

WHISPER PUBLIC IMPROVEMENT DISTRICT

**LANDOWNER AGREEMENT
AND NOTICE OF ASSESSMENTS**

among

THE CITY OF SAN MARCOS, TEXAS

And

**YARRINGTON PARTNERS, LTD.,
WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP,
WHISPER INDUSTRIAL 2019 QOZB, LLC, AND
135 RESIDENTIAL DEVELOPMENT, LLC**

Dated as of:

_____, 2020

LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS

This **LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS** (this "Agreement") is entered into among the CITY OF SAN MARCOS, TEXAS, a home-rule municipal corporation of the State of Texas (the "City"), and (i) YARRINGTON PARTNERS, LTD., a Texas limited partnership ("Yarrington Partners"), (ii) WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP, a Texas limited partnership ("Whisper MC"), (iii) WHISPER INDUSTRIAL 2019 QOZB, LLC, a Texas limited liability company ("Whisper Industrial"), and (iv) 135 RESIDENTIAL DEVELOPMENT, LLC, a Texas limited liability company ("135 Residential") (Yarrington Partners, Whisper MC, Whisper Industrial and 135 Residential are each referred to herein as a "Landowner" and collectively as the "Landowners") (the City and the Landowners are referred to herein individually as a "Party" and collectively as the "Parties"). This Agreement shall be effective on the latest date it is executed by all the Parties (the "Effective Date").

RECITALS

WHEREAS, the Landowners collectively own approximately 706.1 acres of land located in San Marcos, Hays County, Texas, which is more particularly described in **Exhibit "A"** attached hereto (the "Land"), which Land is comprised as follows:

Whisper MC owns a total of approximately 442.966 acres of land located within the Land which is more particularly described in Exhibit "A-1" attached hereto and made a part hereof (the "Whisper MC Property");

Yarrington Partners owns a total of approximately 115.686 acres of land located within the Land which is more particularly described in Exhibit "A-2" attached hereto and made a part hereof (the "Yarrington Property");

Whisper Industrial owns a total of approximately 16.560 acres of land located within the Land which is more particularly described in Exhibit "A-3" attached hereto and made a part hereof (the "Whisper Industrial Property"); and

135 Residential owns a total of approximately 130.641 acres of land located within the Land which is more particularly described in Exhibit "A-4" attached hereto and made a part hereof (the "135 Residential Property");

WHEREAS, the Land constitutes taxable, privately owned land located within the Whisper Public Improvement District (the "District") created pursuant to the authority of Chapter 372, Texas Local Government Code, as amended (the "PID Act");

WHEREAS, Yarrington Partners, Whisper MC and the City entered into that certain Whisper Public Improvement District Financing Agreement dated September 5, 2017 and passed and approved by Resolution No. 2017-139R, as amended and restated by that certain Amended and Restated Financing Agreement between the City and the Landowners dated _____, 2020 and passed and approved by Resolution No. _____ (as may

be further amended from time to time as provided therein, the “PID Finance Agreement”) (relating to, among other matters, the levy of assessments on the Land, the issuance of revenue bonds secured by such assessments, and the construction of the “Authorized Improvements” as defined therein);

WHEREAS, the City Council of the City (the “City Council”) has contemporaneously herewith adopted an assessment ordinance (Ordinance No. _____) (including all exhibits, the “Assessment Ordinance”) that levied an assessment (the “Assessment”) on each Parcel located within the District, which Assessments will be used to reimburse Whisper MC for the costs of the Authorized Improvements or, if PID Bonds are issued by the City, pledged as security for the payment of such PID Bonds to pay for, among other things, the costs of constructing the Authorized Improvements that will confer a special benefit on the property in the District;

WHEREAS, a copy of the Assessment Ordinance is attached hereto as **Exhibit “B”**;

WHEREAS, the Assessment Ordinance includes a “Service and Assessment Plan”;

WHEREAS, the Service and Assessment Plan includes an “Assessment Roll” setting forth the amount of the “Assessment” for each Parcel located within the District, including the amount of the “Annual Installment” for each Assessment paid in installments; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I DEFINITIONS; APPROVAL OF AGREEMENTS

Definitions. Capitalized terms used but not defined in this Agreement (including the exhibits hereto) shall have the meanings given to them in the Service and Assessment Plan.

