

ANNEXATION APPLICATION

Updated: September, 2020



CONTACT INFORMATION

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|-----------------------------|---|-------------------------|---|
| Applicant's Name | Harris Hill Residential Land Holdings Ltd. | Property Owner | Harris Hill Residential Land Holdings Ltd. |
| Company | Harris Hill Residential Land Holdings Ltd. | Company | Harris Hill Residential Land Holdings Ltd. |
| Applicant's Mailing Address | 100 NE Loop 410, Suite 775, San Antonio, TX 78216 | Owner's Mailing Address | 100 NE Loop 410, Suite 775, San Antonio, TX 78216 |
| Applicant's Phone # | 512.695.3532 | Owner's Phone # | 512.695.3532 |
| Applicant's Email | rw4@cgminterests.com | Owner's Email | rw4@cgminterests.com |

PROPERTY INFORMATION

Is the property adjacent to city limits: YES NO

Is the property proposing to connect to City utilities: YES, WATER YES, WASTE WATER NO

Is the property subject to an approved development or other agreement : YES NO

Proposed Use: single family residential & MF Proposed Zoning: CD-3 / EC w. MF

Reason for Annexation / Other Considerations: The Owner is requesting annexation as part of the Whisper South PID's entitlements, Annexation is conditioned on the full execution of a Development Agreement for the

Property and zoning of the Property that is consistent with that Development Agreement, all pursuant to the PID Term Sheet

AUTHORIZATION

By submitting this digital application, I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.

Filing Fee \$1,181 Technology Fee \$13 TOTAL COST \$1,194

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

APPLY ONLINE – WWW.MYGOVERNMENTONLINE.ORG/

PROPERTY OWNER AUTHORIZATION

I, R.W. McDonald, IV - manager (owner name) on behalf of
Harris Hill Residential Land Holdings, Ltd. (company, if applicable) acknowledge that I/we
am/are the rightful owner of the property located at
see exhibit attached for property location (address).

I hereby authorize R.W. McDonald, IV (agent name) on behalf of
McDonald Development Group (agent company) to file this application for
Annexation Agreement (application type), and, if necessary, to work with
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 05/17/2021

Printed Name, Title: R.W. McDonald, IV - Manager

Signature of Agent:  Date: 05/17/2021

Printed Name, Title: R.W. McDonald, IV

This **DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the ____ day of _____, 2021 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a Texas home-rule municipal corporation (the "**City**") and **Harris Hill Residential Land Holdings, Ltd.** ("**Owner**"). The **City** and **Owner** are sometimes hereinafter referred to individually as "**Party**", and collectively as the "**Parties**". The Parties agree as follows:

PURPOSES AND CONSIDERATIONS

WHEREAS, Owner currently owns approximately 379.84 acres, more or less, ("the Property") located in the Extraterritorial Jurisdiction ("ETJ") of the City, Hays County, Texas, and more particularly described by metes and bounds in **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, Owner desires to zone the Property as Employment Center, with the modifications in this Agreement, and Character District-3, with the modifications in this Agreement, pursuant to the City's Development Code, as that code exists on the effective date of this Agreement (subject to any modifications set forth herein), and generally in accordance with the Conceptual Land Use Plan, as more particularly described in Exhibit "B" attached hereto; and

WHEREAS, the City is authorized to make and enter into this Agreement with Owner in accordance with SUBCHAPTER G, CHAPTER 212, LOCAL GOVERNMENT CODE and Chapter 2, Article 4, Division 3 of the San Marcos Development Code (SMDC), to accomplish the following purposes:

- A. Extend the City's planning authority in accordance with the Conceptual Land Use Plan and the development regulations contained herein under which certain uses and development of the Property is authorized; and
- B. Authorize enforcement by the City of certain municipal land use and development regulations, as required and/or authorized by San Marcos Development Code, as applicable, to the extent the same are consistent with the development regulations contained herein and in the same manner the applicable regulations are enforced within the City's municipal boundaries;

- C. Provide for the annexation of the Property and provide for the terms of annexation given that annexation is agreed to by the parties as set forth herein;
- D. Specify the uses and development of the Property before and after annexation given that annexation is agreed to by the parties as set forth herein, which authorizes the City to modify any of the zoning regulations set forth in the San Marcos Development Code. In connection with such authority, this Agreement will modify the San Marcos Development Code as provided herein to provide for an estimated 1412 single family residential lots and approximately 16.09 acres of multifamily development; and
- E. Pursuant to Section 2.4.3.1 of the SMDC, to prescribe land uses, environmental standards, development standards, and public facilities standards governing the Property during the term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and agreements of the Parties in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties- agree as follows:

SECTION 1: GENERAL TERMS AND CONDITIONS

1.01 Conceptual Land Use Plan

The City hereby approves the general use and development of the Property in accordance with the Conceptual Land Use Plan, which is incorporated herein as **Exhibit "B"**. The Conceptual Land Use Plan shall constitute the land use plan under Section 2.4.3.3 of the San Marcos Development Code ("SMDC"). The Conceptual Land Use Plan may be amended from time to time in accordance with the processes and procedures outlined in Section 2.4.3.7.C of the SMDC or as stated in Section 2.04 below. Development applications for the Property shall be consistent with the Conceptual Land Use Plan.

1.02 Proposed Schedule of Development and Phasing

Pursuant to Section 212.172(b)(7) and (8) of the Texas Local Government Code, the Owner and the City have agreed upon annexation and have agreed to specify the terms of annexation and the uses and development allowed after such annexation. Owner shall submit applications for annexation and zoning of the entire Property within 90 days of the effective date of this agreement. Upon submittal of such applications, and in accordance with state law and the San Marcos Development Code, the City shall promptly schedule any and all required public

hearings and City Council actions necessary to complete the annexation, Comprehensive Plan designation, and zoning consistent with this Agreement. The parties acknowledge and agree, pursuant to Sections 43.0672 and 212.172(b)(7) and (8) of the Texas Local Government Code, the terms of any annexation shall provide that such annexation is conditioned on and subject to zoning of the Property being consistent in all respects with the terms of this Agreement.

1.03 Base Zoning District(s)

- A. The City and Owner agree that (i) the Owner shall make an application for and the City Council of the City shall consider an ordinance zoning the Property to Employment Center District and Character District-3, , and (ii) that Property will, subject to City Council discretionary and legislative approval, be zoned Employment Center District (“EC”) and Character District-3 (“CD-3”) with, and subject, the modifications to the SMDC use and development regulations associated with such base districts as set forth in this Agreement and as shown on the Conceptual Land Use Plan.

