

**AGREEMENT REGARDING WAIVER OF RIGHT OF REDEMPTION AND WAIVER  
OF AGRICULTURAL VALUATION**

(WHISPER PID)

This agreement regarding conveyance of right of redemption and waiver of agricultural valuation (the “Agreement”), dated as of \_\_\_\_\_, 2020 (the “Effective Date”), by and among Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington Partners”), Whisper Master Community Limited Partnership, a Texas limited partnership (“Whisper MC”), and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential”) (Yarrington Partners, Whisper MC, and 135 Residential are each referred to herein as a “Landowner” and collectively as the “Landowners”), the City of San Marcos, Texas (the “City”), and \_\_\_\_\_ (the “Escrow Agent”), each acting by and through its duly authorized representative (the Landowners, City, and Escrow Agent collectively referred to as the “Parties”). Capitalized terms not defined herein shall have the meanings provided in Appendix “A” attached hereto.

**RECITALS**

WHEREAS, on October 6, 2014, the City authorized the formation of the Whisper Public Improvement District (the “District”) on the Property (defined below) in accordance with Chapter 372 of the Texas Local Government Code. The “Property” shall mean the approximately 706.1 acres of land located in Hays County, Texas, and more particularly described in Exhibit “A” attached hereto;

WHEREAS, the Landowners intend to develop the Property as a master planned development and Whisper MC, as the “Developer,” has constructed and intends to construct certain public improvements to serve the Property and has transferred or intends to transfer certain of those improvements to the City in accordance with the terms and provisions of the Whisper Public Improvement District Financing Agreement, dated as of September 5, 2017 between Yarrington Partners, Whisper MC and the City, as such was amended and restated by that certain Amended and Restated Financing Agreement between the City, Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company and the Landowners dated \_\_\_\_\_, 2020 (collectively, the “PID Financing Agreement”);

WHEREAS, the City adopted an ordinance (the “Assessment Ordinance”) pursuant to which assessments (the “Assessments”) were levied against all or a portion of the Property (the “Assessed Property”), and intends to issue one or more series of bonds for payment of costs associated with construction and/or acquisition of the certain public improvements in connection with the Property (the “PID Bonds”);

WHEREAS, each Landowner agrees to (a) waive, subject to and in accordance with the terms and conditions of this Agreement, all rights to redeem any portion of the Non-Redeemable Property (defined below), following a foreclosure of a tax lien or sale, transfer or conveyance in connection with a tax sale (collectively a “Forced Sale”), and (b) execute and deliver into escrow with the Escrow Agent a waiver of agricultural use valuation as described in Section 2 hereof; and

NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto hereby agree as follows:

**SECTION 1. WAIVER OF RIGHT OF REDEMPTION.**

Subject to and in accordance with the terms and conditions of this Agreement, with regard to any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, as amended (“Tax Redemption Rights”), each Landowner hereby agrees to absolutely, unconditionally and irrevocably waive, release, relinquish and surrender forever, on behalf of itself and its respective successors and assigns, and agrees not to assert or exercise any and all Tax Redemption Rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire any portions of the Property that are Assessed Property and are designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Redeemable Property”) in the event of and following a Forced Sale. As of the Effective Date, the Non-Redeemable Property is more particularly described in Exhibit “A-1” attached hereto and made a part hereof.

