GWTP MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

TC GREEN WATER MASTER DEVELOPER, LLC

CONCERNING THE DEVELOPMENT OF
THE GREEN WATER TREATMENT PLANT
AUSTIN, TEXAS

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GWTP MASTER DEVELOPMENT AGREEMENT

This GWTP Master Development Agreement (this "**Agreement**") is made to be effective as of the 6th day of June, 2012 (the "**Effective Date**"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**") and TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company ("**Developer**").

RECITALS

A. On March 4, 2008, the City issued a Request for Proposal ("**RFP**") to develop the property currently known as the Green Water Treatment Plant (as more particularly defined below, the "**Property**") and the Energy Control Center (the "**ECC**"), both located in downtown Austin, Texas.

B. On April 30, 2008, a strategic alliance including Trammell Crow Company and Constructive Ventures Inc. (the "**TCC/CVI Development Group**") submitted a response (the "**RFP Response**") to the RFP for the development of the Property and ECC.

C. On June 18, 2008, the RFP Response was selected by the City Council of the City of Austin as the winning proposal for the development of the Property and the ECC in satisfaction of Texas law requiring competitive bidding for certain sales or conveyances of public property.

D. The RFP Response designated TC Austin Development, Inc., a Delaware corporation (a wholly owned subsidiary of Trammell Crow Company) ("**TC Austin**") as the point of contact for the TCC/CVI Development Group. Within the TCC/CVI Development Group, the RFP Response designates TC Austin as the lead developer of the Property and Constructive Ventures, Inc. ("**CVI**") as the lead developer of the ECC.

E. The City and TC Austin entered into an Exclusive Negotiating Agreement (as extended, the "**ENA**") dated effective August 11, 2008, concerning certain rights to negotiate the terms of this Agreement for the initial development of the Property and a master development agreement for the initial development of the ECC.

F. The City, CVI and TC Austin entered into an ECC Master Development Agreement dated _____, 2010 [sic] concerning the sale, purchase and development of the ECC.

G. Developer is a wholly owned subsidiary of TC Austin.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Developer agree as follows:

ARTICLE I
DEFINED TERMS

1.1 Defined Terms. As used in this Agreement, terms used, but not defined in the body of this Agreement will have the meanings indicated:

"**Affiliate**" means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term "control" when used with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Applicable Bankruptcy Law**" as defined in 8.1(g) hereof.

"**Bankruptcy Event**" means a petition for relief is filed under Applicable Bankruptcy Law or an involuntary petition for relief is filed against Developer under any Applicable Bankruptcy Law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Developer is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

"**Block**" means Block 1, Block 23, Block 185 or Block 188, as applicable.

"**Block 1**" means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-2 attached hereto.

"**Block 23**" means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A- 3 attached hereto.

"**Block 185**" means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-4 attached hereto.

"**Block 188**" means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-5 attached hereto.

"**Business Day**" means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving. If the last day for performance of an act falls upon a day that is not a Business Day, then the last day for performance will automatically be extended until the next-following regular Business Day.

"**Certificate of Occupancy**" means a final, conditional or temporary certificate of occupancy or certificate of completion, as applicable, of a majority of a shell building (or its equivalent) issued by the applicable Governmental Authority, determined on a Block by Block basis.

"**City Caused Delay**" means any actual delay to the extent caused solely by the City (a) with respect to its obligations which *are not specified* hereunder in its capacity as a governmental entity (such as building permit issuance or plat approval), by its unlawful action or inaction; provided however, if Developer is obligated under this Agreement or the Declaration to perform an action within a specified time period, and that time period is shorter than the specific time frame established by Legal Requirements for a related

regulatory action by the City acting in its governmental capacity, then the time for Developer's performance will be extended beyond the contractual time period at least to the date of the related City regulatory action, (b) with respect to its obligations which *are specified* hereunder in its capacity as a governmental entity (such as providing a dedicated review team), by its unreasonable delay in such action or inaction, or (c) in its capacity as a landowner (such as design approval, and financial approvals), by its failure to meet the specific timeframes for action set forth herein.

"**City's Actual Knowledge**" and "**Actual Knowledge**", or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City's Economic Growth & Redevelopment Services Office as to knowledge of that Person while he/she serves as Director, (b) the current or any future project manager for the Property within the City's Economic Growth & Redevelopment Services Office as to knowledge of that person while he/she serves as such project manager, and (c) the current or any future internal legal counsel specifically assigned to the Property as to knowledge of that Person while he/she serves as such counsel, without any duty of inquiry or investigation, and does not include constructive, imputed or inquiry knowledge.

"**Claim**" as defined in Section 7.2(a) hereof.

"**Commence Construction**" and "**Commencement of Construction**" mean the commencement of bona-fide pouring of concrete footings for construction of the proposed improvements on the Property or similar activity for construction of the proposed "build out" of the applicable Improvements on the Property, as applicable for each Block following the Takedown of such Block.

"**Community Facility Agreement**" means a Community Facility and Cost Reimbursement Agreement between the Developer and the City regarding the reimbursement of the cost of the Environmental Remediation and the Public Improvements, as applicable (each of which the City Council authorizes the City Manager to negotiate and execute).

"**Complete Construction**" and "**Completion of Construction**" mean the day on which all of the following have been satisfied:

(a) the applicable Improvements have been substantially completed in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer's architect as to the applicable Improvements,

(b) all Governmental Authorities having jurisdiction have issued Certificates of Occupancy for such Improvements, and

(c) all bills for such Improvements have been paid, are not yet due and payable or are being contested in good faith through appropriate proceedings.

"**Cure Period**" as defined in Section 4.3(c) hereof.

"**CWMOU**" means a Chilled Water Memorandum of Understanding between Developer and Austin Energy concerning the delivery of chilled water to all or any portion of the Property.

"**CWSA**" means a Chilled Water Service Agreement between Developer and Austin Energy concerning delivery of chilled water to all or any portion of the Property.

"**Declaration**" means the Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C. While the intent of the term of this Agreement is to cover the initial development of the Property, the intent of the term of the Declaration is to cover a much longer period of time to ensure that the Property is maintained, reconstructed (if applicable) and redeveloped (if applicable) in accordance with the intent of this Agreement. One Declaration will be filed for all Blocks at the first Takedown.

"**Deed**" means the Special Warranty Deed substantially in the form attached hereto as Exhibit D.

"**Developer Caused Delay**" means any actual delay caused solely by Developer's failure to meet the specific timeframes for action set forth herein.

"**Disclosure Notice**" as defined in Section 2.3 hereof.

"**dollars**" or "**$**" means lawful money of the United States of America.

"**Environmental Remediation**" means all work required to design, obtain permits, and safely excavate and remove any petroleum contaminated soil currently located on Block 23 and Block 188 to the extent necessary to effect the contemplated development, as more particularly set forth in the applicable Community Facility Agreement. Such work shall include the design and installation of retention systems in the public right of way along the entirety of the Northern property line of Blocks 23 and 188 (to the extent creek bank stabilization is not adversely affected), the Eastern property line of Block 23, and the Western property line of Block 188. The design and installation of this retention system will be coordinated by Developer and the City to ensure that it does not conflict with the design and construction of the Improvements to be completed on Block 23 and Block 188. The work shall also include the complete excavation of both blocks to a depth necessary to entirely remove the contaminated soil, the anticipated extent of which is described in the Site Investigation Report prepared by URS and submitted to TCEQ as IOP No. 805. Upon completion of the excavation the retention system will be left in place, and a drainage facility will be installed to allow for drainage of the excavated area.

"**Environmental Site Assessments**" mean final written reports of the environmental condition of the Property and any response action (including removal and remediation) in the City's possession or control and prepared for the City by the City's environmental consultants.

"**Event of Default**" means any happening or occurrence described in Sections 8.1 or 8.3 hereof following the expiration of any applicable grace, notice or cure period.

"**Final Ready Date**" means the later of (a) the Initial Ready Date, (b) the date of the Voluntary Cleanup Program Certificate of Completion (to residential standards) issued by the TCEQ concerning all Blocks which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements, (c) the date of the Innocent Owner/Operator Program Certificate by the TCEQ concerning Blocks 23 and 188 which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements, and (d) the substantial completion of the Environmental Remediation. If the programs/certificates noted in this definition are changed, this definition will automatically be modified to refer to the successor programs/certificates; provided however, if all the other conditions listed in this paragraph have been satisfied but such Innocent Owner/Operator Program Certificate has not been issued, then the Final Ready Date will be deemed to occur as of the satisfaction of the other conditions (but Developer may continue to pursue issuance of such Innocent Owner/Operator Program Certificate).

"**Financing Delay Period**" as defined in Section 4.1(c) hereof.

"**Force Majeure**" means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Agreement or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof).

"**Governmental Authority**" means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever or any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Hazardous Materials**" mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as "hazardous substance," "hazardous material," "hazardous waste," "acutely hazardous waste", "extremely hazardous waste," infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such

synthetic gas) or derivatives thereof. "**Hazardous Materials**" also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

"**Improvements**" means core and shell improvements (as opposed to interior improvements completed by, or for, the end user of a space) of the Property constructed in accordance with this Agreement and the Declaration.

"**Initial Ready Date**" means the date of the Voluntary Cleanup Program Certificate of Completion (to residential standards) issued by the TCEQ concerning Block 1 which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements. If the programs/certificates/standards noted in this definition are changed, this definition will automatically be modified to refer to the successor programs/certificates/standards.

"**Inspection Right**" as defined in Section 3.3(g) hereof.

"**Legal Requirements**" mean applicable restrictive covenants (including the Declaration), service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions, including without limitation, the Waterfront Overlay District, Downtown Creek Overlay, Capital View Corridor restrictions, Great Streets Development Program and Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines).

"**License Agreement**" means a license granted by the City for the activities listed in Sections 3.3(l) and 3.3(m) (each of which the City Council authorizes the City Manager to negotiate and execute).

"**Market Delay Period**" as defined in Section 4.1(b) hereof.

"**M&M Lien**" means a lien, claim of lien or affidavit of a lien concerning any work performed or materials delivered.

"**M/WBE**" as defined in Section 3.2(c) hereof.

"**M/WBE Ordinance**" means Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the Austin City Code.

"**M/WBE Resolution**" means the City Council Resolution attached hereto as Exhibit E.

"**Objection Period**" as defined in Section 4.3(c) hereof.

"**Ordinance**" as defined in Section 3.1(g) hereof.

"**Other Development Documents**" means the Deed, Declaration, each Community Facility Agreement and each License Agreement.

"**Permitted Encumbrances**" mean (a) general real estate taxes on each Block for the year of Takedown of that Block, if any, (b) the Declaration, (c) other than the public utility easements and rights of ingress/egress as reserved in instruments recorded in Volume 12852, Page 120 and Volume 8460, Page 413 Real Property records of Travis County, Texas, which the City will vacate, all exceptions to title coverage with respect to a Block set forth for such Block in the Title Binder and any update thereto provided that no exception that first appears on any update to the Title Binder will be a Permitted Encumbrance unless it also qualifies under (d) or (e) immediately below, (d) all matters shown on the subdivision plat for the Property approved by Developer, which approval will not be unreasonably withheld, conditioned or delayed, (e) any other encumbrances approved, or caused, by Developer, and (f) any matter which is accepted by Developer or deemed a Permitted Encumbrance under Section 4.3(c) hereof.

"**Person**" means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

"**Potential Event of Default**" means any condition or event which after notice and/or the lapse of time would constitute an Event of Default.

"**Property**" means certain real property located in the City of Austin, Travis County, Texas, commonly known as the Green Water Treatment Plant, as more particularly shown on Exhibit A-1 attached hereto and described on Exhibit A-2 through Exhibit A-5 attached hereto. The Property includes all of Block 1, Block 23, Block 185 and Block 188.

"**Public Improvements**" means the (a) 2nd Street extension from San Antonio Street west to the Shoal Creek Bridge, (b) Nueces Street extension from the 3rd Street alley located adjacent to the northern Property line to Cesar Chavez, each including utility extensions and construction to the City's Great Streets Development Program, and (c) the Water Quality Basin.

"**Public Improvements Completion**" means the day on which all of the following have been satisfied:

(a) the applicable Public Improvements have been substantially completed (which may not include the final street "top coat") in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer's engineer,

(b) all Governmental Authorities having jurisdiction have issued certificates of completion, certificates of occupancy, final acceptance letter or their equivalent, as applicable, for the Public Improvements, and

(c) all bills for such applicable Public Improvements have been paid, are not yet due and payable or are being contested in good faith through appropriate proceedings.

"**Public Improvements City Plans**" as defined in Section 3.1(d)(i).

"**Public Improvements City Plans License**" as defined in Section 3.1(d)(i).

"**Shoal Creek Bridge**" as defined in Section 3.1(d) hereof.

"**Shoal Creek Bridge Construction Easement**" means a temporary construction easement for the construction of the Shoal Creek Bridge as provided in Section 3.2(i) hereof in the area shown on Exhibit G attached hereto.

"**Staging Right**" as defined in Section 3.3(k) hereof.

"**Survey**" means any survey of the Property (or any Block) prepared by a civil engineer for the Developer.

"**Takedown**" means the transfer by the City of a Block to Developer.

"**Takedown Date**" as defined in Section 4.1(a) hereof.

"**TCEQ**" means the Texas Commission on Environmental Quality, including its successors.

"**Title Binder**" means the Commitment For Title Insurance prepared by Heritage Title Company of Austin, Inc. with an effective date of March 5, 2012 as GF No. 102663 and all exceptions to title coverage set forth therein as provided in Section 4.4 hereof.

"**Title Company**" means Heritage Title Company of Austin, Inc., its successors and assigns, or any other title company approved by the City and Developer.

"**Transfer**" as defined in Section 9.15(c) hereof.

"**Transfer Price**" means, as applicable, the following:

Block	Transfer Price
1	$15,830,208
23	$11,982,915
185	$10,277,470
188	$4,309,407

"**Water Quality Basin**" means a water quality structure and associated stormwater infrastructure that will receive stormwater runoff from the public streets and

other public rights-of-way adjacent to the Property and from the Improvements developed or to be developed on each Block, which structure fulfills the water quality requirements of the City in effect as of the Effective Date.

1.2 Modification of Defined Terms. Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this Section shall be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Agreement to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this paragraph" and "this subparagraph" and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation." Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context clearly otherwise requires. Except as specifically provided in Sections 3.3(e), 3.3(h) and 3.3(i) references to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.

