

EXHIBIT A

FIRST AMENDMENT TO AGREEMENT CONCERNING CREATION AND OPERATION OF WINFIELD MUNICIPAL UTILITY DISTRICTS NOS. 1, 2, 3 AND 4

THE STATE OF TEXAS §
 § KNOWN ALL BY THESE PRESENTS:
COUNTIES OF TRAVIS §
AND HAYS

THIS FIRST AMENDMENT TO AGREEMENT CONCERNING CREATION AND OPERATION OF WINFIELD MUNICIPAL UTILITY DISTRICTS NOS. 1, 2, 3 AND 4 (“**First Amendment**”) is entered into by and among the CITY OF AUSTIN, TEXAS, a Texas home rule city (the “**City**”), **SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 1** (“**District 1**”), **SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 2** (“**District 2**”), **SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 3** (“**District 3**”), **SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 4** (“**District 4**”) (District 1, District 2, District 3, and District 4 [collectively referred to in this First Amendment as the “**Districts**”]) were formerly Winfield Municipal Utility Districts Nos. 1, 2, 3 and 4), the Districts acting by and through their duly authorized Boards of Directors under the authority of Section 43.0751 of the Texas Local Government Code, **2428 PARTNERS, LLC**, a Texas limited liability company (the “**Initial Landowner**”), and **A&M OPTION 541, LLC**, a Texas limited liability company (the “**A&M Option 541**”) (collectively, the Initial Landowner and A&M Option 541 and their successors and assigns are referred to as the “**Landowner**”).

WHEREAS, the City, Winfield Municipal Utility Districts Nos. 1, 2, 3 and 4, and the Initial Landowner executed that certain Agreement Concerning Creation and Operation of Winfield Municipal Utility Districts Nos. 1, 2, 3 and 4 (the “**Agreement**”), which is recorded as Document No. 2015_____ of the Official Public Records of Travis County, Texas and as Document No. 2015_____, Volume _____, Page _____ of the Official Public Records of Hays County, Texas and remains in effect;

WHEREAS, the City has annexed District 2 into its limited purpose jurisdiction;

WHEREAS, the City and District 2 wish to amend the Land Plan (defined below) for District 2 to permit a wider variety of development, including single-family development;

WHEREAS, A&M Option 541 is the owner and developer of a substantial portion of the property within District 2, and, with respect to such property, is the successor to the Initial Landowner’s rights and obligations under the Agreement;

WHEREAS, A&M Option 541 has filed an application, bearing Case Number C814-2014-0083, to the City for a mixed-use, Planned Unit Development within District 2 consistent with the amended Land Plan;

WHEREAS, the Texas Commission on Environmental Quality ("TCEQ") has issued Certificate of Convenience and Necessity ("CCN") No. 11316 to District 4 authorizing it to provide retail water service to approximately 575.7 acres, more or less, in Hays County and Travis County, Texas, which comprises the entire land area of District 2;

WHEREAS, the City and the Districts have determined that it is in the best interest of both Parties and also potential customers in District 2 to allow the City to provide retail water service within the boundaries of District 2;

WHEREAS, the City and the Districts wish to amend the Agreement to allow the City to provide retail water service within the boundaries of District 2;

WHEREAS, the Districts have, by formal action, approved the terms of this First Amendment in open session at meetings held in accordance with the Open Meetings Act;

WHEREAS, the City has by vote of Council approved on final reading the terms of this First Amendment as Ordinance No. 20150910-_____ at a meeting held on 10 September 2015 in accordance with the Open Meetings Act; and

WHEREAS, all procedural requirements imposed by state law for the adoption of this Amendment have been met;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the parties contained in the Agreement and this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all of the parties to this First Amendment, the City and the Districts severally and collectively agree and by the execution hereof shall be bound to the obligations and to the performance and accomplishment of the hereinafter described amendments, modifications, alterations and changes to the Agreement in the following respects only and all other terms and conditions remain as stated in the original Agreement:

I.

The **Recitals** of the Agreement are hereby amended as follows:

The current Recital H is relabeled as Recital I.

Add a new Recital H as follows:

H. District 2 held an election 12 May 2007 to (a) confirm creation of District 2, and (b) authorize (i) the issuance of \$12,465,000 bonds for system facilities and the levy of taxes in payment of the bonds, and (ii) the issuance of \$18,700,000 refunding bonds for system facilities and the levy of taxes in payment of the refunding bonds (collectively, the "**Authorized Bond Amounts**").

II.

Article II (Strategic Partnership Agreement) of the Agreement is hereby amended as follows:

The first sentence in the Article II paragraph is amended by deleting in its entirety the phrase “attached hereto as Exhibit E” and the capitalized term stating “Limited Purpose Annexation Land” is deleted and substituted with the phrase “Limited Purpose Annexation Property.”

III.

Article III (Issuance of Bonds by Districts) of the Agreement is hereby amended as follows:

Paragraph B is amended to read:

B. District 2 agrees that it shall issue bonds and refunding bonds only for the purposes and in the manner provided by applicable law and regulations and as permitted herein and in a total amount that does not exceed the Authorized Bond Amounts without approval by the City Council of the City. For each proposed issue of bonds by District 2, District 2 shall submit to the City, in accordance with the City's regulations governing same, a request for the City's approval of the bonds, including, without limitation, copies of the engineering report provided to the Commission, the draft bond resolution and the draft preliminary official statement for the bonds. All bonds and refunding bonds of District 2 shall be subject to review and approval by the City Council of the City prior to the issuance thereof. Such approval shall not be unreasonably withheld or delayed and may be withheld only (i) if either Landowner or District 2 is in material breach of this Agreement or the Strategic Partnership Agreement, or (ii) as otherwise permitted by law. District 2 may issue bonds only for the purposes of (a) acquiring, constructing, purchasing, operating, repairing or improving water, sanitary sewer and drainage facilities, (b) developing, operating, and maintaining Parks and Recreational Facilities as authorized by Subchapter N of Chapter 49 (Sections 49.461, et seq.), Texas Water Code, as amended, and (c) paying expenses authorized by Section 49.155, Texas Water Code, as amended.

Paragraph D is amended to read:

D. Unless otherwise approved in writing by the Director of the City's Department of Financial and Administrative Services, or its successor department:

(1) District 2 shall not issue bonds to acquire, construct or pay the Landowner for park land or park facilities required to be dedicated or constructed by Article IX, Paragraph F of this Agreement in excess of the amount specified in Section 49.4645 of the Texas Water Code;

(2) the bonds of District 2 shall provide for principal and interest payments that are generally level during the period of amortization of the

bonds, except for an initial period not to exceed twenty-four (24) months after issuance of any series of bonds where District 2 may utilize capitalized interest to defer principal retirement;

(3) all new bond issues of District 2 shall have an optional redemption date beginning approximately ten years after issuance of the series of bonds being issued;

(4) the term of refunding bonds of District 2 shall not exceed the original term of the refunded bonds;

(5) a proposed issue of refunding bonds of District 2 shall meet the requirements of the City's approved financial policies in effect at the time of the refunding; and

(6) the proceeds of District 2's bonds may be used for any lawful purpose; provided, however, in regard to District 2 Internal Facilities and the cost of District 2's share of Regional Facilities that are water mains (which are less than or equal to twenty-four (24) inches in diameter), wastewater mains, lift stations, force mains, and associated appurtenances located within District 2 (collectively known as the "**Article III. D. (6) Facilities**"), such proceeds shall not be used to reimburse any developer expenditure for Article III.D.(6) Facilities by more than seventy percent of the cost of such Article III.D.(6) Facilities. For purposes of this paragraph, "District 2 Internal Facilities" and "District 2's share of Regional Facilities" shall not include the Far South Pressure Zone Facilities (defined in Article VI.B.5. below).

IV.

Article VI (Area of, and Limitations on, Service) of the Agreement is amended by labeling the existing paragraph of Article VI as paragraph "A. Service Limitations." and by adding the following new paragraphs to Article VI:

B. District 2 Retail Water Service.

1. Certificate of Convenience and Necessity. Upon approval of a Planned Unit Development Ordinance for District 2 consistent with the Land Plan described in Article IX, the City, District 2, and District 4 shall collectively apply to the Texas Public Utility Commission (the "**PUC**") for the transfer to the City of the portion of the certificate of convenience and necessity which is referred to as CCN No. 11316 issued by the PUC with respect to all retail water service within District 2 in order to allow the City to provide all retail water service

within the geographic area of District 2 (the “**District 2 CCN Transfer**”).

2. Interim Service. The City shall be authorized to provide retail water service within District 2 pending approval of the District 2 CCN Transfer application to the PUC as set forth in this Agreement. Nothing in this Agreement shall in any way impair, or adversely affect District 4’s right to provide retail water service to any customers within CCN No. 11316, excepting District 2, before approval of the District 2 CCN Transfer by the PUC.

3. Application by City for Certification. District 2 and District 4 shall cooperate reasonably with the City in filing an appropriate application for the District 2 CCN Transfer with PUC. District 2 and District 4 shall support and cooperate with the City and PUC to obtain PUC approval of the District 2 CCN Transfer in a reasonably expeditious manner. Neither District 2 nor District 4 shall be responsible for costs associated with preparing and filing the District 2 CCN Transfer application or the pursuit of regulatory approvals, all of which such costs shall be paid by the City. District 2 and District 4, at no cost to the City, shall provide necessary signatures, information, and testimony required for the District 2 CCN Transfer application, documentation if required by PUC to confirm closing of the transaction, and shall cooperate in all respects in prosecuting the District 2 CCN Transfer application and in attempting to ensure that it is granted by PUC.

4. Customers in Certification Area. All customers, if any, whose place of use of water is currently located within District 2 and who are provided retail water service by the City whether on an interim basis or after approval of the District 2 CCN Transfer, shall be deemed retail water customers of the City for all purposes, and will be provided service in accordance with, and will be subject to, all applicable City rules, design criteria, ordinances, and policies applicable to City retail water service, including, but not limited to, the City’s conservation ordinances. Service to customers within District 2 may be curtailed on the same basis as services may be curtailed to any other City retail water customer under applicable City ordinances and policies.

