

**WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT CONSTRUCTION,
FUNDING, AND ACQUISITION AGREEMENT**

THIS WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT (this “Agreement”), dated as of December 15, 2021, is by and among the **CITY OF SAN MARCOS, TEXAS**, a general law municipality of the State of Texas (the “City”), **HARRIS HILL RESIDENTIAL LAND HOLDINGS, LTD.**, a Texas limited partnership (“Harris Hill Residential”) and **HARRIS HILL COMMERCIAL LAND HOLDINGS, LTD.**, a Texas limited partnership (“Harris Hill Commercial”); Harris Hill Residential and Harris Hill Commercial are each sometimes referred to herein as an “Owner” and collectively as the “Owners”).

**ARTICLE I
DEFINITIONS**

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Indenture (as hereinafter defined).

“**Act**” means the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended.

“**Actual Costs**” means the costs of the Improvement Area #1 Projects, Improvement Area #2 Projects, and Improvement Area #3 Projects, respectively, actually paid or incurred for construction and installation of the Improvement Area #1 Projects, Improvement Area #2 Projects, and Improvement Area #3 Projects, respectively, in accordance with the Service and Assessment Plan.

“**Administrator**” means, initially, P3Works, or any other individual or entity designated by the City to administer the District.

“**Bond Ordinance**” means the ordinance adopted by the City Council on December 15, 2021 authorizing the issuance of the Bonds pursuant to the Indenture.

“**Bonds**” means the City’s bonds designated "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2022 (Whisper South Public Improvement District)".

“**Budgeted Costs**” means the anticipated, agreed upon costs of the Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects as shown in Exhibit C of the Service and Assessment Plan.

“**City Inspector**” means an individual employed by or an agent of the City whose job is, in part or in whole, to inspect infrastructure to be owned by the City for compliance with all rules and regulations applicable to the development and the infrastructure inspected.

“**City Manager**” means the City Manager of the City, or its designee.

“City Representative” means the City Administrator, or any other official or agent of the City later authorized by the City to undertake the action referenced herein.

“Closing Disbursement Request” means the certificate, substantially in the form of **Exhibit A** hereto or otherwise mutually agreed to by the Harris Hill Residential, Administrator, and City Representative, executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, specifying the amounts to be disbursed for the costs related to the creation of the District and the costs of issuance of the Bonds.

“Construction Contracts” means the contracts for the construction of an Authorized Improvement. **“Construction Contract”** means any one of the Construction Contracts.

“Cost” means the Budgeted Costs or the cost of an Improvement Area #1 Project, an Improvement Area #2 Project, or an Improvement Area #3 Project, as reflected in a Construction Contract and the Service and Assessment Plan, if greater than the Budgeted Costs.

“Cost of Issuance Account” means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

“Cost Overrun” means, with respect to each Improvement Area #1 Project, Improvement Area #2 Project, and Improvement Area #3 Project, the amount by the Actual Cost, as appropriate, of such Improvement Area #1 Project, Improvement Area #2 Project or Improvement Area #3 Project, respectively, in excess of the Budgeted Cost.

“Cost Underrun” means, with respect to each Improvement Area #1 Project, Improvement Area #2 Project, and Improvement Area #3 Project, the amount by which the Actual Cost, as appropriate, of such Improvement Area #1 Project, Improvement Area #2 Project or Improvement Area #3 Project, respectively is less than its Budgeted Cost.

“District” shall mean the Whisper South Public Improvement District created May 4, 2021.

“Final Completion” means completion of an Authorized Improvement, as applicable, in compliance with existing City standards for dedication under the City’s ordinances.

“Financing Agreement” means that certain Whisper South Public Improvement District Financing Agreement dated December 15, 2021 entered into between the City and the Owners.

“Improvement Area #1 Improvement Account” means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

“Improvement Area #1 Improvements” mean the public improvements allocable to Improvement Area #1 listed in Section III.B of the Service and Assessment Plan. An individual Improvement Area #1 Improvement, including a completed segment, section or part, shall be referred to as an **Improvement Area #1 Improvement**.

“Improvement Area #1 Projects” means Improvement Area #1 Improvements and Improvement Area #1’s allocable share of the Major Improvements (as defined in the Service and

Assessment Plan). An individual Improvement Area #1 Project shall be referred to as an **Improvement Area #1 Project**

“Improvement Area #2 Improvement Account” means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

“Improvement Area #2 Improvements” mean the public improvements allocable to Improvement Area #2 listed in Section III.C of the Service and Assessment Plan. An individual Improvement Area #2 Improvement, including a completed segment, section or part, shall be referred to as an **Improvement Area #2 Improvement**.

“Improvement Area #2 Projects” means Improvement Area #2 Improvements and Improvement Area #2’s allocable share of the Major Improvements (as defined in the Service and Assessment Plan). An individual Improvement Area #2 Project shall be referred to as an **Improvement Area #2 Project**.