1.04 Development Standards:

- A. All City of San Marcos codes and ordinances in effect on the Effective Date of this Agreement shall govern throughout the term of this Project, except as noted within this Agreement. In the event of a conflict between this Agreement and the SMDC or the City’s Codes and Ordinances, this Agreement shall control. For example, the variations and modifications to SMDC regulations and standards specified in Section 1.04(C) shall be construed as to vary and modify conflicting regulations and standards in the SMDC to the extent such conflicting regulations and standards prevent the variations and modifications provided in Section 1.04(C) from being implemented.
- B. Notwithstanding Section 1.04(A), the variations and modifications to SMDC regulations and standards specified in Section 1.04 (C) of this Agreement shall not be construed as to supersede, vary or modify environmental regulations in Chapter 6 of the SMDC, or flood damage prevention regulations in Chapter 39 and locally adopted international codes in Chapters 14 and 38 of the San Marcos City Code.
- C. Variations and modifications to the SMDC and Other Special City Standards are hereby granted and allowed as follows:
 - 1. Section 4.4.3.4., “Parking Location”, which prohibits surface parking in the First Layer in Character District-3 Districts, is modified as follows:
 - i. Where a single car garage is proposed on a lot, the second required parking space may be surface parking located in the First Layer.
 - 2. Section 4.4.5.1., “Parking Location”, which prohibits surface and garage parking in the First Layer and prohibits garage parking in the

Second Layer of a lot in Employment Center Districts, is modified as follows:

- i. Section 4.4.5.1 “Parking Location” shall not apply and surface and garage parking shall be permitted in the First Layer and Second Layer of a lot.
3. Section 4.4.5.1., “Build-To Zone”, which dictates the area on the lot where a certain percentage of the front principal building façade must be located, is modified as follows:
 - i. Section 4.4.5.1 “Build-To Zone” shall not apply to the Property.
4. Section 7.1.4.3, “Parking Lot Landscaping”, which requires a landscaped interior island every 10 parking spaces and requires median islands, is modified as follows:
 - i. Section 7.1.4.3.C.1 shall not apply and instead, no parking space shall be located more than sixty (60) feet from a landscaped area or island.
 - ii. Section 7.1.4.3.D Median Islands shall not be required
5. Section 4.4.3.4., “Lot”, which requires all lots 45 feet or less in width shall take vehicular access from a rear alley in Character District-3 Districts and Section 3.6.4.2.D.2 requires all lots 40 feet or less in width shall take vehicular access from a rear alley in all zoning districts, is modified as follows:
 - i. Rear alleys shall not apply and shall not be required on the Property.
6. Section 7.1.4.1.C, “Residential Garage Parking Requirements”, which requires garages be setback from the front façade of the house, is modified as follows:
 - i. Section 7.1.4.1.C shall not apply and instead, the following shall apply to any garage that is attached to the primary structure and where the garage doors are oriented to the street.
 1. In no case shall the garage be the front-most protrusion of the front façade of the house
 2. The garage may be flush with the front façade of the house or a covered front porch.
7. Section 4.3.5.11 “Front Porch”, which provides standards for porches on single family homes, is modified as follows:
 - i. Section 4.3.5.11 shall not apply to the Property.
8. Section 3.6.4.1.D. “Stub Streets”
 - i. The stub street requirement shall be modified to allow the three (3) variances identified in **Exhibit E – Block Perimeter Exhibit**.
9. Section 3.6.2.1 “Blocks, Lots, Access”, which dictates the number of tiers of residential lots, the maximum block perimeter, and the maximum length for a dead-end street based on the associated zoning, is modified as follows:
 - i. Section 3.6.2.1 shall be amended as follows:

1. CD-3 Maximum Dead End Street Length : 350 feet
2. The maximum allowed length of block perimeter for sites with a permitted industrial use and a building which exceeds 200,000 square feet, a larger block perimeter may be permitted but the block perimeter shall not exceed the area required to meet parking and landscaping provisions for the individual site.
- ii. In addition, Section 3.6.2.1.B.1 “Block Standards” shall be amended to allow a single tier of residential lots provided that a 6 ft. tall wall, constructed with conventional masonry such as brick and mortar or rock and mortar, or precast concrete that reflects the aesthetics of masonry such as LedgeStone Style, Rock Style, or Split Face CMU Style, shall be provided along the rear property lines.
10. Chapter 3, Article 8 “Existing Street”, which provides standards for improving existing streets including requiring street tree spacing every 35-40 feet on center, average, is modified as follows:
 - i. Chapter 3, Article 8 shall be modified to allow street tree spacing every 50 feet on average.
11. Section 5.1.1.2., “Land Use Matrix”.
 - i. Permitted, Conditional, and Prohibited uses on the Property shall comply with and shall be allowed as set forth on **Exhibit C**.
12. Multi-family projects within the development shall comply with all requirements in Chapter 9, Article 4, Division 3, “Multifamily Residential Design Standards”.
13. Chapter 3, Article 7 “New Streets”, which provides standards for constructing new streets, is modified as follows:
 - i. The Owner may use street cross sections and right-of-way widths which are in accordance with City approved sections or those sections provided in **Exhibit D** attached hereto and incorporated herein in developing the Property.

1.05 Application Procedures

- A. Development of the Property shall be governed by the following:
 1. The San Marcos Development Code and City of San Marcos Code of Ordinances, as they exist on the effective date of this Agreement and the Conceptual Land Use Plan except as modified by this Agreement. Pursuant to Section 212.172(g) of the Texas Local Government Code, this Agreement is a permit under Chapter 245 of the Texas Local Government Code.
- B. Plat Approval: The Parties agree that the approved land uses in each final plat of portions of the Property shall be consistent with the Conceptual Land Use Plan

and **Exhibit C** attached hereto.

1.06 Utilities

- A. An Out of City Utility Connection / Extension application will not be required for the development of this Property provided that the terms of this Agreement are met.
- B. The Owner shall be responsible for the payment of all costs associated with the extension and improvements of the infrastructure required to properly serve development of the Property, subject to the terms of the Whisper South Public Improvement District, including Owner's right to receive reimbursement as may be allowed in connection with such district.
- C. Provisions for providing Water Service to the Property
 - 1. Maxwell Special Utility District ("Maxwell SUD") is the water service provider and has the necessary CCN to serve the Property.
- D. Provisions for providing Wastewater Service to the Property
 - 1. The Owner has previously requested to opt into the City's Wastewater CCN, to the extent the Property is not already within such CCN in a written request provided to City of San Marcos.
- E. Provisions for providing Electric Service to the Property
 - 1. The Property is not currently within the City of San Marcos Electric Utility Service Area; however, the San Marcos Electric Utility Roadway Lighting Standards will apply.

