

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

(WHISPER SOUTH PID)

This agreement regarding conveyance of right of redemption and waiver of agricultural valuation (the “Agreement”), dated as of \_\_\_\_\_, 2021 (the “Effective Date”), by and among HARRIS HILL RESIDENTIAL LAND HOLDINGS, LTD., a Texas limited partnership (“Harris Hill Residential”), HARRIS HILL COMMERCIAL LAND HOLDINGS, LTD., a Texas limited partnership (“Harris Hill Commercial”) (Harris Hill Residential and Harris Hill Commercial are each referred to herein as a “Landowner” and collectively as the “Landowners”), the City of San Marcos, Texas (the “City”), and UMB Bank, N.A. (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 May 4, 2021, the City authorized the formation of the Whisper South 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 595.94 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 Harris Hill Residential, 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 South Public Improvement District Financing Agreement, dated as of \_\_\_\_\_, 2021 between Harris Hill Residential, Harris Hill Commercial and the City (the “PID Financing Agreement”);

WHEREAS, the City adopted an ordinance or ordinances (the “Assessment Ordinance,” whether one or more) 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 Harris Hill Residential and Harris Hill Commercial, 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 2021 (Whisper South Public Improvement District Improvement Areas #1-3 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 2020 and 2021. 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.

(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) The Escrow Agent shall hold the Agricultural Use Waiver in escrow until it receives further written instruction from the City to (i) deliver the Agricultural Use Waiver to the City if, and only if, foreclosure, sale, transfer or conveyance for failure to pay Assessments levied by the Assessment Ordinance or a Forced Sale has occurred with respect to Non-Redeemable Property; (ii) return the Agricultural Use Waiver to the Landowner or Subsequent Landowner upon the termination of this Agreement pursuant to Section 5(a) hereof; provided however, if this Agreement terminates pursuant to Section 5(a) hereof and the Escrow Agent has not received written instruction from the City to return the Agricultural Use Waivers and the funds within the Property Tax Fund to the Landowner or Subsequent Landowner, then it shall return the Agricultural Use Waiver and the funds within the Property Tax Fund to the Landowner or Subsequent Landowner within 30 days of such termination; or (iii) provided this Agreement remains in effect and the City has previously informed the Escrow Agent in writing of a Forced Sale or a foreclosure sale of a public improvement district lien that has been conducted in a legally sufficient manner with respect to Non-Redeemable Property and such sale has failed to occur for any reason other than the payment by the Landowner or Subsequent Landowner of the delinquent taxes and/or assessments, penalties and interest, then, upon the City's instruction and certification to Escrow Agent and Landowner or Subsequent Landowner that such failed foreclosure sale has occurred, the Escrow Agent shall deliver the Agricultural Use Waiver to the City.

(iii) Within ten (10) business days after termination of this Agreement, as evidenced by written instructions from the City, 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 approved by the City 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" that has been completed by a Landowner and approved by the City.

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 and that the Escrow Agent shall have no duty or obligation to challenge or otherwise question, initiate or compel any such determination.

### **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, the City 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 the City 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. The Escrow Agent shall have no obligation with respect to any default of a Landowner or Subsequent Landowner.

### **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.

(e) For the avoidance of doubt, the Escrow Agent serves solely in the capacity of Escrow Agent under this Agreement, and not as Trustee.

(f) In making disbursements from the Property Tax Fund, delivering the Agricultural Use Waiver, executing any Release of Redemption or taking any other action hereunder, the Escrow Agent may conclusively rely upon the written direction, determination, or approval of the City, and shall have no obligation to evaluate any documentation received or determine if any conditions set forth in this Agreement have been complied with. The Escrow Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(g) The Escrow Agent may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(h) In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to this Agreement, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

(i) In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until:

(a) the rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or

(b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

(j) Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 30 days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal: All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor Escrow Agent as may be designated in writing by the City, whereupon the Escrow Agent's obligations hereunder shall cease and terminate; If no such successor Escrow Agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease

and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by City or in accordance with the directions of a final order or judgment of a court of competent jurisdiction; Further, if no such successor Escrow Agent has been designated by such date, the resigning or removed Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent; further, the resigning or removed Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Agreement.

## **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) Escrow Agent receives written instruction from the City under Section 2; (2) 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 (3) no obligations remain outstanding under the Indenture or the Escrow Agent no longer serves as trustee 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 City's 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.