“Improvement Area #3 Improvement Account” means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

“Improvement Area #3 Improvements” mean the public improvements allocable to Improvement Area #3 listed in Section III.D of the Service and Assessment Plan. An individual Improvement Area #3 Improvement, including a completed segment, section or part, shall be referred to as an **Improvement Area #3 Improvement**.

“Improvement Area #3 Projects” means Improvement Area #3 Improvements and Improvement Area #3’s allocable share of the Major Improvements (as defined in the Service and Assessment Plan). An individual Improvement Area #3 Project shall be referred to as an **Improvement Area #3 Project**.

“Indenture” means that certain Indenture of Trust between the City and UMB Bank, N.A., as trustee, dated as of January 19, 2022 relating to the Bonds.

“Plans” means the plans, specifications, schedules and related construction contracts for the Authorized Improvements, respectively, approved pursuant to the applicable standards, ordinances, procedures, policies and directives of the City and any other applicable governmental entity.

“Project Fund” means the fund, including the accounts created and established under such fund, where monies from the proceeds of the sale of the Bonds, excluding those deposited in other funds in accordance with the Indenture, shall be deposited, and the fund by such name created under the Indenture.

“Projects” means, collectively, the Improvement Area #1 Projects, Improvement Area #2 Projects, and Improvement Area #3 Projects.

“Service and Assessment Plan” means the Whisper South Public Improvement District Service and Assessment Plan adopted by a City ordinance on December 15, 2021 by the City Council, prepared pursuant to the Act.

“Substantial Completion” means the time at which the construction of a Major Improvement, an Improvement Area #1 Improvement, an Improvement Area #2 Improvement or an Improvement Area #3 Improvement (or specified segment, section or part thereof) has progressed to the point where such Major Improvement, Improvement Area #1 Improvement, Improvement Area #2 Improvement or Improvement Area #3 Improvement (or a specified segment, section or part thereof) is sufficiently complete in accordance with the Construction Contracts related thereto so that such Major Improvements, Improvement Area #1 Improvement, Improvement Area #2 Improvement or Improvement Area #3 Improvement (or a specified segment, section or part thereof) can be utilized for the purposes for which it is intended.

“Supplement” means a written document agreed upon by the parties to this Agreement amending, supplementing or otherwise modifying this Agreement and any exhibit hereto.

ARTICLE II RECITALS

Section 2.01. The District and the Authorized Improvements.

(a) The City has created the District under the Act for the financing of, among other things, the acquisition, construction and installation of the Authorized Improvements.

(b) The City has authorized the issuance of the Bonds in accordance with the provisions of the Act, the Bond Ordinance and the Indenture, the proceeds of which Bonds shall be used, in part, to finance all or a portion of the Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects in accordance with the terms and limitations of the Financing Agreement and the Service and Assessment Plan.

(c) All Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects are eligible to be financed with proceeds of the Bonds to the extent specified herein.

(d) The proceeds from the issuance and sale of the Bonds shall be deposited in accordance with the Indenture.

(e) Harris Hill Residential will undertake, oversee, or ensure the construction and development of the Authorized Improvements for acquisition and acceptance by the City or the Maxwell Special Utility District (“Maxwell SUD”), a political subdivision of the State of Texas operating under the authority of Chapters 49 and Chapter 65 of the Texas Water Code, as amended, in accordance with the terms and conditions of the Financing Agreement.

Section 2.02. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, Harris Hill Residential and Harris Hill Commercial agree that the

foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

ARTICLE III FUNDING

Section 3.01. Bonds.

(a) The City, in connection with this Agreement, is proceeding with the issuance and delivery of the Bonds.

(b) The projects to be financed in part with the proceeds of the Bonds are the Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects. The payment of costs from the proceeds of the Bonds for such Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects shall be made from the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account and the Improvement Area #3 Improvement Account, respectively, each as established under the Indenture.

(c) The City's obligation with respect to the payment of the Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects shall be limited to the lesser of the Actual Costs or Budgeted Costs, and shall be payable solely from amounts on deposit for the payment of such costs as provided herein and in the Indenture. Harris Hill Residential agrees and acknowledges that it is responsible for all Cost Overruns and all expenses related to the Improvement Area #1 Projects, the Improvement Area #2 Projects and the Improvement Area #3 Projects, qualified, however, by the distribution of Cost Underrun monies, as detailed in Section 4.04.

(d) The City shall have no responsibility whatsoever to Harris Hill Residential with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment.

(e) Harris Hill Residential acknowledges that any lack of availability of amounts in the funds or accounts established in the Indenture to pay the Actual Costs of the Improvement Area #1 Projects, the Improvement Area #2 Projects and/or the Improvement Area #3 Projects shall in no way diminish any obligation of Harris Hill Residential with respect to the construction of or contributions for the Improvement Area #1 Projects, Improvement Area #2 Projects or the Improvement Area #3 Projects required by this Agreement, the Financing Agreement, or any other agreement to which Harris Hill Residential is a party or any governmental approval to which Harris Hill Residential or any land within the District is subject.