5. Water Service Plan and Utility Infrastructure Review. District 2 has submitted, and the City has approved, the Water Service Plan for water service to District 2, attached as Exhibit E hereto (the “**Water Service Plan**”). The Water Service Plan does not expire unless stated so in a future amendment to this Agreement. District 2 and property owners within District 2 shall retain the right to propose to modify the approved Water Service Plan. The approved Water Service Plan contemplates the construction of improvements to create the Far South pressure zone system,

which is comprised of a pump station, reservoir and an appropriately sized water transmission main (the “**Far South Pressure Zone Facilities**”). Designing, constructing, financing, operating and maintaining the Far South Pressure Zone Facilities shall be the exclusive responsibility of the City, and this Agreement shall not be construed to require District 2 or any property owner within District 2 to construct, finance, operate or maintain the same, other than as required of any other City retail water customer under applicable City ordinances and policies. However, District 2 or a property owner within District 2 may elect to construct or provide for the construction of the Far South Pressure Zone Facilities and seek cost participation with, or reimbursement by, the City. Regardless, District 2 agrees to donate or cause to be donated to the City without any cost to the City the property for the Far South Pressure Zone Facilities, to consist of a tract of land as described in the Water Service Plan granted in fee simple title and sufficient in size and location as determined by the City in its sole discretion for a reservoir and pump station, and all necessary raw, reclaimed, and potable water line easements with all associated appurtenances, and any related vehicle, equipment, and worker controlled road or access-way easements with all associated culverts, bridges, drainage, and other appurtenances for a water transmission main and all appurtenances, in accordance with the terms of the attached Water Service Plan and prior to the sale, lease, or donation of such property to another entity. The conveyances and dedications shall be made no later than the date described in the Water Service Plan.

For each phase of development, and in lieu of submitting a service extension request, the party constructing the infrastructure (“**Constructing Party**”) will be required to submit a City Utility Infrastructure Review (“**UIR**”). In conjunction with each UIR, the Constructing Party will provide the City Utility Director with all information pertaining to the related phase of development that is necessary for the City Utility Director to confirm the level of service and the appropriateness of the type, sizing, and alignment of the water infrastructure. The City agrees that no fees will be required for filing or processing any UIR under this Section. The City Utility Director will timely review all UIRs submitted under this Section and either approve them or provide written comments specifically identifying any changes required for approval within 90 days of receiving a complete UIR from the Constructing Party. The City will utilize the infrastructure constructed pursuant to each approved UIR to provide service to the related phase of development at the requested level of service.

C. Effluent Reuse by District 2.

District 2 contemplates a potential agreement with one or more adjoining municipal utility districts, including, but not limited to, District 1, District 3 and District 4, to obtain treated effluent (non-potable water) for use

to irrigate certain parks, common areas and public spaces. Such an effluent reuse agreement could involve the conveyance of untreated wastewater from District 2 to an adjoining municipal utility district for treatment, or the purchase of treated effluent originating wholly within another District. The City hereby acknowledges and affirms the Districts' authority to enter into effluent reuse agreements among themselves and with other utilities. The Districts agree that the City, at its sole discretion, may cost participate in the infrastructure to convey treated effluent and enter into effluent reuse agreements with any district. Such cost participation shall be based upon the City's proportionate share. Unless the City has entered into an agreement with District 2 or until the dissolution or full-purpose annexation of District 2 by the City, the City shall have no ownership interest in any effluent or effluent purchase contract entered into by District 2, and no right to charge a service fee, capital recovery charge, tax, or other fee to either District 2 or any District 2 customer for such use of effluent.

V.

Article VII (Annexation of District 2 by the City) is amended as follows:

Paragraph C is amended to read:

C. Full purpose annexation of District 2, and its dissolution and/or conversion to a limited district, shall be governed by the provisions of the Strategic Partnership Agreement.

VI.

Article IX ("Land Use and Development") is amended as follows:

Paragraph A is amended to read as follows:

A. The parties agree that the Land Plan attached hereto as **Exhibit F** ("**Land Plan**") and incorporated herein for all purposes including notations thereon, as the same may be amended from time to time with the concurrence of a majority of the City Council of the City and Landowner, its successors and assigns, is the agreed plan for development of the Limited Purpose Annexation Property. The densities and land use reflected on the Land Plan are not guaranteed levels of development, but rather levels subject to changes thereof necessitated by compliance with the requirements of applicable laws, ordinances and regulations. Landowner has applied for zoning for the Limited Purpose Annexation Property consistent with the Land Plan as provided herein and in the Strategic Partnership Agreement, excluding the 93.206-acre tract conveyed by Landowner to Hays Consolidated Independent School District for use as a school site. No site development permit shall be issued for an area within the Limited Purpose Annexation Property which

is not owned by Hays Consolidated Independent School District until that area is zoned by the City.

Paragraph C is amended to read as follows:

C. Landowner agrees to dedicate to the City, at no cost to the City, a net-buildable two-acre tract of land located generally in the area shown on the Land Plan to be used as a fire and EMS station site. The City's Fire Department has reviewed and approved the location of this site. At any time prior to dedication of the site, the City's Fire Department and the Landowner may mutually agree on a new location of the site within District 2. The dedication shall be made no later than the earlier of (1) the date of the dedication of any adjacent roadway to the fire and EMS station site; or (2) **31 March 2025**.

A new Paragraph F is added as follows:

F. Parkland Dedication.

1. Parkland Dedication Requirement. District 2 will be developed as a master-planned community with substantial parkland, open space, trails, and park improvements. Based on the preliminary development plan for the Project, approximately 57.5 acres of park and 78.6 acres of open space land are required under the current applicable rules. The Landowner agrees to provide park and open space land and improvements for the parkland exceeding this required acreage as shown on the Land Plan. Landowner shall dedicate parkland required by this Section at the time of approval of a final plat that touches the boundary of any parkland. The City agrees that the dedication of public parkland and trails and the construction of amenities to be described in the Park Master Plan discussed in Paragraph F.2 below will satisfy all of the parkland dedication requirements for development that is completed in accordance with the Land Plan and/or any approved zoning (the "**Project**"), and that no additional parkland dedication or park fees will be required from the Landowner for the Project unless the number of dwelling units exceeds 2,916.

2. Construction. Amenities to be constructed on parkland in District 2 will have a total value of at least \$200 per living unit equivalent. District 2 shall require Landowner to prepare a park facilities plan for the Project subject to approval by District 2 and the Director of the City's Parks and Recreation Department, or successor department (the "**PARD**") (the "**Park Master Plan**"), which will identify the Parks and Recreational Facilities to be owned and operated by District 2 and the recreational facilities that will be owned and operated by a Texas non-profit corporation created by the Landowner on or before the date the first

subdivided lot within District 2 is sold to a third-party purchaser to, among other things, enforce restrictive covenants and own and operate amenities (the “**Owners Association**”). A copy of such plan will be provided to the Director of the City’s Planning and Zoning Department, or successor department (the “**PZD**”) and PARD at least 30 days before the Board meeting at which District 2 considers approval of the Park Master Plan, and shall be approved by PARD before the approval of any subdivision or site plan application by the City. The Landowner and District 2 agree that any design of construction plans related to the park and open space land within the Project will be subject to approval by the City, and that they will be designed to comply with the accessibility requirements of the Americans with Disabilities Act and will meet any applicable consumer product safety standards. Amenities shall include an extensive trail and bike network and additional park improvements to be identified in the Park Master Plan. The Park Master Plan shall include a phasing agreement for the construction of park improvements. The phasing agreement shall require the construction of Parks and Recreational Facilities within each phase by the Landowner or its successors at the time of construction of residences within said phase.

3. Ownership, Operation and Maintenance of Parks and Recreational Facilities. Except for property to be dedicated to the Owners Association or dedicated to or reserved for the City or another governmental entity under this Agreement, the Landowner will dedicate all Parks and Recreational Facilities located within the Project to District 2 for ownership, operation and maintenance. No Owners Association amenities may be dedicated to District 2 and all Owners Association amenities must be conveyed to and operated and maintained by the Owners Association. District 2 agrees not to convey or transfer any Parks and Recreational Facilities to the Owners Association without the approval of the City. Before full-purpose annexation of District 2 by the City, District 2 agrees to operate and maintain the Parks and Recreational Facilities conveyed to it in good state of repair and in a manner so as not to create a nuisance or danger to the public health and safety. Upon full-purpose annexation of District 2 by the City, the Parks and Recreational Facilities dedicated to District 2 shall be transferred to, and owned, operated and maintained by Sunfield Limited District No. 2 as provided in the Strategic Partnership Agreement. Should District 2 be dissolved without the creation of a limited district, the Parks and Recreational Facilities shall be transferred to the City and the Owners Association shall be obligated, under restrictive covenants naming the City as a benefitted party and that are filed on or before the date the first subdivided lot within District 2 is sold to a third-party purchaser, to operate and maintain the Parks and Recreational Facilities in perpetuity at the expense of the Owners Association. In addition the Owners Association must have authority to levy assessments against the Landowner, and the Landowner’s successors and assigns,

of the property in the Ultimate District 2 Boundaries to discharge the maintenance obligation set forth herein. The Landowner, and the Landowner's successors and assigns, of the property in the Ultimate District 2 Boundaries also must be jointly and severally liable for the maintenance of the Facilities, but only in the event the Owners Association fails to discharge its obligations to maintain the Parks and Recreational Facilities.

A new Paragraph G is added as follows:

G. Restrictive Covenants. The Landowner on or before the date the first subdivided lot within District 2 is sold to a third-party purchaser will impose Restrictive Covenants on all of the Limited Purpose Annexation Property within District 2, other than the property 93.206-acre tract conveyed by Landowner to the Hays Consolidated Independent School District, in order to assure high quality development and high quality maintenance of all improvements constructed for the benefit of the community which are not maintained by a public entity. The Restrictive Covenants, which will include any provisions specifically required by this Agreement, will be enforced by the Owners Association. Any Restrictive Covenant to be imposed on property owned or to be conveyed to District 2 will be subject to the review and approval of the PZD prior to recordation, which approval will not be unreasonably withheld, conditioned or delayed.

