3. North 45°58'23"West, a distance of 741.66 feet to the POINT OF BEGINNING and containing a 22.588 acre tract in Hays County, Texas.

Bearings are based upon the Texas State Plane Coordinate System, South Central Zone (4204) NAD 1983.

Surveyed this the 1st day of July, 2020.

Reference survey of said 22.588 acre tract of land prepared this same date.