1.07 Public Facilities Schedule and Financing

Public facilities and services will be provided as ordinarily allowed for development subject to the SMDC. The Owner intends to finance such public facilities and services, in whole or in part, pursuant to the Whisper South Public Improvement District.

1.08 Annexation

Upon approval of this Agreement and subject to the terms and conditions of this Agreement, Owner agrees to full purpose annexation of the Property. Concurrent with annexation of the Property, the Owner shall initiate a request for a zoning change to establish a zoning district(s) that is (are) consistent with the terms and conditions of this Agreement. Owner has previously submitted applications for Annexation and Zoning of the entire 379.84-acre Property. Approval of ordinances granting annexation and zoning districts consistent with the Agreement as set forth herein are discretionary; provided that however, failure to so annex and zone the Property consistent with this Agreement shall result in a failure to adhere to the terms of annexation agreed to by the parties. The draft ordinance annexing the Property

presented to the City Council by City staff will include an effective date that occurs after the date City Council finally approves zoning consistent with this Agreement but prior to the effective date of such zoning, so that a failure of City Council to vote to finally approve such zoning shall result in a failure of the City to complete annexation of the Property and the immediate revocation of Owner's consent to annexation prior to the effective date of the annexation ordinance.

1.09 Dedication of Land

- A. Parkland dedication requirements may be satisfied by providing publicly accessible private parkland owned and maintained by a homeowners' association ("HOA") and no additional parkland dedication to the City shall be required. Notwithstanding the foregoing, the Owner shall be allowed to provide other private parkland and amenities that are not publicly accessible, but such private parkland and amenities shall not count towards meeting the City's parkland dedication requirements. Parkland shall not be maintained by the City of San Marcos. The HOA shall be required to own, operate, and maintain the private parkland. The amount and location of such private parkland shall be approved administratively, notwithstanding anything in the SMDC to the contrary.

SECTION 2: MISCELLANEOUS PROVISIONS

2.01 Term

The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years thereafter ("Initial Term"), unless sooner terminated under this Agreement. After the Initial Term, the Agreement may be extended for another fifteen (15) year period by Owner, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term. Following expiration of the second 15-year term, the Agreement may be extended for up to three successive five (5) year periods by Owner, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term.

2.02 Enforcement and Default and Remedies for Default

The Parties agree that the City shall be entitled to enforce the San Marcos Development Code as it exists on the effective date of this Agreement, as modified by this Agreement. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty

(30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the City of San Marcos Code of Ordinances, as applicable.

If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement or other enforcement remedies the City may possess under its municipal regulatory authority.

Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

2.03 Authority, Applicable Rules and Right to Continue Development

This Agreement is entered under the statutory authority of Sections 42.042, 43.0672 and 212.172 of the Texas Local Government Code and pursuant to Chapter 2, Article 4, Division 3 of the SMDC. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.

Execution of this agreement, under Section 212.172 of the Texas Local Government Code, constitutes a permit under Chapter 245 of the Texas Local Government Code. In addition, the City acknowledges and agrees that (1) the uses and development contemplated in and authorized by this Agreement were planned for the Property more than ninety (90) days prior to the effective date of this Agreement and, therefore, more than ninety (90) days prior to the effective date of annexation of the Property, and (2) the Owner has filed a completed application for the initial authorization with the City prior to the institution of any annexation proceedings related to the Property. As a result of the foregoing sentence, Section 43.002 of the Texas Local Government Code applies to the uses and development of the Property contemplated in and authorized by this Agreement.

In consideration of Owner's agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Property, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Property. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Property will apply to the Property if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owner's obligations or decreasing Owner's rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency or a moratorium authorized by Subchapter E, Chapter 212 of the Texas Local Government Code.

2.04 Exhibits/Amendment

- A. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
- B. Owner may make minor changes to the Conceptual Land Use Plan and other attachments to this agreement with approval from the Director of Planning & Development Services and may make major changes with approval by City Council. Minor change shall consist of but are not limited to:
 - 1. A change that does not materially affect a change of lot or unit density contemplated by this Agreement by more than 10%
 - 2. Changes to accommodate tree preservation or the protection of KARST features.
- C. Owner may appeal the Planning and Development Services Director's determination of a minor change to the City Manager within 10 days of the date of notification of the decision.

- D. Major changes shall consist of but are not limited to:
1. The addition of land area
 2. Density beyond what is permitted in SMDC, except as allowed by this Agreement
 3. Changes in roadway alignments more than what is necessary to meet Code
 4. Change in the base zoning

2.05 Recordation

Pursuant to the requirements of Section 212.172(f), Texas Local Government Code, this Agreement shall be recorded in the official public records of Hays County, Texas. The terms of this Agreement shall be binding upon: (a) the Parties; (b) the Parties' successors and assigns; (c) the Property; and (d) future owners of all or any portion of the Property.

Owners agree that all restrictive covenants for the Property shall not be inconsistent with the requirements herein. Owners further agree to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement shall be recorded in the Hays County land records to place subsequent purchasers on notice at Owners' expense and Owners shall provide a copy of all such restrictive covenants to the City prior to filing.

2.06 Assignment and Binding Effect Upon Successors

Owner hereunder, may assign this Agreement, and the rights and obligations of Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Property or to an affiliate of the Owner provided that the assignee assumes all of the obligations hereunder, without any consent of the City being required. Any assignment must be in writing, specifically describe the property in question, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.

The provisions of this Agreement shall run with the land, will be binding upon, and inure to the benefit of the Parties, future owners of the Property, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Property.

2.07 Miscellaneous

Force Majeure The term "force majeure" as used herein shall mean and refer to Acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, devil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability.

If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Governing Law, Jurisdiction and Venue This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in Hays County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

Severability If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible. The Parties agree to reasonably cooperate to effectuate the intent of this Agreement.

Parties If any of the ownership entities fail or refuse to sign this Agreement or choose to opt out of this Agreement, those entities and their property shall be excluded. The Conceptual Land Plan will be amended to reflect the change and will automatically become part of this Agreement. Further, the county deed records will be amended by the Owner to reflect the change and evidence of the recordation will be provided to the City.