A new Paragraph H is added as follows:

H. Affordable Housing. The Landowner will support the City's affordable housing goals and programs as provided in the attached **Exhibit H**.

VII.

Article XIV (Term of Agreement) is hereby amended to read:

This Agreement shall be effective from 5 May 2005 and shall continue in effect until District 2 is annexed and dissolved or, if converted to a limited district pursuant to the Strategic Partnership Agreement, until the limited district is dissolved.

VIII.

The List of Exhibits and the **Exhibits** attached to the Agreement are amended as follows:

- A. A new List of Exhibits attached to this First Amendment as **Attachment One** is attached to the Agreement immediately prior to Exhibit A of the Agreement as a new List of Exhibits.
- B. Exhibit E to the Agreement is deleted in its entirety and is substituted in its place with a

new **Exhibit E** attached to this First Amendment as **Attachment Two**.

C. Exhibit F to the Agreement is deleted in its entirety and is substituted in its place with a new **Exhibit F** attached to this First Amendment as **Attachment Three**.

D. A new **Exhibit H** attached to this First Amendment as **Attachment Four** is attached to the Agreement as a new Exhibit H.

IX.

All capitalized terms not otherwise defined in this First Amendment have the meanings assigned to them in the Agreement.

This First Amendment will be effective from and after, and the terms and conditions of this First Amendment incorporated into the Agreement on, **21 September 2015** which is the date that is the later of: (i) the effective date of the ordinance authorizing execution of this First Amendment by the Austin City Council; (ii) approval of this First Amendment by the Board of Directors of the Districts; and (iii) execution of this First Amendment by the Landowner, the Districts, and the City. This First Agreement may be executed in duplicate counterparts.

Immediately following the effective date of this First Amendment, District 2 will cause the original Agreement and this First Amendment with correct references to the filing location of the original Agreement in the first "Whereas" clause of this First Amendment to be recorded in the official public records of Hays County, Texas and Travis County, Texas with the original recorded Agreement and this First Amendment to be sent following recording in each county's official public records to the after recording address set forth on the last page of this Amendment and include the project information set forth on the last page of this Amendment.

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EXECUTED AND DELIVERED effective as set forth in Article IX above.

CITY OF AUSTIN

By: _____
Name: Marc A. Ott
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me, the undersigned notary, on this day by Marc A. Ott as City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.

Given under my hand and seal of office on _____ September 2015.

[Seal]

Notary Public, State of Texas

APPROVED AS TO FORM:

City of Austin
Law Department

James M. Williams, Sr.
Assistant City Attorney

SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 1

By: _____

Name: _____

Title: President

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me, the undersigned notary, on this day
by _____, _____ on behalf of said Sunfield Municipal
Utility District No. 1.

Given under my hand and seal of office on _____ September 2015.

Notary Public, State of Texas

[Seal]

SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 2

By: _____

Name: _____

Title: President

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me, the undersigned notary, on this day
by _____, _____ on behalf of said Sunfield Municipal
Utility District No. 2.

Given under my hand and seal of office on _____ September 2015.

Notary Public, State of Texas

[Seal]

SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 3

By: _____

Name: _____

Title: President

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me, the undersigned notary, on this day
by _____, _____ on behalf of said Sunfield Municipal
Utility District No. 3.

Given under my hand and seal of office on _____ September 2015.

Notary Public, State of Texas

[Seal]

SUNFIELD MUNICIPAL UTILITY DISTRICT NO. 4

By: _____
Name: _____
Title: President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me, the undersigned notary, on this day
by _____ on behalf of said Sunfield Municipal
Utility District No. 4.

Given under my hand and seal of office on _____ September 2015.

Notary Public, State of Texas

[Seal]

Landowner: A&M Option 541 and Initial Landowner

A&M Option 541: **A&M OPTION 541, LLC**

Attest: _____
Secretary

By: _____
President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me, the undersigned notary, on this day by _____, _____ of A&M Option 541, LLC, a Texas limited liability company, for and on behalf of the company.

Given under my hand and seal of office on _____ September 2015.

Notary Public in and for the State of Texas

[Seal]

Initial Landowner: **2428 PARTNERS, LLC**

Attest: _____
Secretary

By: _____
President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me, the undersigned notary, on this day by _____, _____ of 2428 Partners, LLC, a Texas limited liability company, for and on behalf of the company.

Given under my hand and seal of office on _____ September 2015.

Notary Public in and for the State of Texas

[Seal]

**AGREEMENT CONCERNING CREATION AND OPERATION OF WINFIELD
MUNICIPAL UTILITY DISTRICTS NOS.
1, 2, 3 AND 4**

LIST OF EXHIBITS

The following are the exhibits for this Agreement:

Exhibit A -

Exhibit A-1 - Property

Exhibit A-2 – Additional Property

Exhibit B -

Exhibit B-1 - District 1 Property

Exhibit B-2 - District 2 Property

Exhibit B-3 - District 3 Property

Exhibit B-4 - District 4 Property

Exhibit C - Released Property

Exhibit D - Ultimate District Boundaries

Exhibit D-1 - District 1 Ultimate District Boundary

Exhibit D-2 - District 2 Ultimate District Boundary

Exhibit D-3 - District 3 Ultimate District Boundary

Exhibit D-4 - District 4 Ultimate District Boundary

Exhibit E - Water Service Plan with Attachment E-1 Map

Exhibit F - Land Plan

Exhibit G - Calculation of Surcharge Criteria and Formula

Exhibit H - District 2 Affordable Housing Plan with Attachments H-1 and H-2
Restrictive Covenants

WATER SERVICE PLAN

Name: Sunfield MUD No. 2

Description of Improvements:

Phase I Water Improvements (to serve up to approximately 600 service units or the remainder of the subject tract if Phase II Water Improvements (described below) are constructed prior to Phase I Water Improvements): Applicant shall construct approximately 8,300 feet of 24-inch water main from the existing 42-inch water transmission main (Project 2009- 0069) at FM 1327 Rd and Bradshaw Rd and extend east along FM 1327 Rd and south along N Turnersville Rd, across SH 45, and along S Turnersville Rd to the subject tract.

Phase II Water Improvements (to serve the remainder of the subject tract or up to approximately 600 service units if Phase II Water Improvements are constructed prior to Phase I Water Improvements): Applicant shall construct approximately 11,000 feet of 24-inch water main from the existing 42- inch water transmission main at SH 45 (Project 2009-0058) and extend south along IH 35 and east along Turnersville Rd to the subject tract, as approximately shown on the attached and incorporated map set forth as

Attachment E-1 to this exhibit.

Applicant shall construct a 24-inch "looped" water system through the subject tract from the proposed 24-inch water main in S Turnersville Rd to the proposed 24-inch water main in Turnersville Rd. Applicant shall also dedicate an appropriately sized and located reservoir site with approximately five (5) acres with a minimum elevation of 760 feet, based on the North American Vertical Datum of 1988 (NAVD88) and access and water easements within the subject tract and connecting the proposed 24-inch water main and the reservoir site (actual size and location within District 2 to be determined by the applicant and the City of Austin). The "looped" water system must be in service and the reservoir site and associated easements dedicated on the earlier to occur of (a) the date which is immediately prior to exceeding approximately 600 service units on any single fed system off of the existing 42-inch water transmission main, or (b) **31 March 2025**.

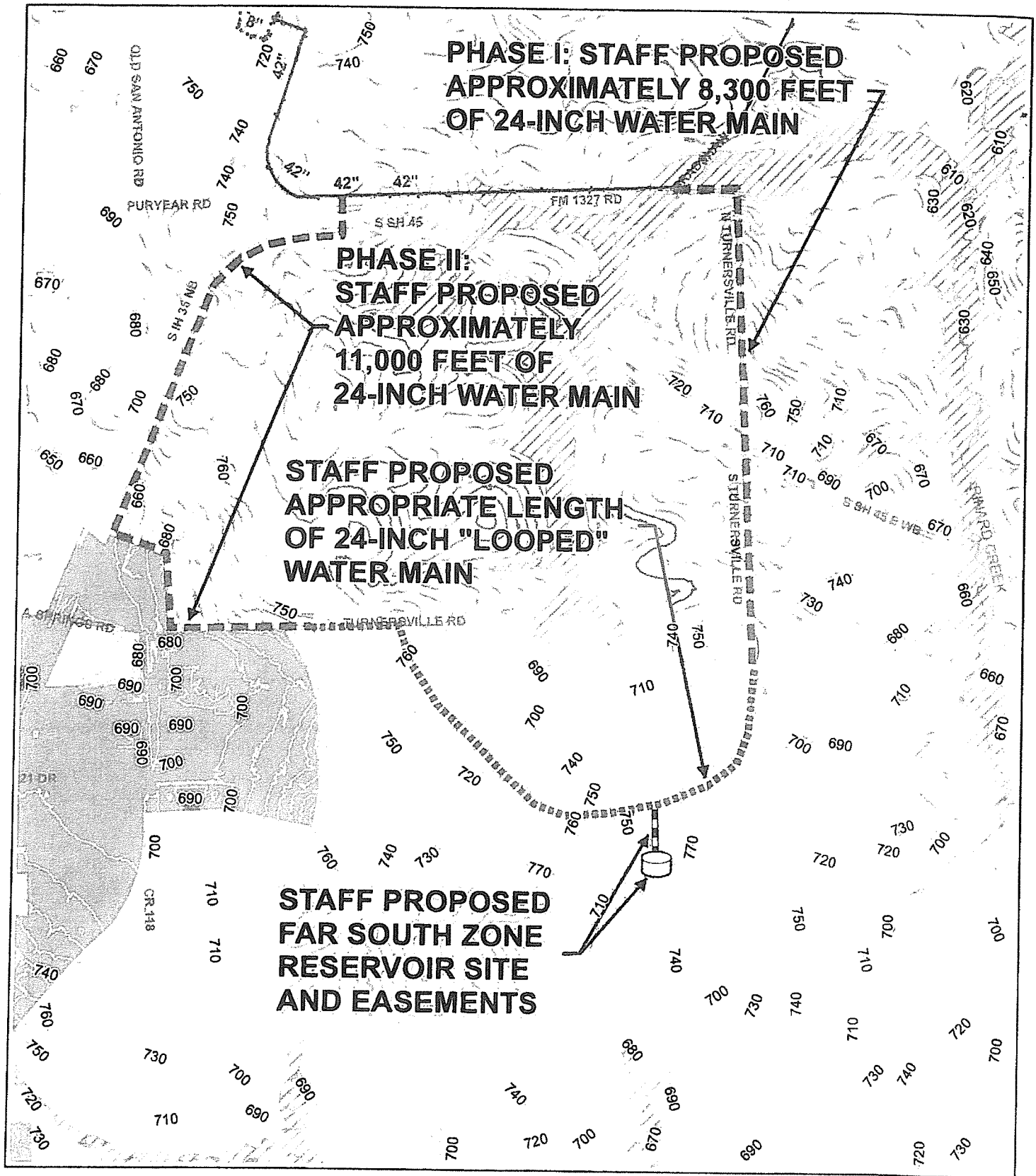
Initial water service will be provided by the South pressure zone. Ultimately the majority of the subject tract will be served by the future South boosted water pressure zone (Far South pressure zone). The Far South pressure zone shall be created to serve areas above an elevation of 750 feet, based on the North American Vertical Datum of 1988 (NAVD88) (+/- 40- ft). Prior to this, localized boosting at the