**SECTION 2. DEPOSIT OF FUNDS WITH ESCROW AGENT/WAIVER OF AGRICULTURAL USE VALUATION.**

(a) Deposit. The business day prior to the closing date of the PID Bonds, the Landowners will collectively deposit \$ \_\_\_\_\_, consisting of \$ \_\_\_\_\_, \$ \_\_\_\_\_ and \$ \_\_\_\_\_ to be provided by Yarrington Partners, Whisper MC and 135 Residential, respectively (collectively, the “Initial Landowner Deposit”) with the Escrow Agent to be held in the “Developer Property Tax Reserve Fund” relating to the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District Improvement Area #1 Project)” (the “Property Tax Fund”), which is estimated to be two years of ad valorem taxes levied by all taxing units on the Non-Redeemable Property belonging to such Landowner for the calendar years 2019 and 2020. Escrow Agent is instructed to hold the Property Tax Fund in cash until such time as the Escrow Agent receives further instruction from the City to either (i) return the funds to the Landowners; or (ii) deliver the funds to the City if, and only if, the Agricultural Use Waiver (defined herein) is released to the City under Section 2(b)(ii) below as a result of delinquent taxes. In the event funds are delivered to the City to pay delinquent taxes pursuant to clause (ii) above, the Landowner of the Property delinquent on such taxes shall deposit additional funds with the Escrow Agent to be held in the Property Tax Fund in an amount that will cause such Landowner’s total deposit (less any funds delivered to the City) to the Property Tax Fund to equal their portion of the Initial Landowner Deposit. The Landowners and any Subsequent Landowner (as defined herein) shall provide proof of payment of any taxes or Assessments secured by a lien against any portion of the Non-Redeemable Property then owned by such Landowner or Subsequent Landowner to the Escrow Agent by each March 1. In the event that any Landowner or Subsequent Landowner does not timely provide such proof to the Escrow Agent, the Escrow Agent will notify the City and the applicable Owner or Subsequent Owner in writing, and is hereby directed to take action pursuant to Section 2(b)(ii) below.

(b) Delivery of Agricultural Use Waiver into Escrow.

(i) Concurrently with the execution and delivery of this Agreement, each Landowner executed and delivered, or will promptly deliver, to the Escrow Agent to be held in escrow 5 originals of the form attached hereto as Exhibit “B” (each an “Agricultural Use Waiver”) waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to Non-Redeemable Property belonging to such Landowner. Each Agricultural Use Waiver shall be held in escrow, and shall only be released from escrow in strict accordance with the provisions of this Section 2.

(ii) In the event that any Landowner or any Subsequent Landowner has not provided to the Escrow Agent proof of payment of any taxes and Assessments secured by a lien against any portion of the Non-Redeemable Property then owned by such Landowner or Subsequent Landowner by March 1 following the year for which such taxes are levied, the Escrow Agent shall provide the City and the applicable Landowner or Subsequent Owner written notice of the deficiency and provide 20 days to cure said deficiency. If the applicable Landowner or Subsequent Landowner does not provide such proof of payment by March 21 of the applicable year, the Escrow Agent shall and the applicable Landowner or Subsequent Landowners hereby irrevocably authorizes the Escrow Agent to, release the Agricultural Use Waiver relating to the portion of the Non-Redeemable Property as to which proof of payment of taxes or Assessments was not provided from escrow and deliver it to the City. The Escrow Agent shall, and the applicable Landowner or Subsequent Landowner further authorize the Escrow Agent to, attach to the Agricultural Use Waiver a description of that portion of the Non-Redeemable Property for which taxes or Assessments are delinquent; provided, however, that the Escrow Agent shall verify with the City in writing the descriptions of the Non-Redeemable Property to be attached to such Agricultural Use Waiver. In the event that the Escrow Agent receives notice that delinquent taxes or Assessments and all penalties and interest have been paid prior to Escrow Agent’s transmittal of the Agricultural Use Waiver to the City, then the Escrow Agent shall not deliver the Waiver of Agricultural Use to the City and such waiver shall be returned to escrow.

(iii) Within ten (10) business days after termination of this Agreement, the Escrow Agent shall return any funds within the Property Tax Fund to the applicable Landowner and return all of the Agricultural Use Waivers to all of the Landowners.

(c) Continued Agricultural Use. The parties hereto acknowledge and agree that except in the limited circumstances set forth in Section 2(b) above, (i) Landowners and any Subsequent Landowner shall have the full right to maintain any and all ad valorem tax exemptions available under applicable law; (ii) such right to maintain ad valorem tax exemptions is not waived (except in the limited circumstances set forth in Section 2(b) above); and (iii) Landowners and any Subsequent Landowner expressly reserve and retain such rights.

