

ORDINANCE NO. _____

1 AN ORDINANCE ESTABLISHING INITIAL PERMANENT ZONING FOR THE
2 PROPERTY GENERALLY KNOWN AS THE WHISPER VALLEY PLANNED
3 UNIT DEVELOPMENT PROJECT COMPRISED OF 2,066 ACRES OF LAND,
4 MORE OR LESS, LOCATED EAST OF FM 973 AND APPROXIMATELY 782 FEET
5 NORTH OF THE INTERSECTION OF FM 969 AND TAYLOR LANE; WITHIN A
6 LIMITED PURPOSE ANNEXATION AREA; AND CHANGING THE ZONING
7 MAP FROM UNZONED TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

8
9 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

10
11 **PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to
12 change the base district from unzoned to planned unit development (PUD) district on the
13 property described in Zoning Case No. C814-2009-0094, on file at the Planning and
14 Development Review Department, as several parcels of land consisting of approximately
15 2066.284 acres in Travis County, Texas, shown in Exhibit A (the "Property"). The Property
16 is generally located east of FM 973 and approximately 782 feet north of the intersection of
17 FM 969 and Taylor Lane.

18
19 **PART 2.** This ordinance and the attached Exhibits A through I are the land use plan (the
20 "Land Use Plan") for the Whisper Valley planned unit development district (the "PUD")
21 created by this ordinance. Development of and uses within the PUD shall conform to the
22 limitations and conditions set forth in this ordinance and in the Land Use Plan . If this
23 ordinance and the attached exhibits conflict, this ordinance controls. Except as otherwise
24 provided by this ordinance or by Section 245.004 of the Local Government Code,
25 development within the PUD is subject to the ordinances, regulations, and rules in effect on
26 the effective date of this ordinance for a period conforming to the term set forth in Section
27 13.02 of the Whisper Valley and Indian Hills Annexation and Development Agreement,
28 effective June 18, 2009, ("Development Agreement") attached as Exhibit J. To the extent
29 applicable, the terms of the Development Agreement apply to development of the Property.

30
31 **PART 3.** The attached exhibits are incorporated into this ordinance in their entirety as
32 though set forth fully in the text of this ordinance. The exhibits are as follows:

33 Exhibit A: Description of Property
34 Exhibit B: Park Improvement Plan
35 Exhibit C: Grow Green Native and Adapted Landscape Plants
36 Exhibit D: Protected Headwaters Map

- 1 Exhibit E: CWQZ/PUD Road Crossing Exhibit
- 2 Exhibit F: Street Section Comparison
- 3 Exhibit G: Compatibility Standards and Regulations
- 4 Exhibit H: Zoning Use Summary Table
- 5 Exhibit I: Site Development Regulations
- 6 Exhibit J: Development Agreement

7 8 **PART 4. Definitions**

9 10 A. In this ordinance:

- 11
- 12 1. INDIAN HILLS PROJECT means the land identified in zoning ordinance
- 13 C14-2009-0089 on file with the City of Austin Planning and Development
- 14 Review Department.
- 15

16 **PART 5. Open Space and Parkland**

- 17
- 18 A. As set forth in Section 3.08(b) of the Development Agreement, the developer
- 19 shall provide a total of at least 700 acres of publicly-dedicated and private open
- 20 space.
- 21
- 22 B. As set forth in Section 3.08(a)(2) of the Development Agreement, private open
- 23 space for the benefit of some or all of the residents, tenants, and invitees of the
- 24 PUD will be provided at a level of 10 acres of open space for every 500 single-
- 25 family lots platted.
- 26
- 27 C. As set forth in Section 3.08(a)(1) of the Development Agreement, parkland
- 28 dedication requirements for the PUD are satisfied up to total of 9,028 residential
- 29 units in combined total with the Indian Hills Project. Additional parkland
- 30 dedication and/or fees will not be required unless the number of residential units
- 31 exceeds 9,028.
- 32
- 33 D. As set forth in Section 3.08 of the Development Agreement, the developer shall
- 34 provide for community amenities within the open space and parkland areas of the
- 35 PUD as outlined in the Whisper Valley Master Parkland Agreement on file with
- 36 the Director of the City of Austin Parks and Recreation Department.
- 37
- 38 E. Development within the publicly-dedicated open space area is limited to 27.21
- 39 acres of impervious cover.
- 40