1.4 Term of Agreement. The intent of this Agreement is to govern the initial development of the Property and the applicable Other Development Documents will govern the ongoing use of the Property. The term of this Agreement shall commence on the Effective Date and shall continue, on a Block by Block basis, until the date which is the earlier to occur of (a) three months following the Completion of the Construction on a Block, and (b) this Agreement is earlier terminated pursuant to the terms hereof. When this Agreement terminates as to a Block, this Agreement no longer applies to such Block (but the Other Development Documents may continue to apply to such Block).

1.5 ENA. The ENA is terminated as of the Effective Date and neither party has any ongoing responsibilities or liabilities thereunder.

ARTICLE II
REPRESENTATIONS

2.1 Representations of the City. The City represents to Developer as follows (as applicable to each portion of the Property which has not been Takendown):

(a) Title. The City presently has good and indefeasible title to the Property, subject to the Permitted Encumbrances.

(b) Parties in Possession. As of the Effective Date, there is no party in possession of the Property (other than the City and its departments), and on the applicable Takedown Date, there will not be any party in possession of the applicable portion of the Property (subject to the Permitted Encumbrances and the Shoal Creek Bridge Construction Easement).

(c) Proceeding by Governmental Authority. There is no pending or, to the City's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof (except with respect to this representation made as of a Takedown Date, any condemnation legislation filed in the Legislature of the State of Texas).

(d) Litigation or Administrative Proceeding. To the City's Actual Knowledge, the City has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the City to perform any of its obligations hereunder.

(e) Performance Will Not Result in Breach. Performance of this Agreement or the Other Development Documents pursuant to the terms hereof and thereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the City is a party or by which the City or the Property might be bound.

(f) Execution. The execution and delivery of, and the City's performance under, this Agreement and the Other Development Documents are within the City's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement and the Other Development Documents on behalf of the City has, or will have when executed, the authority to do so. This Agreement and the Other Development Documents constitute the legal, valid and binding obligation of the City enforceable in accordance with their respective terms, subject to the principles of equity.

(g) Not a Foreign Person. The City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder. City understands that this representation may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment, or both.

(h) Broker. The City has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. To the extent allowed by Legal Requirements, the City agrees to indemnify and hold harmless Developer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in

connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedowns and any expiration or termination of this Agreement.

(i) Environmental. To the City's Actual Knowledge, the City has delivered copies, or otherwise made available, to Developer all Environmental Site Assessments in City's possession as of the date hereof.

(j) 2nd Street and Nueces Street Design. City has delivered to Developer all design documents and other related information in its possession or control related to the design of the extension of 2nd Street and Nueces Street (and related utilities) so that Developer can complete the design and construction work related thereto as required by Sections 3.1(d)(i)-(vii) hereof.

2.2 Representations of Developer. Developer represents to the City as follows:

(a) Authorization. Developer is duly organized and legally existing under the laws of its state of organization. Developer is duly qualified to do business in the State of Texas.

(b) Performance. Performance of this Agreement and the Other Development Documents will not result in any breach of, or constitute any default under, any agreement or other instrument to which Developer is a party or by which Developer might be bound.

(c) Execution. The execution and delivery by Developer of, and Developer's performance under, this Agreement and the Other Development Documents are within Developer's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement and the Other Development Documents on behalf of Developer has, or will have when executed, the authority to do so. This Agreement and the Other Development Documents constitute the legal, valid and binding obligation of Developer enforceable in accordance with its terms, subject to the principles of equity.

(d) Broker. Developer has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. Developer agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedowns and any expiration or termination of this Agreement.

(e) Executive Order 13224. Developer and all Persons or entities holding any legal or beneficial interest whatsoever in Developer are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to or otherwise associated with, any of the Persons or entities referred to or described in Executive Order 13224 (Blocking Property and Prohibiting

Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

2.3 Change in Representations. If, after the Effective Date and prior to a Takedown, either party obtains actual knowledge of any fact, matter or circumstance which causes any of its representations made in Sections 2.1 or 2.2 to be inaccurate or untrue in any material respect, such party shall submit written notice thereof to the other party (a "**Disclosure Notice**") specifying in reasonable detail such fact, matter or circumstance. The disclosure of such fact, matter or circumstance by Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as to the particular Block which is the subject of the applicable Takedown, then such party shall be obligated to cause the representation to be true as of a Takedown, and the other party has no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as to the particular Block which is the subject of the applicable Takedown, then such other party has until the date which is five Business Days after the date of the Disclosure Notice, at its option, to elect, in writing, not to consummate the sale at such Takedown. The failure to elect not to close within the period described in the preceding sentence will be deemed to be a waiver of the fact, matter or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect thereto. The timely and proper election not to close under this Section as to any Block shall terminate this Agreement with respect to that Block in which event neither party shall have any right or obligation under this Agreement as to that Block, except those which expressly survive such termination.

2.4 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN CITY'S SPECIAL WARRANTY OF TITLE CONTAINED IN ANY DEED), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS AGREEMENT

WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. DEVELOPER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO, IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TAKEDOWNS, NOT MERGE WITH THE PROVISIONS OF ANY TAKEDOWN DOCUMENT AND BE INCORPORATED INTO ANY DEED. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO DEVELOPER.

ARTICLE III
COVENANTS AND AGREEMENTS

3.1 Developer's Development Related Covenants and Agreements.

(a) Improvements Design and Performance. Developer shall design and construct the Improvements in accordance with Legal Requirements, the Declaration and this Agreement.

(b) Subdivision Plat. Developer, at its sole cost and expense, shall be responsible for subdividing and platting the Property in accordance with Legal Requirements, except that the City shall execute (solely in its capacity as a landowner) all preliminary plans, subdivision plats and related documents (including applications therefor) reasonably approved by the City in its capacity as a landowner. In furtherance of this subdivision requirement, Developer shall cause its civil engineer to prepare the preliminary plans, the subdivision plats and related documents (including applications therefor) for each applicable portion of the Property and all other civil engineering information and/or documentation necessary to finalize such subdivision plats. The City will be the applicant with respect to such subdivision plat(s).

(c) Design and Construction of the Improvements. Subject to Force Majeure and City Caused Delays, Developer shall Commence Construction of the Improvements in a timely manner following the applicable Takedown. Following Commencement of Construction, Developer shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Improvements to Completion of Construction. Developer will cause the design and construction of the Improvements to comply with Section 1 of the Declaration relating to the City's design approval rights. The design and construction of the Improvements must show, on a Block by Block basis, reasonable progress towards the requirements hereof and the Declaration, including

without limitation, minimum square footage, public parking and affordable housing requirements. The City will not be responsible for the cost of the design, construction or development of the Improvements. Developer acknowledges that all Block faces must meet the Great Streets Development Program requirements (such requirements on all faces which front a street included in the Public Improvements will be included in the construction of the Public Improvements).

(d) Design and Construction of Public Improvements.

(i) City hereby grants to Developer a license to use those plans and specifications for the Public Improvements (the "**Public Improvements City Plans**") which have been prepared for, and are owned by, the City (the "**Public Improvements City Plans License**"). Under the Public Improvements City Plans License, Developer will have the right to use the Public Improvements City Plans to construct the Public Improvements.

(ii) Contemporaneously with Developer's design of the Improvements, Developer shall use the Public Improvements City Plans to complete the design of the Public Improvements. The completion of the design of the Public Improvements shall be subject to the prior written approval of the City both in its regulatory capacity and its landowner capacity. Each request for approval under this paragraph relating to the City's landowner capacity will be made in the same manner a design approval request is made under Section 1 of the Declaration (except that the required "plans" shall mean all the construction drawings of the Public Improvements). Developer shall cause the completion of the design of the Public Improvements to comply with all Legal Requirements, this Agreement and the applicable Community Facility Agreement. The design of the 2nd Street extension must be compatible with the City's design and construction of the connecting bridge across Shoal Creek (the "**Shoal Creek Bridge**").

(iii) Subject to Force Majeure and City Caused Delays, Developer shall Commence Construction of the Public Improvements at the appropriate time following Commencement of Construction of the adjacent Improvements (i.e., commencement will begin in sufficient time to allow completion according to the following sentence). Following such commencement, Developer shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Public Improvements. Developer shall cause the construction of the Public Improvements to comply with this Agreement, the Other Development Documents and the Legal Requirements. Developer's obligations under this paragraph will terminate to the extent the Public Improvements City Plans License is terminated by the City.

(iv) Subject to Force Majeure and City Caused Delays, the Public Improvements Completion of the 2nd Street extension from the Shoal Creek Bridge to San Antonio Street must be achieved by the earlier to occur of (A) opening of the Shoal Creek Bridge, or (B) issuance of a Certificate of Occupancy for the first building on a Block to be completed, but such completion of the

Public Improvements Completion of the 2nd Street extension from the Shoal Creek Bridge to San Antonio Street is not required to occur prior to December 31, 2014.

(v) Subject to Force Majeure and City Caused Delays, the Public Improvements Completion of the Nueces extension from the 3rd Street alley to Cesar Chavez must be achieved by issuance of a Certificate of Occupancy for the first building which is adjacent to Nueces Street. Compliance with this covenant will be measured in two parts – Nueces Street from the 3rd Street alley to 2nd Street and Nueces Street from 2nd Street to Cesar Chavez.

(vi) Contemporaneously with the City's acceptance of the Public Improvements for maintenance Developer shall:

A. assign to the City all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Public Improvements,

B. execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence the City's ownership of the Public Improvements, without representation or warranty, except an obligation of Developer to cause its contractor to provide a maintenance bond for a period of one year, and

C. provide to the City such other instruments or documentation reasonably requested by the City to evidence the transfer of ownership of the Public Improvements under this Agreement.

(vii) The Public Improvements will be designed and constructed by Developer and the cost thereof will be reimbursed by the City through a separate Community Facility Agreement.

(e) Licensing and Leasing. Subject to Section 3.3(k) hereof, Developer will not license, lease or otherwise similarly transfer possessory rights to any portion of the applicable Property prior to its Takedown without the prior written consent of the City (which may be withheld in the City's sole and absolute discretion).

(f) Chilled Water Agreement. Contemporaneously with the execution hereof, Developer shall use good faith efforts to negotiate with Austin Energy to obtain a CWMOU and CWSA with respect to each Block so long as the use of such chilled water is not more costly (other than de minimis additional costs) or cause burdensome operational issues than the alternatives or adversely affect Developer in complying with any LEED covenants under the Declaration.

(g) Trees. After the issuance of the RFP, submittal of the RFP Response and selection of the Developer, the City enacted Ordinance 20100204-038 (the "**Ordinance**"), commonly known as the Heritage Tree Ordinance. The Property currently has seven "Heritage" trees (Tree Numbers 1184, 1370, 1371, 1385, 1386, 1412

and 3018) and one "Protected" tree (Tree Number 1430), each as defined in the Ordinance, which are delineated on Exhibit B attached hereto. In connection with the Environmental Remediation during the City's ownership of Block 23, Tree Number 3018 will be removed and mitigated. Prior to the development of Block 185, Tree Number 1184 will be transplanted to a location agreed upon by City and Developer near the Property. Not later than the Commencement of Construction for Block 1, Developer shall pay to the City the total sum of $58,632 concerning the removal of Tree Numbers 1370, 1371 and 1430. In connection with the development of Block 1, Tree Numbers 1385, 1386 and 1412 will be removed and mitigated with new trees (or an increase in the minimum caliper of onsite Great Streets Development Program's trees), or a combination thereof, of at least 324 caliper inches to be installed at the appropriate time in the next growing season but within 9 months of the Commencement of Construction on Block 1. Any "transplanted" trees required under this paragraph will include a five year Developer irrigation and maintenance commitment. Any "new trees" required under this paragraph will be located in City of Austin public parks as selected by the City and reasonably approved by Developer in as close a proximity to the Property as possible, be at least 4" caliper trees, be a variety which is listed as a potential future "Heritage" tree in the Ordinance and include a two year Developer warranty and irrigation commitment for all trees not located on the Property. Developer's satisfactory performance of its obligations under this paragraph will be deemed full and complete compliance with the Ordinance.

(h) Heritage Tree Provision Added from the Dais. The Developer will work with the City arborist to determine whether or how the heritage trees on the site might be incorporated into the design of the project.

(i) Difficult to Employ Provision Added from the Dais. The Developer shall exercise due diligence in its relationship with its contractors in promoting the hiring of applicants with a criminal record.

3.2 Developer's General Covenants and Agreements.

(a) Single Asset Entity. During the term of this Agreement, Developer shall not (i) acquire any real or personal property other than real property within the Property and personal property related to the redevelopment, operation and maintenance of the Property, (ii) operate any business other than the redevelopment, management and operation of the Property, or (iii) maintain its assets in a way that would make them difficult to segregate and identify.

(b) Downtown Austin Alliance. Within 90 days following the Effective Date, Developer shall petition to join the Downtown Austin Public Improvement District and diligently pursue and maintain its membership therein.

(c) Intentionally Omitted.

(d) M/WBE.

(i) Developer, its architect, and its general contractor shall use good faith efforts to meet the minority-owned and women-owned business enterprises

("**M/WBE**") Participation Goals set forth herein. If Developer, its architect, and its general contractor do not meet each of the M/WBE Participation Goals the Developer must document good faith efforts to meet the goals that were not met. Good faith efforts are those efforts described in sections 2-9A-21 and 2-9B-21 of the M/WBE Ordinance. If Developer provides documentation evidencing these good faith efforts, Developer shall be deemed in compliance with such obligations. Failure to perform this obligation shall be considered a material breach of this contract. If such failure includes providing false or misleading information to the City, Developer may also be subject to being barred, suspended, or deemed non-responsible in future City solicitations and contracts for a period up to five years. If an Event of Default results under this paragraph, Developer may also be subject to being barred, suspended, or deemed non-responsible in future City solicitations and contracts for a period up to five years.

(ii) With respect to the design and construction of the Improvements and Public Improvements, Developer, its architect, and its general contractor will meet the following, ethnic-specific participation goals or submit documentation demonstrating its good faith efforts to meet the goals:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	2.9%	2.7%
Hispanic-owned Business Enterprises	9.0%	9.7%
Asian-American and Native American-owned Business Enterprises	4.9%	2.3%
Women-owned Business Enterprises	15.8%	13.8%

(iii) Developer shall provide an outreach program designed to solicit participation of minority-owned businesses, women-owned businesses, and small businesses.