(d) Proportional Release. Notwithstanding anything in this Agreement to the contrary, if all or a portion of the Non-Redeemable Property ceases to be included in the Assessment Rolls (as defined in Appendix “A”) with respect to the District, then the owner of such land shall have the right to assume ownership of the Tax Redemption Rights for said portion of the Non-Redeemable Property. In addition, if all or a portion of the Non-Redeemable Property ceases to

be designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Agricultural Portion”), that Non-Agricultural Portion shall be entitled to release from this Agreement upon the applicable Landowner providing written notice to the Escrow Agent and the City with documentation that shows (i) the Non-Agricultural Portion no longer has an agricultural use appraisal, and (ii) that the taxes and Assessments for the final year in which an agricultural use appraisal applied to the Non-Agricultural Portion have been paid in full. Upon written request by an owner of land subject to an event described in this Section 2(d), the City and the Escrow Agent shall execute a Release of Redemption from this Agreement in the form attached hereto as Exhibit “C”.

It is hereby acknowledged and agreed that the Hays County Appraisal District is the sole entity authorized to make the determination of whether the Property is subject to an agricultural use valuation and/or any right to special appraisal arising based on agricultural use.

### **SECTION 3. DEFAULT AND REMEDIES.**

If a Landowner or any Subsequent Landowner of Non-Redeemable Property shall violate any of the terms and provisions set forth in this Agreement, then the Escrow Agent, upon written notice from the City of a violation of this Agreement, shall have any remedies available at law or in equity. Upon written direction from the City, the Escrow Agent shall provide 30 days’ notice to (i) any such defaulting Landowner or Subsequent Landowner, and (ii) to any lender or mortgagee that holds a lien or security interest in all or a portion of the Assessed Property prior to taking any enforcement action. Notwithstanding anything to the contrary set forth in this Agreement, the obligations of the Landowners under this Agreement shall be several, not joint.

### **SECTION 4. REGARDING ESCROW AGENT.**

(a) The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement and no implied obligations or duties are to be imposed upon Escrow Agent. The Escrow Agent shall not be responsible for the enforceability of the transfer rights provided in Section 2 or the terms of this Agreement.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it in the performance of its duties under this Agreement, except for its own negligence or willful misconduct.

(c) Any action against the Escrow Agent under this Agreement shall be limited to specific performance.

(d) The Escrow Agent shall be under no obligation to institute any suit, or to undertake any proceeding under this Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of its responsibilities hereunder or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other

reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct.

## **SECTION 5. MISCELLANEOUS.**

(a) Term of Agreement. Subject to the provisions of Section 2(d) above, this Agreement shall continue in full force and effect until the earlier of: (1) the Landowners provide written notice to the Escrow Agent and the City with documentation that shows (i) the Assessed Property no longer has an agricultural use appraisal, and (ii) that the taxes and Assessments for the final year in which an agricultural use appraisal applied to the Assessed Property have been paid in full; or (2) any obligations remain outstanding under the Indenture.

