

## **RESTRICTIVE COVENANT AGREEMENT**

This RESTRICTIVE COVENANT AGREEMENT ("**Restrictive Covenant**") is made to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2022 by and between (i) **EAST VH 2222, LLC** a Texas limited liability company (collectively, the "**Owner**") and (ii) **COURTYARD HOMEOWNERSASSOCIATION, INC.**, a Texas nonprofit corporation ("**Courtyard HOA**"), **SHEPHERD MOUNTAIN NEIGHBORHOOD ASSOCIATION**, a Texas nonprofit corporation ("**Shepherd Mountain NA**"), **LAKE AUSTIN COLLECTIVE, INC.** a Texas nonprofit organization ("**LAC**"), and **MONTE VISTA CONDOMINIUM ASSOCIATION, INC.** a Texas nonprofit corporation ("**Monte Vista**") (collectively, the "**Neighborhood Associations**").

### **RECITALS**

A. Owner is the owner of certain real property consisting of approximately 8.26 acres of land, generally located at 6025 North Capital of Texas Highway in the City of Austin, Travis County, Texas, as more particularly described by the legal described attached hereto as **Exhibit "A"** (the "**Property**").

B. The Property is currently subject to certain zoning and development restrictions contained within City of Austin Zoning Ordinance 920507-B ("**Zoning Ordinance**"); that certain Restrictive Covenant recorded as Document No. 92045794 in the Real Property Records of Travis County, Texas ("**1992 Restrictive Covenant**"); and that certain Compromise Settlement Agreement related to Cause No. 94-07160, Josie Ellen Champion, et al v. City of Austin in the 353rd Judicial District Court of Travis County ("**Settlement Agreement**"). Among these restrictions includes an overall cap on the total amount of building square footage that may be developed on the Property in an amount not to exceed 70,000 square feet ("**Development Cap**").

C. Owner intends to sell the Property to a developer that desires to construct a hotel use on the Property that would exceed the Development Cap ("**Desired Use**"), which would require certain approvals from the City of Austin to amend the Zoning Ordinance, 1992 Restrictive Covenant, and Settlement Agreement ("**City Approvals**").

D. Owner has sought the support from the Neighborhood Associations for the requisite City Approvals to achieve the Desired Use.

E. In exchange for the Neighborhood Associations' support, Owner has agreed to impose upon the Property certain covenants and conditions, as detailed below, for the mutual benefit of the Property, Owner, and Neighborhood Associations.

F. In reliance upon Owner's agreement to impose these covenants and conditions upon the Property and the terms and provisions of this Restrictive Covenant, the Neighborhood Associations have agreed to support Owner's applications for the City Approvals, subject to the terms hereof.

NOW, THEREFORE, for the consideration set forth above, the receipt and sufficiency of which is hereby acknowledged, Owner does hereby impose the following obligations, restrictions, and covenants upon the Property, which shall be binding upon Owner and all subsequent owners of the Property, or any portion thereof. Owner further declares that the Property shall be held, sold and conveyed, subject to the following:

### **AGREEMENTS**

1. **Recitals.** The Owner and the Neighborhood Associations acknowledge and agree that the above and foregoing recitals are true and correct, and are hereby incorporated herein as material terms, conditions, and covenants of this Restrictive Covenant.
2. **Property Restrictions.** The use and development of the Property shall be subject to the following development restrictions (collectively, the “**Property Restrictions**”):

- a. **Building Size**

- i. **Stories.** No building or structure on the Property shall exceed a maximum of three (3) stories.
- ii. **Height.** No building or structure on the Property shall exceed a maximum of forty-five feet (45 ft.) in height, as determined by the Austin Land Development Code.
- iii. **Building Square Footage.** The Property shall continue to be restricted to the Development Cap; provided, however, the Property may be developed with a hotel use that exceeds the Development Cap, subject to the following conditions:
  1. The aggregate building square footage for the hotel use, including all accessory uses, shall be limited to 90,000 square feet (“**Aggregate Development Maximum**”); and
  2. Within the Aggregate Development Maximum, no more than 5,000 square feet may be used for events and meeting space.
- iv. **Development Bonus.** Notwithstanding the limits of subsection (iii) above, as an incentive to include a dine-in restaurant on the Property, an additional 5,000 square feet may be added to the Aggregate Development Maximum so long as such additional square footage is used exclusively for a dine-in restaurant, for a total aggregate, post-development bonus building square footage maximum of 95,000 square feet.