Section 3.02 Accounts. All disbursements from the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account and/or the Improvement Area #3

Improvement Account shall be made by the City in accordance with provisions of the Financing Agreement, the Service and Assessment Plan, this Agreement, and the Indenture.

ARTICLE IV
CONSTRUCTION OF THE IMPROVEMENT AREA #1 IMPROVEMENTS, THE
IMPROVEMENT AREA #2 IMPROVEMENTS AND THE IMPROVEMENT AREA #3
IMPROVEMENTS

Section 4.01. Duty of Harris Hill Residential to Construct.

(a) All Authorized Improvements shall be constructed by or at the direction of Harris Hill Residential in accordance with the Plans and in accordance with this Agreement and the Financing Agreement. Harris Hill Residential shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of the Authorized Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Harris Hill Residential shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Authorized Improvements to be acquired and accepted by the City or Maxwell SUD from Harris Hill Residential as provided in this Agreement.

(b) Harris Hill Residential shall not be relieved of its obligation to construct or cause to be constructed each Authorized Improvement and, upon completion, inspection, and acceptance, convey each such Authorized Improvement, as applicable, to the City or Maxwell SUD, as applicable, in accordance with the terms hereof, even if there are insufficient funds in the Project Fund to pay the Actual Costs thereof. In any event, this Agreement shall not affect any obligation of Harris Hill Residential under any other agreement to which Harris Hill Residential is a party or any governmental approval to which Harris Hill Residential or any land within the District is subject, with respect to the Authorized Improvements required in connection with the development of the land within the District.

Section 4.02. No Competitive Bidding. The Authorized Improvements shall not require competitive bidding pursuant to Section 252.022(a)(9) of the Texas Local Government Code, as amended.

Section 4.03. Independent Contractor. In performing this Agreement, Harris Hill Residential is an independent contractor and not the agent or employee of the City with respect to the Authorized Improvements.

Section 4.04. Remaining Funds After Completion of an Authorized Improvement. Upon the Final Completion of an Authorized Improvement, and payment of all outstanding invoices for such Authorized Improvement, as applicable, any Cost Underrun for such Authorized Improvement may be made available to pay Cost Overruns on any other Authorized Improvement, as applicable. The City shall promptly confirm to the Administrator that such remaining amounts are available to pay such Cost Overruns, and Harris Hill Residential, the Administrator and the

City Representative will agree how to use such moneys to secure the payment and performance of the work for other Authorized Improvements, as applicable. Prior to completion of an Authorized Improvement (or segment or section thereof), any anticipated Cost Underrun for such Major Improvement, Improvement Area #1 Improvement, Improvement Area #2 Improvement or Improvement Area #3 Improvement (or segment or section thereof) may be applied to any Cost Overruns on any other Authorized Improvement within the same Improvement Area, as set forth in more detail in the Indenture. If, upon completion of the Authorized Improvements (or segment or section thereof) in any improvement category, there are funds remaining in any improvement categories, those funds can then be used to reimburse Harris Hill Residential for any qualifying costs of the Authorized Improvements (or segment or section thereof) that have not been previously paid.

Section 4.05. Contracts and Change Orders. Harris Hill Residential shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as “change orders”) required for the construction of the Authorized Improvements. Harris Hill Residential or its contractors may approve and implement any change orders, even if such change order would increase the Actual Cost of an Authorized Improvement, but Harris Hill Residential shall be solely responsible for payment of any Cost Overruns resulting from such change orders except to the extent amounts are available pursuant to Section 4.04. If any change order is for work that requires changes to be made by an engineer to the construction and design documents and plans previously approved under Section 4.01, then such revisions made by an engineer must be submitted to the City for approval by the City’s engineer prior to execution of the change order.

ARTICLE V ACQUISITION, CONSTRUCTION, AND PAYMENT

Section 5.01. Payment Requests for Disbursements at Closing. In order to receive the disbursement from the Cost of Issuance Account and/or from the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account or the Improvement Area #3 Improvement Account at closing of the Bonds related to costs of issuance of the Bonds or costs incurred in the creation of the District, Harris Hill Residential shall execute a Closing Disbursement Request, substantially in the form of **Exhibit A** hereto or otherwise acceptable and agreed to by the City, to be delivered to the City no less than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. In order to receive the disbursement at closing for an Improvement Area #1 Project, an Improvement Area #2 Project or an Improvement Area #3 Project from the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account or the Improvement Area #3 Improvement Account, respectively, Harris Hill Residential shall execute a Certification for Payment to be delivered to the City no later than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. Upon approval by the City, the City shall submit a Closing Disbursement Request or a Certification for Payment, as applicable, to the Trustee for disbursement to be made from the Cost of Issuance Account or the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account or the Improvement Area #3 Improvement Account, as applicable.

Section 5.02. Certification for Payment for an Authorized Improvement.