(b) Covenants Run with the Land; Transfers of the Property. This Agreement shall be recorded in the deed records of Hays County, Texas, and shall run with the land and the ownership of any Non-Redeemable Property and shall be binding upon Subsequent Landowners having an interest in the Non-Redeemable Property. Upon the acquisition by any party of any interest in the Non-Redeemable Property, (a) such party shall automatically and without further action by such party or any other party be deemed to have assumed and agreed to be bound by this Agreement from and after the date of such transfer, and (b) the applicable Landowner shall be released of liability with respect to the transferred interest in the Non-Redeemable Property from and after the date of such transfer, but not prior thereto. Without limiting the foregoing, any party who acquires a fee interest in any portion of the Non-Redeemable Property (each, a “Subsequent Landowner”) shall, and hereby shall be deemed to have agreed to, (i) execute and record in the Official Public Records of Hays County, Texas, promptly following the recording of the conveyance instrument, an agreement in the form attached hereto as Exhibit “D” (the “Acknowledgment and Agreement”) to acknowledge that such party is subject to the terms of this Agreement, expressly agreeing to comply with the terms and provisions of this Agreement applicable to the portion of the Non-Redeemable Property acquired by such party, and waiving such party’s right to redeem such portion of the Non-Redeemable Property, and (ii) execute and deliver to the Escrow Agent, concurrently with the recording of the Acknowledgment and Agreement, 5 Agricultural Use Waivers in the form attached hereto as Exhibit “B” for that portion of the Non-Redeemable Property acquired by such party. In the event that the number of Agricultural Use Waivers signed by a Subsequent Landowner that are held by Escrow Agent is fewer than 2 and some portion of the Property owned by the Subsequent Landowner is Non- Redeemable Property, such Subsequent Landowner agrees to promptly execute and deliver to the Escrow Agent, to be held in and released from escrow as provided herein, another Agricultural Use Waiver for use with any remaining Non-Redeemable Property owned by such Subsequent Landowner; provided, however, that the Escrow Agent shall deliver to the Hays County Tax Assessor/Collector or its successor an Agricultural Use Waiver with respect to the remaining Non-Redeemable Property owned by a Subsequent Landowner that has not paid taxes or Assessments as required by this Agreement, if said Subsequent Landowner does not execute and deliver to the Escrow Agent such additional Agricultural Use Waivers within 30 days of a written request by the Escrow Agent.

(c) Release of Obligations and Notice of Termination. Immediately prior to the termination of this Agreement as contemplated in Subsection (a) of this Section 5, the City shall execute and cause the Escrow Agent to record the Release of Obligations and Notice of

Termination of this Agreement in the form attached hereto as Exhibit “E” in the deed records of Hays County, Texas.

(d) **INDEMNIFICATION.** LANDOWNERS AND SUBSEQUENT LANDOWNERS, SEVERALLY SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ESCROW AGENT AND EACH DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY, AGENT AND AFFILIATE OF THE ESCROW AGENT AND CITY (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) AGAINST ANY AND ALL ACTIONS, CLAIMS (WHETHER OR NOT VALID), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, COSTS AND EXPENSES) INCURRED BY OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF OR ARISING FROM OR IN ANY WAY RELATING TO ANY CLAIM, DEMAND, SUIT, ACTION OR PROCEEDING BY ANY PERSON, INCLUDING WITHOUT LIMITATION SUCH LANDOWNER, ASSERTING A CLAIM FOR ANY LEGAL OR EQUITABLE REMEDY AGAINST ANY PERSON ARISING FROM OR IN CONNECTION WITH THE NEGOTIATING, EXECUTION, PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY LANDOWNER OR SUCH SUBSEQUENT LANDOWNER, AS APPLICABLE, WHETHER OR NOT ANY SUCH INDEMNIFIED PARTY IS A PARTY TO ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED, HOWEVER, THAT NO INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED HEREUNDER FOR ANY LIABILITY TO HAVE RESULTED SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

(e) Escrow Agent’s Fees. The Escrow Agent shall not charge a fee for the performance of services hereunder. The Landowners and/or Subsequent Landowners shall fully cover payment for any and all expenses incurred by the Escrow Agent, including legal expenses, relating to or arising from the Escrow Agent’s duties under this Agreement.

(f) Binding Effect. This Agreement shall be binding upon each Landowner and its successors, receivers, trustees, and assigns and shall inure to the benefit of the City, the Escrow Agent, and the successors and assigns of the City and Escrow Agent.

(g) Amendments. This Agreement may be modified or amended only by a written agreement executed by the Escrow Agent, the City, and each owner of Non-Redeemable Property and recorded in the Official Public Records of Hays County, Texas.

(h) Severability; No Waiver. If any provision of this Agreement is held invalid or unenforceable, no other provision of this Agreement will be affected by such holding and all other provisions of this Agreement will continue in full force and effect. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver of such requirement or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

(i) Notices. Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by (i) hand delivery, (ii) overnight courier, or (iii) by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the address set forth below or at such other address as may be specified in writing by any party hereto to the other Parties.