Notices All notices, demands and requests required hereunder shall be in writing and shall be deemed to have been properly delivered and received (i) as of the date of delivery to the addresses set forth below if personally delivered or delivered by facsimile machine, with confirmation of delivery (in the event a facsimile is sent after 5:00 p.m. local San Marcos, Texas time, it shall be deemed to have been received on the next day), or email (as indicated below); (ii) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (iii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to City: City of San Marcos
 Attn: City Manager
 630 East Hopkins Street
 San Marcos, Texas 78666

With a copy to:

City of San Marcos
Attn: City Attorney
630 East Hopkins Street
San Marcos, Tx 78666

If to the Owner: Harris Hill Residential Land
 Holdings, Ltd.
 McDonald Development
 Group
 9811 South IH-35
 Building 3, Suite 100
 Austin, Texas 78744

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

GOVERNMENTAL FUNCTION; IMMUNITY

The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

EXECUTED to be effective as of the Effective Date first stated above.

CITY OF SAN MARCOS, TEXAS

By: _____
Bert Lumbreras, City Manager

Harris Hill Residential Land Holdings, Ltd.,
a Texas limited partnership

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

By: _____
R.W. McDonald IV, its Manager

Acknowledgements

STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was acknowledged before me on the ___ day of _____ 2021, by Bert Lumbreras, City Manager of the City of San Marcos, in such capacity, on behalf of said entity.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____ 2021, by R.W. McDonald IV, Manager of Harris Hill GP, LLC, a Texas limited liability company, general partner of Harris Hill Residential Land Holdings, Ltd., a Texas limited partnership, in such capacity, on behalf of said limited partnership.

Notary Public, State of Texas

Exhibit A
Metes and Bounds

**EXHIBIT - A
METES AND BOUNDS**

HOPSON PARCEL

FIELD NOTES FOR A 67.94 ACRE TRACT OF LAND

A **67.94 acre** tract of land, out of the J. Miner Survey, Abstract 321, and the T.G. McGehee Survey, Abstract 11, Hays County, Texas and being all of a called 33-2/5 acre tract of land, all of a called 17.76 acre tract of land, and a portion of a called 118-1/2 acre tract of land, all as described in Volume 154, Page 504 of the Deed Records of Hays County, Texas. Said **67.94 acre** tract being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2" iron rod in the apparent southeast right-of-way line of County Road 160 (Harris Hill Road), for the southwest corner of Lot 1 of the Northpoint Section 1 Subdivision, a plat of record in Volume 2, Pages 251-252 of the Plat Records of Hays County, Texas, at the apparent north corner of said 33-2/5 acre tract and for the northwest corner of the tract described herein;

THENCE: S 46° 24' 00" E, departing the apparent southeast right-of-way line of Harris Hill Road, and with the southwest lines of said Northpoint Section 1 Subdivision, Northpoint Section 4 Subdivision, a plat of record in Volume 7, Pages 289-290 of the Plat Records of Hays County, Texas, and the apparent northeast lines of said 33-2/5 acre tract and the 17.76 acre tract, a distance of **2525.46 feet** to a found 1" iron pipe for the south corner of Lot 99 of said Northpoint Section 4 Subdivision, in the west line of said 118-1/2 acre tract, at the apparent east corner of said 17.76 acre tract and for an interior corner of the tract described herein;

THENCE: N 43° 13' 46" E, with the southeast line of said Northpoint Section 4 Subdivision, Northpoint Section 3 Subdivision, a plat of record in Volume 3, Pages 281-282 of the Plat Records of Hays County, Texas, and the northwest line of said 118-1/2 acre tract, a distance of **1397.62 feet** to a found 1-1/2" iron pipe for the southeast corner of Lot 1 of the Harris Hill Road Sport Vehicle Track Subdivision, a plat of record in Volume 14, Pages 42-43 of Plat Records of Hays County, Texas, for the south corner of a R.O.W. Dedication as shown on said Harris Hill Road Sport Vehicle Track Subdivision Plat, for the east corner of Lot 69 of said Northpoint Section 3 Subdivision, for the southwest corner of a called 5.058 acre tract of land as described and conveyed to Hays County of record in Volume 5158, Page 87 of the Official Public Records of Hays County, Texas, for the north corner of said 118-1/2 acre tract and the most northerly northeast corner of the tract described herein;

THENCE: S 46° 28' 36" E, with the common line between said 118-1/2 acre tract and said 5.058 acre tract, a distance of **10.95 feet** to a found 1/2" iron rod with an orange plastic cap stamped "McGray-McGray" for the northwest corner of a called 11.736 acre tract of land as described and conveyed to Hays County of record in Document No. 16008150 of the Official Public Records of Hays County, Texas, and for the most easterly northeast corner and a point of curvature of the tract described herein;

THENCE: Departing the northeast line of said 118-1/2 acre tract and with the westerly lines of said 11.736 acre tract, the following six (6) courses:

1. With a non-tangent curve to the left having a radius of **9110.00 feet**, an arc length of **60.14 feet**, a delta angle of **000° 22' 42"** and a chord bears, **S 33° 27' 18" W**, a distance of **60.14 feet** to a found 1/2" iron rod with an orange plastic cap stamped "McGray-McGray" for a point of tangency,
2. **S 33° 15' 57" W**, a distance of **948.71 feet** to a found 1/2" iron rod with a yellow plastic cap stamped "Byrn" for an angle,
3. **S 36° 07' 42" W**, a distance of **200.23 feet** to a found 1/2" iron rod with a yellow plastic cap stamped "Byrn" for an angle,
4. **S 33° 15' 57" W**, a distance of **199.98 feet** to a found 1/2" iron rod with a yellow plastic cap stamped "Byrn" for an angle,
5. **S 27° 33' 19" W**, a distance of **100.49 feet** to a found 1/2" iron rod for an angle, and
6. **S 33° 15' 57" W**, a distance of **796.45 feet** to a set 1/2" iron rod with a red plastic cap stamped "Matkin Hoover Eng. & Survey" in the north line of a called 100.0 acre tract of land as described in Volume 154, Page 503 of the Deed Records of Hays County, Texas, for the southwest corner of said 11.736 acre tract, the northwest corner

MATKINHOOVER

ENGINEERING
& SURVEYING

of a called 19.083 acre tract of land as described and conveyed to Hays County of record in Document No. 17041297 of the Official Public Records of Hays County, Texas, in the southwest line of said 118-1/2 acre tract and for the most easterly southeast corner of the tract described herein;

THENCE: N 45° 24' 57" W, with the common line between said 100.0 acre tract and said 118-1/2 acre tract, a distance of **96.67 feet** to a set 1/2" iron rod with a red plastic cap stamped "Matkin Hoover Eng. & Survey" for the northwest corner of said 100.0 acre tract and an interior corner of the tract described herein;

THENCE: S 44° 07' 50" W, with the northwest line of said 100.0 acre tract, a distance of **112.31 feet** to a found 1/2" iron rod for the east corner of a called 312.005 acre tract of land as conveyed to Reuben Nicholai Revocable Trust of record in Volume 2946, Page 47 of the Official Public Records of Hays County, Texas, and for a southerly exterior corner of the tract described herein;

THENCE: N 45° 55' 33" W, with the northeast line of said 312.005 acre tract, a distance of **2853.29 feet** to a found 1/2" iron rod in the apparent southeast right-of-way line of Harris Hill Road, at the apparent west corner of said 33-2/5 acre tract, for the north corner of said 312.005 acre tract and for the west corner of the tract described herein;

THENCE: N 44° 12' 31" E, with the apparent southeast right-of-way line of Harris Hill Road and the apparent northwest line of said 33-2/5 acre tract, a distance of **957.35 feet** to the **POINT OF BEGINNING** and containing **67.94 acres** of land situated in Hays County, Texas.