(iv) Developer shall inform the City's Small and Minority Business Resources Department ("**SMBR**") when Developer, its architect, or its general contractor desires assistance from SMBR in its efforts regarding the ethnic-specific M/WBE utilization goals set forth above. This assistance may include providing a list of certified M/WBE firms from which Developer may solicit or cause its architect or general contractor to solicit participation in design or construction, identifying potential scopes of work, establishing the bid packages available, scheduling and hosting outreach meetings, and assisting Developer in

soliciting M/WBE firms to provide bids. The foregoing covenant does not require Developer to solicit participation during a period in which Developer is not designing and/or constructing the Improvements or Public Improvements, but rather, requires Developer to incorporate the standards and principles of the M/WBE Ordinance including the foregoing M/WBE Participation goals into its development process as and when such process exists. Additionally, the foregoing covenant does not require Developer to modify or amend any contract or agreement that Developer has entered into prior to the Effective Date which are listed on Exhibit J attached hereto. In the event the Developer applies for a service extension request for the Property, Developer is encouraged to comply with the standards and principles of the M/WBE Ordinance in the design of the water and wastewater infrastructure and related facilities.

(v) Developer shall provide monthly reports to allow SMBR to track (A) the utilization on a percentage basis of M/WBE firms in the design and construction of the Improvements and Public Improvements, and (B) a summary of Developer's efforts to implement the M/WBE Resolution. SMBR shall provide the forms to be used by Developer in submitting such reports.

(e) Prevailing Wage Ordinance. Developer shall require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to pay the prevailing wage as defined in the City of Austin Ordinances attached hereto as Exhibit F.

(f) OSHA Resolution. Developer shall require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to comply with the OSHA Resolution attached hereto as Exhibit H.

(g) Worker's Defense. In addition to complying with the covenants pertaining to M/WBE, the Prevailing Wage Ordinance and the OSHA Resolution in accordance with Sections 3.2(d), (e) and (f) of this Agreement, Developer will comply with all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, workers compensation and other applicable insurance and wage and hour (including minimum wage), and Developer agrees to make commercially reasonable efforts to work with the Workers Defense Project ("**WDP**") in connection therewith. Additionally, Developer will, and will require its contractors to, use commercially reasonable efforts to comply with each of the following:

(i) Advertise open labor positions with workforce training centers certified by WDP;

(ii) Provide construction workers with personal protective equipment required by OSHA without charge;

(iii) Provide construction workers with 10 hour OSHA safety training without charge;

(iv) Provide construction workers breaks, in addition to a lunch break, for every four consecutive hours of work, and provide drinking water and sanitation facilities;

(v) Require contractors to provide workers compensation insurance for construction workers;

(vi) Require general contractors to employ a safety representative with a minimum of 30 hours of OSHA approved supervisor safety training on any construction site;

(vii) Allow a WDP representative with a minimum of 30 hours of OSHA approved supervisor safety training to accompany representatives of Developer and the general contractor's safety representative on scheduled monthly safety inspections;

(viii) Prohibit contractors from retaliating against construction workers who address workplace concerns with WDP;

(ix) Provide reasonable signage that provides contact information for WDP and encourages construction workers to contact WDP regarding project safety or wage issues, which signage shall be posted in the same general location where other federal and state regulation signage is posted; and

(x) Work with WDP to reasonably investigate and address concerns raised by construction workers regarding safety conditions or wages.

(h) Worker Provision Added from the Dais. Developer shall allow a WDP representative with a minimum of 30 hours of OSHA approved supervisor safety training to accompany representatives of Developer and the general contractor to monitor worker welfare once per pay period.

(i) Worker Provision Added from the Dais. Developer shall set a target goal of 20% hiring from graduates of a local hands-on construction training school that offers bilingual classes free of charge with a wage floor of $16 per hour for these workers who have continued their education.

(j) Shoal Creek Bridge Construction Easement. City, at no cost, shall have the right to occupy the Shoal Creek Bridge Construction Easement for the purpose of constructing the Shoal Creek Bridge. The Shoal Creek Bridge Construction Easement location may change from time to time as the needs of the City, in its construction of the Shoal Creek Bridge, and the Developer, in its development of the Property, may change and the City and the Developer shall work together in good faith to facilitate any such relocation!

3.3 City's Covenants and Agreements.

(a) Litigation. Prior to a Takedown, the City will notify Developer of any administrative proceeding, litigation or written, threatened and reasonably meritorious claim against the City, which if adversely determined, would substantially impair the redevelopment of the remaining Property, each of which the City has Actual Knowledge.

(b) No Further Sales. Prior to a Takedown, subject to Section 4.4 regarding condemnation, the City will not voluntarily sell or otherwise transfer all or any remaining portion of the Property to a party other than Developer, without the prior written consent of Developer which Developer may grant or deny in its sole and absolute discretion.

(c) No Further Leases. Without the prior written consent of Developer (which Developer may grant or deny in its sole and absolute discretion) prior to a Takedown, other than the Permitted Encumbrances and the Staging Right, the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any applicable remaining portion of the Property which (i) cannot be terminated on up to 30 days prior notice (and in any event not later than the applicable Takedown), and (ii) materially and adversely interferes with Developer's obligation to redevelop the applicable Property under this Agreement.

(d) Dedicated Team. Commencing on the Effective Date and ending on the date which is 12 months following the last scheduled Takedown, the City will use its good faith efforts to dedicate and maintain resources to review the architectural plans required to be submitted to the City under the Declaration, subdivision plats, site development permits, Community Facility Agreements, license applications, public infrastructure and shell building permits/applications.

(e) Controlling Ordinances, Manuals, and Rules. As provided in Section 3 of the Declaration, the Improvements must be constructed in accordance with all "Legal Requirements" (as defined in the Declaration). Solely for the benefit of the initial developer of the Improvements (as opposed to any other owner, tenant, licensee or occupant of the Improvements), commencing on the Effective Date and ending on the date which is 12 months following the last scheduled Takedown, the application of all City of Austin ordinances, manuals, and rules regarding land development, including the Land Development Code, to the development of the Improvements for which a building permit has been issued by such date will be "locked-in" by limiting them to the terms and provisions as they exist on the Effective Date; except the following applicable City of Austin ordinances, manuals and rules shall not be "locked-in" and may be enforced as enacted or amended:

(i) except with respect to a prohibition of interlocking, fire-separated stairs in a high-rise building, measures regulating conduct or activity relating to health and safety including City Code Chapter 25-7 (Drainage) and Chapter 25-12 (Technical Codes), in addition to the City's Drainage and Utility Criteria Manuals;

(ii) measures which the City must enact or enforce pursuant to state or federal mandates, or by court order; and

(iii) measures regulating signs, including but not limited to City Code Chapter 25-10 (Sign Regulations).

(f) Environmental.

(i) City will use commercially reasonable efforts to cause its environmental consultant to pursue issuance of the Voluntary Cleanup Program Certificate of Completion and Innocent Owner/Operator Program Certificate referenced in the definitions of "Final Ready Date" and "Initial Ready Date". Developer, at its election, may pursue issuance of the Innocent Owner/Operator Program Certificate referenced in the definition of "Final Ready Date" and City shall use its good faith efforts to assist in Developer's pursuit of such Innocent Owner/Operator Program Certificate.

(ii) City will hire Developer to manage the construction and remediation necessary to achieve completion of the Environmental Remediation, which arrangement will be evidenced by a Community Facility Agreement. All costs to complete the Environmental Remediation will be reimbursed by the City through a Community Facility Agreement (subject to the terms thereof).

(iii) The City will keep Developer generally informed as to the progress on the City's efforts to satisfy the requirements for the Initial Ready Date and the Final Ready Date.

(g) Inspection Prior to Takedown Date.

(i) Developer may enter upon the Property, and cause authorized representatives of Developer to enter upon the Property to conduct general or special physical investigations and inspections of the Property on behalf of Developer in furtherance of the purpose of assessing and causing the development of the Property (the "**Inspection Right**"). In no event may Developer conduct general or specialized tours through the Property or hold any event on the Property without the prior written consent of City. All inspections performed by Developer shall be at Developer's sole expense. Developer shall make such inspections in good faith and with due diligence and in compliance with all Legal Requirements. City reserves the right to have a representative present at the time of making any such inspection. Developer shall notify City not less than two business days in advance of exercising the Inspection Right.

(ii) If, for any reason, this Agreement expires or terminates, Developer shall repair any damage to the Property which has not been Takendown caused by Developer, or its agents, contractors or employees, arising out of or concerning the Inspection Right, and restore such portion of the Property to substantially the same condition it was in prior to the occurrence of damage. If Developer fails to commence to repair such damage within a reasonable time after written notice

from the City and diligently pursue the restoration to completion, the City may perform such repair and restoration work, and Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses within 10 days after receipt of an invoice reasonably detailing such work and the cost thereof. Developer shall cause its agents and contractors to execute and deliver to the City waivers of liability as reasonably promulgated by the City concerning the Property as a condition to entry upon the Property. In making any inspection hereunder, Developer will, and will cause any representative of Developer to, use discretion so as not to unreasonably disturb any occupants or personal property of the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(iii) DEVELOPER ACKNOWLEDGES THAT THE INSPECTION RIGHT IS GRANTED TO THE PROPERTY AS IS, WITH ALL FAULTS, IN ITS EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING THE PROPERTY'S GENERAL STATE OF SAFETY FOR INDIVIDUALS.

(h) Interlocking Stairs; Area of Refuge.

(i) As used in this subsection, the term "interlocking stairs" means a stairway in which two stairwells are run in the same shaft such that the stairwells cross at alternating floors in buildings which are primarily used for residential purposes.

(ii) Notwithstanding any City code requirement, policy, or rule, including but not limited to requirements of the Land Development Code, the Building Code, the Fire Code, or any administrative rule or policy, development within the Property may utilize interlocking stairs to satisfy applicable building ingress and egress requirements, subject to the following provisions:

A. The design must demonstrate to the City Building Official and the City Fire Code Official a level of safety for fire access and ingress that is equivalent to, or better than, the level of safety that would be provided by compliance with the minimum requirements of the 2003 International Building Code (IBC) and 2003 International Fire Code (IFC). Subject to these standards, IBC Sections 104.11 (Alternate materials, design and method of construction and equipment) and IFC Section 104.9 (Alternate materials and methods) may be employed with respect to each of the following:

1. remoteness of exits;
2. egress capacity;
3. fire resistance;

4. resistance to compromise by a single accidental or intentional act;

5. smoke management or control;

6. areas of refuge or rescue assistance;

7. emergency communications; and

8. installed fire protection and suppression systems.

(iii) Solely by way of illustration, and without limiting alternate building designs or configurations, the following approved developments are examples of projects that utilize interlocking stairs which satisfy the requirements in subsection 3.3(h)(ii) hereof:

A. Spring Condominiums
300 Bowie Street
Austin, TX 78703

B. 7 Rio
615 West Seventh Street
Austin, TX 78701

C. Tara Condominiums
Sacramento, CA

(iv) Compliance with the area of refuge requirements for development of the Property approved in subsection 3.3(h)(ii) hereof shall be determined in a manner consistent with the area of refuge approved by the City of Austin for the Spring Condominiums at 300 Bowie Street, Austin TX 78703.

(i) Managed Growth Agreement. Chapter 25-5-81 of the City Code provides that an approved site plan expires three years from the date of its approval. As a result of the significant challenges and delicate market conditions associated with marketing, developing, and financing the Improvements, the Developer has requested an extension of the site plan expiration date for the Improvements' each approved site plan. Thus, the expiration date of the approved site plan for the Improvements under Chapter 25-5-81 of the City Code will be five years from the date of its respective approval, subject to the exceptions set forth in Chapter 25-5-81 of the City Code. All other terms of Chapter 25 of the City Code will remain in effect as provided therein, subject to Section 3.3(e) hereof. Additionally, the expiration date of the Thomas C. Green Water Treatment Plant Decommission and Deconstruction Site Plan SP-2008-0258d(XT) (the current site plan for the Property) is extended to May 23, 2013. This section is deemed a "managed growth agreement" pursuant to Chapter 25-1-540 of the City Code.

(j) Shoal Creek Bridge. Subject to Force Majeure and Developer Caused Delays, City shall construct the Shoal Creek Bridge. In connection with the design of the Shoal Creek Bridge, City will afford Developer the right to provide input into such design regarding the functionality and connectivity to the 2nd Street extension to be constructed by Developer under Section 3.1(d)(iii) hereof. But City does not covenant to

generally construct the Shoal Creek Bridge in accordance with any particular design or timetable, other than the mutually agreed upon design regarding such functionality and connectivity. Once constructed, City makes no representation or warranty regarding such functionality or connectivity.

(k) Staging Right. Commencing upon the closing of the first Takedown, the City grants to Developer, at no cost, subject to the Permitted Encumbrances and subject to City approval (not to be unreasonably withheld) of the general scope of staging activities, adequate visual and noise screening and access points, the right to occupy the remaining portions of the Property which have not yet been purchased under this Agreement solely for the purpose of staging its development activities on the Property (the "**Staging Right**"). The Staging Right will automatically terminate upon the expiration or earlier termination of this Agreement. In connection with such termination or expiration, any equipment or other materials which remain on the date which is 30 days following such expiration or termination on the portion of the Property which has not been Takendown will be deemed abandoned by the Developer and the City may, in its sole and absolute discretion, dispose of such property. No tenancy relationship or other property right is created by the Staging Right and the City will not have an obligation to perform any services as a landowner whatsoever in connection with Developer's Staging Right.

(l) License for Underground Parking. Because the RFP encouraged a high density development on the Property and stated "[t]he Proposer should note that there is the ability to place a portion of the parking under 2nd Street and Nueces Street near the GWTP properties", subject to the execution of applicable License Agreements (which the City Council authorizes the City Manager to negotiate and execute), at no cost to the Developer, in connection with the development and operation of only the Property, the City will allow the Developer to construct and maintain, in connection with the initial development of the Property, an underground garage(s) under the rights of way of the Public Improvements solely for the use of the residents, tenants and guests of the Property and the general public (as opposed to regular use by residents, tenants and guests of neighboring properties).