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

Yarrington Partners, Ltd.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 E. Hopkins Street  
San Marcos, Texas 78666

With a copy to: San Marcos City Attorney  
Attn: \_\_\_\_\_  
630 E. Hopkins Street  
San Marcos, Texas 78666

If to Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(j) Third Party Beneficiaries. The provisions of this Agreement are and will be for the benefit of the Parties, the Escrow Agent and the holders of the PID Bonds only and are not for the benefit of any other third party and, accordingly, no other third party shall have the right to enforce the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

(l) Governing Law. The law of the State of Texas shall govern this Agreement.

(m) Anti-Boycott Verification. Pursuant to Section 2271.002, Texas Government Code, the Landowners and the Escrow Agent hereby verify that neither the Landowners, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent, if any, boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Landowners and Escrow Agent understand “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

(n) Iran, Sudan and Foreign Terrorist Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Landowners and Escrow Agent represent that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law and excludes the Landowners, the Escrow Agent, and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Landowners and the Escrow Agent understand “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives on dates set forth in the acknowledgements below, to be effective as of the day and year first above written.

The City of San Marcos, Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF TEXAS §

§

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared, \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, City Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

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

(SEAL)

\_\_\_\_\_  
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 \_\_\_\_\_

**135 RESIDENTIAL:**

135 RESIDENTIAL DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

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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 \_\_\_\_\_

\_\_\_\_\_, as Escrow Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
\_\_\_\_\_, \_\_\_\_\_ on behalf of  
\_\_\_\_\_.

[SEAL]

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

Appendix "A"

Definitions

"Indenture" shall mean the Indenture of Trust between the City and \_\_\_\_\_, relating to the issuance of a series of PID Bonds for financing costs of authorized public improvements, as it may be amended from time to time.

"Assessment Roll" or "Assessment Rolls" shall mean both the Assessment Roll, prepared and approved in connection with the Service and Assessment Plan pertaining to the District, as such Service and Assessment Plan was initially approved by the City Council of the City pursuant to Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, as such Service and Assessment Plan is amended or restated from time to time.

**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

**LEGAL DESCRIPTION**

The Property

The "Property" as defined in the Agreement consists of three 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; and
- (3) 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-3" 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 135 Residential Property

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

**EXHIBIT "A-1"**

**NON-REDEEMABLE PROPERTY**



Property would be detrimental to the property valuation base and may significantly impair the ability of the City to meet its obligations under the PID Financing Agreement or, if issued, its revenue bonds secured by and payable from assessment revenues.

G. Landowner further acknowledges that the exercise of the right to redemption after a tax sale pursuant to Subchapter B of Chapter 34 of the Texas Tax Code would also significantly impair the City's ability to meet its debt obligations for its revenue bonds secured by and payable from assessment revenues.

### WAIVER

Section 1. Waiver of Exemptions. Landowner, on behalf of itself, its successors and assigns, (i) irrevocably waives its right to claim any of the Exemptions with respect to the Property for a period of 30 years beginning on the date this Waiver is received by the Hays County Tax Assessor/Collector (the "Waiver Period"); (ii) authorizes the City and/or the Escrow Agent to file this Waiver with the Chief Appraiser of the Hays Central Appraisal District, or its successors, in accordance with the terms of the Agreement; and (iii) covenants that it will not, during the Waiver Period, if applicable, make any claim for a special appraisal except on written authorization of the City. Landowner acknowledges that it may have the right under Article 8 of the Texas Constitution to assert some or all of the Exemptions which it is waiving herein, and agrees that it shall be estopped from claiming such Exemptions at any time during the Waiver Period, if applicable; provided, however, it is expressly acknowledged and agreed by Landowner that mechanisms for single-family residences now available or to be made available by any change in Texas laws for the reduction of ad valorem tax liability or of valuation for the purposes of ad valorem taxes or other assessments with respect to real property, such as exemptions for homesteads, disabled veterans, elderly homesteads, and etcetera, are not included in the definition of Exemptions and are expressly allowed, to the extent such exemptions would be otherwise available, with respect to the Property.

[Section 2. Disclosures of Lienholders. Landowner represents and warrants that \_\_\_\_\_ and \_\_\_\_\_ are the current lienholders on the Property.]