- b. **Water Quality and Impervious Cover**

- i. **Gross Site.** Impervious cover on the Property shall be limited to a maximum



of forty percent (40%) gross site area.

- ii. CWQZ. Impervious cover shall be limited within the Critical Water Quality Zone ("CWQZ") to zero percent (0%) impervious cover. Prior to the issuance of a certificate of occupancy for any development on the Property, Owner shall be required to remove all existing impervious cover from the CWQZ. For purposes of this provision, the CWQZ shall be defined as the area within one-hundred fifty feet (150 ft.) of the centerline of West Bull Creek.
- iii. Water Quality. Except as provided in subsection (ii) above, all development of the Property shall comply with all water quality control requirements of the Austin Land Development Code applicable to new projects submitted to the City of Austin as of the Effective Date. For avoidance of doubt, this provision is expressly intended to prevent the development from taking advantage of vested rights that would permit development of the Property pursuant to outdated water quality control requirements that precede the water quality control requirement in effect as of the Effective Date hereof, and Owner expressly disclaims any rights to develop the Property with any variances or waivers of water quality control requirements that might be contained within the Zoning Ordinance, 1992 Restrictive Covenant, or Settlement Agreement.
- c. Hill Country Roadway. At all times, at least forty percent (40%) of the site must remain undisturbed, in substantially the same condition as existed prior to its development, in compliance with Section 2.7.2(B) (Hill Country Roadway Landscape Criteria) of the City of Austin Environmental Criteria Manual and the Austin Land Development Code.
- d. Use Restriction. The sale, rental, leasing, lending, and distributing of paddle boards, kayaks, and all other forms of watercraft shall be expressly prohibited on the Property (collectively, the "Watercraft Restriction"). This Watercraft Restriction is expressly intended to prevent hotel guests and other members of the general public from accessing Bull Creek from or nearby the Property. Owner shall stipulate in any legal contract for hotel management that the Watercraft Restriction shall be enforced at all times.
- e. Fencing. Prior to the issuance of a certificate of occupancy, Owner shall construct or cause the construction of a fence of reasonable scale, location, and materials between the Property and adjacent property owned by the Courtyard HOA. Prior to construction of the fencing, Owner and the Courtyard HOA shall work in good faith to establish the specific scale, location, and materials for such fencing.
- f. Vested Rights Termination. Upon the completion of any project on the Property, Owner, and any successors and subsequent owners or interest-holders, or assigns, agree to permanently relinquish and abandon any and all vested rights granted on the Property by the Zoning Ordinance, 1992 Restrictive Covenant, or Settlement Agreement, agree that any such vested rights are thereafter null and void. For



purposes of this provision, project shall be defined as any site plan submitted in compliance with this Restrictive Covenant and may include multiple buildings. Completion shall be determined by the issuance by the City of Austin of certificates of occupancy for all of the buildings contained on such site plan, regardless of site plan duration. The intended effect of this provision is to terminate any vested rights associated with the Property such that the Owner is afforded the right to complete the buildings identified on the applicable site plan and any future structure, addition to a building, or other improvement of the Property must comply with all City of Austin codes and regulations in effect at the time a new permit is submitted. The provision is not intended to allow the Owner to hold onto vested rights and reconstruct portions of the Property under outdated standards by failing to complete a building identified on the site plan, nor is it intended to create any vested rights for purposes of a Chapter 245 determination by a public agency.