(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 to be recorded 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: Harris Hill Residential Land Holdings, Ltd.  
100 NE Loop 410, Suite 775  
San Antonio, Texas 78216

Harris Hill Commercial Land Holdings, Ltd.  
100 NE Loop 410, Suite 775  
San Antonio, Texas 78216

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: UMB Bank, N.A.  
\_\_\_\_\_  
\_\_\_\_\_

(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 enable the City 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 within the meaning of SEC Rule 405, 17 C.F.R. § 230.405 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 enable the City 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 within the meaning of SEC Rule 405, 17 C.F.R. § 230.405 and exists to make a profit.

(o) 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 Landowners and Escrow Agent hereby verify that neither the Landowners, the Escrow Agent, nor any 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 Landowners and Escrow Agent understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Landowners or Escrow Agent within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

(p) 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 Landowners and Escrow Agent 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,

(I) ‘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,

(II) ‘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 Landowners and Escrow Agent understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Landowners or Escrow Agent within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, 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 \_\_\_\_\_, 2021.

(SEAL)

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

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

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

BEFORE ME, a Notary Public, on this day personally appeared Robert W. McDonald IV, as Manager of Harris Hill GP, LLC, a Texas limited liability company, the General Partner of Harris Hill Residential Land Holdings, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed on behalf of said entities.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

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

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

BEFORE ME, a Notary Public, on this day personally appeared Robert W. McDonald IV, as Manager of Harris Hill GP, LLC, a Texas limited liability company, the General Partner of Harris Hill Commercial Land Holdings, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed on behalf of said entities.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

UMB Bank, N.A., as Escrow Agent

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

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

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

THE STATE OF TEXAS       §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2021, by \_\_\_\_\_, \_\_\_\_\_, of UMB Bank, N.A., on behalf of said entity.

[SEAL]

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

Appendix "A"

Definitions

"Indenture" shall mean the Indenture of Trust between the City and UMB Bank, N.A., 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:

**Exhibit “A(1)”**

The Harris Hill Residential Property

The “Harris Hill Residential Property” as defined in the Agreement consists of two tracts containing approximately \_\_\_\_\_ acres of land and \_\_\_\_\_ acres of land, respectively, described as follows:

**Exhibit “A(2)”**

The Harris Hill Commercial Property

The “Harris Hill Commercial Property” as defined in the Agreement consists of approximately \_\_\_\_\_ acres of land described as follows:

**EXHIBIT "A-1"**

**NON-REDEEMABLE PROPERTY**

**EXHIBIT “B”**

**AGRICULTURAL USE WAIVER**

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

THAT this Agricultural Use Waiver (this “Waiver”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, for the benefit of the City of San Marcos, Texas (the “City”) and the Escrow Agent (as defined below), by \_\_\_\_\_ (the “Landowner”), owner of the property described on Schedule 1 hereto (the “Property”), which Property is located within Whisper South Public Improvement District (the “District”), a public improvement district of the City, pursuant to Texas Tax Code Ann. §23.20.

**RECITALS**

A. The City has the right to levy assessments on land located within the District pursuant to a separate ordinance enacted by the City Council of the City, which assessments are intended to provide for the financing of certain public improvements for the benefit of the District.

B. The purpose of the City in levying assessments and, if approved by the City Council of the City, selling its assessment revenue bonds is to provide, among other things, financing for certain public improvements to serve the District (the “Facilities”).

C. UMB Bank, N.A. (the “Escrow Agent”) is a trustee as described in that certain Whisper South Public Improvement District Financing Agreement having an effective date of \_\_\_\_\_, 2021 by and between Landowner, Harris Hill Residential Land Holdings, Ltd. (“Harris Hill Residential”) and the City (“PID Financing Agreement”).

D. In furtherance of this purpose, the City has agreed to fund the construction costs of any Authorized Improvements directly, in whole or in part, as work progresses on such Authorized Improvements and/or reimburse Landowner for payments made for certain public improvements for the benefit of the District.

E. Landowner, \_\_\_\_\_, the City and Escrow Agent have also entered into that certain Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (the “Agreement”) dated \_\_\_\_\_, 2021, which requires Landowner to provide executed originals of this Waiver to the Escrow Agent to be held in escrow pursuant to the terms and conditions of said Agreement.

F. Landowner acknowledges that the election by Landowner to claim agricultural use exemptions or valuations arising under Subchapter C of Chapter 23 of the Texas Tax Code (collectively, the “Exemptions”), but not including any residential homestead exemption, for the 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 Vantage Bank Texas is the current lienholder 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:**

[INSERT SIGNATURE BLOCK]



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 South 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 \_\_\_\_\_, 2021, 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