(m) Licenses for Certain Development Functions. Subject to the execution/issuance of applicable License Agreements/permits, payment of applicable fees and reasonable City approval regarding the specific applicable location(s), in connection with its development of the Property, the City will allow the Developer to (i) temporarily use the rights-of-way (streets, sidewalks and alleys) which are contiguous to the Property, (ii) locate crane foundations in the public rights-of-way contiguous to the Property (so long as Developer removes such foundations located within 20' below finished grade), (iii) install a subgrade retention system for the Improvements and Environmental Remediation on the Property (including piles and tie backs) in the public rights-of-way contiguous to the Property and (iv) construct and install the Water Quality Basin underground within the public right-of way of Nueces Street between 2nd Street on the north and Cesar Chavez on the south with the right to tie into this system from each Block, which will satisfy all water quality requirements for each of the Blocks. The Water Quality Basin will be constructed as part of the Public Improvements to serve both

private (i.e., the Blocks) and public (i.e., the Public Improvements) improvements and the design, permitting and construction cost thereof will be fully reimbursed by the City under a Community Facility Agreement, but be maintained by the owners of the Blocks under the Declaration at their expense.

ARTICLE IV
PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement and Timing.

(a) Takedown Dates. The Takedowns of the Property will occur in four or less closings on the following dates:

	Block	Timing
First Takedown	Any Block	Within 12 months following the Initial Ready Date (but in no event earlier than the date which is 12 months following the Effective Date) (the "**First Required Takedown Date**")
Second Takedown	Any remaining Block	Within the date which is the later of (a) 21 months following the First Required Takedown Date, and (b) 180 days following the Final Ready Date (the "**Second Required Takedown Date**")
Third Takedown	Any remaining Block	Within 18 months following the Second Required Takedown Date (the "**Third Required Takedown Date**")
Fourth Takedown	Any remaining Block	Within 15 months following the Third Required Takedown Date (the "**Fourth Required Takedown Date**")

The First Required Takedown Date, Second Required Takedown Date, Third Required Takedown Date and Fourth Required Takedown Date, each a "**Takedown Date**" and collectively, the "**Takedown Dates**".

The Developer, at its option, may Takedown any Block before the applicable Takedown Date, but such early Takedown will not accelerate any subsequent Takedowns.

(b) Real Estate Market Delay of Takedown Date. Any Takedown Date may be delayed by Developer for up to 3 periods of 9 months each (a "**Market Delay Period**") if one of the following conditions exist:

(i) Residential. If (A) Class A "for rent" multifamily vacancy rate for the City of Austin Central Business District exceeds 8%, or (B) the unsold inventory of new, completed for-sale high rise condominium units in the City of Austin Central Business District represents 10% of the total number of high rise

condominium units in the City of Austin Central Business District, on the date which is 3 months prior to a scheduled Takedown Date.

(ii) Hotel. If occupancy of Class A hotel rooms in the City of Austin Central Business District is less than 70% for the prior 12 month period ending on the date which is 3 months prior to a scheduled Takedown Date.

(iii) Office. If Class A office direct vacancy rate for the City of Austin Central Business District exceeds 12% on the date which is 3 months prior to a scheduled Takedown Date.

Once utilized, a Market Delay Period will no longer be available to Developer (i.e., if Developer exercises the office Market Delay Period, the office Market Delay Period will no longer be available; provided however if Block 23 is the first Block to be Takendown, the "Office" Market Delay Period in Section 4.1(b)(iii) above will be replaced with the following:

Additional Residential. If Class A "for rent" multifamily vacancy rate for the City of Austin Central Business District exceeds 8% on the date which is 3 months prior to a scheduled Takedown Date.

A Market Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Market Delay Period must be accompanied by evidence from a mutually acceptable research publication or commissioned study concerning the market factors listed above prepared by a third party that is unaffiliated with Developer. No Market Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Market Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 9 months resulting in future Takedown Dates of October 1, 2015, July 1, 2016 and October 1, 2017.

(c) Financing Market Delay of Takedown Date. All Takedown Dates may be delayed by Developer for 1 period of 12 months (the "**Financing Delay Period**") if a loan for the construction of the proposed improvements on the remaining Blocks is not available to Developer in the then current debt market on the date which is 3 months prior to a scheduled Takedown Date, based on any one or more of the following terms (and such other terms as are customary for similar projects):

(i) loan amount of not less than 60% but not more than 80% of total projects costs related to the development of the applicable takedown Block;

(ii) a market required guaranty not to exceed a 25% repayment and completion guaranty;

(iii) an interest rate of not more than 8% per annum (fixed or equivalent rate); and

(iv) a commitment or origination fee not more than 75 basis points.

A Financing Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Financing Delay Period must be accompanied by evidence in form and content reasonably acceptable to the City from an independent third party stating that such financing is not available. No Financing Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Financing Delay Period on October 1, 2014 would extend *all future* Takedown Dates by 12 months resulting in future Takedown Dates of January 1, 2016, July 1, 2017 and October 1, 2018.

(d) Developer Unilateral Right to Delay Takedown Date. Any Takedown Date may be delayed by Developer for up to 4 periods of 3 months each (a "**Unilateral Delay Period**") which periods may be exercised one at a time or cumulatively, subject to the following conditions:

(i) Developer has given City not less than 60 days' prior written notice of Developer's intention to extend the next occurring Takedown Date.

(ii) No Bankruptcy Event, Event of Default or Potential Event of Default exists.

(iii) Developer shall pay to City, contemporaneously with the written notice of the extension, an extension fee in the amount of $125,000, which extension fee will be deemed due, payable, earned and nonrefundable, but will apply as a credit against Developer's obligation to pay the Transfer Price at the next Takedown and if such next Takedown does not occur, City may retain such amount.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Unilateral Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 3 months resulting in future Takedown Dates of April 1, 2015, July 1, 2016 and October 1, 2017.

4.2 Takedown Conditions.

(a) The City's Takedown Conditions. The City's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in the City's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of Developer contained herein shall be materially

true, accurate and correct as of the applicable Takedown Date (except to the extent they relate to an earlier Takedown Date) and Developer must have performed all the material agreements to be performed by Developer as of the applicable Takedown Date.

(ii) No Event of Default. No Developer Bankruptcy Event, Event of Default or Potential Event of Default exists.

(iii) Contributions and Payments. Developer must make the applicable contributions and payments set forth in ARTICLE VI.

(b) Developer's Takedown Conditions. Developer's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in Developer's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of the City contained herein shall be materially true, accurate and correct as of the applicable Takedown Date (except to the extent they relate to an earlier Takedown Date). The City has performed all the material agreements to be performed by the City as of the applicable Takedown Date.

(ii) No Event of Default. No City Event of Default or Potential Event of Default exists.

4.3 Title Binder and Survey.

(a) Title Binder. Developer has received and approved the Title Binder, subject to the exceptions noted in the definition of Permitted Encumbrances.

(b) Updating Title Binder; Survey. Not less than 30 days' prior to the proposed Takedown Date, Developer may obtain an update of the Survey and an update of the Title Binder covering the applicable Block that is the subject of the Takedown.

(c) Review of Updated Title Binder and Survey. If such (i) Survey shows any easement, right-of-way, or other encumbrance that was not created by, through or under Developer affecting the applicable Block, other than the Permitted Encumbrances, or (ii) updated Title Binder shows any additional exceptions to title coverage that were not created by, through or under Developer, other than the Permitted Encumbrances and the standard printed exceptions, and such new easement, right-of-way, other encumbrance or additional exceptions has an adverse effect on the title to the applicable Block, Developer shall, within 10 days after receipt of both the updated Title Binder and the Survey, notify the City in writing of such fact and the objections thereto (each such period, an "**Objection Period**"), in which event the City will have 10 days after the expiration of such Objection Period to cure such objections (the "**Cure Period**"). Upon the expiration of the Objection Period, Developer shall be deemed to have accepted the updated Title Binder and the Survey and all matters shown or listed thereon (except for the matters which are the subject of a notification permitted under the preceding sentence), and such

matters will be included in the term "**Permitted Encumbrances**" as used herein. Notwithstanding anything to the contrary contained herein, the City shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions except monetary liens, security interests and other collateral financing interests granted by the City against the Property, mechanic's liens arising out of any work performed by or under a contract with the City; judgment liens against the City and any exceptions and encumbrances created by the City after the Effective Date without Developer's consent. If the City is unable or unwilling to eliminate or modify such objectionable matters to the reasonable satisfaction of Developer within the Cure Period, Developer may, on or before the date which is 10 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (x) terminate this Agreement as to the applicable Block by delivering written notice of termination to the City, in which event neither party shall have any right or obligation under this Agreement as to that Block, except those which expressly survive such termination, (y) extend the Takedown Date by up to 30 days to attempt to cure such objectionable matter that the City is unable or unwilling to eliminate or modify, or (z) accept such title to the applicable Block as the City can deliver and such objectionable matters will be deemed approved by Developer as Permitted Encumbrances. If Developer elects option (y) immediately above and is unable to so cure such objectionable matter to its reasonable satisfaction with such additional 30 day period then, at the end of such period Developer shall have the right to terminate as to the applicable Block as provided in (x) immediately above or accept title and close as provided in (z) immediately above.

(d) Developer's Option to Waive Updating Title Binder and Survey. Developer may waive its right to obtain the Title Binder and the Survey with respect to all or any portion of the Property. If Developer so waives its right to obtain the updated Title Binder and the Survey, the "Permitted Encumbrances" for the applicable Property will be "subject to general real estate taxes on the Property for the current year, zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property and any and all valid restrictions, easements and other encumbrances, affecting the Property as the same appear of record, and all matters that would be disclosed in a current, accurate ALTA/ACSM Land Title Survey of the Property."

4.4 Condemnation.

(a) Knowledge. With respect to any portion of the Property which has not been Takendown, prior to a Takedown, upon the City obtaining written knowledge of the institution of any actual or threatened proceedings for the stated purchase or condemnation of the Property or any applicable portion thereof, the City will send Developer written notice of the pendency or threat of such proceedings; provided, however, the City's obligations to deliver such notice with respect to threatened legislation will not apply to threatened legislation which the City does not deem (in its reasonable discretion) a threat which could realistically result in the condemnation of the Property or a portion thereof.

(b) Developer's Role. Provided no Developer Event of Default exists, Developer may intervene in good faith by appropriate proceedings in any such proceedings for the sole purpose of protecting its interests under this Agreement, and, upon request from Developer, the City shall from time to time deliver to Developer written consent to such intervention. In any such condemnation event, this Agreement will remain in full force and effect until completion of such proceedings or as otherwise provided in this Section 4.4.

(c) Legal Requirements. The parties have the rights and duties set forth in this Section rather than as prescribed by the Uniform Vendor and Purchaser Risk Act (Texas Property Code, Section 5.007).

ARTICLE V
PROPERTY TAKEDOWN AND TRANSFER PRICE PAYMENT

5.1 The Takedowns. The Takedowns will take place at the offices of the Title Company on or before the Takedown Dates set forth in Section 4.1(a) hereof or such other time and place mutually agreed upon by the parties. At each Takedown the following will occur, each of which will be a concurrent condition to such Takedown:

(a) The City's Takedown Obligations. At each Takedown, the City shall:

(i) Deliver to the Title Company a duly executed and acknowledged Deed in favor of Developer covering the applicable portion of the Property, subject to the applicable Permitted Encumbrances.

(ii) With respect to the first Takedown, deliver to the Title Company a duly executed and acknowledged Declaration concerning the entire Property.

(iii) Deliver possession of the applicable portion of the Property to Developer, subject to the applicable Permitted Encumbrances.

(iv) Deliver such other documentation or instruments as reasonably required by the Title Company for such Takedown to occur in accordance with this Agreement.

(b) Developer's Takedown Obligations. At each Takedown, Developer shall:

(i) Pay to the City the applicable portion of the Transfer Price.

(ii) Deliver to the Title Company a duly executed and acknowledged counterpart of the Deed.

(iii) Deliver to the City the applicable payments and contributions set forth in ARTICLE VI hereof.

(iv) Deliver such other documentation or instruments as reasonably required by the Title Company for such Takedown to occur in accordance with this Agreement.

(c) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the applicable portion of the Property for the calendar year of Takedown, to the extent the City is obligated to pay such items, will be apportioned between the City and Developer at the applicable Takedown as of midnight of the day preceding the applicable Takedown Date.

(d) Closing Costs. Developer will pay all closing costs (e.g., title insurance, survey, inspection fees, Developer's attorney fees, financing fees, recording fees and escrow fees) in connection with each Takedown, except the City's legal fees and financial obligations of any lien the City granted on the Takedown Property, security interests and other collateral financing interests for which the City is responsible under Section 4.3(c) and any encumbrances created by the City after the Effective Date without Developer's consent. Section 3.1(b) of the ENA provides that Developer will receive a credit against the Transfer Price for certain Developer deposits. As the Improvements are approximately 75% of the overall improvements contemplated in the RFP response and the ENA (the other 25% being covered in the ECC Master Development Agreement), at the Takedown, Developer will receive a credit against the Transfer Price for 75% of the deposits referenced in Section 3.1 of the ENA (i.e., 75% of $50,000 + 3% interest accruing from April 30, 2008 [RFP response submission date] plus 75% of $100,000 + 3% interest accruing from August 11, 2008 [ENA effective date]), apportioned based on the Transfer Price for each Block compared to the sum of all Transfer Prices.

ARTICLE VI
DEVELOPER'S PAYMENTS AND CONTRIBUTIONS

6.1 Shoal Creek Improvements. Developer shall contribute $62,500 cash to the City to fund improvements in that portion of Shoal Creek adjacent to the Property on or before the Takedown of each Block (for a total contribution of $250,000). With respect to the improvements constructed with the funds delivered under this section, City will provide advance notice and the opportunity for a representative(s) of Developer to attend all planning/design public meetings concerning such improvements with the intent that City exercise due regard and consideration for Developer's input regarding such improvements. Developer acknowledges that the City may, in its discretion, utilize such funds for the reimbursement of past expenses related to improvements in Shoal Creek.

6.2 Arts in Public Places. Developer shall contribute $93,750 cash on or before the issuance of the applicable Certificate of Occupancy of each Block to the Arts in Public Places program (for a total contribution of $375,000). Such contribution will be used to pay for public art, and for the installation of public art on the Property. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance

notice and the opportunity for a representative(s) of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design, construction and use of the Property or any portion thereof. Any such public art project and the installation thereof may not adversely impact Developer's design, construction and use of the Property or any portion thereof.