Note: The basis of bearing was established using the Trimble VRS Network, NAD (83), Texas State Plane Coordinate System, South Central Zone, 4204, US Survey Foot, Grid. A survey plat was prepared by a separate document. Field work completed on January 23, 2020.

Job # 20-4003 67.94 Acres

Date: January 27, 2020



**EXHIBIT - A
METES AND BOUNDS**

**NICOLAI REUBEN
PARCEL**

FIELD NOTES FOR A 311.9 ACRE TRACT OF LAND

A **311.9 acre** tract of land, out of the J. Veramendi Survey, Abstract 17, Hays County, Texas and being all of a called 312.005 acre tract of land as conveyed to Reuben Nicolai Revocable Trust of record in Volume 2946, Page 47 of the Official Public Records of Hays County, Texas. Said **311.9 acre** tract being more particularly described by metes and bounds as follows:

BEGINNING at a found 1-1/2" iron pipe in the apparent northeast right-of-way line of County Road 160 (Harris Hill Road), for the most southerly corner of said 312.005 acre tract and the tract described herein;

THENCE: With the apparent northeast and easterly right-of-way line of Harris Hill Road and the southwest and northwest line of said 312.005 acre tract, the following three (3) courses:

1. **N 45° 55' 28" W**, a distance of **2602.87 feet** to a found 1/2" iron rod for a point of curvature,
2. With a curve to the right having a radius of **250.00 feet**, an arc length of **392.54 feet**, a delta angle of **089° 57' 48"** and a chord bears, **N 00° 52' 20" W**, a distance of **353.44 feet** to a found 1/2" iron rod for a point of non-tangency, and
3. **N 44° 07' 28" E**, a distance of **4516.12 feet** to a found 1/2" iron rod at the apparent west corner of a 33-2/5 acre tract of land as described in Volume 154, Page 504 of the Deed Records of Hays County, Texas, for the north corner of said 312.005 acre tract and the tract described herein;

THENCE: **S 45° 55' 33" E**, departing the apparent easterly right-of-way line of Harris Hill Road and with the northeast line of said 312.005 acre tract, a distance of **2853.29 feet** to a found 1/2" iron rod in the northwest line of a called 100.0 acre tract of land as described in Volume 154, Page 503 of the Deed Records of Hays County, Texas, for the east corner of said 312.005 acre tract and the tract described herein;

THENCE: **S 44° 07' 50" W**, with the common line between said 100.0 acre tract, the northwest line of a called 24.93 acre tract of land as described in Volume 4186, Page 253 of the Official Public Records of Hays County, Texas and said 312.005 acre tract, a distance of **4766.34 feet** to the **POINT OF BEGINNING** and containing **312.005 acres** of land situated in Hays County, Texas.

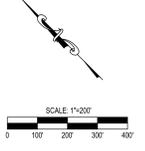
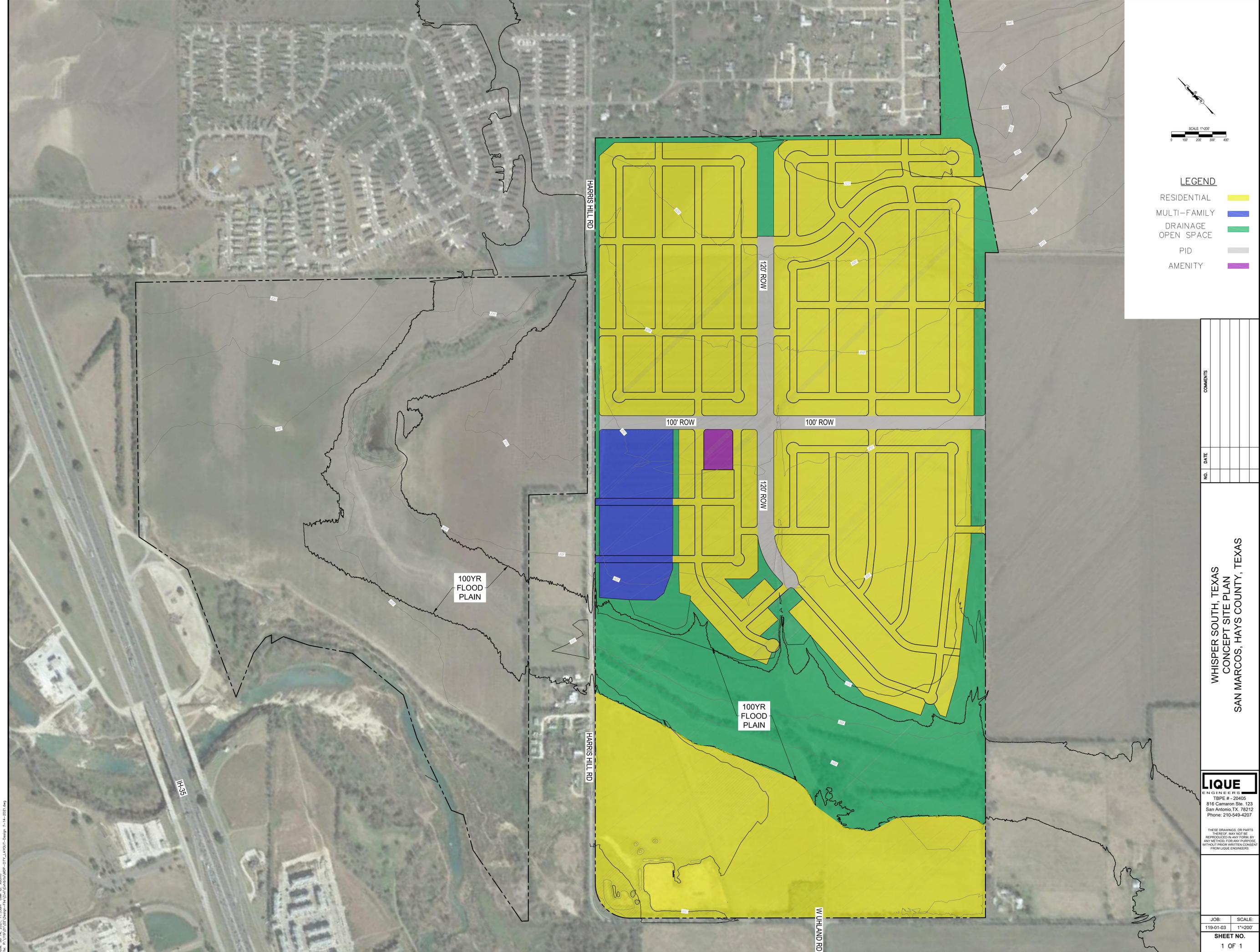
Note: The basis of bearing was established using the Trimble VRS Network, NAD (83), Texas State Plane Coordinate System, South Central Zone, 4204, US Survey Foot, Grid. A survey plat was prepared by a separate document. Field work completed on January 23, 2020.