Section 3. Covenants to Run with Land. The terms and provisions hereof shall be deemed to be restrictive covenants encumbering and running with the Property and shall be binding upon the Landowner and its successors and assigns. In particular, each successive purchaser of the Property shall, upon purchase thereof (or such portion thereof) be deemed to have waived its right to claims of the Exemptions with respect to the Property (or such portions thereof) at any time during the Waiver Period, if applicable.

Section 4. Enforceability. The covenants and restrictions binding the Property hereunder shall be enforceable only by the City, the Escrow Agent, and their respective successors and assigns. This Waiver is for the sole benefit of the parties hereto, and of the Escrow Agent, and no other third party is intended to be a beneficiary of this Waiver.

Section 5. Termination. This Waiver shall continue in full force and effect until the earlier to occur of the following: (i) the expiration of the Waiver Period; or (ii) such time as the

Escrow Agent approves a revocation in writing.

Section 6. Severability. Every provision of this Waiver is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable to the maximum extent permitted by law, it being the intent of the parties hereto to give full force and effect to the agreements made hereunder to the maximum extent permitted by law.

Section 7. Headings. The Section headings are included in this Waiver for convenience of reference only, and shall not be deemed to affect the substantive provisions of this Waiver.

Section 8. Remedies. If Landowner breaches its obligations hereunder, the Escrow Agent or the City (on behalf of the Escrow Agent), in addition to all other remedies set forth herein or otherwise available at law or in equity, shall be entitled to recover from Landowner the amount of assessments that would have been due to the City had Landowner complied with this Waiver. Such payment will be due and payable, and will incur penalties and charges under the same terms as if the payment had been an assessment obligation of Landowner to City.

[execution page follows]

EXECUTED to be effective as of the date first above written.

[LANDOWNER]

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Schedule 1 to Agricultural Use Waiver

**EXHIBIT “C”**

**RELEASE OF REDEMPTION AGREEMENT**

STATE OF TEXAS       §  
                                  §                   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HAYS     §

WHEREAS, the land described in the attached Exhibit “A” (“Property”) is located within the Whisper Public Improvement District (“District”);

WHEREAS, \_\_\_\_\_ is the owner of the Property (“Owner”);

WHEREAS, the Property is subject to the terms of the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation with an effective date of \_\_\_\_\_, 2020, and recorded in Document No. \_\_\_\_\_, Official Public Records of Hays County, Texas (“Redemption Agreement”);

WHEREAS, the City of San Marcos, Texas (the “City”), \_\_\_\_\_ (the “Initial Owner”), and \_\_\_\_\_ (the “Escrow Agent”) are parties to the Redemption Agreement;

WHEREAS, pursuant to the Redemption Agreement, certain rights to redeem the Property under the Texas Tax Code (as described in the Redemption Agreement) were waived by the Initial Owner;

WHEREAS, pursuant to Redemption Agreement, the Escrow Agent is authorized to deliver a Waiver of Agricultural Use to the City for filing with the appropriate Tax Assessor/Collector office in the event that delinquent taxes or assessments are owed on the Property;

WHEREAS, pursuant to Redemption Agreement, the City and the Escrow Agent are authorized to release property from the terms of the Redemption Agreement; and

WHEREAS, the City and the Escrow Agent have determined that the Property should be released from the terms of the Redemption Agreement.

NOW, THEREFORE, for and in consideration of the above stated premises, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged by the City and the Escrow Agent, the City and the Escrow Agent do hereby forever release and discharge the Property from all terms, restrictions, covenants, and conditions of the Redemption Agreement in its entirety, and release any and all rights that the City and the Escrow Agent had, have or may have by virtue of the Redemption Agreement. In no event shall this release have any impact on land within the District other than the Property described in the attached Exhibit “A”.

WITNESS THE EXECUTION HEREOF this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

The City of San Marcos, Texas

By: \_\_\_\_\_,  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

THE STATE OF TEXAS       §

COUNTY OF HAYS       §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ and \_\_\_\_\_, the Mayor and Clerk,  
respectively, of the City of San Marcos, Texas, a home rule city and Texas municipal corporation,  
on behalf of said city and municipal corporation.