Applicant's cost will be allowed on a case by case basis for developments at higher elevations. The Far South pressure zone will include a pump station and appropriately sized water transmission main from the future South zone reservoir (to be located northwest of the SH 45 and IH 35 intersection) to the proposed Far South zone reservoir to be located within the subject tract. Far South zone water service is not available until the Far South zone pump station, transmission main and reservoir are designed and constructed. The proposed major improvements required to create the Far South zone system will be completed by the City of Austin under a future Capital Improvements Project (CIP). Should the Applicant's development schedule necessitate the construction of the future Far South zone pump station, reservoir and transmission mains prior to CIP project, the Applicant can construct the necessary improvements and seek cost participation.

NOTE: Fire flow requirement of 1,500 gpm based on engineering report received from V. Ryan Sowa, P.E. on 07/09/2014.

Additional Conditions:

- 1) Construction of all infrastructure extensions is subject to all environmental and planning ordinances.
- 2) Infrastructure extensions are subject to the guidelines established in the Land Development Code, Section 25-9, Water and Wastewater Utility Service.
- 3) The level of service approved by this document does not imply commitment for land use.
- 4) Public utility mains must meet City of Austin design and construction criteria and must be approved by Austin Water Utility Engineering Review.
- 5) Approval of a site plan that meets the Fire Department requirements for fire control.
- 6) Proposed public water improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 7) Proposed public water improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be in place prior to construction plan approval.



Sunfield MUD No. 2 Water Service Plan

Utility Development Services Plotted 1/15/2015

First Amendment

Page 22

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the City of Austin for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

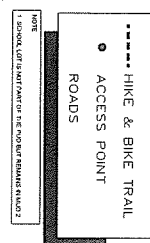
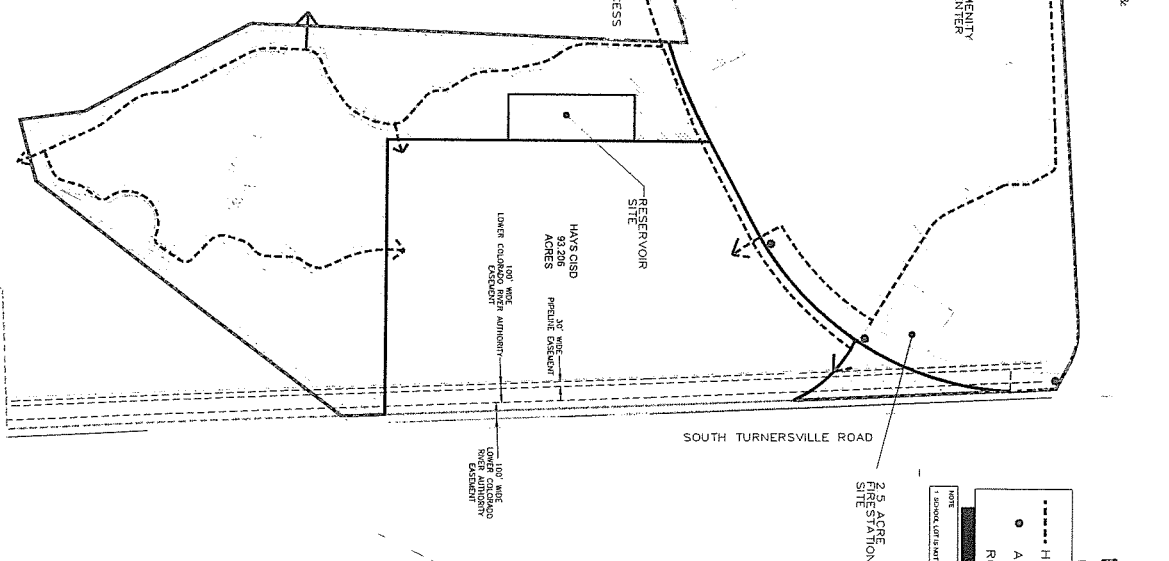
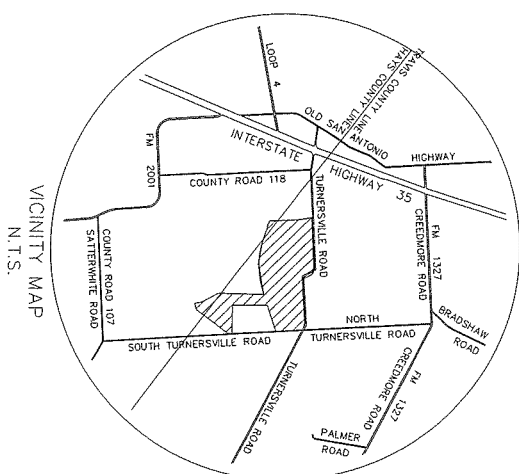
Subject Tract
100-yr FEMA Floodplain
Full-Purpose City Limit
2-Mile ETJ
5-Mile ETJ
Limited-Purpose City Limit
City of Buda
City of Buda ETJ

Attachment Three

Exhibit F

LAND PLAN

SUNFIED PUD DEVELOPMENT PROGRAM					
LAND USE	ACRE	ACRE %	DU/ac	DU	SQ. FT.
SINGLE FAMILY RESIDENTIAL	222.6	39%	5	1165	
MULTIFAMILY/SINGLE FAMILY RESIDENTIAL	80.9	14%	22	1751	
SUBTOTAL	303.5			7916	
AMENITY CENTER	4.9	1%			20000
CS-1					35000
COMMERCIAL	18.3	3%			128000
OPEN SPACE (23.7K FLOODPLAIN, CEF BUFFER)	73.5	13%			
PARALLEL (50% CREDIT)					
(100YR FLOODPLAIN, CWDZ)	10.1	2%			
PARALLEL (100% CREDIT)	52.4	9%			
FIRE STATION	2.5	0%			
RESERVED SITE	5.0	1%			
HIGH SCHOOL TRACT	93.2				
PROPOSED MAIN ST./TURNESVILLE RD. ROW	12.2	2%			
SUBTOTAL	222.2				
GRAND TOTAL	525.7			2916	183900



SUNFIELD
CITY OF AUSTIN
TRAVIS COUNTY, TEXAS

SUNFIELD MUD #2
LAND PLAN

KHA PROJECT 054404014	
DATE OCT 2014	
SCALE AS SHOWN	
DESIGNED BY:	KB
DRAWN BY:	KB
CHECKED BY:	SS

Kimley»Horn

10814 JOLLYVILLE ROAD AVALON IV SUITE 300 AUSTIN, TX
78759
PHONE: 512-418-1771 FAX: 512-418-1791
WWW.KIMLEY-HORN.COM
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TBE Firm No. 928

DISTRICT 2 AFFORDABLE HOUSING PLAN

1. In order to meet the City's affordable housing goals and to ensure long-term affordability, the Landowner and the Landowner's successors and assigns (collectively referred to as the "**Landowner**") agree to set aside within the District 2 Boundaries (the "**District 2 Boundaries**") at least:
 - a. Ten percent (10%) of the total number of lots or units sold as owner-occupied, residential housing units located within the District 2 Boundaries for occupancy by households whose income is equal to or less than 80% of the median family income of the Austin metropolitan statistical area (each an "**Affordable Ownership Unit**," collectively, the "**Affordable Ownership Units**") for an ownership affordability period of forty (40) years (collectively, the "**Ownership Affordability Requirement**"). In addition the Landowner agrees to comply with the following:
 - i. The Ownership Affordability Requirement period shall commence upon the date of recordation of a final plat containing lots designated as Affordable Ownership Units.
 - ii. For Affordable Ownership Units (either attached or detached), the Ownership Affordability Requirement shall be calculated based on the total number of owner-occupied, residential housing units and, to the extent economically feasible, shall be spread across the various product types within the District 2 Boundaries. Although there shall be no requirement that each phase of owner-occupied, residential housing unit development within the District 2 Boundaries contain a specific number of Affordable Ownership Units, the Landowner shall be responsible for ensuring that the requisite number of Affordable Ownership Units are located within the District 2 Boundaries.
 - iii. Affordable Ownership Units shall be sold at a price affordable to persons whose household income is equal to or less than 80% of the median family income in the Austin statistical metropolitan area. Each Affordable Ownership Unit offered for sale and meeting the Ownership Affordability Requirement shall be reserved, sold, and transferred at the time of sale to an income eligible buyer subject to a resale-restricted, shared-equity agreement and restrictive covenant in substantially the appropriate form attached and incorporated as Attachment H-1 or Attachment H-2 acceptable to and approved in writing by the Director of the City's Neighborhood Housing and Community Development Department or successor director (the "**Director**"), or such other form as may be mutually agreeable to the Landowner and the

Director, and recorded in the official public records of the county where the Affordable Ownership Unit is located. At the election of the City, the City, or an entity designated by the City that is an instrumentality of the City, may purchase any Affordable Ownership Unit at the affordable price and resell the Affordable Ownership Unit to an income eligible buyer.