Job # 20-4003 311.9 Acres

Date: January 27, 2020



Exhibit B
Conceptual Land Use Plan



- LEGEND**
- RESIDENTIAL
 - MULTI-FAMILY
 - DRAINAGE
 - OPEN SPACE
 - PID
 - AMENITY

| NO. | DATE | COMMENTS |
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WHISPER SOUTH, TEXAS
CONCEPT SITE PLAN
SAN MARCOS, HAYS COUNTY, TEXAS

LIQUE
 ENGINEERS
 816 Cameron Ste. 123
 San Antonio, TX. 78212
 Phone: 210-549-4207

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Date: Jul 14, 2023, 11:33am User: R. Acosta
 File: P:\119-01-03\Drawings\119-01-03-01\119-01-03-01.dwg 7/14/2023 11:33am

Exhibit C
Land Use Matrix

| Types of Land Uses | CD-3 Character District 3 | EC Employment Center |
|--|------------------------------|-------------------------|
| Agricultural Uses | | |
| Barns or agricultural buildings | L | -- |
| Stables | L | -- |
| Community Garden | L | P |
| Urban Farm | L | C |
| Plant Nursery | -- | P |
| Accessory Uses and Structures | | |
| Accessory Building/Structure | P | P |
| Accessory Dwelling Unit | L | -- |
| Accessory Use, except as listed below: | P | P |
| Outdoor Storage | -- | L |
| Outdoor Display | -- | L |
| Food Truck | -- | P |
| Drive-thru or Drive-in | -- | P |
| Home Occupation | L | -- |
| Family Home Care | P | -- |
| Short Term Rental | L | P |
| Residential Uses | | |
| Single Family Detached / Tiny Home | P | -- |
| Cottage Court | P | -- |
| Two Family | P | -- |
| Single Family Attached | P | -- |
| Small Multi-Family (up to 9 units) | -- | P |
| Courtyard Housing (up to 24 units) | -- | P |
| Multi-family (10 or more units) | -- | P |
| Purpose Built Student Housing | -- | -- |
| Manufactured Home | -- | -- |
| Mobile Home Community / Manufactured Home Park / Tiny Home Village | -- | -- |
| Community Home | L | P |
| Fraternity or Sorority Building | -- | C |
| Commercial Uses | | |
| Professional Office | -- | L |
| Medical, except as listed below: | -- | L |
| Urgent care, emergency clinic, or hospital | -- | -- |
| Nursing/ retirement home | -- | P |
| Personal Services, except as listed below: | -- | L |
| Animal care (indoor) | C | -- |
| Animal care (outdoor) | C | -- |

| Types of Land Uses | CD-3 Character District 3 | EC Employment Center |
|---|---|-------------------------|
| Funeral Home | -- | -- |
| Adult Oriented Businesses | See Section 18, Article 6 of the City Code | |
| All Retail Sales, except as listed below: | -- | L |
| Gasoline Sales | -- | -- |
| Truck stop | -- | -- |
| Tattoo, body piercing | -- | C |
| Building material sales | -- | -- |
| Vehicle Sales/ Rental | -- | -- |
| Pawnshop | -- | C |
| Restaurant/ Bar, as listed below: | | |
| Eating Establishment | -- | L |
| Bar | -- | -- |
| Mobile Food Court | -- | -- |
| Sale of Alcohol for on premise consumption | -- | C |
| Overnight Lodging, as listed below: | | |
| Bed and Breakfast (up to 8 rooms) | C | P |
| Boutique Hotel (9 - 30 rooms) | -- | P |
| Hotel/ Motel (more than 30 rooms) | -- | P |
| Outdoor Recreation, except as listed below: | -- | P |
| Golf Course | C | C |
| Traveler Trailers/ RVs Short Term Stays | -- | -- |
| Shooting Range | -- | C |
| Indoor Recreation, except as listed below: | -- | P |
| Gym/ Health club | -- | P |
| Smoking Lounge | -- | P |
| Charitable Gaming Facility | -- | C |
| Special Event Facility | -- | -- |
| Public & Institutional | | |
| Civic, except as listed below: | L | P |
| Day Care Center | C | P |
| Parks, Open Space, and Greenways | P | P |
| Minor Utilities | P | P |
| Major Utilities | -- | -- |
| Antenna | See Section 5.1.6.3D of the Land Development Code | |
| Industrial | | |
| Light Industrial | -- | C |

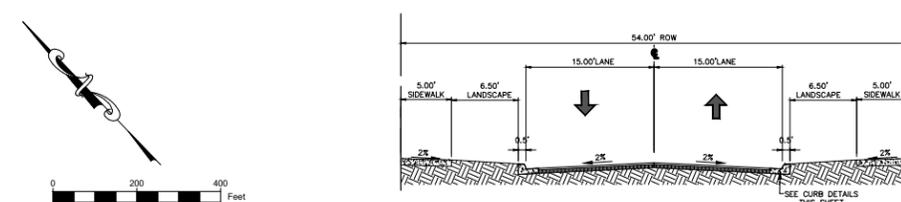
| Types of Land Uses | CD-3 Character District 3 | EC Employment Center |
|-----------------------------------|------------------------------|-------------------------|
| Light Manufacturing | -- | P |
| Vehicle Service, as listed below: | | |
| Car Wash | -- | C |
| Vehicle repair (minor) | -- | C |
| Vehicle repair (major) | -- | C |
| Warehouse & Distribution | -- | P |
| Waste-Related service | -- | -- |
| Wholesale trade | -- | P |
| Self Storage | -- | C |
| Research and Development | -- | C |
| Wrecking/Junk Yard | -- | -- |