Affirmation of Recitals. The matters set forth in the Recitals of this Agreement are true and correct and are incorporated in this Agreement as official findings of the City Council.

ARTICLE II AGREEMENT OF LANDOWNERS

A. Each Landowner ratifies, confirms, accepts, agrees to, and approves:

(i) the creation of the District, the boundaries of the District, and the boundaries of the Assessed Properties;

(ii) the location and construction of the Authorized Improvements which confer a special benefit on the Assessed Properties;

(iii) the determinations and findings of special benefit to the Assessed

Properties made by the City Council in the Assessment Ordinance and Service and Assessment Plan;

(iv) the Assessment Ordinance and the Service and Assessment Plan; and

(v) the Buyer Disclosure in the form attached as **Exhibit “C”**.

B. Each Landowner consents, acknowledges, accepts, and agrees:

(i) to the Assessments levied against the applicable Assessed Properties as shown on the Assessment Roll, as the Assessment Roll may be amended from time to time;

(ii) that the Authorized Improvements and administration and operation of the District confer a special benefit on the Assessed Properties in an amount that exceeds the Assessments against the Assessed Properties as shown on the Assessment Roll;

(iii) that the Assessments against the Assessed Properties are final, conclusive, and binding upon the Landowner and its successors and assigns;

(iv) to pay the Assessments and Annual Installments against the Assessed Properties when due and in the amounts stated in the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(v) that each Assessment or reassessment against the Assessed Properties, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Assessed Properties, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Assessed Properties regardless of whether the owner is named;

(vi) that the Assessment liens on the Assessed Properties are liens and covenants that run with the land and are effective from the date of the Assessment Ordinance and continue until the Assessments are paid in full and may be enforced by the governing body of the City in the same manner that ad valorem tax liens against real property may be enforced;

(vii) that delinquent installments of Assessments against the Assessed Properties shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) that the owner of an Assessed Property may pay at any time the entire Assessment against the Assessed Property, with interest that has accrued on the Assessment to the date of such payment;

(ix) that Annual Installments may be adjusted, decreased, and extended and

that owners of the Assessed Properties shall be obligated to pay such Annual Installments as adjusted, decreased, or extended, when due and without the necessity of further action, assessments, or reassessments by the City Council; and

(x) that the Landowner has received, or hereby waives, all notices required by State law (including, but not limited to the PID Act) in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll.

C. Each Landowner hereby waives:

(i) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the District, defining the Assessed Properties, adopting the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll, levying of the Assessments, and determining the amount of the Annual Installments of the Assessments;

(ii) any and all notices and time periods provided by the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the approval of the Assessment Ordinance, Service and Assessment Plan, Assessment Roll and regarding the levying of the Assessments and determining the amount of the Annual Installments of the Assessments;

(iii) any and all actions and defenses against the adoption or amendment of the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(iv) any and all actions and defenses against the City's finding of "special benefit" pursuant to the PID Act and as set forth in the Service and Assessment Plan and the levying of the Assessments and determining the amount of the Annual Installment of the Assessments; and

(v) any right to object to the legality of the Assessment Ordinance, Service and Assessment Plan, Assessment Roll, or Assessments or to any proceedings connected therewith.

ARTICLE III TEXAS PROPERTY CODE SECTION 5.014 NOTICE

A. Section 5.014 of the Texas Property Code requires that a seller of residential real property that is located in a public improvement district and that consists of not more than one dwelling unit shall give to the purchaser of the property written notice of the district in substantially the form set forth on **Exhibit "C"** hereto. The seller is required to deliver the notice to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the required notice, the

references to the street address, the date in the notice, and the purchaser's signature may be omitted.

B. As the property in the District is developed, a notice substantially in the form as the notice attached hereto as **Exhibit "C"** (as may be updated and amended from time to time) will be prepared and provided to any purchaser of an Assessed Property located in the District. If Section 5.014 of the Texas Property Code is amended, said amendment will control the notice to be provided as of the effective date of such amendment.