(a) No payment hereunder shall be made from the Project Fund to Harris Hill Residential for work on an Authorized Improvement until a Certification for Payment is received from Harris Hill Residential. Upon receipt of a Certification for Payment from Harris Hill Residential, the City Inspector shall conduct a review in order to confirm that such request is complete, that the work with respect to such Authorized Improvement identified therein for which payment is requested was completed in accordance with all applicable governmental laws, rules and regulations and applicable Plans therefor and with the terms of this Agreement, and to verify and approve the Actual Cost of such work specified in such Certification for Payment. The City Inspector and/or the City Representative shall also conduct such review as is required in his or her discretion to confirm the matters certified in the Certification for Payment. Harris Hill Residential agrees to cooperate with the City Inspector and/or City Representative in conducting each such review and to provide the City Inspector and/or City Representative with such additional information and documentation as is reasonably necessary for the City Inspector and/or City Representative to conclude each such review. In no event shall the City require both an all-bills-paid affidavit and copies of cleared checks to be provided as additional documentation. The City agrees that providing either an all-bills-paid affidavit or copies of cleared checks shall be sufficient.

(b) Within fifteen (15) business days of receipt of any Certification for Payment, the City Representative shall either (i) approve and execute the Certification for Payment and forward the same to the Administrator for approval and delivery to the Trustee for payment to Harris Hill Residential in accordance with Section 5.03(a) hereof or (ii) in the event the City Representative disapproves the Certification for Payment, give written notification, within ten (10) business days of receipt thereof, to Harris Hill Residential of the City Representative's disapproval, in whole or in part, of such Certification for Payment, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Certification for Payment. If a Certification for Payment seeking reimbursement is approved only in part, the City Representative shall specify the extent to which the Certification for Payment is approved and shall deliver such partially approved Certification for Payment to the Administrator for approval in accordance with Section 5.03 hereof and delivery to Harris Hill Residential in accordance with Section 5.02(c) hereof, and any such partial work shall be processed for payment under Section 5.03 notwithstanding such partial denial.

(c) If the City Representative denies the Certification for Payment, the denial must be in writing, stating the reason(s) for denial. The denial may be appealed to the City Council by Harris Hill Residential in writing within thirty (30) days of being denied by the City Representative. Denial of the Certification for Payment by the City Council shall be attempted to be resolved by half-day mediation between the parties in the event an agreement is not otherwise reached by the parties, with the mediator's fee being paid by Harris Hill Residential. The Certification for Payment shall not be forwarded to the Trustee for payment until the dispute is resolved by the City and Harris Hill Residential. Any appeal to and action of the City Council on appeal is subject to the standards and procedures governing the subject of the appeal under applicable ordinances, and this Agreement and the remedies allowed under this subsection do not and may not supersede the requirements of such applicable ordinances.

(d) Harris Hill Residential shall deliver the approved or partially approved Certification for Payment to the Trustee for payment and the Trustee shall make such payment from the Project Fund in accordance with Section 5.03 below.

(e) Harris Hill Residential shall not submit Certifications for Payment more frequently than once per month.

Section 5.03. Payment for Authorized Improvements.

(a) Upon receipt of a reviewed and approved Certification for Payment, the Trustee shall make payment from the Improvement Area #1 Improvement Account, the Improvement Area #2 Improvement Account or the Improvement Area #3 Improvement Account, as applicable, pursuant to the terms of the Certification for Payment and the Indenture in an amount not to exceed the Budgeted Cost for the particular Improvement Area #1 Project, Improvement Area #2 Project, or Improvement Area #3 Project (or a completed segment or section thereof), unless a Cost Overrun amount has been approved for a particular Authorized Improvement. If a Cost Overrun amount has been approved, then the amount reimbursed shall not exceed the Budgeted Amount plus the approved Cost Overrun amount.

(b) Approved Certifications for Payment that await reimbursement shall not accrue interest.

(c) Notwithstanding any other provisions of this Agreement, when payment is made, the Trustee shall make payment directly to the general contractor or supplier of materials or services or jointly to Harris Hill Residential (or any permitted assignee of Harris Hill Residential) and the general contractor or supplier of materials or services, as indicated in an approved Certification for Payment, out of available funds in the Improvement Area #1 Account, Improvement Area #2 Improvement Account or Improvement Area #3 Improvement Account, as applicable. If an unconditional lien release related to the items referenced in the Certification for Payment is attached to such Certification for Payment, the Trustee shall make such payment to Harris Hill Residential or any permitted assignee of Harris Hill Residential. In the event Harris Hill Residential provides a general contractor's or supplier of materials' unconditional lien release for a portion of the work covered by a Certification for Payment, the Trustee will make such payment directly to Harris Hill Residential or any permitted assignee of Harris Hill Residential to the extent of such lien release.

(d) Nothing in this Agreement shall be deemed to prohibit Harris Hill Residential or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to Harris Hill Residential or the City with respect thereto, including the withholding of any payment that may be associated with the exercise of such remedy, so long as such delay in performance shall not subject the Authorized Improvement, as applicable, to foreclosure, forfeiture, or sale. In the event that any such mechanics or materialman's lien and/or judgment with respect to any Authorized Improvement is contested, Harris Hill Residential shall post or cause delivery of a surety bond or other type of surety in the amount determined by the City or City may decline to accept the Authorized Improvement until such mechanics or materialman's lien and/or judgment is satisfied.