- iv. Lots within the District 2 Boundaries offered for sale and to have Affordable Ownership Units constructed on the lot shall be platted and developed in at least 3 areas within the District 2 Boundaries in sections of at least 25 lots so long as such sections are integrated into the District 2 Boundaries, located within walking distance of District 2 amenities, and the Affordable Ownership Units shall have substantially similar architectural design and restrictions as other residential units offered for sale to the general public.
- b. Ten percent (10%) of the total number of multifamily rental housing development units located within the District 2 Boundaries for occupancy by households whose income is less than 60% of the median family income (each an “**Affordable Rental Unit**,” collective “**Affordable Rental Units**”) in the Austin metropolitan statistical area for a rental affordability period of forty (40) years (collectively, the “**Rental Affordability Requirement**”). In addition the Landowner agrees to comply with the following:
- i. The Rental Affordability Requirement period for each multifamily development with Affordable Rental Units (the “**Affordable Development**”) begins on the date a certificate of occupancy is issued for any phase of the Affordable Development.
 - ii. The Rental Affordability Requirement for each Affordable Development shall be based on the total number of units in each Affordable Development.
 - iii. The Landowner shall restrict each lot sold or developed for use as an Affordable Development with a restrictive covenant acceptable to and approved in writing by the Director at the time of the sale or development and recorded in the official public records of the county where the Affordable Development is located.
 - iv. Notwithstanding the foregoing, if the Landowner provides more Affordable Rental Units in any Affordable Development than ten percent (10%) of the total number of units in the Affordable Development, then the total number of Affordable Rental Units required to meet the Rental Affordability Requirement within the District 2 Boundaries shall be reduced as follows: (i) up to 3% of the total number of Affordable Rental Units in the Affordable Development (rounded down to the nearest whole number) exceeding the 10% Rental Affordability Requirement on a ratio of 1.5:1.0 within the District 2 Boundaries; and (ii) up to an additional 2% of the total number of Affordable Rental Units in the Affordable Development (rounded down to the nearest

whole number) exceeding the 10% Rental Affordability Requirement on a ratio of 4.0:1.0 within the District 2 Boundaries; provided, however, in no event shall the total number of units required to meet the Rental Affordability Requirement within the District 2 Boundaries be reduced below 5% of the total number of multifamily rental housing development units within the District 2 Boundaries.

- v. The ratio of the number of single-bedroom Affordable Rental Units to the number of multi-bedroom Affordable Rental Units in each Affordable Development shall be not less than the ratio of the total number of single-bedroom multifamily rental housing development units located within the District 2 Boundaries to the total number of multi-bedroom multifamily rental housing development units located within the District 2 Boundaries. The Affordable Rental Units within each Affordable Development shall be interspersed with market rate units.

Collectively, the “Ownership Affordability Requirement” and the “Rental Affordability Requirement” are referred to in this exhibit as the “**Affordable Housing Requirements.**”

2. The Affordable Housing Requirements cannot be used to meet any other City affordable housing bonus requirement or exception and vice-versa.
3. Income limits with respect to the Affordable Housing Requirements shall be established annually as determined by the United States Department of Housing and Urban Development (HUD).
4. The Landowner shall file a written acceptable report with the Director on the number and location of each Affordable Ownership Unit and Affordable Rental Units meeting the Affordable Housing Requirements within the District 2 Boundaries (the “**Affordability Report**”). The initial Affordability Report shall be filed within fifteen (15) calendar days following the March 31 or September 30 next following the date of recordation of a plat within the District 2 Boundaries and be continuously filed on a semi-annual basis until the end of the term of the Affordable Housing Requirements.
5. Compliance with the Affordable Housing Requirements will be monitored by the City’s Neighborhood Housing and Community Development Department, or successor office or department, through an annual audit of the sale and rental of Affordable Ownership Units and Affordable Rental Units within the District 2 Boundaries.

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE and BUYER INCOME
(LOT 2 BLOCK B ANDERSON HILL SUBDIVISION)**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT

This Affordable Housing Agreement and Covenant ("Covenant") is entered into as of _____ 201__ (the "Effective Date"), by and between _____, a _____ (the "Grantor"), and the City of Austin, Texas (the "City").

This Covenant applies only to the following described real property, including improvements, in _____ County, Texas ("Affordable Unit"):

Lot ____, Block ____, _____ Subdivision, according to the map or plat thereof recorded in Document No. _____ of the Official Public Records of _____ County, Texas

RECITALS

WHEREAS, the City of Austin supports the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Affordable Unit is subject to the Affordable Housing Declaration; and

WHEREAS, the Affordable Housing Declaration requires, inter alia, that Grantor impose this Covenant on the Affordable Unit; and

WHEREAS, in accordance with such requirement, the Grantor has agreed to impose the affordable housing restrictions set forth in this Covenant against the Affordable Unit; and

WHEREAS, the intent of the City is to preserve the affordability of the Affordable Unit for persons of low or moderate income, including a surviving spouse or heirs of an Eligible Buyer; and

WHEREAS, subsequent purchasers will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, the intent of the Grantor is to preserve through this Covenant the affordability of the Affordable Unit for persons of low or moderate income, their surviving spouse, domestic partner, lineal descendants or siblings, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

“Area Median Income” means the Area Median Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Austin, Texas.

“Affordable Housing Declaration” means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for _____, Austin, Texas, recorded under Document No. _____ of the Official Public Records of _____ County, Texas.

“Affordable Sales Price” means the original affordable sales price paid by initial Owner which is equal to \$_____.

“Affordable Unit” means Lot ____, Block ____, _____ Subdivision, a subdivision in _____ County, Texas, according to the map or plat thereof recorded in Document No. _____ of the Official Public Records of _____ County, Texas.

“Asset Limits” means aggregate personal assets, including cash, personal property and real property assets of not more than _____ Dollars (\$_____.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for the Affordable Unit. The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA).

“Certified” means written acknowledgement of the City that an individual is an Eligible Buyer, Owner or Income Qualified Person, based on the Qualified Person’s previous year federal income tax return and year to date income statements or paycheck stubs as the case may be and meets the requirements of this Covenant for ownership of the Affordable Unit.

“City” or “Grantee” means the City of Austin, a Texas home rule municipality.

“Declarant” or “Grantor” means _____, a _____.

“Eligible Buyer” means an Income -Qualified Person who has been certified by the City as meeting the City’s Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase the Affordable Unit.

“Eligible Capital Improvement” means (i) a capital improvement to the Affordable Unit that is reasonably necessary to maintain the Affordable Unit in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Affordable Unit and normal and customary repairs and maintenance to the mechanical, electrical or plumbing systems in the Affordable Unit; and (ii) replacing built-in appliances and fixtures.

“First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Affordable Unit to secure a loan used to purchase the Affordable Unit made by an Institutional Lender.

“HOA Declaration” means the Declaration of Covenants, Conditions and Restrictions for _____ recorded under Document No. _____ in the Official Public Records of _____ County, Texas, including any amendments to the recorded instruments and also including, but not limited to, plats and maps.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Low Income Limit” means the maximum gross household income which allows a household to be considered “low income” for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area.

“Income” means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then “income” shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

“Income Limits” means a projected Income of not more than 80% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

“Income-Qualified Person(s)” means a person or persons who has been certified by the City, as meeting the City’s Asset Limits and Income Limits.

“Institutional Lender” means any bank or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

“Notice of Exercise of Right” means the City’s written notice to Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

“Notice of Waiver of Right” means the City’s written notice to Owner of its waiver of its Purchase Right.

“Owner” means any buyer, devisee, transferee, grantee, owner or holder of title of the Affordable Unit or any interest in the Affordable Unit, excluding Grantor.

“Purchase Right” means the City’s limited right to purchase the Affordable Unit solely as provided in Section 6.B. of this Covenant.

“Transfer” means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Affordable Unit, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a land contract by which possession of the Affordable Unit is transferred and Owner retains title.

2. Requirement of Title and Term of Affordability

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. Eligible Buyers must have a valid income certification from the City approved within nine months from the closing of the purchase of the Affordable Unit in order to be eligible to purchase the Affordable Unit.

3. Term

This Covenant shall become effective on the Effective Date, and shall remain in effect for a period of forty (40) years thereafter (the “Term”).

4. Required Conveyance Deed Language

Grantor and each Owner shall use a form of special warranty deed, which includes the language below in 12 point type and in all caps on the front page thereof:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 2015, RECORDED UNDER DOCUMENT NO. _____ OF THE OFFICIAL PUBLIC RECORDS OF _____ COUNTY, TEXAS.

5. Eligible Buyers

A. Title to the Affordable Unit may only be transferred to an Eligible Buyer or Income Qualified Person; provided, however, upon the death of an Eligible Buyer, the Affordable Unit may be transferred to the surviving spouse, domestic partner, lineal descendants or siblings of an Eligible Buyer without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the buyer's assets shall not exceed the Asset Limits and the buyer's projected income may be not be more than 80% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers. If the Affordable Unit is sold jointly to more than one buyer in the same transaction, or if the Affordable Unit is sold to a buyer who is married or who has a domestic partner, or if the Affordable Unit is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers shall be considered to be a household for the purposes of this Covenant; (b) the income of all persons in the household (which will include each buyer of the Affordable Unit, the spouse or domestic partner of the buyer, and all buyer's children who are age eighteen or older) shall be used in determining the buyer's(s') income; and (c) the HUD Low Income Limit shall be adjusted to reflect the household's size.

B. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the new Owners, other than an estate, shall use the Affordable Unit as his or her principal residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
- ii. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more children or grandchildren of the deceased Owner or one or more siblings of a deceased Owner.
- iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Affordable Unit.

- v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Affordable Unit.
- vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Affordable Unit.