3. **Limited Amendments.** The City Approvals sought by Owner shall be limited to those necessary to achieve the Desired Use and to incorporate the Property Restrictions set forth in this Restrictive Covenant. It is expressly understood that, in addition to the restrictions contained herein above, there are existing restrictions contained within the 1992 Restrictive Covenant and the Settlement Agreement and those restrictions shall continue to be in full force and effect.
4. **Neighborhood Support.** The Neighborhood Associations hereby agree to fully support and endorse the City Approvals contemplated herein to the extent they are consistent with the Property Restrictions set forth in this Restrictive Covenant. In the event that Owner believes that one or more of the Neighborhood Associations is not satisfying this provision, Owner shall notify the Neighborhood Associations in writing and the Neighborhood Associations shall have a reasonable opportunity to cure and resolve any such concern.
5. **Violations.** If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for any Neighborhood Association or the Owner, or their respective successor organizations or assigns, to initiate proceedings at law or in equity against such person or entity violating or attempting to violate this Restrictive Covenant.
6. **Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Restrictive Covenant, the prevailing party or parties shall be entitled to reasonable attorneys' fees, and costs, in addition to any other relief to which such party or parties may be entitled.
7. **Binding.** This Restrictive Covenant, along with the restrictions, covenants, benefits, and obligations created hereby, are benefits and servitudes running with the land and shall inure to the benefit of the Owner and the Neighborhood Associations, and their respective successors and assigns, and shall be binding upon the Owner, and its heirs, representatives, lessees, successors and assigns. No mortgagee of any record owner of any portion of the Property shall have any liability under the Restrictive Covenant, except for any acts of such mortgagee occurring after the date on which the mortgagee becomes the owner of a portion of such Property, by foreclosure or otherwise. The owner of any portion of the Property

shall be obligated to comply with restrictions imposed on such portion only during the period of his or its ownership, and liability shall be assessed against an owner only for violations constituting a breach of the covenants and restrictions hereunder and arising by, through or under such owner, and which occur on his or its portion of the Property owned during the period of his or its ownership of same.

8. **Duration.** This Restrictive Covenant shall remain in effect until sixty (60) years after the Effective Date (the "**Initial Term Expiration Date**"). The Restrictive Covenant shall be automatically extended for successive ten (10) year periods thereafter, unless earlier terminated by the provisions hereunder.
9. **Invalidity.** If any part of this Restrictive Covenant or any of the foregoing covenants are declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining portion of this Restrictive Covenant shall remain in full effect.
10. **Modification.** This Restrictive Covenant may be modified, amended, or terminated only by joint written action of each of the Neighborhood Associations and the Owner of the Property at the time of such modification, amendment, or termination. If, at the time of such modification, amendment, or termination, one or more of the Neighborhood Associations have dissolved, only the written action of the surviving Neighborhood Associations shall be required. If there are no surviving Neighborhood Associations to enforce the covenants and restrictions hereunder, the Owner may record an affidavit in the Official Public Records of Travis County, Texas, certifying that this Restrictive Covenant has terminated.
11. **No Waiver.** If at any time the Neighborhood Associations or the Owner fail to enforce this Restrictive Covenant, whether any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
12. **Notice.** All notices required shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated by notice to the other parties, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:

If to Courtyard HOA, to:

Courtyard HOA President  
c/o Goodwin Property Management, P. O. Box 203310  
Austin, TX 78720-3310

If to Shepherd Mountain NA, to:

Shepherd Mountain NA President  
5903 Long Court  
Austin, TX 78730



If to LAC, to:

Lake Austin Collective President  
5903 Long Court  
Austin, TX 78730

If to Monte Vista, to:

Monte Vista Condominium Association President  
Monte Vista Condominium Association,  
Inc., 6000 Shepherd Mountain Cove  
Austin, TX 78731 President

For each Neighborhood Association, a copy of the notice should be provided to:

Brad Rockwell  
Attorney  
Perales, Allmon & Ice, PC  
1206 San Antonio  
Austin, TX 78701

If to Owner, to:

East VH 2222, LLC  
1001 Cypress Creek Road #203  
Cedar Park, TX 78613

13. **Governing Law.** The laws of the State of Texas shall govern this Restrictive Covenant. Venue for all purposes shall be Travis County, Texas. All references to the Austin City Code, Land Development Code, and Environmental Criteria Manual shall refer to those City of Austin ordinances, rules, or other regulations in effect as of the Effective Date of this Restrictive Covenant.
14. **Interpretation.** The parties acknowledge that each party and its counsel has reviewed and revised this Restrictive Covenant, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Restrictive Covenant or any amendments or exhibits hereto.