(Ord. No. 2020-60, 9-1-2020)

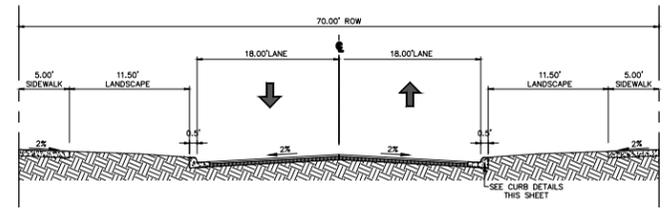
Key to Use Table

1. Permitted Use (P)
2. Limited Use (L)
3. Conditional (C)
4. Uses Not Permitted (--)

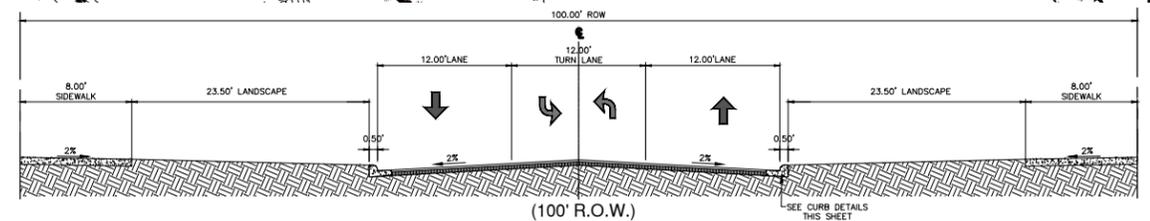
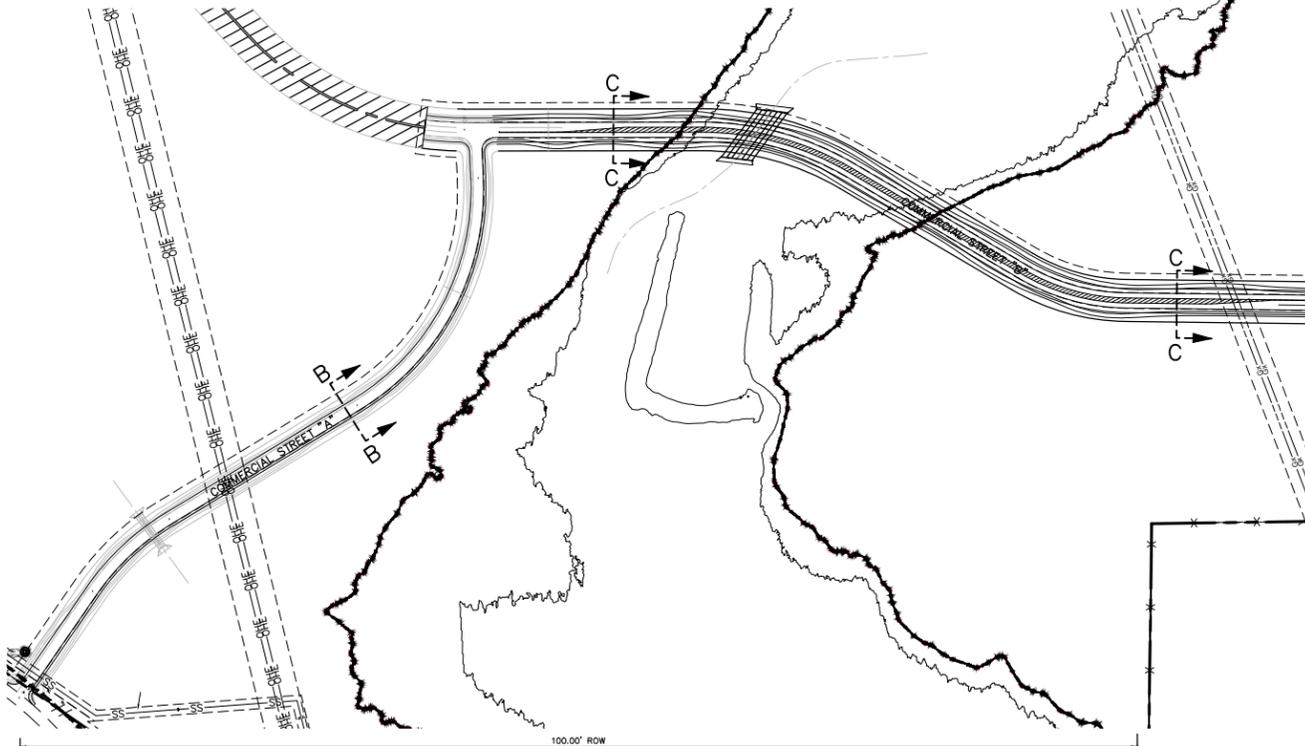
Exhibit D
Street Sections



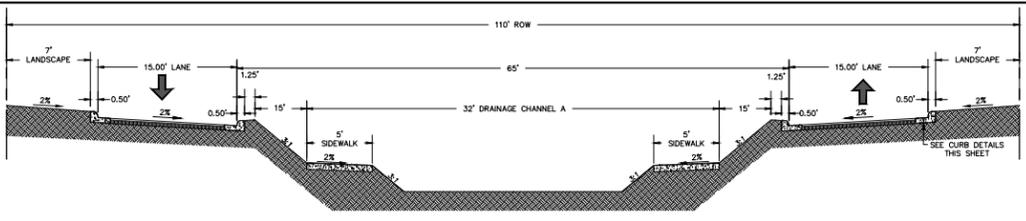
(54' R.O.W.)
RESIDENTIAL STREET SECTION
NOT-TO-SCALE
SECTION A-A



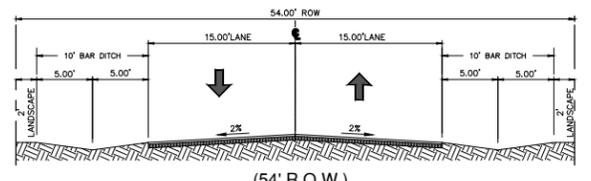
(70' R.O.W.)
COLLECTOR STREET SECTION
NOT-TO-SCALE
SECTION B-B



(100' R.O.W.)
COMMERCIAL STREET SECTION
NOT-TO-SCALE
SECTION C-C



(110' R.O.W.)
COLLECTOR STREET SECTION
NOT-TO-SCALE
SECTION D-D



(54' R.O.W.)
RESIDENTIAL STREET SECTION
NOT-TO-SCALE
SECTION E-E



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WHISPER SOUTH CORE INFRASTRUCTURE
 HARRIS HILL RESIDENTIAL LAND HOLDINGS, LTD. &
 HARRIS HILL COMMERCIAL LAND HOLDINGS, LTD.
 SAN MARCOS, HAYS COUNTY, TEXAS
STREET SECTION EXHIBIT