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

WITNESS THE EXECUTION HEREOF this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

Escrow Agent

By: \_\_\_\_\_

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_, on behalf of  
said entity.

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

\* Attach description of the Property as Exhibit "A" prior to recording.

After Recording Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "D"**

**ACKNOWLEDGMENT OF ASSUMPTION AND WAIVER OF  
RIGHT OF REDEMPTION**

This Acknowledgment of Assumption and Waiver of Right of Redemption (this "Acknowledgment and Agreement") is entered into effective \_\_\_\_\_, 20 \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (whether one or more, the "Buyer"), in favor of the City of San Marcos, Texas and the Escrow Agent, as such term is defined in the Redemption Agreement (defined below).

R E C I T A L S

A. WHEREAS, Buyer has purchased and acquired certain land described on Exhibit "A" attached hereto (the "Property"); and

B. WHEREAS, the Property is subject to that certain Agreement Regarding Waiver of Right of Redemption and Wavier of Agricultural Valuation, dated on or about \_\_\_\_\_, 20\_\_\_\_ (the "Redemption Agreement"); and

C. WHEREAS, pursuant to the requirements of the Redemption Agreement, it is a condition to the acquisition of the Property that the Buyer execute this Acknowledgment and Agreement and record same in the Official Public Records of Hays County, Texas; and

D. WHEREAS, the purchase price paid by Buyer for the Property was calculated and determined, in part, based upon the benefits and restrictions applicable to the Property and arising in connection with the Redemption Agreement and the other agreements executed in connection therewith and the requirement that Buyer execute this Acknowledgment and Agreement.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer hereby represents, warrants and agrees as follows:

1. Buyer acknowledges that the Redemption Agreement continues to affect the Property, and that Buyer has assumed, and Buyer hereby does assume and agree to perform, the obligations of Landowner (as such term is defined in the Redemption Agreement) under the Redemption Agreement with respect to the Property.

2. Subject to and in accordance with the terms and conditions set forth in the Redemption Agreement, Buyer hereby agrees to absolutely, unconditionally and irrevocably waive, release, relinquish and surrender forever on behalf of itself and its successors and assigns, and agrees not to assert or exercise any and all rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, in the event of and following any Forced Sale (as defined in the Redemption Agreement) in connection with any portion of the Property that constitutes Non- Redeemable Property (as defined in the Redemption Agreement), including, without limitation, any and all

rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, but excluding any redemption rights arising out of the homestead status of the Property.

3. Concurrently with the execution and delivery of this Acknowledgment and Agreement, Buyer has executed and has delivered (or will promptly deliver) to the Escrow Agent to be held in escrow five (5) Waivers of Special Appraisal (the “Waivers”) in the form attached as Exhibit “B” to the Redemption Agreement waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to the Property. Such Waivers shall be held in, and released from, escrow in accordance with the provisions of the Redemption Agreement.

EXECUTED to be effective as of the date first above written.

BUYER:

\_\_\_\_\_

Address for Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_, on behalf of said entity.

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

\* Attach description of the Property as **Exhibit A** prior to recording.

**EXHIBIT "E"**

**RELEASE OF OBLIGATIONS AND NOTICE OF TERMINATION**

THE STATE OF TEXAS                   §  
  §       KNOW EVERYONE BY THESE PRESENTS:  
COUNTY OF HAYS                   §

All rights and obligations under that certain Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation having an effective date of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement") recorded in the Official Public Records of Hays County, Texas, on \_\_\_\_\_, 20\_\_\_\_, under Instrument No. \_\_\_\_\_ ARE HEREBY RELEASED and NOTICE IS HEREBY GIVEN of the termination of the Agreement in accordance with its terms.

**THE CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_  
  \_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
  \_\_\_\_\_, City Clerk

STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS                   §

BEFORE ME, a Notary Public, on this day personally appeared \_\_\_\_\_, Mayor, and \_\_\_\_\_, the Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

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