- 1 F. Development of a park and ride/transportation terminal use within the open space
2 areas is limited to four acres of impervious cover over a five-acre site.
3
- 4 G. As set forth in Section 3.08(f) of the Development Agreement, permitted
5 activities within the publicly-dedicated open space areas may include, but are not
6 limited to, those activities outlined in the Whisper Valley Master Parkland
7 Agreement on file with the Director of the City of Austin Parks and Recreation
8 Department.
9
- 10 H. As set forth in Section 3.08(e) of the Development Agreement, additional
11 activities prohibited in all open space areas include the use of biocides, dumping,
12 and placement or use of underground storage tanks.
13

14 **PART 6. Environmental**

15

- 16 A. Development of the site shall comply with requirements of the Austin Energy
17 Green Building Program (GBP) multifamily, single family, or commercial rating
18 system for a minimum two-star rating. Certification from the GBP shall be based
19 on the version of the rating system in the Austin Energy GBP rating packets.
20
- 21 B. Each site plan application filed for open space, commercial and multifamily
22 development shall use plant material recommended in the Grow Green Native
23 and Adapted Landscape Plants list attached as Exhibit C. Plants on the Invasive
24 Species/Problem Plants list, attached as part of this exhibit, may not be included.
25
- 26 C. For each site plan application filed for commercial, industrial, mixed use,
27 multifamily residential or open space areas for the project, the developer shall
28 submit an integrated pest management (IPM) plan that complies with Section
29 1.6.9.2(D) and (F) of the Environmental Criteria Manual to the Director of the
30 Planning and Development Review Department (the "Director") for approval of
31 the plan.
32
- 33 D. As set forth in Exhibit J of the Development Agreement, the developer of the
34 PUD will plant a sufficient number of trees such that, at ultimate maturity, the
35 tree canopy for the entire site will be equal to or greater than the tree canopy
36 existing on June 18, 2009.
37
- 38 E. As set forth in Exhibit J of the Development Agreement, the developer of the
39 PUD will use wet ponds, bio-filtration systems and other similar innovative water

quality controls instead of traditional water quality controls when commercially reasonable and cost effective.

- F. As set forth in Section 7.01 and Exhibit J of the Development Agreement, the developer of the PUD will utilize the headwater areas of Gilleland Creek to further treat runoff, and therefore enhance water quality. This will be accomplished primarily by protecting those headwater areas identified in Exhibit D. Headwaters are deemed to be those areas draining less than 320 acres. Permitted development in the headwater drainage areas will include roadway crossings, utility crossings, and water quality facilities.
- G. As set forth in Section 7.02 of the Development Agreement, seven of the 13 Critical Environmental Features (CEFs) identified in Exhibit E shall be preserved with a 150 foot setback as required by Code. The remaining six CEFs will be mitigated according to the Environmental Criteria Manual (ECM) Section 1.3.0(B)(1)(f)(3, 4, 5, or 6).
- The Director may reduce the referenced setbacks if appropriate mitigation is provided. The Director may allow pedestrian facilities (i.e. trails and associated facilities) within the referenced setbacks. Fencing of setbacks is not required.
- H. The use of tar sealants or other pavement sealants is prohibited.
- I. As set forth in Section 8.01(b) of the Development Agreement, any private street developed within the PUD will be treated as a "roadway" for purposes of Sections 25-8-341 (*Cut Requirements*) and 25-8-342 (*Fill Requirements*) of the Code. Street design and construction of streets, alleys, and pedestrian paths may be designed and constructed in accordance with the Standards Criteria Manual, the Standard Specifications Manual, or the standards set forth in Exhibit F.

PART 7. Public Facilities

- A. As set forth in and subject to the terms of Section 3.05(c) of the Development Agreement, the developer shall reserve one site of not more than 5 acres for a Transit Center/Transportation Terminal in one of the approximate locations shown on Exhibit B.
- B. As set forth in and subject to the terms of Section 3.05(d) of the Development Agreement, the developer shall reserve two sites for either public primary or

1 public secondary schools in one of the approximate locations shown on Exhibit
2 B.