ARTICLE VI
OWNERSHIP AND TRANSFER OF IMPROVEMENT AREA #1 IMPROVEMENT,
IMPROVEMENT AREA #2 IMPROVEMENT, OR IMPROVEMENT AREA #3
IMPROVEMENT

Section 6.01. Authorized Improvements to be Owned by the City or Maxwell SUD – Title Evidence. If required by the City or Maxwell SUD, Harris Hill shall furnish a preliminary title report for land with respect to an Authorized Improvement to be acquired and accepted by the City or Maxwell SUD from Harris Hill Residential and not previously dedicated or otherwise conveyed to the City or Maxwell SUD, as applicable, for review and approval at least thirty (30) calendar days prior to the transfer of title of an Authorized Improvement to the City or Maxwell SUD. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City’s clean title or use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the Authorized Improvement, as applicable, until Harris Hill Residential (or the applicable Owner) has cured such objections to title to the satisfaction of the City.

Section 6.02. Authorized Improvement Constructed on City Land or Owner Land. If the applicable Authorized Improvement is on land owned by the City, the City hereby grants to Harris Hill Residential a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Authorized Improvement, as applicable. If the Authorized Improvement is on land owned by either Owner, such Owner hereby grants to the City a license to enter upon such land for purposes related to inspection and maintenance (pending acquisition and acceptance) of the Authorized Improvement, as applicable. The grant of the license shall not relieve either Owner of any obligation to grant the City title to property and/or easements related to the Authorized Improvement as required by the Financing Agreement or this Agreement, or as should in the City’s reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Authorized Improvement. The provisions for inspection and acceptance of such Authorized Improvement otherwise provided herein shall apply.

ARTICLE VII
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 7.01. Representations, Covenants and Warranties of the Owners. Harris Hill Residential and Harris Hill Commercial each represents and warrants for the benefit of the City as follows, where applicable:

(a) Organization. Each Owner consists of one limited partnership duly formed, organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to fulfill its obligations in this Agreement and the Financing Agreement, and to carry on its business in the State of Texas as now being conducted as hereby contemplated.

(b) Authority. Each Owner has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by such Owner.

(c) Binding Obligation. This Agreement is a legal, valid and binding obligation of each Owner, enforceable against each Owner in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Law. The Owners shall not commit, suffer or permit any act to be done in, upon or to the lands in the District or the Authorized Improvements in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the District or the Authorized Improvements.

(e) Requests for Payment. Harris Hill Residential represents and warrants that (i) it will not request payment from the Project Fund for the acquisition construction or installation of any improvements that are not part of or costs associated with Improvement Area #1 Projects, Improvement Area #2 Projects, or Improvement Area #3 Projects and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the Certifications for Payment.

(f) Financial Records. For a period of two years after completion of the Authorized Improvements, as applicable, Harris Hill Residential covenants to maintain proper books of record and account for the construction of the Authorized Improvements and all Actual Costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agents at any reasonable time during regular business hours on reasonable notice.

(g) Plans. Harris Hill Residential represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. Harris Hill Residential further agrees that, subject to the terms hereof, the Authorized Improvements have been or will be constructed in full compliance with such Plans and any change orders thereto consistent with the Act, this Agreement and the Financing Agreement. Harris Hill Residential shall provide as-built plans for all Authorized Improvements to the City.

(h) Additional Information. Harris Hill Residential agrees to cooperate with all reasonable written requests for nonproprietary information by the initial purchaser of the Bonds, the City Manager and the City Representative related to the status of construction of the Authorized Improvements within the District, the anticipated completion dates for future improvements and any other matter that the initial purchaser of the Bonds or City Representative deems material to the investment quality of the Bonds.

(i) Continuing Disclosure Agreement. Each Owner agrees to provide the information required pursuant to the continuing disclosure agreement executed by Owners in connection with the Bonds.

(j) Tax Certificate. The City will deliver a certificate relating to the Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “Tax Certificate”) containing covenants and agreements designed to satisfy the requirements of 26 U.S. Code Sections 103 and 141 through 150, inclusive, and the federal income tax regulations issued thereunder relating to the use of the proceeds of the Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of 26 U.S. Code Section 148 (collectively, “Bond Proceeds”).

Each Owner covenants to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. Each Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Bonds and will be, to the best of the knowledge of the officers of such Owner providing such facts and estimates, true, correct and complete as of that date, and (ii) each Owner will make reasonable inquiries to ensure such truth, correctness and completeness. Each Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds (including, but not limited to, the use of the Improvement Area #1 Projects, Improvement Area #2 Projects or Improvement Area #3 Projects) that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the Bonds for federal income tax purposes.