6.3 Public Music. Developer shall contribute $37,500 cash on or before the issuance of the applicable Certificate of Occupancy of each Block to the Music Division of the City's Economic Growth and Redevelopment Services Office (or its successor) to program music performances on the Property (for a total contribution of $150,000). With respect to the selection of such public music under this section (a) Developer shall advise City during the process of selection as to Developer's plans as a guiding principle in such selection, and (b) City will provide advance notice and the opportunity for a representative(s) of Developer to attend all music selection meetings, with the intent that City not negatively impact Developer's planned use of the Property.

6.4 Excess Environmental Remediation Costs. Contemporaneously with the Takedown of Block 23, Developer shall pay to the City all costs of the Environmental Remediation incurred by the City in excess of $3,100,000, if any.

ARTICLE VII
INSURANCE AND INDEMNITY

7.1 Insurance.

(a) General. Developer shall carry and maintain from the inception of this Agreement (except as specifically noted below) the following insurance policies:

(i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of $1,000,000 bodily injury for each accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on Developer's behalf, will utilize with respect to the Property in a minimum limit of $1,000,000, combined single limit.

(iii) Commercial General Liability policy with a minimum limit of $1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations and contractual liability coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.

(iv) Intentionally Omitted.

(v) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of $1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. If coverage is written on a claims made basis, the retroactive date shall be coincident with the date the professional service provider commences its work and the certificate of insurance shall state that the coverage is claims made and the retroactive date shall be shown. The contractor shall maintain coverage for a two year period following the end of this Agreement. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(vi) For work that involves asbestos or any Hazardous Materials or pollution, the following will be in addition to the other insurance required hereunder:

A. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of $1,000,000. This policy cannot exclude asbestos or any Hazardous Materials or pollution and shall provide "occurrence" coverage without a sunset clause. This policy cannot exclude asbestos or any Hazardous Materials or pollution except for exclusions as are typical in the insurance marketplace and approved by City Risk Management. The policy shall provide "occurrence" coverage without a sunset clause.

B. Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other Hazardous Materials. The endorsement must, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The insurance required under this subsection will only be required concerning the entity which is actually performing such work. For example, if Developer's contractor (instead of Developer) is performing such work, the contractor, not Developer, will be required to

carry such insurance. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(b) Special Requirements. Developer will not cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to the insurance coverage required under this Article VII, such coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of B+VII or better or otherwise acceptable to the City. Additionally with respect to Sections 7.1(a)(i), (ii) and (iii), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Legal Requirements, and will be endorsed to provide the City with a 30-day notice of cancellation or other appropriate documentation as acceptable to the City. The City will be an additional insured as its interests may appear on the Commercial General, Automobile Liability and Pollution policies. The "other" insurance clause shall not apply to the City where the City is an additional insured on any policy. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Developer will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Developer will be responsible for (i) overseeing its contractors with respect to such contactors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates and other documentation evidencing the insurance coverages required hereunder.

(c) Additional Insured. The certificate of insurance and all endorsements i.e. additional insured, waiver of subrogation, and thirty day notice of cancellation (or appropriate documentation as acceptable to the City) shall indicate: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767.

(d) Cost. Developer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Developer (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the certificate of insurance. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Developer or the City under this Agreement.

7.2 Indemnity and Release.

(a) Indemnity. Developer will indemnify and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, contractors, employees and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "**Claim**") which are suffered by, recovered from or asserted against the City or its respective

officers, directors, employees and agents to the extent any such Claim arises from or in connection with (i) any Developer Event of Default, (ii) the consequences of any alleged, established or admitted act or omission of Developer or any agents, contractors, representatives or employees of Developer, (iii) the Staging Right and the use of the Property under the Staging Right, and (iv) any alleged, established or admitted act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the (a) gross negligence or willful misconduct of the City, or (b) negligence of the City or any agents, contractors, representatives or employees of the City in connection with the Shoal Creek Bridge Construction Easement and the use of the Property under the Shoal Creek Bridge Construction Easement.

(b) Claims. If the City notifies Developer of any Claim, Developer shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Developer and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume within 20 days after being notified of the Claim the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using counsel selected by the City; provided, that if any such failure by Developer continues for 30 days or more after Developer is notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Developer does not admit liability or agree to affirmative obligations on behalf of the City, Developer is authorized to settle a Claim for itself and the City.

(c) Release. Other than to the extent caused by a City Event of Default, Developer hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

The provisions of this Section will survive the expiration or earlier termination of this Agreement.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default – Developer. The following constitute Events of Default by Developer:

(a) Failure to Pay. Developer fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from the City.

(b) Abandonment or Suspension. Following Commencement of Construction, Developer voluntarily abandons or substantially suspends such construction for more than 60 consecutive days, subject to Force Majeure.

(c) Failure to Perform Obligations. Without limiting any other provision of this Section, Developer fails to perform any other obligations or duties provided in this Agreement, subject to Force Majeure, after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the City to Developer to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Developer fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(d) Insurance. Developer fails to maintain the insurance required under Section 7.1 hereof.

(e) Assignment. Developer violates the terms of Section 9.15 hereof.

(f) Other Development Documents. Developer commits an event of default under any of the Other Development Documents which continues past any applicable grace, notice or cure period(s).

(g) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Developer, either in a proceeding brought by Developer or in a proceeding brought against Developer, and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or Developer consents to or acquiesces in such appointment or possession. Developer files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing collectively, "**Applicable Bankruptcy Law**") or an involuntary petition for relief is filed against Developer under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming Developer is entered under any Applicable Bankruptcy Law, or any composition,

rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer.

(h) Litigation. Any reasonably meritorious third party suit shall be filed against Developer, which if adversely determined, would substantially impair the ability of Developer to perform in any material respect each and every one of its material obligations under and by virtue of this Agreement, and pursuant to which a permanent injunction is issued by a court of competent jurisdiction enjoining Developer from performing its obligations hereunder and such injunction is not released or bonded around within 90 days of its issuance, unless such claim arises out of or is related to the City entering into this Agreement with Developer.

8.2 Remedies of the City. Upon the occurrence and during the continuance of an Event of Default by Developer, the City has, as the City's sole and exclusive remedies, the remedies set forth below:

(a) Termination. With respect to any Block which has not been Takendown, the City may terminate all or a portion of Developer's rights under (i) this Agreement and/or (ii) the Declaration upon written notice to Developer. Additionally, the City may cause Developer to assign to another Person all or a portion of its rights and obligations without any representations or warranties under this Agreement (with an appropriate apportionment, as determined by the City, of rights and obligations between that portion of the Property that has been Takendown by Developer and that portion of the Property which has not been Takendown by the Developer). If the assignee assumes such rights, Developer has no further rights or obligations hereunder or thereunder as of the date of such assumption as to the rights and obligations so assigned. In connection with any such termination or assignment, City may also terminate that portion of the Public Improvements City Plans License that concerns the obligations of the MDA to be so assigned or terminated.

(b) Specific Performance. The City may institute an action for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. The City may pursue a claim against Developer for actual, but not punitive or consequential, damages.

(d) Intentionally Omitted.

(e) Tolling of Obligations under CWSA. The City may authorize Austin Energy to toll the performance of Austin Energy's obligations under any CWSA and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(f) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and the Other Development Documents (other than the obligation to reimburse Developer for development costs under a Community Facility Agreement) and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(g) Remedies Under Other Development Documents. The City may exercise any remedy provided to the City under the Other Development Documents.

EXCEPT AS SET FORTH ABOVE, THE CITY WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST DEVELOPER FOR DEVELOPER'S EVENT OF DEFAULT.

8.3 Events of Default – City. The following constitute Events of Default by the City:

(a) Failure to Pay. The City fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from Developer.

(b) Failure to Perform Obligations. Without limiting any other provision of this Section, the City fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by Developer to the City to perform such obligation and duty, or, in the case of a default not susceptible of cure within 30 days, the City fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(c) Assignment. City violates the terms of Section 9.15 hereof.

(d) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of the City, either in a proceeding brought by the City, or in a proceeding brought against the City and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or the City consents to or acquiesces in such appointment or possession. The City files a petition for relief under Applicable Bankruptcy Law or an involuntary petition for relief is filed against the City under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming the City is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by the City.

(e) Litigation. Any reasonably meritorious suit shall be filed against the City, which if adversely determined, would substantially impair the ability of the City to perform each and every one of its obligations under and by virtue of this Agreement, which is not dismissed within 90 days of filing.

(f) Other Development Documents. City commits an event of default under any of the Other Development Documents which continues past any applicable grace, notice or cure period(s).

8.4 Remedies of Developer. Upon the occurrence of an Event of Default by the City, Developer has, as Developer's sole and exclusive remedies, the remedies set forth below:

(a) Termination of the Development. Developer may terminate its obligations under this Agreement to Takedown the Property.

(b) Specific Performance. Developer may institute an action against the City for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. Developer may pursue a claim against the City for actual, but not punitive or consequential, damages.

(d) Tolling of Other Obligations. Developer may toll performance of its obligations under this Agreement and the Other Development Documents and any required time for performance thereof will be extended by the number of days the City Event of Default existed.

EXCEPT AS SET FORTH ABOVE, DEVELOPER WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST THE CITY FOR ANY CITY EVENT OF DEFAULT.

8.5 Rights and Remedies Are Cumulative. The rights and remedies of the parties to this Agreement are cumulative and the exercise by either party of any one (1) or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

8.6 LIMITED WAIVER OF SOVEREIGN IMMUNITY. **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY DEVELOPER SEEKING ONLY THE REMEDIES SPECIFIED IN SECTION 8.4 HEREOF AND THE SPECIFIC REMEDIES GRANTED IN AN ANY EXHIBIT HERETO. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT AND ANY EXHIBIT HERETO.**

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 Notices. Formal notices, demands and communications between the parties shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Developer:	TC Green Water Master Developer, LLC 100 Congress Avenue, Ste. 225 Austin, TX 78701 Attention: Aaron Thielhorn and Adam Nims
with a copy to:	Trammell Crow Company 2100 McKinney Avenue Suite 800 Dallas, TX 75201 Attention: Scott Dyche
with a copy to:	Constructive Ventures, Inc. 1000 East 8th Street Austin, TX 78702 Attention: Larry Warshaw
with a copy to:	Constructive Ventures, Inc. 1311A East 6th Street Austin, Texas 78702 Attention: Perry Lorenz
with a copy to:	DuBois, Bryant & Campbell, LLP 700 Lavaca, Suite 1300 Austin, Texas 78701 Attention: Rick Reed
City:	City of Austin City Manager's Office 301 West 2nd Street Austin, Texas 78701 Attention: City Manager
with a copy to:	City of Austin Economic Growth and Redevelopment Services Office 301 West 2nd Street Austin, Texas 78701 Attention: Director
and:	City of Austin Law Department 301 West 2nd Street Austin, Texas 78701 Attention: City Attorney
and:	Thompson & Knight L.L.P. 98 San Jacinto, Suite 1900

Austin, Texas 78701
Attention: James E. Cousar and Andrew Ingrum

or to such other address or to the attention of such other Person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

9.2 Limitation on Liability. No member, official or employee of the City shall be personally liable to Developer for any default or breach by the City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement. No Affiliate of Developer, and no officer, manager, director, partner, shareholder, member, official or employee of Developer or any Affiliate of Developer shall be personally liable to the City for any default or breach by Developer, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

9.3 Independent Contractor. Developer is an independent contractor with respect to the Improvements and the Public Improvements and is not serving as the employee or agent of the City. Nothing contained in this Agreement shall be construed as creating or constituting any partnership, joint venture, employment or agency between the parties. Each of Developer and the City has sole authority and responsibility to employ, discharge and otherwise control its own employees, and the respective employees of Developer and the City are not, and shall not be deemed to be, employees of the other. Neither party has the right or power to bind or obligate the other party for any liabilities or obligations without the prior written consent of the other party.

9.4 Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Developer of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Developer.

9.5 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

9.6 Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the parties and supersede all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

9.7 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.8 Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

9.9 Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

9.10 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Legal Requirements.

9.11 No Third Party Beneficiaries. Except with respect to any permitted assignees of Developer and the City as contemplated in Section 9.15, the City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other Person or entity third party beneficiary status.

9.12 Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one (1) single instrument.

9.13 Time of Performance. All performance dates (including without limitation cure dates) expire at 5:00 p.m. Central Standard Time, on the performance or cure date. A performance or cure date which falls on a day other than a Business Day is deemed extended to the next Business Day.

9.14 Estoppel Certificates. Upon 30 days' prior written notice and not more than four times in any 12-month period, the City and Developer each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other factual information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request (or any to be formed entity which is organized for the purpose for which the estoppel certificate is requested), may only be used to estop the responding party from claiming that the facts are

other than as set forth in the certificate, and may not be relied upon by any Person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

9.15 Successors and Assigns.

(a) General. Except as provided in this Section, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the City and Developer, and where the terms "**Developer**" or "**City**" are used in this Agreement, they mean and include their respective permitted successors and assigns. If any party hereto assigns its interest herein as permitted hereby, the assigning party will not be released from its obligations hereunder, except to the extent it obtains a written release from the beneficiary party to such obligations, which such beneficiary party may give or withhold in its sole and absolute discretion.

(b) City Assignment. Without Developer's prior consent, the City may only assign its interest in the Property to a special entity to facilitate the redevelopment of the Property, provided the City remains liable for the City's obligations to Developer in this Agreement. If the City assigns its interest hereunder, the City's assignee shall execute an assumption agreement unconditionally assuming the City's obligations hereunder, a copy of which shall be provided to Developer.

(c) Developer Assignment. Developer shall not assign (including without limitation, by transfer or pledge of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer or pledge of majority interest of [or controlling] ownership interests, merger, or dissolution shall be deemed an assignment), transfer or hypothecate all or any interest (a "**Transfer**") in this Agreement, without the City's prior written consent, provided however, (i) without the City's prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to another wholly owned Affiliate of Trammell Crow Company provided that such Affiliate is owned and controlled by the Persons that own and control Developer as of the Effective Date, and (ii) without the City's prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to a wholly owned Affiliate of CVI provided that such Affiliate is owned and controlled by the Persons that own and control CVI as of the Effective Date. In each such case, the transferee must assume the obligations of Developer in writing. The City Council authorizes the City Manager of the City to approve any Transfer.