- 3
- 4 C. As set forth in Section 3.05(e) of the Development Agreement, the developer
5 shall dedicate one two-acre site for a public safety facility site. The developer
6 shall temporarily provide land adjacent to the public safety facility site (not to
7 exceed 1 acre) if required by the City of Austin to facilitate the concurrent
8 dissembling of the ESD Fire Station and construction of the City of Austin Fire
9 Station. The approximate location of the public safety facility site is shown on
10 Exhibit B and will be dedicated no later than the approval of the final plat for the
11 phase in which the public safety facility site is located as shown on Exhibit B.
- 12
- 13 D. Development of the initial fire station site for the Travis County Emergency
14 Services District #12 (ESD) and the future City of Austin Fire Station shall
15 follow the Covenants, Conditions and Restrictions (CCR's) recorded by the
16 developer of the PUD and shall not be required to follow the City of Austin's
17 Commercial Design Standards.
- 18
- 19 E. As set forth in and subject to the terms of Section 3.05(f) of the Development
20 Agreement, the developer shall reserve one site for a library in one of the
21 approximate locations shown on Exhibit B.
- 22

23 **PART 8. Affordable Housing Program**

- 24
- 25 A. As set forth in Section 3.14 of the Development Agreement, the developer shall
26 set aside at least 10% of the owner occupied residential units within the PUD for
27 occupancy by households whose income is less than 80% of the median family
28 income in the Austin metropolitan statistical area ("Affordable Ownership
29 Requirement"). Affordable housing provided under this section cannot be used
30 to meet affordable housing requirements for a Vertical Mixed Use bonus or
31 exception and vice-versa.
- 32
- 33 B. The Affordable Ownership Requirement for condo-style projects shall be based
34 on number of units and calculated on a condo project-by-condo project basis.
35 Condo style projects shall follow the same multi-bedroom unit requirements as
36 are set forth for apartments in Paragraph E, below. For other forms of single
37 family housing (either attached or detached), affordability shall also be calculated
38 based on the number of units and, to the extent economically feasible, shall be
39 spread across the various product types within the PUD. Although there shall be
40 no requirement that each project or plat within the PUD contain a specific

1 number of affordable units, the Developer shall be responsible for ensuring that
2 ultimately the entire PUD contains the requisite number of affordable ownership
3 units. The Developer shall report to the Director of the Neighborhood Housing
4 Community Development on the status of the number and location of affordable
5 ownership units within the PUD on a semi-annual basis commencing on the date
6 the first plat is recorded.

- 7
- 8 C. Notwithstanding the foregoing, if the Developer provides more affordable units
9 in any given apartment project than the ten percent required per Paragraph D,
10 below, then the number of units required to meet the Affordable Ownership
11 Requirement in the PUD shall be reduced (i) on a 1.5:1 ratio for up to three
12 percent of the ten percent Affordable Ownership Requirement for the PUD; and
13 (ii) on a 4:1 ratio for up to an additional two percent of the ten percent Affordable
14 Ownership Requirement for the PUD. Provided however, in no event shall the
15 number of units required to meet the Affordable Ownership Requirement in the
16 PUD be reduced below five percent of total ownership units through the method
17 described above.
- 18
- 19 D. As set forth in Section 3.14 of the Development Agreement, the developer shall
20 set aside at least 10% of the rental units for multifamily residential within the
21 PUD for occupancy by households whose income is less than 60% of the median
22 family income in the Austin metropolitan statistical area ("Affordable Rental
23 Requirement"). Affordable housing provided under this section cannot be used
24 to meet affordable housing requirements for a Vertical Mixed Use bonus or
25 exception and vice-versa.
- 26
- 27 E. As set forth in Section 3.14(b) of the Development Agreement, the Affordable
28 Rental Requirement shall be based on number of units and calculated on an
29 apartment project-by-apartment project basis. The ratio of affordable single units
30 to affordable multi-bedroom units shall be equal to the ratio of total single to total
31 multi-bedroom units for the applicable project. The affordable units within any
32 given apartment project shall be interspersed with market rate units.
- 33

34 **PART 9. Transportation and Bicycle Plan**

- 35
- 36 A. The PUD shall provide internal bicycle routes for access and continuity to
37 existing or planned bicycle routes as identified in the Austin 2020 Bicycle Plan as
38 of the effective date of this ordinance for the following routes:
- 39
- 40 a. Segment #71.05 - FM 973N from US 290 E to FM 969;