(k) Financial Resources. Harris Hill Residential represents and warrants that it has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement, the Service and Assessment Plan and the Financing Agreement.

Section 7.02. Indemnification and Hold Harmless. HARRIS HILL RESIDENTIAL SHALL INDEMNIFY AND HOLD HARMLESS THE CITY INSPECTOR, THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN “INDEMNIFIED PARTY”), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY HARRIS HILL RESIDENTIAL; (II) THE NEGLIGENT DESIGN, ENGINEERING, AND/OR CONSTRUCTION BY HARRIS HILL RESIDENTIAL OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY HARRIS HILL RESIDENTIAL OF ANY OF THE AUTHORIZED IMPROVEMENTS ACQUIRED FROM EITHER OWNER HEREUNDER; (III) HARRIS HILL RESIDENTIAL’S NONPAYMENT UNDER CONTRACTS BETWEEN HARRIS HILL RESIDENTIAL AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION OF THE AUTHORIZED IMPROVEMENTS; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY HARRIS HILL RESIDENTIAL OR ITS AGENTS TO CONSTRUCT THE AUTHORIZED IMPROVEMENTS; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO HARRIS HILL RESIDENTIAL’S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES, REGARDING OR RELATED TO THE AUTHORIZED IMPROVEMENTS OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE

AUTHORIZED IMPROVEMENTS, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE SOLE OR PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY, HARRIS HILL RESIDENTIAL IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST HARRIS HILL RESIDENTIAL IN PROVIDING SUCH DEFENSE.

IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY HARRIS HILL RESIDENTIAL IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF HARRIS HILL RESIDENTIAL'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF HARRIS HILL RESIDENTIAL'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES, PURSUANT TO THIS AGREEMENT. HARRIS HILL RESIDENTIAL SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF HARRIS HILL RESIDENTIAL FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND HARRIS HILL RESIDENTIAL SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES.

THIS SECTION 7.02 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST HARRIS HILL RESIDENTIAL.

Section 7.03. Use of Monies by City; Changes to Indenture. The City agrees not to take any action or direct the Trustee to take any action to expend, disburse or encumber the monies held in the Project Fund and any monies to be transferred thereto for any purpose other than the purposes permitted by the Indenture. Prior to the acceptance of all the Authorized Improvements the City agrees not to modify or supplement the Indenture without the approval of Harris Hill Residential if as a result or as a consequence of such modification or supplement: (a) the amount of monies that would otherwise have been available under the Indenture for disbursement for the

Costs of the Authorized Improvements is reduced, delayed or deferred, (b) the obligations or liabilities of Harris Hill Residential is or may be substantially increased or otherwise adversely affected in any manner, or (c) the rights of Harris Hill Residential is or may be modified, limited, restricted or otherwise substantially adversely affected in any manner.

Section 7.04. No Reduction of Assessments. Each Owner agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the effective date of this Agreement.

ARTICLE VIII TERMINATION

Section 8.01. Mutual Consent. This Agreement may be terminated by the mutual, written consent of the City and the Owners, in which event the City may either execute contracts for or perform any remaining work related to the Authorized Improvements not accepted by the City or other appropriate entity and use all or any portion of funds on deposit in the Project Fund, or other amounts transferred to the Project Fund, under the terms of the Indenture to pay for same, and Harris Hill Residential shall have no claim or right to any further payments for the Costs of an Authorized Improvement, as applicable, hereunder, except as otherwise may be provided in such written consent.

Section 8.02. City's Election for Cause.

(a) The City, upon notice to the Owners and the passage of the cure period identified in subsection (b) below, may terminate this Agreement, without the consent of the Owners if Harris Hill Residential shall breach any material covenant or default in the performance of any material obligation hereunder.

(b) If any such event described in Section 8.02(a) occurs, the City shall give written notice of its knowledge of such event to the Owners, and Harris Hill Residential agrees to promptly meet and confer with the City Inspector and other appropriate City staff and consultants as to options available to assure timely completion, subject to the terms of this Agreement, of the Authorized Improvements. Such options may include, but not be limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Owners (and any mortgagee or trust deed beneficiary specified in writing by either Owner to the City to receive such notice) of the grounds for such termination and allow Harris Hill Residential a minimum of 45 days to eliminate or to mitigate to the reasonable satisfaction of the City the grounds for such termination. Such period may be extended, at the sole discretion of the City, if Harris Hill Residential, to the reasonable satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, Harris Hill Residential has not eliminated or completely mitigated such grounds to the reasonable satisfaction of the City, the City may then terminate this Agreement. In the event of the termination of this Agreement, Harris Hill Residential is entitled to payment for work accepted by the City related to an Authorized Improvement only as provided for under the terms of the Indenture and this Agreement prior to the termination date of this Agreement. Notwithstanding the foregoing, so long as Harris Hill Residential has breached any material covenant or defaulted in the performance of any material obligation hereunder, notice of which has been given by the City to Harris Hill Residential, and

such event has not been cured or otherwise eliminated by Harris Hill Residential, the City may in its discretion cause the Trustee to cease making payments for the Actual Costs of Authorized Improvements provided that Harris Hill Residential shall receive payment of the Actual Costs of any Authorized Improvements that were accepted by the City or Maxwell SUD at the time of the occurrence of such breach or default by Harris Hill Residential upon submission of the documents and compliance with the other applicable requirements of this Agreement.