(d) Developer Assignment. Prior to the date which is three months following Completion of Construction of the Improvements on a Block of the Property, Developer shall not Transfer all or any interest in such Block, without the City's prior written consent (which consent must be requested in writing through the Director of the City's Economic Growth & Redevelopment Services Office [or successor position or department] and will not be unreasonably withheld or conditioned) provided however, in connection with any such approved Transfer, such transferee, the Developer and the City enter into a Master Development Agreement Joinder in the form attached hereto as Exhibit I (which the City Council authorizes the City Manager to execute).

Notwithstanding the previous sentence, if any lender or investor requires that the applicable Block be owned and developed by a single asset entity (an "**SAE Developer**") following a Takedown, Developer, without the prior consent of the City, may Transfer its interest in such Block to an SAE Developer provided that (i) the Developer must control the SAE Developer through a managing member, manager, general partner or similar interest, and (ii) the SAE Developer, the Developer and the City enter into a Master Development Agreement Joinder in the form attached hereto as Exhibit I (which the City Council authorizes the City Manager to execute). The City Council authorizes the City Manager of the City to approve any Transfer.

(e) Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Developer (or its successor in interest hereunder) is permitted to assign this Agreement in disregard of the restrictions contained in this Article (or if this Agreement shall be assumed by a trustee for such Person), the trustee or assignee shall cure any Event of Default under this Agreement and shall provide adequate assurance of future performance by the trustee or assignee, including (i) the source of performance of Developer's obligations under this Agreement for which adequate assurance shall mean the deposit of cash or equivalent security with the City in an amount equal to the sum of 20% of Developer's estimated remaining monetary obligations under this Agreement, which deposit shall be held by City, without interest, as security for the full and faithful performance of all of the obligations under this Agreement on the part of Developer yet to be performed; (ii) that the trustee's or assignee's development expertise with respect to mixed use urban developments is at least equal to that of Developer as of the Effective Date, and (iii) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a "Class A" mixed use urban development or impose any additional burden upon the Property or increase the services to be provided by City. If all Events of Defaults are not cured and such adequate assurance is not provided within ninety (90) days after there has been an order for relief under Applicable Bankruptcy Law, then this Agreement shall be deemed rejected, Developer or any other Person in possession shall immediately vacate the Property and the City shall have no further liability to Developer or any Person claiming through Developer or any trustee under this Agreement.

9.16 No Recording/Filing. Neither party will record or file this Agreement or any memorandum thereof in any public recording office.

9.17 Effect of Force Majeure, City Caused Delays and Developer Caused Delays. If the City or Developer is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure, City Caused Delay or Developer Caused Delay and if such party has not otherwise committed an Event of Default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(a) The affected party shall give prompt written notice of such occurrence to the other party; and

(b) The affected party shall diligently attempt to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination;

provided however, an affected party will not be permitted to benefit from a delay which was a direct result of such affected party's acts or omissions.

9.18 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Developer agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Takedown or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

9.19 Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments and minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement without approval of the Austin City Council.

9.20 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Developer, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

9.21 Interstate Land Sales Full Disclosure. The City and Developer acknowledge and agree that the sale of the Property in accordance with this Agreement will be exempt from the provisions of the Interstate Land Sales Full Disclosure Act in accordance with the exemption applicable to the sale of property to any Person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to Persons engaged in such business.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By:_____
Marc A. Ott, City Manager

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

Thompson & Knight LLP

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a Delaware corporation, its Managing Member

By:_____
Name:_____
Title:_____

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC, a Delaware corporation

By:_____
Name:_____
Title:_____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By:_____
Marc A. Ott, City Manager

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

_____

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a Delaware corporation, its Managing Member

By:_____
Name: Scott A. Dyche
Title: Executive Vice President

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC, a Delaware corporation

By:_____
Name:_____
Title:_____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By:_____
Marc A. Ott, City Manager

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

_____

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a Delaware corporation, its Managing Member

By:_____
Name:_____
Title:_____

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC, a Delaware corporation

By:_____
Name: ADAM NIMS
Title: VICE PRESIDENT

CVI consents to the terms and conditions of this Agreement and agrees that this Agreement may be modified, amended or terminated without its consent except that the provisions of Section 9.15(c) regarding assignment to CVI shall not be modified or amended without CVI's prior written consent.

CONSTRUCTIVE VENTURES, INC., a Texas corporation

By: _____

Name: LARRY WARSHAW

Title: Authorized Signatory

A-1
TO GWTP MASTER DEVELOPMENT AGREEMENT

Graphic Depiction of Property

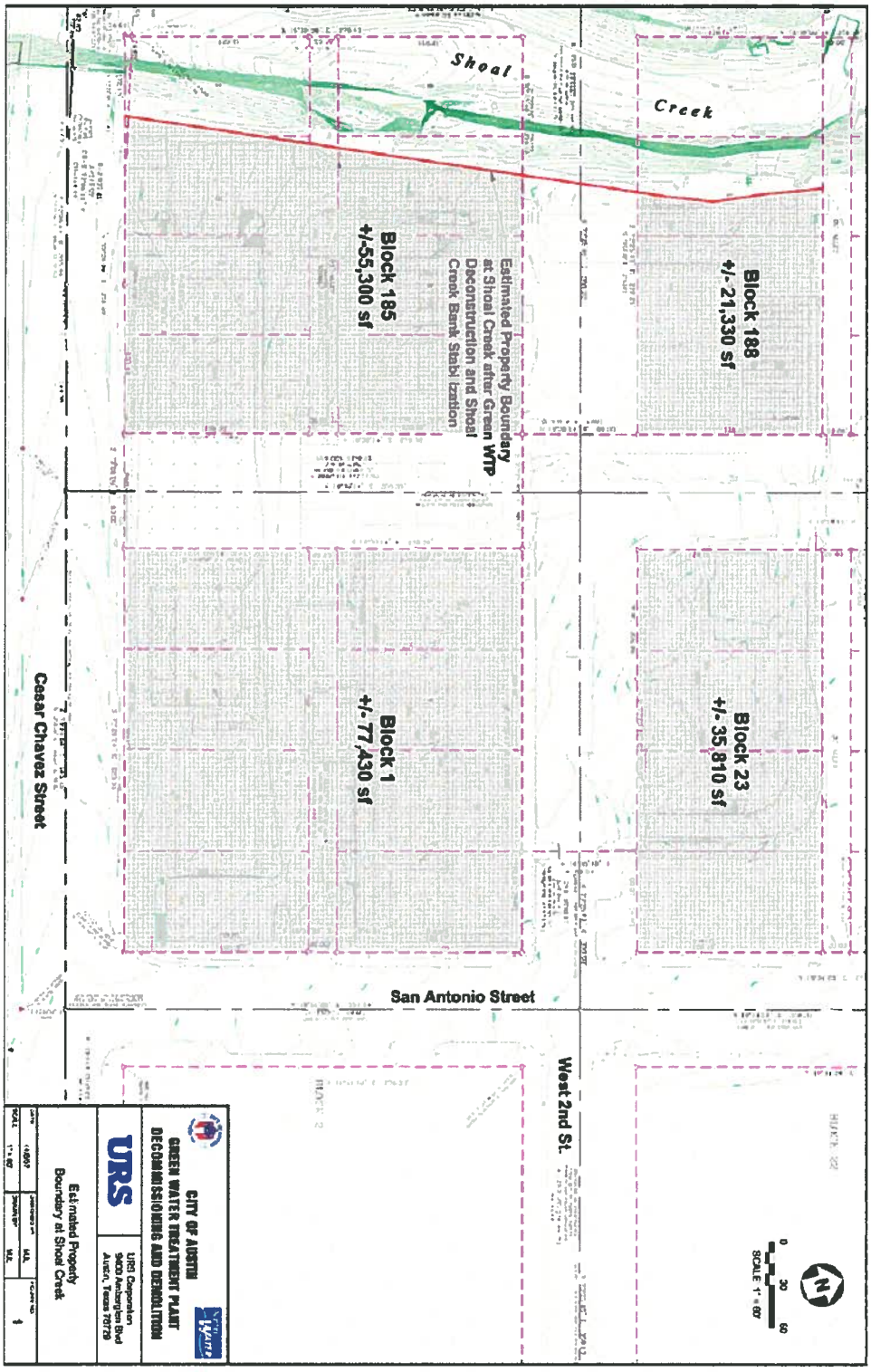

EXHIBIT A-2
TO GWTP MASTER DEVELOPMENT AGREEMENT

(Block 1)

BEING 1.776 ACRES OF LAND, OR A CALCULATED MAP AREA OF 77,369 SQUARE FEET, ALL OF LOTS 1-8, INCLUSIVE, IN BLOCK 1, ORIGINAL CITY OF AUSTIN, ACCORDING TO THE MAP OR PLAT ON FILE WITH THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, SAID CONVEYED TO THE CITY OF AUSTIN BY DEEDS RECORDED IN VOLUME 366, PAGE 10 (LOTS 1, 2, AND 8) AND VOLUME 502, PAGE 259 (LOTS 3-6) OF THE TRAVIS COUNTY DEED RECORDS, AND THE 20' ALLEY, IN SAID BLOCK 1, VACATED PER VOLUME 12852, PAGE 120 OF THE TRAVIS COUNTY REAL PROPERTY RECORDS, SAVE AND EXCEPT THAT CERTAIN 193 SQUARE FEET OF LOT 4, BLOCK 1, DEDICATED FOR RIGHT-OF-WIDENING PER VOLUME 12678, PAGE 624 OF THE TRAVIS COUNTY REAL PROPERTY RECORDS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" rebar set at the intersection of the west right-of-way line of San Antonio Street with the south right-of-way line of West 2nd Street, at the northeast corner of Lot 5 of said Block 1, for the northeast corner and PLACE OF BEGINNING hereof, said point having NAD '83 Texas State Plane Central Zone coordinates of northing 10,069,788.10 and easting of 3,112,405.66 (combined scale factor of 0.999942);

THENCE with the west right-of-way line of San Antonio Street, also the east line of said Block 1, S 16°33'19" W 246.54 feet to a ½" rebar set at the northeast corner of said 193 square feet tract of land, for the most easterly southeast corner hereof;

THENCE with the westerly line of said 193 square feet tract of land, with a curve to the right having a radius of 30.00 feet and a length of 47.14 feet with a chord bearing of S 61°33'58" W 42.43 feet to a ½" rebar set at on the north right-of-way line of West Cesar Chavez Street, at the southwest corner of said 193 square feet tract of land, on the south line of Lot 4 in said Block 1, for the most southerly southeast corner hereof;

THENCE with the north line of Cesar Chavez Street, also the south line of said Block 1, N 73°25'22" W 250.73 feet to a ½" rebar set on the east right-of-way line of Nueces Street, at the southwest corner of Lot 1 in said Block 1, for the southwest corner hereof;

THENCE with the east right-of-way line of Nueces Street, also the west line of said Block 1, N 16°40'08" E 276.55 feet to a ½" rebar set on the south right-of-way line of West 2nd Street, at the northwest corner of Lot 8 in said Block 1, for the northwest corner hereof;

THENCE with the south right-of-way line of West 2nd Street, also the north line of said Block 1, S 73°25'22" E 280.19 feet to the PLACE OF BEGINNING and containing 1.776 acres of land, more or less, and a calculated map area of 77,369 square feet of land.

EXHIBIT A-3
TO GWTP MASTER DEVELOPMENT AGREEMENT

(Block 23)

BEING 0.823 ACRE OF LAND, OR A CALCULATED MAP AREA OF 35,860 SQUARE FEET, AND BEING ALL OF LOTS 1-4, INCLUSIVE, OF BLOCK 23, OF "THE ORIGINAL CITY OF AUSTIN", IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT ON FILE WITH THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, SAID LOTS CONVEYED TO THE CITY OF AUSTIN BY DEEDS RECORDED IN VOLUME 383, PAGE 394 (LOT 1) AND VOLUME 2354, PAGE 140 (LOTS 2 AND 3) OF THE TRAVIS COUNTY DEED RECORDS AND BY VOLUME 12401, PAGE 590 (CAUSE NO. 1323) (LOT 4) OF THE TRAVIS COUNTY REAL PROPERTY RECORDS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" rebar set at the intersection of the west right-of-way line of San Antonio Street with the north right-of-way line of West 2nd Street, at the southeast corner of Lot 4 of said Block 23, for the southeast corner and PLACE OF BEGINNING hereof, said point having NAD '83 Texas State Plane Central Zone coordinates of northing 10,069,864.78 and easting of 3,112,428.45 (combined scale factor of 0.999942);

THENCE with the north right-of-way line of West 2nd Street, also the south line of said Block 23, N 73°25'22" W 280.03 feet to a ½" rebar set on the east right-of-way line of Nueces Street, at the southwest corner of Lot 1 in said Block 23, for the southwest corner hereof;

THENCE with the east right-of-way line of Nueces Street, also the west line of said Block 23, N 16°40'08" E 128.12 feet to a ½" rebar set at the northwest corner of Lot 1, Block 23, on the south line of a 20' alley, for the northwest corner hereof;

THENCE with the south line of said 20' alley, also the north line of Lots 1-4, Block 23, S 73°25'15" E 279.78 feet to a ½" rebar set on the west right-of-way line of San Antonio Street, at the northeast corner of Lot 4, Block 23, for the northeast corner hereof;

THENCE with the west right-of-way line of San Antonio Street, S 16°33'19" W 128.11 feet to the PLACE OF BEGINNING and containing 0.823 acre of land, more or less, or a calculated map area of 35,860 square feet.