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- b. Segment #14.24 - New road from FM 973 to Taylor Lane;
 - c. Segment #77.05 - Taylor Lane from Blake Manor to FM 969; and
 - d. Segment #971.14 - Gilleland Creek Greenway from FM 973 to FM 969.
- B. The number of bicycle parking spaces shall equal at least five percent of required motor vehicle parking. At least half the total spaces shall be either (a) Class I racks/parking spaces as defined in the City Transportation Criteria Manual or (b) spaces in a locked bicycle storage room with a means to secure individual bicycles within the room. Review and approval of bicycle parking placement by the City of Austin Bicycle Program or any successor program is required prior to site plan approval.
- C. A building containing one or more office uses that total 25,000 square feet or more shall include shower facilities for bicycle riders. A building containing more than 25,000 square feet, but less than 50,000 square feet of office uses shall provide one private unisex facility. A building containing more than 50,000 square feet, but less than 100,000 square feet of office uses shall provide one private facility for each gender. A building containing more than 100,000 square feet, but less than 500,000 square feet of office uses shall provide private shower facilities with two showers for each of both sexes. A building containing more than 500,000 square feet of office uses shall provide private shower facilities with three showers for each of both sexes. The facilities shall be separate from the office toilet facilities and include an area for changing clothes and storing personal items. The facilities may be located outside of the building in a common area accessible to all buildings subject to this requirement. The shower facilities shall also be provided if the office building includes retail uses as well. Shower facilities need only be accessible to employees in the building.
- D. A publicly accessible 12-foot wide trail generally following the alignment shown on Appendix J of the 2009 Austin Trails Master Plan shall be provided within the designated public open space areas of the PUD and shall be dedicated when the parkland is dedicated to the City of Austin.
- E. As set forth in Section 8.01(c) of the Development Agreement, alternative street standards including street tree and building placement are attached as Exhibit F.

- 1 F. A site plan or building permit may not be approved, released, or issued, if the
2 completed development or uses in the PUD, considered cumulatively with all
3 existing or previously authorized development and uses, generate traffic that
4 exceeds the total traffic generation for the PUD specified in that certain Traffic
5 Impact Analysis ("TIA") prepared by Bury + Partners, Inc., dated July 2009, or
6 as amended and approved by the Director. All development in the PUD is
7 subject to the recommendations contained in the memorandum from the
8 Transportation Review Section of the Planning and Development Review
9 Department dated June 7, 2010 and the Declaration of Traffic Phasing Restrictive
10 Covenant recorded in the real property records of Travis County, Texas. The
11 TIA shall be kept on file at the Planning and Development Review Department.
12
- 13 G. As set forth in Section 8.02 of the Development Agreement, driveways and curb
14 cuts shall be permitted from every lot within a single-family residential area.
15 Notwithstanding the foregoing, driveways and curb cuts to public rights-of-way
16 maintained by the Texas Department of Transportation may be subject to
17 driveway and access standards established by the Texas Department of
18 Transportation. The City may prohibit certain driveways and curb cuts if such
19 driveways and curb cuts create a traffic safety hazard.
20
- 21 H. A collector street shall remain a collector street for its entire length. A collector
22 street shall not transition to a local street.
23
- 24 I. Right-of-way shall be dedicated at platting in at least two locations to provide
25 connectivity to the area north of the PUD.
26
- 27 J. At least three sections of right-of-way shall be dedicated at platting along both
28 sides of Braker Lane to allow busses to pull off of Braker Lane without stopping
29 traffic.
30
- 31 K. All internal street sections must comply with the proposed alternative street
32 sections shown in Exhibit F or with the Transportation Criteria Manual (TCM).
33 A collector street constructed under the TCM shall include bicycle lanes.
34

35 **PART 10. Signage**

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- 37 A. The developer shall have the right to install and maintain project identity signage
38 within the open space as outlined in the Whisper Valley Master Parkland
39 Agreement on file with the Director of the City of Austin Parks and Recreation
40 Department.