ARTICLE IV DEDICATION OF AUTHORIZED IMPROVEMENTS

The City hereby acknowledges and agrees that (i) the Authorized Improvements will be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or a homeowners' association or property owners' association formed by any of the Landowners with respect to any portion of the Land (each an "Owners Association"), and (ii) that in the case of any Authorized Improvements conveyed or dedicated to an Owners Association, such Authorized Improvements are nevertheless provided "for the benefit of" in accordance with Section 372.023 (a) of the PID Act and such Owners Association is an entity authorized approved by the City Council and authorized by the City to own, operate and maintain such Authorized Improvements for the City in accordance with Section 372.023(a)(3) of the PID Act. Each Landowner acknowledges that the Authorized Improvements, together with the land, easements, or other rights-of-way needed for the Authorized Improvements, shall be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or authorized Owners Association as provided in the PID Finance Agreement. Each Landowner will execute such conveyances and/or dedications as may be reasonably required to evidence the same. Without limiting the generality of any of the foregoing, with respect to any Authorized Improvements that are dedicated, conveyed, leased or otherwise provided to an Owners Association as provided herein, the applicable Landowner shall execute any necessary easements to the public with respect thereto in order to evidence that although such Authorized Improvements are owned and maintained by such Owners Association, the Authorized Improvements are provided for the use and benefit of the public.

ARTICLE V MISCELLANEOUS

A. Notices. Any notice or other communication (a "Notice") required or contemplated by this Agreement shall be given at the addresses set forth below. Notices as to one or more Assessed Properties shall only be given to the Landowner that owns the applicable Assessed Properties. Notices as to all of the Land shall be given to all Landowners. Notices shall be in writing and shall be deemed given: (i) five business days after being deposited in the United States Mail, Registered or Certified Mail, Return Receipt Requested; or (ii) when delivered by a nationally recognized private delivery service (*e.g.*, Federal Express or UPS) with evidence of delivery signed by any person at the delivery address. Each Party may change its address by written notice to the other Parties in accordance with this section.

If to Landowners: Whisper Master Community Limited Partnership
9811 South IH 35
Building 3, Suite 100
Austin, Texas 78744

Yarrington Partners, Ltd.

Whisper Industrial 2019 QOZB, LLC

135 Residential Development, LLC
9811 South IH 35
Building 3, Suite 100
Austin, Texas 78744

With a copy to: McLean & Howard, L.L.P.
Attn: Jeffrey S. Howard
Barton Oaks Plaza, Building II
901 South MoPac Expressway, Suite 225
Austin, Texas 78746
Facsimile: 512-328-2409

If to City: City of San Marcos
Attn: City Manager
630 East Hopkins
San Marcos, TX 78666
Facsimile: 512-396-2683

B. Parties in Interest. In the event of the sale or transfer of an Assessed Property or any portion thereof, the purchaser or transferee shall be deemed to have assumed the obligations of the Landowner with respect to such Assessed Property or such portion thereof, and the seller or transferor shall be released with respect to such Assessed Property or portion thereof. Notwithstanding the foregoing, if PID Bonds are issued by the City, the holders of PID Bonds are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the Parties, subject to the limitations set forth in the Indenture.

C. Amendments. This Agreement may be amended only by a written instrument executed by all the Parties. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the Land and recorded in the Official Public Records of Hays County, Texas.

D. Estoppels. Within 10 days after written request from any Party, the other Parties shall provide a written certification indicating whether this Agreement remains in effect as to an Assessed Property and whether any Party is then in default hereunder.

E. Termination. This Agreement shall terminate as to each Assessed Property upon payment in full of the Assessment against the Assessed Property.

[SIGNATURE PAGES TO FOLLOW]

EXECUTED by the Parties on the dates stated below.

THE CITY OF SAN MARCOS, TEXAS

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared _____, as _____ of the City of San Marcos, a Texas home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed on behalf of that municipal corporation.

GIVEN UNDER MY HAND AND SEAL of office this _____ day of _____, 2020.