EXHIBIT A-4
TO GWTP MASTER DEVELOPMENT AGREEMENT

(Block 185)

BEING 1.265 ACRES OF LAND, OR A CALCULATED MAP AREA OF 55,124 SQUARE FEET, AND BEING A PORTION OF LOTS 1, 2, AND 3 IN BLOCK 185, ALL OF LOTS 4-6, INCLUSIVE, IN BLOCK 185, A PORTION OF LOT 7, IN BLOCK 185, OF "THE ORIGINAL CITY OF AUSTIN", ACCORDING TO THE MAP OR PLAT ON FILE WITH THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, SAID LOTS CONVEYED TO THE CITY OF AUSTIN BY DEEDS RECORDED IN VOLUME P, PAGE 151 (LOTS 1,7, AND 8) AND VOLUME 365, PAGE 184 (LOTS 2-4) AND VOLUME 360, PAGE 561 (LOT 5) AND VOLUME 361, PAGE 29 (LOT 6) OF THE TRAVIS COUNTY DEED RECORDS, AND A PORTION OF THE VACATED 20' ALLEY IN BLOCK 185, AS RECORDED IN VOLUME 12852, PAGE 120 OF THE TRAVIS COUNTY REAL PROPERTY RECORDS (TCRPR), SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" rebar set at the intersection of the west right-of-way line of Nueces Street with the north right-of-way line of Cesar Chavez Street, at the southeast corner of Lot 4 in said Block 185, for the southeast corner and PLACE OF BEGINNING hereof, said point having NAD '83 Texas State Plane Central Zone coordinates of northing 10,069,625.95 and easting of 3,111,981.14 (combined scale factor of 0.999942);

THENCE with the north right-of-way line of West Cesar Chavez Street, also the south line of said Block 185, N 73°25'22" W 103.25 feet to a ½" rebar set on the south line of Lot 3, Block 185, at the east corner of a 289 square feet tract of land dedicated for right-of-way widening on West Cesar Chavez Street, recorded in Volume 12678, Page 630 of the TCRPR, for a point of curve to the right, from which point an "x" found in concrete on the bridge over Shoal Creek, at the southwest corner of Lot 1, Block 185 bears N 73°25'22" W 172.74 feet;

THENCE crossing through Lots 3,2, and 1, Block 185, and with the north line of said 289 square feet tract of land, also the north line of Cesar Chavez Street, with a curve to the right having a radius of 2957.41 feet, a central angle of 02°15'55", an arc length of 116.93 feet with a chord bearing of N 72°17'24" W 116.92 feet to a rebar set for the southwest corner hereof;

THENCE crossing through Lots 1,2, and 7, Block 185, N 25°14'32" E 277.41 feet to a ½" rebar set on the south right-of-way line of West 2nd Street, also the north line of Lot 7, Block 185, for the northwest corner hereof;

THENCE with the south right-of-way line of West 2nd Street, also the north line of said Block 185, S 73°25'22" E 178.80 feet to a ½" rebar set on the west right-of-way line of Nueces Street, at the northeast corner of Lot 5, Block 185, for the northeast corner hereof;

THENCE with the west right-of-way line of Nueces Street, also the east line of said Block 185, S 16°40'08" W 276.55 feet to the PLACE OF BEGINNING and containing 1.265 acres of land, more or less, or a calculated map area of 55,124 square feet.

EXHIBIT A-5
TO GWTP MASTER DEVELOPMENT AGREEMENT

(Block 188)

BEING 0.488 ACRE OF LAND, OR A CALCULATED MAP AREA OF 21,282 SQUARE FEET, AND BEING PART OF LOT 2, AND ALL OF LOTS 3 AND 4, IN BLOCK 188, OF "THE ORIGINAL CITY OF AUSTIN", ACCORDING TO THE MAP OR PLAT ON FILE WITH THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, IN TRAVIS COUNTY, TEXAS, SAID LOTS CONVEYED TO THE CITY OF AUSTIN BY DEEDS RECORDED IN VOLUME 2253, PAGE 52 (LOT 1) AND VOLUME 362, PAGE 148 (LOTS 2-4) OF THE TRAVIS COUNTY DEED RECORDS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" rebar set at the intersection of the west right-of-way line of Nueces Street with the north right-of-way line of West 2nd Street, at the southeast corner of Lot 4 in said Block 188, for the southeast corner and PLACE OF BEGINNING hereof, said point having NAD '83 Texas State Plane Central Zone coordinates of northing 10,069,967.50 and easting of 3,112,083.41 (combined scale factor of 0.999942);

THENCE with the north right-of-way line of West 2nd Street, also the south line of said Block 188, N 73°25'22" W 166.74 feet to a ½" rebar set on the south line of Lot 2, Block 188, for the southwest corner hereof;

THENCE crossing through said Lot 2, the following three courses:
1) N 25°14'32" E 2.80 feet to a ½" rebar set at a point of curve to the left;
2) with said curve to the left having a radius of 285.00 feet, a central angle of 20°37'51", an arc length of 102.62 feet, with a chord bearing of N 14°55'37" E 102.07 feet to a ½" rebar set at a point of tangency;
3) N 04°36'41" E 23.82 feet to a ½" rebar set on the north line of said Lot 2, also the south line of a vacated 20' alley, for the northwest corner hereof;

THENCE with the south line of said vacated 20' alley as recorded in Volume 12852, Page 120 of the Travis County Real Property Records, S 73°25'46" E 174.40 feet to a ½" rebar set on the west right-of-way line of Nueces Street, at the northeast corner of Lot 4, Block 188, for the northeast corner hereof;

THENCE with the west right-of-way line of Nueces Street, also the east line of said Block 188, S 16°40'08" W 128.12 feet to the PLACE OF BEGINNING and containing 0.488 acre of land, more or less, or a calculated map area of 21,282 square feet.

EXHIBIT B
TO GWTP MASTER DEVELOPMENT AGREEMENT

Tree Designations

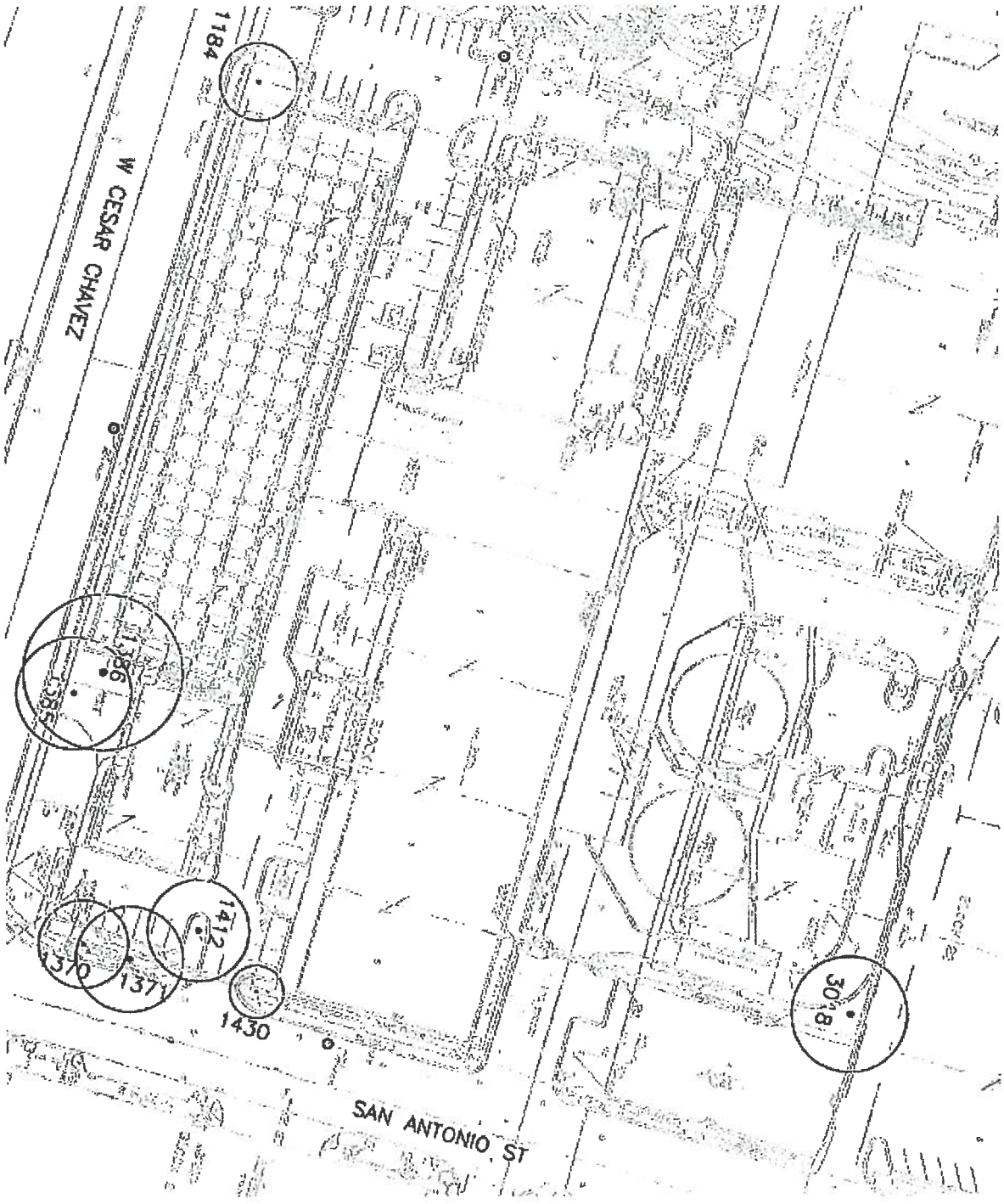

EXHIBIT C
TO GWTP MASTER DEVELOPMENT AGREEMENT

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.

After Recording Return To:
Thompson & Knight L.L.P.
1722 Routh Street, Suite 1500
One Arts Plaza
Dallas, Texas 75201
Attention: Andrew A. Ingrum

DECLARATION OF RESTRICTIVE COVENANTS
(GWTP)

This Declaration of Restrictive Covenants (this "**Declaration**") is made to be effective as of the ____ day of _____, 20___ by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Declarant**").

RECITALS:

A. Declarant is the owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached hereto and made a part hereof ("**Property**") which is comprised of the properties commonly known as Block 1, Block 23, Block 185 and Block 188;

B. Declarant and TC Green Water Master Developer, LLC ("**Developer**") entered into that certain GWTP Master Development Agreement ("**MDA**") dated _____, 2012 relating to the purchase, sale and initial development of the Property.

C. Pursuant to certain Special Warranty Deed(s), Declarant is selling the Property to Developer;

D. The Property is located in the 2nd Street District; and

E. Declarant wishes to impose certain restrictions on the Property for the overall benefit of the Property and to ensure the Property's integration into the 2nd Street District.

NOW THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, or occupied subject to the following restrictions:

1. Design Approval.

(a) No substantial improvement will be commenced or constructed upon the Property, nor will any substantial exterior addition to or substantial exterior change or alteration thereof be made, unless and until the site plan, the exterior facades and the landscape plans therefor (and any material exterior modifications thereto) will have first been submitted to and reasonably approved in writing by the Declarant through the Project Manager in its Economic Growth & Redevelopment Services Office (or appropriate successor department). Except as provided in Section 2 hereof and pursuant to the Declarant's regulatory capacity, the Declarant will not have any rights to review or approve interior aspects of the improvements.

(b) Each request for Declarant's approval (a "**Design Approval Request**") under section (a) above must be accompanied by plans and specifications showing the partition layout, site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and such other information related to the exterior appearance of the improvements as Declarant may reasonably require (the "**Plans**"); which Plans must be submitted for Declarant's approval through a Design Approval Request at the conclusion of the following 2 planning stages – (A) upon completion of conceptual Plans (i.e., prior to commencement of detailed construction drawings) and (B) upon completion of "50% construction drawings".

(c) In reviewing a Design Approval Request, Declarant may consider any factors it reasonably deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment.

(d) If Declarant fails to notify applicant in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of Declarant's deemed receipt thereof, applicant may provide Declarant a second written Design Approval Request (containing a statement in all bold and capital letters that reads **"FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 15 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST"**) which if not responded to by Declarant within 15 days after deemed receipt will be deemed approval of the Design Approval Request. In such event and on the applicant's written request to the Declarant, the Declarant will provide written confirmation to the applicant of such deemed approval. Declarant will notify the applicant in writing of any materials that Declarant believes are missing to make a Design Approval Request complete. Declarant may: (i) approve the Design Approval Request with or without conditions; (ii) approve a portion of the Design Approval Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the Design Approval Request.

(e) If Declarant approves the Design Approval Request with conditions, approves a portion of the Design Approval Request and disapproves other portions and a revised Design Approval Request with revised Plans is submitted, Declarant shall notify the applicant in writing of the final determination on any such revised Design Approval

Request no later than 15 days after its receipt of such revised Design Approval Request and all required submissions.

(f) Not later than obtaining such approval (applicant being expressly permitted to apply, at its own risk, for regulatory approvals before obtaining the approvals described in this Section 1), applicant shall promptly apply for and diligently pursue regulatory approval (e.g., building permit, site plan) concerning such approved construction. If construction does not commence within the period required by such regulatory approval, the approval granted hereunder shall automatically expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

2. Minimum Square Footage. The Property must be comprised of the following:

(a) At least 1,750,000 gross square feet of space (exclusive of garages), provided that such square footage may be decreased by 10% without the prior written approval of the City Manager of the Declarant.

(b) At least 65,000 gross square feet of retail space (the "**Retail Space**"), which includes:

(i) At least 50,000 gross square feet of Retail Space on the ground level of the improvements.

(ii) At least 50,000 gross square feet of Retail Space which "fronts" 2nd Street (which may include the public retail portion of a hospitality use). As used herein, the term "fronts" means the main customer entrance is located on 2nd Street.

(c) Each block of the Property must be mixed use (e.g., two or more uses within a single block such as residential, office, retail, hospitality, etc.).

The design and construction of the improvements on the Property must show, on a block by block basis, reasonable progress towards the requirements of this Section 2.

At any time after the conveyance of a block of the Property under the MDA to Developer, Developer may "lock in" the restrictions in this Section 2 to such block to satisfy the restrictions in this Section 2; provided however, the Owner(s) of any affected block(s) and Developer (so long as the MDA is in effect) may agree to reallocate such restrictions between themselves. No such allocation may adversely affect a block without the written consent of the Developer (so long as the MDA is in effect) and the affected block Owner. By way of example and not of limitation, if Block 1 contains 40,000 square feet of Retail Space and Block 185 contains the remaining 25,000 square feet of Retail Space, then the restriction that the Property must contain at least 65,000 square feet of Retail Space will be split - 40,000 square feet for Block 1 and 25,000 square feet for Block 185. The applicable Owner(s) will confirm such "lock in" of restrictions (and any reallocations thereof) in a recorded document reasonably approved

by the Declarant. The City is not responsible for the allocations and any reallocations under this Section.