LIQUE
 ENGINEERS
 TBPE # - 20405
 816 Cameron Ste. 123
 San Antonio, TX. 78212
 Phone: 210-549-4207

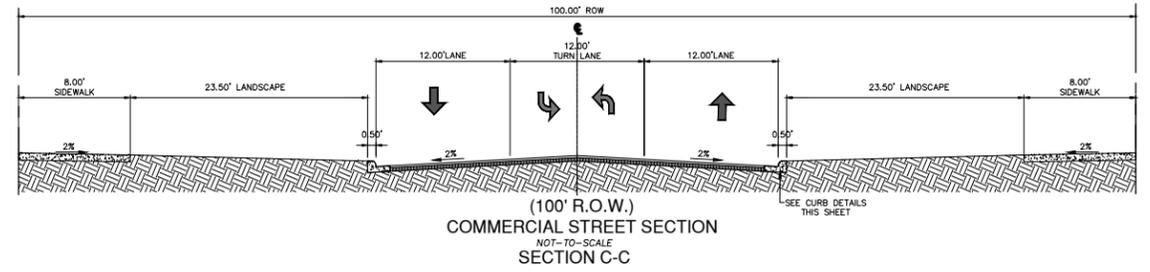
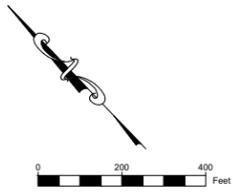
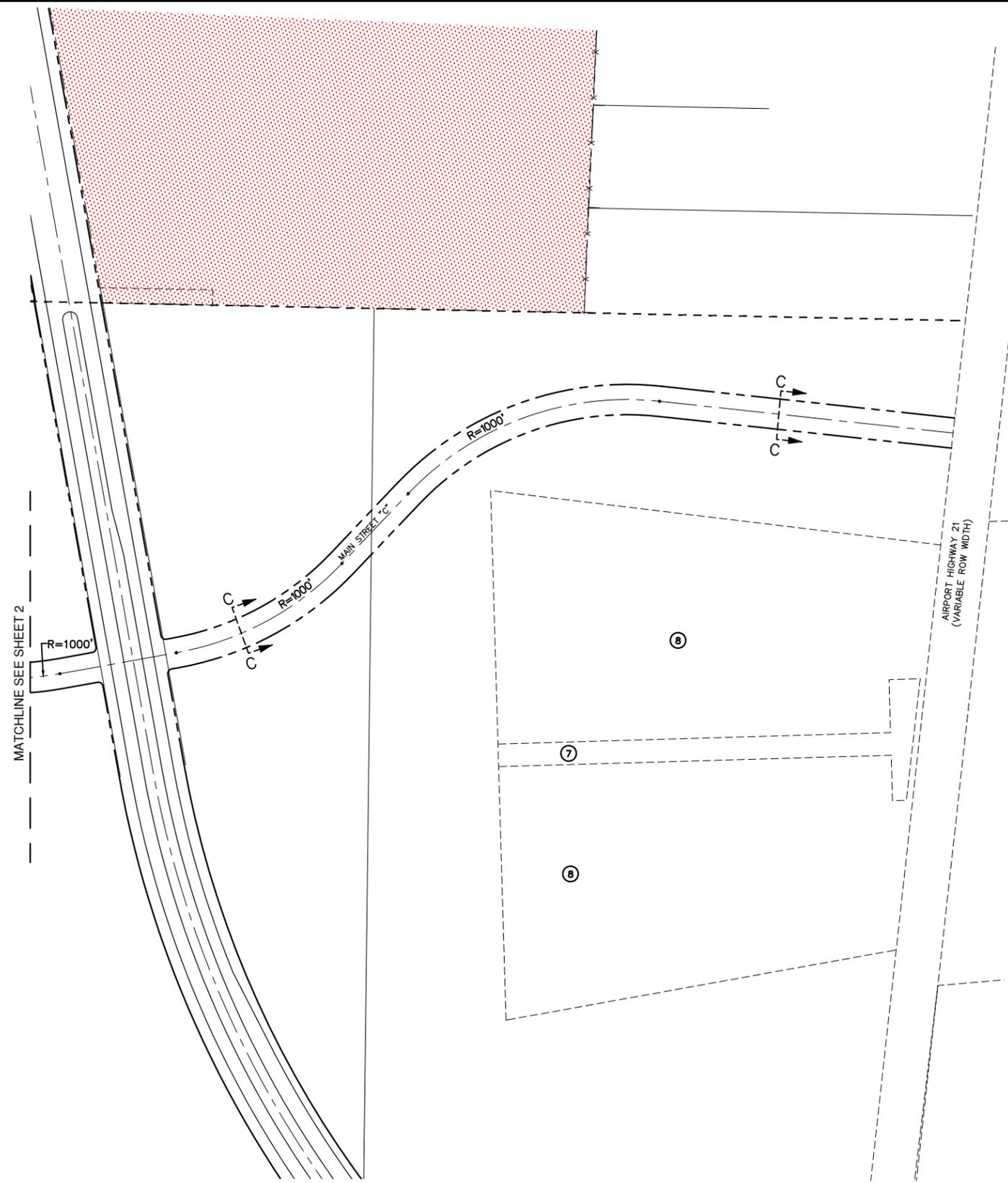
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 ONLY UNDER THE
 AUTHORIZATION OF:
 DAMIAN ESQUIVEL,
 P.E. #98362

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| DATE: | March 1, 2021 |
| JOB: | SCALE: |
| 119-01-02 | 1"=200' |

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(100' R.O.W.)
 COMMERCIAL STREET SECTION
 NOT-TO-SCALE
 SECTION C-C

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WHISPER SOUTH CORE INFRASTRUCTURE
 HARRIS HILL RESIDENTIAL LAND HOLDINGS, LTD. &
 HARRIS HILL COMMERCIAL LAND HOLDINGS, LTD.
 SAN MARCOS, HAYS COUNTY, TEXAS
STREET SECTION EXHIBIT

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 ENGINEERS
 TBPE # - 20405
 816 Cameron Ste. 123
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| DATE: | March 1, 2021 |
| JOB: | SCALE: |
| 119-01-02 | 1"=200' |

Exhibit E
Block Perimeter Exhibit