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2 **B.** Signage within the Commercial District of the PUD shall be governed by the
3 requirements set forth in the Commercial Sign District of the City Code. Signage
4 within the Mixed Use and Residential Districts shall be governed by the
5 requirements set forth in the Neighborhood Commercial Sign District of the City
6 Code.
7

8 **PART 11. Continuation of Existing Uses and Activities.** As set forth in Section 3.03 of the
9 Development Agreement, the following land uses and activities that currently exist within the
10 PUD as of the date of this ordinance shall be allowed to continue operating in the same
11 manner, upon limited purpose annexation of the PUD into the City: (i) agricultural (including
12 without limitation, ranching and farm uses); and (ii) hunting. Hunting within the PUD shall
13 be prohibited after issuance of the first building permit for any part of the PUD.
14

15 **PART 12. Code Modifications.** In accordance with Chapter 25-2, Subchapter B, Article 2,
16 Division 5 (*Planned Unit Developments*) of the Code, the following site development
17 regulations apply to the PUD instead of otherwise applicable City regulations.
18

19 **A. Zoning**

- 20
- 21 1. Chapter 25-2, Subchapter C, Article 10 (*Compatibility Standards*) of the
22 Code does not apply to the PUD; such regulations are controlled by
23 Exhibit G of this ordinance.
24
 - 25 2. Section 25-2-243 (*Proposed District Boundaries Must Be Contiguous*) of
26 the Code does not apply to the PUD.
27
 - 28 3. Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) of the
29 Code does not apply to the PUD; such regulations are controlled by
30 Exhibit H of this ordinance.
31
 - 32 4. Section 25-2-492 (*Site Development Regulations*) of the Code does not
33 apply to the PUD; such regulations are controlled by Exhibit I of this
34 ordinance.
35

36 **B. Subdivision**

- 37
- 38 1. Subsection (B) of Section 25-4-33 (*Original Tract Requirement*) of the
39 Code is modified to provide that a portion of an original tract may be
40 included in a subdivision application.

2. Section 25-4-154 (*Street Design and Construction*) of the Code is modified to provide that streets, alleys, and pedestrian paths shall be designed and constructed in accordance with Exhibit F of this ordinance.
3. Section 25-4-171 (*Access to Lots*) of the Code is modified to allow the Director to grant a variance to Subsection (A) of this section if the Director determines that an adequate alternative for resident and emergency access is available.

C. Transportation

1. Section 25-6-171 (*Standards for Design and Construction*) of the Code does not apply to the PUD; such regulations are controlled by Exhibit F of this ordinance.

D. Environmental

1. Subsection (B)(1) of Section 25-8-262 (*Critical Water Quality Zone Street Crossings*) of the Code is modified to allow an arterial or collector street to cross a major critical water quality zone in 4 locations as indicated in Exhibit E of this ordinance without being identified in the Transportation Plan.
2. Subsection (B)(2)(a) of Section 25-8-262 (*Critical Water Quality Zone Street Crossings*) of the Code is modified to allow an arterial or collector street to cross an intermediate waterway critical water quality zone within 2,500 feet on the same waterway in 4 locations as indicated in Exhibit E of this ordinance.
3. Section 25-8-42 (*Administrative Variances*) of the Code is modified to allow the Director to grant a variance from the requirements of Chapter 25-8, Subchapter A, Article 7, Division 3 (*Construction on Slopes*).
4. Subsection (C) of Section 25-8-394 (*Uplands Zone*) and Section 25-2-492 (*Site Development Regulations*) of the Code are modified to allow for development intensity to be transferred; and allowing for maximum impervious cover limitations as described on Exhibit I.

- 1 5. Section 25-8-604 (*Development Application Requirements*) of the Code
2 and Section 3 (*Tree Surveys*) of the Environmental Criteria Manual are
3 modified to allow for mesquite trees in the right-of-way area that are 8"
4 and larger to be cataloged only and not surveyed. The mitigation for each
5 cataloged mesquite will be a 2" replacement tree. Areas outside of the
6 right-of-way will be surveyed at site plan and will comply with City Code.

7
8 E. Signage

- 9
10 1. Section 25-10-82 (*Determination of Applicable Sign District*) of the Code
11 is modified to allow for signage within the Commercial District to be
12 governed by the requirements set forth in the Commercial Sign District of
13 the City Code. Signage within the Mixed Use District and Residential
14 District shall be governed by the requirements set forth in the
15 Neighborhood Commercial Sign District of the City Code.

16
17
18 **PART 13.** This ordinance takes effect on _____, 2010.

19
20
21 **PASSED AND APPROVED**

22
23 §

24 §

25 _____, 2010 § _____

26 Lee Leffingwell
27 Mayor

28
29
30 **APPROVED:** _____

31 Karen M. Kennard
32 Acting City Attorney

33 **ATTEST:** _____

 Shirley A. Gentry
 City Clerk