(c) If this Agreement is terminated by the City for cause, the City may either execute contracts for or perform any remaining work related to the Authorized Improvements not accepted by the City or Maxwell SUD and use all or any portion of the funds on deposit in the Project Fund or other amounts transferred to the Project Fund and Harris Hill Residential shall have no claim or right to any further payments for the Authorized Improvements hereunder, except as otherwise may be provided upon the mutual written consent of the City and Harris Hill Residential. The City shall have no obligation to perform any work related to an Authorized Improvement or to incur any expense or cost in excess of the remaining balance of the Project Fund.

Section 8.03. Termination Upon Redemption or Defeasance of Bonds. This Agreement will terminate automatically and with no further action by the City or either Owner upon the redemption or defeasance of all outstanding Bonds (including any refunding bonds issued to refund the Bonds) issued under the Indenture.

Section 8.04. Construction of the Authorized Improvements Upon Termination of this Agreement. Notwithstanding anything to the contrary contained herein, upon the termination of this Agreement pursuant to this Article VIII, Harris Hill Residential shall perform its obligations with respect to the Authorized Improvements in accordance with this Agreement and the Financing Agreement.

Section 8.05. Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, damage to work in progress by casualty or by other cause beyond the reasonable control of the party (financial inability excepted) (“Force Majeure”), then the specified time for performance shall be extended by the amount of the delay actually so caused. The extension of time to perform allowed by this Section 8.05 shall not apply unless, upon the occurrence of an event of Force Majeure, the party needing additional time to perform notifies the other party of the event of Force Majeure and the amount of additional time reasonably required within ten (10) business days of the occurrence of the event of Force Majeure.

ARTICLE IX MISCELLANEOUS

Section 9.01. Limited Liability of City. The Owners each acknowledge and agree that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City’s obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Project Fund and from no other source. Neither the City, the City Inspector, City Representative nor any other City employee, officer, official or agent shall incur any liability

hereunder to Harris Hill Residential, Harris Hill Commercial or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 9.02. Audit. The City Inspector, City Representative or a finance officer of the City shall have the right, during normal business hours and upon the giving of three business days' prior written notice to Harris Hill Residential, to review all books and records of Harris Hill Residential pertaining to costs and expenses incurred by Harris Hill Residential with respect to any of the Authorized Improvements and any bids taken or received for the construction thereof or materials therefor.

Section 9.03. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City: City of San Marcos
 Attn: Chief Financial Officer
 630 East Hopkins
 San Marcos, Texas 78666
 Facsimile: 512-396-2683

To Harris Hill
Residential: Attn: R.W. McDonald, IV
 Harris Hill Residential Land Holdings, Ltd.
 100 NE Loop 410, Suite 775
 San Antonio, Texas 78216

To Harris Hill
Commercial: Attn: R.W. McDonald, IV
 Harris Hill Commercial Land Holdings, Ltd.
 100 NE Loop 410, Suite 775
 San Antonio, Texas 78216

And to: McLean & Howard, LLP
 Barton Oaks Plaza, Building II
 901 S. Mopac Expressway, Suite 225
 Austin, Texas 78746
 Attn: Jeffrey S. Howard

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

The City shall advise Harris Hill Residential and Harris Hill Commercial of the name and address of any person who is to receive any notice or other communication pursuant to this Agreement.

Section 9.04. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 9.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any receivables due under this Agreement may be assigned by Harris Hill Residential without the consent of, but upon written notice to the City pursuant to Section 9.03 of this Agreement. The obligations, requirements, or covenants of this Agreement shall be able to be assigned, without prior written consent of the City, to: (i) an assignee that is or will become an owner of property within the District; (ii) an affiliate or related entity of Harris Hill Residential; or (iii) any lien holder of property within the District. The obligations, requirements, or covenants of this Agreement shall not be assigned by Harris Hill Residential to any other person or entity without prior written consent of the City Manager, except pursuant to a collateral assignment to any person or entity providing financing to Harris Hill Residential for an Authorized Improvement, provided such person or entity expressly agrees to assume all obligations of Harris Hill Residential hereunder if there is a default under such financing and such Person elects to complete the Authorized Improvement, as applicable. No such assignment shall be made by Harris Hill Residential or any successor or assignee of Harris Hill Residential that results in the City being an “obligated person” within the meaning of Rule 15c-12 of the United States Securities and Exchange Commission without the express written consent of the City. In connection with any consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee’s express assumption of all obligations of Harris Hill Residential hereunder and/or upon any other reasonable factor which the City deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned. The City may assign by a separate writing certain rights as described in this Agreement and in the Indenture, to the Trustee and each of the Owners hereby consents to such assignment.