Any other beneficiaries, heirs, legatees or devisees of Owner, must be certified by the City to be Income-Qualified Persons in order to retain title to the Affordable Unit. Such other beneficiaries, heirs, legatees or devisees who do not meet the requirements to be certified as an Income Qualified Person shall be required to transfer their interest in the Affordable Unit within 180 days of their receipt of title to the Affordable Unit. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange

A. An Owner wishing to transfer the Affordable Unit must provide the City with notice of its intent to sell ("Intent to Sell Notice") and comply with subsections B., and C. of Section 6 of this Covenant.

B. The City's Purchase Right. If the Owner of the Affordable Unit delivers an Intent to Sell Notice to the City, then in such limited event, the City is hereby granted a Purchase Right to purchase the Affordable Unit. The City's Purchase Right must, if at all, be exercised by the City within forty-five (45) days after the City's receipt of said Intent to Sell Notice ("City's Exercise Period"). If the City fails to timely exercise the Purchase Right by timely delivering to the Owner a Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City's Purchase Right to purchase the Affordable Unit shall be deemed to be waived as to the applicable Intent to Sell Notice. If the City timely exercises the Purchase Right by timely delivering the Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City is obligated to either (i) purchase the Affordable Unit, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of the City's Exercise Period, the City must either provide Owner a Notice of Exercise of Right or Notice of Waiver of Right. In the event that the City provides a Notice of Waiver of Right, or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of the City's Exercise Period, the Owner may proceed with sale of the Affordable Unit, in the manner prescribed by subsection 6.C. of this Covenant. In the event the City provides a Notice of Exercise of Right, the sale of the Affordable Unit must close with either the City, or an Eligible Buyer who is the City's assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of Owner's receipt of the Notice of Exercise of Right (the "City's Closing Period"). In the event that the sale does not close prior to the expiration of the City's Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with the City, or its assignee, and sell the Affordable Unit in accordance with the provisions of subsection 6.C. of this Covenant. In such event, the City shall provide Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of Owner's compliance with this Section.

C. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from the City; or, (ii) the City has not timely exercised its Purchase Right prior to the expiration of the City's Exercise Period or, (iii) the City, or its assignee fails to timely close the purchase of the Affordable Unit prior to the expiration of the City's Closing Period, an Owner may market the Affordable Unit for sale in accordance with this subsection. The purpose of this subsection is to assure that an Owner engages in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Affordable Unit, which shall include marketing the Affordable Unit for a minimum of thirty (30) days before any contract for sale may be executed by the Owner. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, the Owner may enter into a contract for sale of the Affordable Unit with a ready, willing and able buyer; provided such buyer has been certified by the City as an Eligible Buyer.

7. Grantor's Sale of the Affordable Unit

The purchase price for Grantor's sale of the Affordable Unit to an Eligible Buyer may not be for more than \$_____.

8. Affordable Resale Price Limit

A. After the first Transfer from Grantor to the first Owner of the Affordable Unit, the Affordable Unit may not be transferred for more than an amount calculated in accordance with this Paragraph. The "Affordable Resale Price" is equal to the Affordable Sales Price paid by such Owner, plus the Affordable Sales Price multiplied by a fixed rate of 2% annual, simple interest multiplied by the number of ownership years the Affordable Unit is owned by such Owner (the "Fixed Rate of Appreciation"). Ownership years are calculated on an annual, pro-rated basis to credit the Owner with that portion of the year that may not be a full calendar year. "Ownership years" equals the total number of days of ownership divided by three hundred and sixty-five days, so that the Ownership Year is prorated daily. The amount of appreciation due to the Owner shall equal the Affordable Sales Price paid by such Owner for the Affordable Unit multiplied by a Fixed Rate of Appreciation.

B. Nothing in this Covenant represents or guarantees that the Affordable Unit will be re-sold at an amount equal to the resale price limit. Depending upon conditions affecting the real estate market, the Affordable Unit may be re-sold for less than the resale price limit.

C. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment").

- (i) Capital Improvements. Provided that prior to Owner's undertaking the Eligible Capital Improvement Owner obtains City's written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to Owner for making the Eligible Capital Improvement. To receive City approval, Owner must submit evidence to City showing the purpose and cost of the capital improvements.

- (ii) Damages. Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, Damages shall not include reasonable wear and tear to items such as painted surfaces, drapery, flooring or carpeting or other normal and customary repairs for which a building permit from the City is not required.

9. City's Right to Acquire Owner's Interest prior to foreclosure

A. The Owner shall give to the City immediate written notice on the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or other instrument encumbering the Affordable Unit.

B. If the Owner has not cured the default under the First Deed of Trust within ten (10) days prior to a scheduled foreclosure sale by an Institutional Lender who is the beneficiary under the First Deed of Trust, then the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of the Affordable Unit. Upon making any such payment, the City shall succeed to all beneficial rights of the Owner to the Affordable Unit and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to the City.

C. The Owner may reacquire or repurchase his or her interest in the Affordable Unit by payment to the City of all sums paid by the City in connection with the First Deed of Trust, or other instrument encumbering the Affordable Unit, and all other sums reasonably expended by the City in relation to its acquisition of the Affordable Unit, plus two percent (2%), per annum, simple interest from each date of expenditure. This reacquisition or repurchase may only occur within twelve (12) months from the date the City expended money in connection with its acquisition of the Affordable Unit. As of the date of such reacquisition or repurchase, the Owner shall re-assume all of his or her rights and obligations under the First Deed of Trust. At the end of such twelve (12) month period, if the Owner's interest has not been so reacquired or repurchased, all right, title and interest of the Owner in the Affordable Unit shall be extinguished, and the Owner shall execute a quit claim deed to the City to evidence Transfer of title to the City. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by the City, the City may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, the City shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the cost of any Eligible Capital Improvement, minus the City's costs to the date of execution of the deed.

D. Provided that the City declines to exercise its right to assume Owner's interest in

the Affordable Unit, an Institutional Lender's foreclosure under a First Deed of Trust, shall terminate this Covenant as to the Affordable Unit, the City shall have no right to acquire the Affordable Unit after a foreclosure sale and the Institutional Lender shall have no obligation to account to, remit proceeds or otherwise deal with the City as a result of any foreclosure sale.

E. Notwithstanding the language of Section 9.D of this Covenant, if an Institutional Lender forecloses under a First Deed of Trust and the proceeds from such foreclosure sale exceed the amount the Institutional Lender would be entitled under the loan documents executed by the Owner in connection with a First Deed of Trust, then any such surplus shall be divided between Owner and City as follows:

- The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.
- The City shall receive all surplus proceeds that exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

Declarant acknowledges that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure sale generating proceeds in excess of the amount an Institutional Lender is legally entitled and Owner 9received more than the purchase option price amount of such surplus. Therefore, Declarant hereby covenants the following: (i) there shall be an irrevocable assignment of certain surplus proceeds to the City, as prescribed in the above bullet points, and that the Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Institutional Lender to distribute any such surplus in accordance with this subsection; and, (ii) in the event that the amount of surplus proceeds for which the City is entitled is inadvertently paid to the Owner, Owner shall be obligated to pay such amount to the City promptly. It is not the intent of Declarant for the covenants set out in this subsection to in any way impair Institutional Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this covenant is limited in scope to only such proceeds generated in surplus of that which Institutional Lender is legally entitled to recover.

10. Subordination of Covenant

The provisions of this Covenant shall be subordinate to the lien of a First Deed of Trust to secure a loan to purchase the Affordable Unit made by an Institutional Lender. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.

11. Re-Financing of the First Deed of Trust or Financing Eligible Capital Improvements.

The Owner may only re-finance the First Deed of Trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible

Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price in effect at the time of the re-financing of the Affordable Unit. Such re-financing must be with an Institutional Lender.

12. Maintenance of Property

The Owner shall maintain the Affordable Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Affordable Unit. The Owner shall not be required to obtain any permission from the City for normal and customary repairs and maintenance of the Affordable Unit; provided, however, the Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.

13. Use of Property as Owner's Primary Residence

A, Occupancy. At or before the time when title is transferred to the Affordable Unit, each new Owner shall certify to the City in writing his or her intent to occupy the Affordable Unit as his or her primary residence; and, the Owner must declare the Affordable Unit as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or recodified. Except for leasing, allowed by this Section 13, Owner shall reside at the Affordable Unit at least nine of the twelve calendar months each year of Owner's possession of the Affordable Unit.

B. Leasing. An Owner may not lease the Affordable Unit except as provided in this subsection 13.B.

- i. Requirements for all leases. Any lease of the Affordable Unit shall be approved by the City before it may become effective. The City shall approve the leasing of the Affordable Unit only if: (1) the lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Affordable Unit in good condition and prohibits subleasing; and (3) the rent for the Affordable Unit does not exceed Owner's monthly cost of principal and interest on the loan secured by the First Deed of Trust to an Institutional Lender, and property insurance, property taxes and any property owners association assessments assessed against the Affordable Unit.
- ii. Requirements for leases that do not exceed a term of three (3) months. Provided that Owner complies with the nine (9) month primary residency requirements, Owner may lease the Affordable Unit for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in subsection 13.B.(i) above.
- iii. Leases greater than three (3) months. Except for Leases that do not exceed three (3) months during a calendar year, Owner shall not lease the

Affordable Unit during the first five (5) years of ownership. Upon the fifth (5th) anniversary of Owner's ownership of the Affordable Unit, Owner may lease the Affordable Unit, provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a seven (7) year period of ownership; (iii) the Affordable Owner first provides the City with notice that the Affordable Unit is available for lease and obtains certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in sub-section 13.B.(i) above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, City may grant a temporary waiver to the Affordable Owner not to exceed 24 months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the economic hardship must be submitted in writing for City to review. City will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period.

14. Enforcement of this Covenant

A. The Grantor and each Owner hereby grant and assign the City the right to enforce compliance with this Covenant.

B. Compliance may be enforced by the City by any lawful means, including without limitation, specific performance.

C. If the City is required to pursue legal action to enforce this Covenant, then in such event, the City shall be entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.

D. Venue for a suit enforcing compliance shall be proper in Travis County, Texas.

15. Miscellaneous

A. This Covenant shall run with the land. It shall bind during the Term, and the benefit hereof shall inure during the Term to the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to the City, its successors, designees, or assignees.