Notary Public, State of Texas

YARRINGTON PARTNERS:

YARRINGTON PARTNERS, LTD.,
a Texas limited partnership

By: TEXAS REALTY/RETAIL PARTNERS, INC.,
a Texas corporation, its General Partner

By: _____

Name: _____

Title: _____

By: 501 W. 15TH, INC.,
a Texas corporation, its General Partner

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2020 by _____, as _____ of TEXAS REALTY/RETAIL PARTNERS, INC., a Texas corporation, the General Partner of Yarrington Partners, Ltd., a Texas limited partnership, on behalf of said entities.

Notary Public, State of _____

WHISPER MC:

**WHISPER MASTER COMMUNITY LIMITED
PARTNERSHIP, a Texas limited partnership**

By: Whisper M.C., LLC, a Texas limited liability company, Its
General Partner

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2020 by _____, as _____ of Whisper M.C., LLC, a Texas limited liability company, the General Partner of Whisper Master Community Limited Partnership, a Texas limited partnership, on behalf of said entities.

Notary Public, State of _____

WHISPER INDUSTRIAL:

WHISPER INDUSTRIAL 2019 QOZB, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2020 by _____, as _____ of Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company, on behalf of said entity.

Notary Public, State of _____

135 RESIDENTIAL:

135 RESIDENTIAL DEVELOPMENT, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2020 by _____, as _____ of 135 RESIDENTIAL DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of _____

EXHIBIT A

LEGAL DESCRIPTION

The Land

The “Land” as defined in the Agreement consists of four tracts:

- (1) That certain approximately 442.966 acre tract, referred to as the “Whisper MC Property” in the Agreement, which is more particularly described in Exhibit “A-1” attached hereto;
- (2) That certain approximately 115.686 acre tract, referred to as the “Yarrington Property” in the Agreement, which is more particularly described in Exhibit “A-2” attached hereto;
- (3) That certain approximately 16.560 acre tract, referred to as the “Whisper Industrial Property” in the Agreement, which is more particularly described in Exhibit “A-3” attached hereto; and
- (4) That certain approximately 130.641 acre tract, referred to as the “135 Residential Property” in the Agreement, which is more particularly described in Exhibit “A-4” attached hereto.

Exhibit “A-1”

The Whisper MC Property

The “Whisper MC Property” as defined in the Agreement consists of approximately 442.966 acres of land described as follows:

Exhibit “A-2”

The Yarrington Property

The “Yarrington Property” as defined in the Agreement consists of approximately 115.686 acres of land described as follows:

Exhibit “A-3”

The Whisper Industrial Property

The “Whisper Industrial Property” as defined in the Agreement consists of approximately 16.560 acres of land described as follows:

Exhibit “A-4”

The 135 Residential Property

The “135 Residential Property” as defined in the Agreement consists of approximately 130.641 acres of land described as follows:

EXHIBIT B

ASSESSMENT ORDINANCE

[To Be Attached]

EXHIBIT C

Homebuyer Disclosure

**WHISPER PUBLIC IMPROVEMENT DISTRICT
LOT TYPE __
HOMEBUYER DISCLOSURE**

SECTION 5.014 TEXAS PROPERTY CODE NOTICE

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO THE CITY OF SAN MARCOS, TEXAS, CONCERNING THE PROPERTY AT THE FOLLOWING STREET ADDRESS AND TAX ID:

Street Address

Tax ID

As the purchaser of this parcel of residential real property located in a public improvement district, you are obligated to pay an Assessment to the City of San Marcos, Texas for improvement projects undertaken by the Whisper Public Improvement District under Subchapter A, Chapter 372, Local Government Code. Information about the Assessment (such as its due date, the amount of the Assessment, or how it is paid) may be obtained by contacting the City. The Assessment against your parcel may be paid in full at any time together with interest through the date of payment. If you do not elect to pay the Assessment in full, it will be due and payable in annual installments, including interest and collection costs. The amount of the Assessments is subject to change. Your failure to pay the Assessment or any annual installment could result in a lien on and the foreclosure of your property.

Date: _____

Purchaser