15. **Assignment.** The parties hereto acknowledge and agree that the terms of the Restrictive Covenant may be assigned by Owner to any successor of any interest in and to the Property. The parties hereto further acknowledge and agree that this Restrictive Covenant may not be assigned by the Neighborhood Associations without the prior written approval of Owner in its sole and absolute discretion.
16. **Authority.** Each party represents and promises that each individual signing this Restrictive Covenant on its behalf has been given authority by such party to bind such party to this Restrictive Covenant. East VH 2222, LLC and Vinod Nagi each represent and promise that there are no prior liens or encumbrances on the Property on the Effective Date of this Agreement that could pre-empt or nullify all or part of this Restrictive Covenant, except a certain Deed of Trust Mortgage on the Property in favor of Champion Assets, Ltd., Champion-Meier Assets, Ltd., and Champion Legacy Partners, L.P., dated December 29, 2021, and recorded in the Official Public Records of Travis County as 2022000671.
- 16a.** Owner agrees that any sale of the Property, such as, but not limited to, the intention expressed in Recital C, will include cash proceeds sufficient to allow immediate payment in full any amount owed on the Property secured by the Deed of Trust Mortgage identified in section 16. Owner further agrees to use such proceeds to immediately satisfy the mortgage obligation as set forth in Official Public Records of Travis County 2022000671.
17. **Entire Agreement.** This Restrictive Covenant is the entire agreement between Owner and the Neighborhood Associations concerning the Property and supersedes any prior agreements, statements, representations and/ or understandings relating thereto.
18. **No Third Party Beneficiaries.** No right, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.
19. **Counterparts.** This Restrictive Covenant may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile signatures appearing on this Restrictive Covenant shall be as valid and binding as original signatures.
20. **Automatic Termination.** Notwithstanding anything to the contrary set forth in this Restrictive Covenant, this Restrictive Covenant will automatically terminate and be rendered null and void and of no further force or effect when and if either 1) the Austin City Council does not approve on third reading or denies the City Approvals contemplated hereunder, or 2) the property is foreclosed by Champion Assets, Ltd. Or Champion-Meier Assets, Ltd. Or Champion Legacy Partners, L.P. pursuant to rights under a Deed of Trust Mortgage recorded in the Official Records of Travis County as 2022000671, or a deed in lieu of foreclosure. Although the foregoing provisions for the automatic termination of this Restrictive Covenant are self-operating, Owner and its successors and assigns are entitled, but not required, to record an affidavit in the Official Public Records of Travis County, Texas, certifying that this Restrictive Covenant has automatically terminated in accordance with its terms. Additionally, if this Restrictive Covenant has automatically terminated in accordance with its terms, then, upon the written request of Owner, each of the Neighborhood Associations will sign and deliver to Owner a recordable confirmation

of such automatic termination.

21. **Severability.** In case any one or more of the provisions contained in this Restrictive Covenant shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Restrictive Covenant shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
22. **Recording.** Upon the execution hereof, this Restrictive Covenant shall be recorded in the Official Public Records of Travis County, Texas.