B. The Affordable Unit may not be used by any other development to satisfy the requirements of this Covenant or any other off-site affordable housing obligations.

C. The Affordable Unit is held and hereafter shall be held, conveyed, encumbered (except to the First Deed of Trust), leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

D. Any buyer or transferee of the Affordable Unit or of any portion of or interest in the Affordable Unit, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

E. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by the City by like notice:

Director of the Neighborhood Housing and Community Development Office
City of Austin
P.O. Box 1088
Austin, Texas 78702

Notices to the Owner may be given in like manner addressed to the Owner of the Affordable Unit as shown on the City's tax rolls.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

H. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Affordable Unit and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during the Term to persons and families of low or moderate income.

I. This Covenant shall not be revised, amended, repealed or otherwise modified without the written approval of City and the Owner of the Affordable Unit; and any such modification must be recorded in the public records of the Texas county where the Affordable Unit is located before becoming effective.

J. This Covenant shall apply to the Affordable Unit in addition to the terms and conditions of the HOA Declaration that is applicable to the subdivision in which the Affordable Unit is located. The terms of this Covenant shall apply in addition to and in conjunction with the HOA Declaration, and no provision of the HOA Declaration shall in any way be impaired by this

Covenant, save and except any amendment to said HOA Declaration that attempts to repeal, amend, or modify this Covenant, which shall be void and without effect.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Grantor has executed this Covenant as of the date first stated above.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of _____, a _____, on behalf of the _____.

NOTARY PUBLIC, STATE OF _____

[Seal]

ACCEPTED:

CITY OF AUSTIN, TEXAS

By: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in the person's capacity as the Director of the Neighborhood Housing and Community Development for, and on behalf of, the CITY OF AUSTIN, TEXAS.

NOTARY PUBLIC, STATE OF TEXAS

[Seal]

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE and BUYER INCOME**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT

This Affordable Housing Agreement and Covenant ("Covenant") is entered into as of _____
_____ 201__ (the "Effective Date"), by and between _____, a _____
_____, and the City of Austin, Texas (the "City").

This Covenant applies only to the following described real property, including improvements, in Travis County, Texas ("Affordable Unit"):

Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

RECITALS

WHEREAS, the City of Austin supports the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Affordable Unit is subject to the Affordable Housing Declaration; and

WHEREAS, the Affordable Housing Declaration requires, inter alia, that Grantor impose this Covenant on the Affordable Unit; and

WHEREAS, in accordance with such requirement, the Grantor has agreed to impose the affordable housing restrictions set forth in this Covenant against the Affordable Unit; and

WHEREAS, the intent of the City is to preserve the affordability of the Affordable Unit for persons of low or moderate income, including a surviving spouse or heirs of an Eligible Buyer; and

WHEREAS, subsequent purchasers will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, the intent of the Grantor is to preserve through this Covenant the affordability of the Affordable Unit for persons of low or moderate income, their surviving spouse, domestic partner, lineal descendants or siblings, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

“Area Median Income” means the Area Median Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Austin, Texas.

“Affordable Housing Declaration” means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for _____, Austin, Texas, recorded under Document No. _____ of the Official Public Records of _____ County, Texas.

"Affordable Sales Price" means the original affordable sales price paid by initial Owner which is equal to \$_____.

"Affordable Unit" means Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in _____ County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of _____ County, Texas.

"Asset Limits" means aggregate personal assets, including cash, personal property and real property assets of not more than _____ Dollars (\$_____.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for the Affordable Unit. The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA),

"Certified" means written acknowledgement of the City that an individual is an Eligible Buyer, Owner or Income Qualified Person, based on the Qualified Person's previous year federal income tax return and year to date income statements or paycheck stubs as the case may be and meets the requirements of this Covenant for ownership of the Affordable Unit.

"City" or "Grantee" means the City of Austin, a Texas home rule municipality.

"Condominium Declaration" means the _____ CONDOMINIUMS, a Condominium project in _____ County, Texas, described in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of _____ County, Texas.

"Condominium Project" means the Project defined in the Condominium Declaration.

"Declarant" or "Grantor" means _____, a _____.

"Eligible Buyer" means an Income-Qualified Person who has been certified by the City as meeting the City's Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase the Affordable Unit.

"Eligible Capital Improvement" means (i) a capital improvement to the Affordable Unit that is reasonably necessary to maintain the Affordable Unit in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Affordable Unit and normal and customary repairs and maintenance to the mechanical, electrical or plumbing systems in the Affordable Unit; and (ii) replacing built-in appliances and fixtures. Eligible Capital Improvements shall also include amounts paid by the Owner of the Affordable Unit as a special assessment under the Condominium Declaration provided the special assessment is for capital improvement to the Condominium Project that is reasonably necessary to

maintain the Condominium Project in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Condominium Project.

“First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Affordable Unit to secure a loan used to purchase the Affordable Unit made by an Institutional Lender.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Low Income Limit” means the maximum gross household income which allows a household to be considered “low income” for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area.

“Income” means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then “income” shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

“Income Limits” means a projected Income of not more than 80% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

“Income-Qualified Person(s)” means a person or persons who has been certified by the City, as meeting the City’s Asset Limits and Income Limits.

“Institutional Lender” means any bank or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

“Notice of Exercise of Right” means the City’s written notice to Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

“Notice of Waiver of Right” means the City’s written notice to Owner of its waiver of its Purchase Right.

“Owner” means any buyer, devisee, transferee, grantee, owner or holder of title of the Affordable Unit or any interest in the Affordable Unit, excluding Grantor.

“Purchase Right” means the City’s limited right to purchase the Affordable Unit solely as provided in Section 6.B. of this Covenant.

“Transfer” means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Affordable Unit,

including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a contract for sale by which possession of the Affordable Unit is transferred and Owner retains title.

2. Requirement of Title and Term of Affordability

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. Eligible Buyers must have a valid income certification from the City approved within nine months from the closing of the purchase of the Affordable Unit in order to be eligible to purchase the Affordable Unit.

3. Term

This Covenant shall become effective on the Effective Date, and shall remain in effect for a period of forty (40) years thereafter (the "Term").

4. Required Conveyance Deed Language

Grantor and each Owner shall use a form of special warranty deed, which includes the language below in 12 point type and in all caps on the front page thereof:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 2015, RECORDED UNDER DOCUMENT NO. _____ OF THE OFFICIAL PUBLIC RECORDS OF _____ COUNTY, TEXAS.

5. Eligible Buyers

A. Title to the Affordable Unit may only be transferred to an Eligible Buyer or Income Qualified Person; provided, however, upon the death of an Eligible Buyer, the Affordable Unit may be transferred to the surviving spouse, domestic partner, lineal descendants or siblings of an Eligible Buyer without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the buyer's assets shall not exceed the Asset Limits and the buyer's projected income may be not be more than 80% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers. If the Affordable Unit is sold jointly to more than one buyer in the same transaction, or if the Affordable Unit is sold to a buyer who is married or who has a domestic partner, or if the Affordable Unit is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers shall be considered to be a household for the purposes of this Covenant; (b) the income of all persons in the household (which will

include each buyer of the Affordable Unit, the spouse or domestic partner of the buyer, and all buyer's children who are age eighteen or older) shall be used in determining the buyer's(s') income; and (c) the HUD Low Income Limit shall be adjusted to reflect the household's size.

B. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the new Owners, other than an estate, shall use the Affordable Unit as his or her principal residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
- ii. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more children or grandchildren of the deceased Owner or one or more siblings of a deceased Owner.
- iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Affordable Unit.
- v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Affordable Unit.
- vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Affordable Unit.

Any other beneficiaries, heirs, legatees or devisees of Owner, must be certified by the City to be Income-Qualified Persons in order to retain title to the Affordable Unit. Such other beneficiaries, heirs, legatees or devisees who do not meet the requirements to be certified as an Income Qualified Person shall be required to transfer their interest in the Affordable Unit within 180 days of their receipt of title to the Affordable Unit. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange.

A. An Owner wishing to transfer the Affordable Unit must provide the City with notice of its intent to sell ("Intent to Sell Notice") and comply with subsections B., and C. of Section 6 of this Covenant.

B. The City's Purchase Right. If the Owner of the Affordable Unit delivers an Intent to Sell Notice to the City, then in such limited event, the City is hereby granted a Purchase Right to purchase the Affordable Unit. The City's Purchase Right must, if at all, be exercised by the City within forty-five (45) days after the City's receipt of said Intent to Sell Notice ("City's Exercise Period"). If the City fails to

timely exercise the Purchase Right by timely delivering to the Owner a Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City's Purchase Right to purchase the Affordable Unit shall be deemed to be waived as to the applicable Intent to Sell Notice. If the City timely exercises the Purchase Right by timely delivering the Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City is obligated to either (i) purchase the Affordable Unit, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of the City's Exercise Period, the City must either provide Owner a Notice of Exercise of Right or Notice of Waiver of Right. In the event that the City provides a Notice of Waiver of Right, or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of the City's Exercise Period, the Owner may proceed with sale of the Affordable Unit, in the manner prescribed by subsection 6.C. of this Covenant. In the event the City provides a Notice of Exercise of Right, the sale of the Affordable Unit must close with either the City, or an Eligible Buyer who is the City's assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of Owner's receipt of the Notice of Exercise of Right (the "City's Closing Period"). In the event that the sale does not close prior to the expiration of the City's Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with the City, or its assignee, and sell the Affordable Unit in accordance with the provisions of subsection 6.C. of this Covenant. In such event, the City shall provide Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of Owner's compliance with this Section.

C. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from the City; or, (ii) the City has not timely exercised its Purchase Right prior to the expiration of the City's Exercise Period or, (iii) the City, or its assignee fails to timely close the purchase of the Affordable Unit prior to the expiration of the City's Closing Period, an Owner may market the Affordable Unit for sale in accordance with this subsection. The purpose of this subsection is to assure that an Owner engages in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Affordable Unit, which shall include marketing the Affordable Unit for a minimum of thirty (30) days before any contract for sale may be executed by the Owner. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, the Owner may enter into a contract for sale of the Affordable Unit with a ready, willing and able buyer; provided such buyer has been certified by the City as an Eligible Buyer.