Section 9.06. Other Agreements. The obligations of the Owners hereunder shall be those of a party hereto and not as an owner of property in the District. Nothing herein shall be construed as affecting the City’s or the Owners’ rights or duties to perform their respective obligations under other agreements, use regulations, ordinances or subdivision requirements relating to the development of the lands in the District, including the applicable Construction Contracts and the Financing Agreement. To the extent there is a conflict between this Agreement and the Financing Agreement, the Financing Agreement shall control. To the extent there is a conflict between this Agreement and the Indenture, the Indenture shall control.

Section 9.07. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights upon the default of any other party, shall not constitute a waiver of such party’s right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

Section 9.08. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

Section 9.09. Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owners any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the City or the Owners shall be for the sole and exclusive benefit of the City and the Owners.

Section 9.10. Amendment. Except as otherwise provided in Section 9.05, upon agreement by the parties, this Agreement may be amended, from time to time in a manner consistent with the Act, the Indenture, and the Bond Ordinance by written supplement hereto and executed in counterparts, each of which shall be deemed an original.

Section 9.11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 9.12. Effective Date. This Agreement has been dated as of the date first above written solely for the purpose of convenience of reference and shall become effective upon its execution and delivery, on the Closing Date of the Bonds, by the parties hereto. All representations and warranties set forth therein shall be deemed to have been made on the Closing Date of the Bonds.

Section 9.13. Term. The term of this Agreement, other than the provisions contained in Section 7.02, which shall survive the termination of this Agreement, shall be thirty (30) years or upon redemption or defeasance of the Bonds (including any refunding bonds issued to refund the Bonds) issued under the Indenture. If Harris Hill Residential defaults under this Agreement or the Financing Agreement, this Agreement and the Financing Agreement shall not terminate with respect to the costs of the Improvement Area #1 Projects, the Improvement Area #2 Projects and/or the Improvement Area #3 Projects that have been approved by the City pursuant to a Certification for Payment prior to the date of default.

Section 9.14. No Waiver of Powers or Immunity. The City does not waive or surrender any of its governmental powers, immunities, or rights.

Section 9.15. No Boycott of Israel. Each of the Owners hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not 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 enable the City to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Texas 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 Owners understand "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 9.16. Not a Listed Company. Each of the Owners hereby represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates 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 enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Texas or Federal law and excludes the Owners and each of their parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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 Owners understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 9.17. No Discrimination Against Fossil-Fuel Companies) Verifications. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owners hereby verify that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, 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 with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

As used in this Section, the Owners understand 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 9.18. No Discrimination Against Firearm Entities and Firearm Trade Associations) Verifications. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, each of the Owners hereby verify that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law.

As used in the foregoing verification and the following definitions,

(a) ‘discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association,

(b) ‘firearm entity,’ a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and

(c) ‘firearm trade association,’ a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

As used in this Section, the Owners understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

[Execution pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of December 15, 2021.

CITY OF SAN MARCOS, TEXAS

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

Name: _____
Title: Attorney for the City

HARRIS HILL RESIDENTIAL:

**HARRIS HILL RESIDENTIAL
LAND HOLDINGS, LTD.,**
a Texas limited partnership

By: Harris Hill GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Robert W. McDonald IV, Manager

HARRIS HILL COMMERCIAL:

**HARRIS HILL COMMERCIAL
LAND HOLDINGS, LTD.,**
a Texas limited partnership

By: Harris Hill GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Robert W. McDonald IV, Manager

Exhibit A

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for Harris Hill Residential Land Holdings, Ltd., a Texas limited partnership (the “Developer”) and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Area #1 Improvement Account of the Project Fund] [the Improvement Area #2 Improvement Account of the Project Fund] [the Improvement Area #3 Improvement Account of the Project Fund] (as defined in the Whisper South Public Improvement District Construction, Funding, and Acquisition Agreement) from UMB Bank, N.A. (the “Trustee”) in the amount of _____ DOLLARS (\$_____) for costs incurred in the establishment, administration, and operation of the Whisper South Public Improvement District (the “District”), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the above itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Whisper South Public Improvement District Construction, Funding, and Acquisition Agreement, the Development Agreement (as defined in the Whisper South Public Improvement District Construction, Funding, and Acquisition Agreement), the Financing Agreement, the Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture (as defined in the Whisper South Public Improvement District Construction, Funding, and Acquisition Agreement) for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested hereunder shall be made as directed below:

- a. X amount to Person or Account Y for Z goods or services.
- b. Etc.

I hereby declare that the above representations and warranties are true and correct.

**HARRIS HILL RESIDENTIAL
LAND HOLDINGS, LTD.,**
a Texas limited partnership

By: Harris Hill GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Robert W. McDonald IV, Manager
Date: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

CITY OF SAN MARCOS, TEXAS

By: _____

Name: _____

Title: _____

Date: _____