[ Signature Pages Follow]



**COURTYARD HOMEOWNERS ASSOCIATION, INC.**  
**SIGNATURE PAGE**  
**Restrictive Covenant Agreement**

**COURTYARD HOA:**

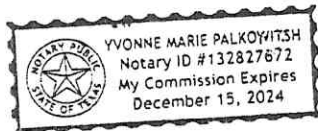
**COURTYARD HOMEOWNERS  
ASSOCIATION, INC.**, a Texas nonprofit  
corporation

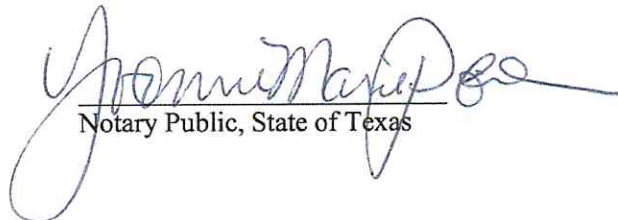
  
\_\_\_\_\_

By: 8-26-2022  
Name: KONAVIS SMITH  
Title: President

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 26 day of August, 2022, by  
Konavis Smith of Courtyard Homeowners Association, Inc., a Texas nonprofit corporation, on  
behalf of said corporation.



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

**SHEPHERD MOUNTAIN NEIGHBORHOOD ASSOCIATION  
SIGNATURE PAGE  
Restrictive Covenant Agreement**

**SHEPHERD MOUNTAIN NA:**

**SHEPHERD MOUNTAIN  
NEIGHBORHOOD ASSOCIATION, a  
Texas nonprofit corporation**

Maria Barreda Lipscher

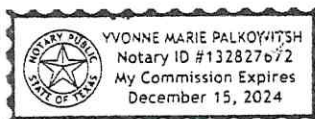
By: 8/26/2022

Name: Maria Barreda Lipscher

Title: President

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on the 26 day of August, 2022 by Maria Barreda Lipscher, President of Shepherd Mountain Neighborhood Association, a Texas nonprofit corporation, on behalf of said corporation.



Yvonne Marie Palkovitch  
Notary Public, State of Texas



**LAKE AUSTIN COLLECTIVE, INC.  
SIGNATURE PAGE  
Restrictive Covenant Agreement**

**LAC:**

**LAKE AUSTIN COLLECTIVE, INC., a  
Texas nonprofit corporation**

Linda Durette Bailey

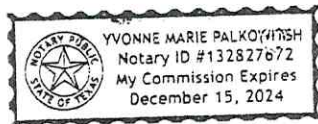
By: 08/26/22

Name: LINDA DURETTE BAILEY

Title: PRESIDENT

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on the 26 day of August, 2022 by Linda Durette Bailey, President of Lake Austin Collective, Inc., a Texas nonprofit corporation, on behalf of said corporation.



Yvonne Marie Palkovich  
Notary Public, State of Texas

**MONTE VISTA CONDOMINIUM ASSOCIATION, INC.**  
**SIGNATURE PAGE**  
**Restrictive Covenant Agreement**

**MONTE VISTA COA:**

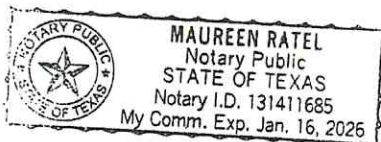
**MONTE VISTA CONDOMINIUM  
ASSOCIATION, INC.**, a Texas nonprofit  
corporation



By:  
Name: KEITH ELKINS  
Title: PRESIDENT, MONTE VISTA HOA

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 29 day of AUGUST, 2022, by  
Keith Elkins, President of Monte Vista Condominium Association, Inc., a Texas nonprofit corporation, on  
behalf of said corporation.



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



**OWNER SIGNATURE PAGE**  
**Restrictive Covenant Agreement**

**OWNER:**

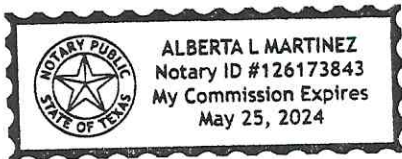
**East VH 2222, LLC**  
a Texas limited liability company

*Vinod Nagi*

By: Vinod Nagi, Manager

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 27<sup>th</sup> day of June, 2022 by Vinod Nagi, Manager of East VH 2222, a Texas limited liability company on behalf of said limited liability company and limited partnership.



*[Signature]*  
\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**  
**(to Restrictive Covenant Agreement)**

[attach legal description]