7. Grantor's Sale of the Affordable Unit

The purchase price for Grantor's sale of the Affordable Unit to an Eligible Buyer may not be for more than \$_____.

8. Affordable Resale Price Limit

A. After the first Transfer from Grantor to the first Owner of the Affordable Unit, the Affordable Unit may not be transferred for more than an amount calculated in accordance with this Paragraph. The "Affordable Resale Price" is equal to the Affordable Sales Price paid by such Owner, plus the Affordable Sales Price multiplied by a fixed rate of 2% annual, simple interest multiplied by the number of ownership years the Affordable Unit is owned by such Owner (the "Fixed Rate of Appreciation"). Ownership years are calculated on an annual, pro-rated basis to credit the Owner with that portion of the year that may not be a full calendar year. "Ownership years" equals the total number

of days of ownership divided by three hundred and sixty-five days, so that the Ownership Year is prorated daily. The amount of appreciation due to the Owner shall equal the Affordable Sales Price paid by such Owner for the Affordable Unit multiplied by a Fixed Rate of Appreciation.

B. Nothing in this Covenant represents or guarantees that the Affordable Unit will be re-sold at an amount equal to the resale price limit. Depending upon conditions affecting the real estate market, the Affordable Unit may be re-sold for less than the resale price limit.

C. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment").

- (iii) Capital Improvements. Provided that prior to Owner's undertaking the Eligible Capital Improvement Owner obtains City's written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to Owner for making the Eligible Capital Improvement. To receive City approval, Owner must submit evidence to City showing the purpose and cost of the capital improvements.
- (iv) Damages. Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, Damages shall not include reasonable wear and tear to items such as painted surfaces, drapery, flooring or carpeting or other normal and customary repairs for which a building permit from the City is not required.

9. City's Right to Acquire Owner's Interest prior to foreclosure

A. The Owner shall give to the City immediate written notice on the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or other instrument encumbering the Affordable Unit.

B. If the Owner has not cured the default under the First Deed of Trust within ten (10) days prior to a scheduled foreclosure sale by an Institutional Lender who is the beneficiary under the First Deed of Trust, then the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of the Affordable Unit. Upon making any such payment, the City shall succeed to all beneficial rights of the Owner to the Affordable Unit and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to the City.

C. The Owner may reacquire or repurchase his or her interest in the Affordable Unit by payment to the City of all sums paid by the City in connection with the First Deed of Trust, or other instrument encumbering the Affordable Unit, and all other sums reasonably expended by the City in relation to its acquisition of the Affordable Unit, plus two percent (2%), per annum, simple interest from

each date of expenditure. This reacquisition or repurchase may only occur within twelve (12) months from the date the City expended money in connection with its acquisition of the Affordable Unit. As of the date of such reacquisition or repurchase, the Owner shall re-assume all of his or her rights and obligations under the First Deed of Trust. At the end of such twelve (12) month period, if the Owner's interest has not been so reacquired or repurchased, all right, title and interest of the Owner in the Affordable Unit shall be extinguished, and the Owner shall execute a quit claim deed to the City to evidence Transfer of title to the City. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by the City, the City may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, the City shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the cost of any Eligible Capital Improvement, minus the City's costs to the date of execution of the deed.

D. Provided that the City declines to exercise its right to assume Owner's interest in the Affordable Unit, an Institutional Lender's foreclosure under a First Deed of Trust, shall terminate this Covenant as to the Affordable Unit, the City shall have no right to acquire the Affordable Unit after a foreclosure sale and the Institutional Lender shall have no obligation to account to, remit proceeds or otherwise deal with the City as a result of any foreclosure sale.

E. Notwithstanding the language of Section 9.D of this Covenant, if an Institutional Lender forecloses under a First Deed of Trust and the proceeds from such foreclosure sale exceed the amount the Institutional Lender would be entitled under the loan documents executed by the Owner in connection with a First Deed of Trust, then any such surplus shall be divided between Owner and City as follows:

- The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.
- The City shall receive all surplus proceeds that exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

Declarant acknowledges that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure sale generating proceeds in excess of the amount an Institutional Lender is legally entitled and Owner received more than the purchase option price amount of such surplus. Therefore, Declarant hereby covenants the following: (i) there shall be an irrevocable assignment of certain surplus proceeds to the City, as prescribed in the above bullet points, and that the Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Institutional Lender to distribute any such surplus in accordance with this subsection; and, (ii) in the event that the amount of surplus proceeds for which the City is entitled is inadvertently paid to the Owner, Owner shall be obligated to pay such amount to the City promptly. It is not the intent of Declarant for the covenants set out in this subsection to in any way impair Institutional Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this covenant is limited in scope to only such proceeds generated in surplus of that which Institutional Lender is legally entitled to recover.

10. Subordination of Covenant

The provisions of this Covenant shall be subordinate to the lien of a First Deed of Trust to secure a loan to purchase the Affordable Unit made by an Institutional Lender. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.

11. Re-Financing of the First Deed of Trust or Financing Eligible Capital Improvements.

The Owner may only re-finance the First Deed of Trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price Limit in effect at the time of the re-financing of the Affordable Unit. Such re-financing must be with an Institutional Lender.

12. Maintenance of Property

The Owner shall maintain the Affordable Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Affordable Unit. The Owner shall not be required to obtain any permission from the City for normal and customary repairs and maintenance of the Affordable Unit; provided, however, the Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.

13. Use of Property as Owner's Primary Residence

A. Occupancy. At or before the time when title is transferred to the Affordable Unit, each new Owner shall certify to the City in writing his or her intent to occupy the Affordable Unit as his or her primary residence; and, the Owner must declare the Affordable Unit as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or re-codified. Except for leasing, allowed by this Section 13, Owner shall reside at the Affordable Unit at least nine of the twelve calendar months each year of Owner's possession of the Affordable Unit.

B. Leasing. An Owner may not lease the Affordable Unit except as provided in this subsection 13.B.

- i. Requirements for all leases. Any lease of the Affordable Unit shall be approved by the City before it may become effective. The City shall approve the leasing of the Affordable Unit only if: (1) the lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Affordable Unit in good condition and prohibits subleasing; and (3) the rent for the Affordable Unit does not exceed Owner's monthly cost of principal and interest on the loan secured by the First Deed of Trust to an Institutional Lender, and property insurance, property taxes and condominium owners association assessments assessed against the Affordable Unit.
- ii. Requirements for leases that do not exceed a term of three (3) months. Provided that Owner complies with the nine (9) month primary residency requirements, Owner may lease the Affordable Unit for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in sub-section 13.B.(i) above.
- iii. Leases greater than three (3) months. Except for Leases that do not exceed three (3) months during a calendar year, Owner shall not lease the Affordable Unit during the first five (5) years of ownership. Upon the fifth (5th) anniversary of Owner's ownership of the Affordable Unit, Owner may lease the Affordable Unit, provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a seven (7) year period of ownership; (iii) the Affordable Owner first provides the City with notice that the Affordable Unit is available for lease and obtains certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in sub-section 13.B.(i) above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, City may grant a temporary waiver to the Affordable Owner not to exceed 24 months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the economic hardship must be submitted in writing for City to review. City will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period.

14. Enforcement of this Covenant

A. The Grantor and each Owner hereby grant and assign the City the right to enforce compliance with this Covenant.

B. Compliance may be enforced by the City by any lawful means, including without limitation, specific performance.

C. If the City is required to pursue legal action to enforce this Covenant, then in such event, the City shall be entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.

D. Venue for a suit enforcing compliance shall be proper in Travis County, Texas.

15. Miscellaneous

A. This Covenant shall run with the Affordable Unit. It shall bind during the Term, and the benefit hereof shall inure during the Term to the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to the City, its successors, designees, or assignees.

B. The Affordable Unit may not be used by any other development to satisfy the requirements of this Covenant or any other off-site affordable housing obligations.

C. The Affordable Unit is held and hereafter shall be held, conveyed, encumbered (except to the First Deed of Trust), leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

D. Any buyer or transferee of the Affordable Unit or of any portion of or interest in the Affordable Unit, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

E. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by the City by like notice:

Director of the Neighborhood Housing and Community Development Office
City of Austin
P.O. Box 1088
Austin, Texas 78702

Notices to the Owner may be given in like manner addressed to the Owner of the Affordable Unit as shown on the City's tax rolls.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

H. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Affordable Unit and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during the Term to persons and families of low or moderate income.

I. This Covenant shall not be revised, amended, repealed or otherwise modified without the written approval of City and the Owner of the Affordable Unit; and any such modification must be recorded in the public records of Texas county where the Affordable Unit is located before becoming effective.

J. This Covenant shall apply to the Affordable Unit in addition to the terms and conditions of the Condominium Declaration that is applicable to the Condominium Project in which the Affordable Unit is located. The terms of this Covenant shall apply in addition to and in conjunction with the Condominium Declaration, and no provision of the Condominium Declaration shall in any way be impaired by this Covenant, save and except any amendment to said Condominium Declaration that attempts to repeal, amend, or modify this Covenant, which shall be void and without effect.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Grantor has executed this Covenant as of the date first stated above.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, _____ of _____, a
_____, on behalf of the _____.

NOTARY PUBLIC, STATE OF _____

[Seal]

ACCEPTED:

CITY OF AUSTIN, TEXAS

By: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, in the person's capacity as the Director of the Neighborhood Housing and Community Development for, and on behalf of, the CITY OF AUSTIN, TEXAS.

NOTARY PUBLIC, STATE OF TEXAS

[Seal]

PROJECT INFORMATION:

Project Name: Sunfield Municipal Utility Districts
Project Case Manager: Virginia Collier
Council Ordinance Nos.: 20150305-018 and 20150910-_____

AFTER RECORDING, PLEASE RETURN TO:

City of Austin
Planning and Zoning Department
505 Barton Springs Road – Fifth Floor (78704)
P.O. Box 1088
Austin, Texas 78767