3. Construction. Each holder of fee simple title to all or any part of the Property (each such party, an "**Owner**") agrees to perform its respective construction: (i) where approval is required, in substantial accordance with such approved Plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; (iii) so as not to unreasonably interfere with any construction work being performed on any other portion of the Property or with the use, occupancy and enjoyment of any other portion of the Property; (iv) except with respect to the initial development of the Property as provided in Section 3.3(e) of the MDA, to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, Waterfront Overlay District, Downtown Creek Overlay, Capital View Corridor restrictions, the Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines), Great Streets Design Program, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, "**Legal Requirements**").

4. Maintenance. Each Owner shall maintain its portion of the Property, including all structures, parking areas, landscaping, and other improvements, in good condition and repair in a manner consistent with a Class A mixed use urban development. Such maintenance includes, but is not limited to, the following (as applicable), which will be performed in a timely manner:

(a) Prompt removal of all litter, trash, refuse, and waste.

(b) Tree and shrub pruning.

(c) Watering.

(d) Keeping exterior lighting and mechanical facilities in working order.

(e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.

(f) Keeping planting beds free of turf grass.

(g) Keeping sidewalks and driveways in good condition, repair and appearance.

(h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects.

(i) Repainting of improvements.

Each Owner shall also be responsible for maintaining landscaping and common areas within that portion of any adjacent public right-of-way, plaza, common area, street or alley

provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

Under the rights granted pursuant to a license agreement between Declarant and the owners of the Property, each Owner shall also maintain, or cause the maintenance of, the water quality system serving its property, which water quality system for the Property will be initially located underground within the public right-of way of Nueces Street between 2nd Street on the north and Cesar Chavez on the south.

The responsibility for maintenance includes responsibility for repair and replacement. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Property (provided that insurance for wind, flood and earthquake may be less than full replacement cost, but will be for such amount as is reasonably available in the market), less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. As soon as possible after any damage to or destruction of any improvement constructed upon the Property (but in any event within 365 days of such event), the applicable Owner shall promptly commence to repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder and diligently pursue same to completion. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

5. Use Restrictions.

(a) No Owner may operate or permit on its portion of the Property:

(i) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary Class A retail, Class A restaurant, Class A office, Class A hotel or residential in a mixed-use community) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the improvements on the Property.

(ii) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).

(iii) A pawn shop.

(iv) Repair or service center (except that service centers or service uses which are incidental to a store selling goods and/or services is not prohibited hereunder).

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(vi) Any massage parlor (except that this prohibition will not prohibit day spas or health clubs or spas including those associated with a hotel use).

(vii) Any veterinary hospital with large animals or livestock and animal raising or boarding facilities.

(viii) Any mortuary, funeral home, or crematorium.

(ix) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; provided however this will not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation.

(x) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, fabricating, distilling, refining, smelting, agricultural or mining operation.

(xi) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live nude or partially clothed dancers or wait staff or similar establishments; provided, however, this will not prohibit the operation of a movie theater for movies, Blockbuster Video, Hollywood Video or similar operation or a Borders, Barnes & Noble, Waldenbooks or a Books-A-Million or similar operation so long as such operations are not adult oriented (as defined in the sexually-oriented business ordinance of the City).

(xii) A dry cleaning plant, provided this will not prohibit a dry cleaning drop off and pick up use.

(xiii) A tattoo parlor, beauty supply store or tanning salon (other than tanning equipment incidental with a spa, health club or hotel).

(xiv) Intentionally omitted.

(xv) Dance clubs, bars or cocktail lounges with aggregate square footage in excess of 8,000 square feet on the ground level of a building (provided that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).

(xvi) Intentionally omitted.

(xvii) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.

(xviii) Correctional or detention facilities.

(xix) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).

(xx) Laundromats, provided that this will not prohibit an internal laundry facility associated with a hotel.

(xxi) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).

(xxii) Tools and heavy equipment sales.

(xxiii) Intentionally omitted.

(b) No Owner of any of the Retail Space may use or permit on the ground level of any public portion of the Property:

(i) Any school, training or educational facility, including but not limited to: beauty schools, barber colleges, trade school, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers.

(ii) Intentionally omitted.

(iii) Any business operated on a part time retail basis (i.e., a business operated less than 6 days per week), other than seasonal kiosks.

(iv) Collection agencies.

(v) Intentionally omitted.

(vi) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, bicycles, boats).

(vii) Tobacco shop (provided that the ancillary sale of tobacco is permitted in other retail establishments).

(viii) Any residential use, including, but not limited to: single family dwellings, apartments, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms.

(ix) Not more than 25% of the Retail Space (0% on the ground level of the Retail Space) may be Office or Service Use. The term "Office or Service Use" includes those uses which are traditionally associated with an office, industrial, limited office and related uses and include Quasi-Retail, Service Retail, and Service Office uses. "Quasi-Retail" includes but is not limited to a travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store. "Service Retail" includes but is not limited to a copy center, cleaners, tailor/alterations, salon, travel agent, etc. "Service Office" includes but is not limited to brokerage office, insurance agency, medical or dental office, law office, office offering income tax preparation.

It is the intent of the Declarant that the public portions of the ground floor of the Property be utilized for traditional retail uses except as specifically provided above.

Declarant, through its Economic Growth & Redevelopment Services Office (or appropriate successor department) (or such other office as is designated by the Declarant's City Manager), may waive any of the foregoing use restrictions in writing at any time and from time to time without the joinder of any other party, including without limitation any Owner.

6. Other Restrictions and Requirements.

(a) Green Building. Owner will use commercially reasonable efforts to cause the shell portion of the improvements Property (i.e., not including commercial or residential interiors) to be constructed to achieve at least a (i) Silver certification under the Leadership in Energy and Environmental Design (LEED) NC (New Construction) Green Building Rating System™ with respect to improvements on the Property to the extent the improvements are predominantly "for rent" residential improvements and (ii) Gold certification under the Leadership in Energy and Environmental Design (LEED) NC (New Construction) Green Building Rating System™ with respect to all other improvements on the Property to the extent they are not predominantly "for rent" residential improvements. Additionally, Owner will use good faith efforts to achieve at least a "Two Star" rating Austin Energy's Green Building Rating System. If such designations no longer exist, Declarant, in its reasonable discretion, shall select another reasonably comparable program and/or standard with which to evaluate the improvements.

(b) Affordable Housing. If any portion(s) of the Property are utilized as a "for rent" residential multi-family unit facility (e.g., not a licensed senior housing facility, hotel or the lease of individual condominium units by end users), such applicable portion(s) of the Property must comply with the remainder of this Section 6(b) with the intent of the Declarant to ensure that a portion of such "for rent" units be available to persons of limited financial means, as provided below:

(i) For a period of 40 years beginning on the date of issuance of a Certificate of Occupancy (or its equivalent) for that portion of the Property utilized as "for rent" (the "**Affordable Housing Period**"), the applicable Owner agrees to lease, or hold available to lease (subject to Section 6.1(b)(i)(A) and (B) immediately below), at least 10% of its units to households whose income is equal to or less than 80% of the median income for households of equivalent size as determined by the United States Department of Housing and Urban Development ("**HUD**") for the Austin – San Marcos, Texas Metropolitan Statistical Area (the "**MSA**"). A unit that is leased, or held available for lease, to persons who meet the above criteria is hereinafter referred to as a "**Restricted Unit**". The rental rate for the Restricted Units must be an amount which does not exceed 28% of such qualifying household's gross income. The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but the applicable Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such

designation at any time. The Restricted Units may not be concentrated in one particular section of a building.

(A) If Block 1 of the Property is utilized as a "for rent" residential multi-family unit facility the total number of Restricted Units on that block shall be the greater of (i) 10% of the total number of "for rent" residential multi-family units constructed or (ii) the lesser of (a) 12% of the total number of "for rent" residential multi-family units constructed or (b) 50 Restricted Units.

(B) If Block 185 of the Property is utilized as a "for rent" residential multi-family unit facility the total number of Restricted Units on that block shall be the greater of (i) 10% of the total number of "for rent" residential multi-family units constructed or (ii) the lesser of (a) 12% of the total number of "for rent" residential multi-family units constructed or (b) 30 Restricted Units.

(ii) During the Affordable Housing Period, the applicable Owner shall keep records of the rental amounts of the Restricted Units and the gross income of the applicable households. The records will be available for annual review by the Declarant.

(iii) Notwithstanding any other provision of this Declaration, the following provisions will govern any breach by the applicable Owner of its covenants in this Section:

(A) The applicable Owner must not be considered to have breached any covenant in Section 6(b)(i) until Declarant has provided Notice to the applicable Owner of such Owner's breach and the applicable Owner has not cured such breach within 30 days of such Owner's receipt of such Notice.

(B) Should the applicable Owner breach a covenant in Section 6(b)(i) and until such time as the breach is cured, as Declarant's sole and exclusive remedies, (i) the applicable Owner shall pay to Declarant liquidated damages in the amount of $1,000 per month for each unrestricted unit that would need to be restricted in order to maintain the 80% MFI requirement set forth above and (ii) Declarant shall have the right to specifically enforce the covenants set forth in Section 6(b)(i).

(C) Declarant acknowledges that the applicable Owner will be relying on prospective tenants to provide the applicable Owner with the information to determine whether or not such prospective tenants are qualifying households. Declarant agrees that in no event will the applicable Owner be held liable for a breach of Section 6(b)(i) due to false information provided to such Owner by such prospective tenants, provided that upon learning that a tenant of a Restricted Unit is not a

qualifying household, the applicable Owner diligently pursues the eviction of the applicable tenant and the leasing of such Restricted Unit to a qualifying household.

The design and construction of the improvements on the Property must show, on a block by block basis, reasonable progress towards the requirements of Section 6(b)(i).

(iv) The Declarant may, but will not be obligated to, extend the Affordable Housing Period beyond the initial 40 years, at the Declarant's expense; provided however, the number and percentage of the Restricted Units cannot exceed the number and percentage set forth herein without the applicable Owner's prior approval. The extension of the Affordable Housing Period will be effective on a year by year basis and, to the extent exercised, must be continuous or it will terminate automatically. Written notification (the "**Extended Affordability Notice**") of this extension shall be provided to the applicable Owner by the Declarant not less than 120 days prior to the date representing the termination of the initial Affordable Housing Period, or the subsequent extension years, as applicable. In such notification, the Declarant shall, consistent with the proviso in the first sentence of this subsection (iv), indicate the number of units it intends to retain as Restricted Units (the "**Extended Restricted Units**"), the income levels to which those Restricted Units shall be offered, the monthly rents that correspond to those income levels and the annual period for which the Affordable Housing Period shall be extended (the "**Extended Affordable Rents**"). If Declarant fails to timely give the Extended Affordability Notice in any year, then Declarant's right to extend the Affordable Housing Period will be void and of no further force and effect.

(v) The Declarant will be responsible for the cost differential between the market rent for the Extended Restricted Units and the Extended Affordable Rents, together with reasonable and actual administrative costs and expenses associated with administering the extended affordable housing program for the ensuing year (collectively, the "**Affordable Rent Difference**"). Within 60 days following the date of the Extended Affordability Notice, the applicable Owner shall deliver to Declarant, in reasonable detail, its good faith calculation of the projected Affordable Rent Difference. If Declarant disagrees with the calculation of the Affordable Rent Difference, the parties shall work together in good faith to agree upon the Affordable Rent Difference. If the parties cannot agree upon the Affordable Rent Difference for the ensuing year within 60 days following the date of the Extended Affordability Notice then Declarant's right to extend the Affordable Housing Period thereafter will be void and of no further force and effect. The Affordable Rent Difference is due and payable to the applicable Owner on or before the date which is 90 days following the commencement of the applicable annual extension period. If Declarant fails to timely pay the Affordable Rent Difference, then the applicable Owner may terminate Declarant's right to extend the Affordable Housing Period after giving Declarant written notice and a

period of 60 days to cure such failure. No such termination shall discharge Declarant from its obligation to pay any Affordable Rent Difference.

(vi) If the Affordable Housing Period is extended, the applicable Owner shall continue to administer all other aspects of the affordable housing program described above, including marketing of units for qualifying households and maintenance and provision of tenant income records. The applicable Owner shall continue to be subject to the breach of covenant provisions above, including the requirements for liquidated damages.

(vii) The applicable Owner shall pay to a City of Austin sponsored affordable housing fund designated by the Declarant ("**Designated Fund**") a one-time payment equal to $5.00 per sellable net square foot in any improvements (excluding common and parking areas) with respect to any portion of the Property which is intended to be marketed by such Owner of such portion of the Property as "for sale" residential condominium units to end users, upon the sale of each such unit (the amount of which is calculated upon the unit sold). It is the intent of the Declarant and the applicable Owner that the payment(s) described hereinabove will be paid on a one time basis with respect to each portion of the Property so developed and the obligation to deliver such payments as to a portion of the Property shall automatically expire upon the payment (in the aggregate) of such amount on the portion of the Property so developed.

(viii) For every usable square foot (exclusive of common and parking areas) of commercial space in excess of 700,000 usable square feet of commercial space in the aggregate for the entire Property ("**Excess Commercial Space**"), each applicable Owner who develops Excess Commercial Space shall pay to the Designated Fund a one-time payment equal to $5.00 per each usable square foot of Excess Commercial Space; provided, however, no such payment shall be required if (i) there are then in existence no fewer than 80 Restricted Units or (ii) a site development permit for no fewer than 80 Restricted Units has been issued by the City of Austin on any portion of the Property ("**Restricted Unit Minimum Condition**"). As the Property will be developed on a block by block basis over time by different Owners, the payment described in the immediately preceding sentence (if any such payment is due) shall be paid by each Owner that develops Excess Commercial Space into an escrow account established pursuant to an escrow agreement among such Owner, the Declarant and an escrow agent reasonably acceptable to such Owner and the Declarant. Any such payment due shall be paid into the escrow account within 30 days after the issuance by the City of Austin of a final certificate of occupancy for the improvements containing such Excess Commercial Space on such Owner's portion of the Property. The escrow agreement will be in form and substance reasonably approved by such Owner and the Declarant and shall provide, among other things, that the amount therein shall be disbursed by the escrow agent to such Owner within 30 days after the Restricted Unit Minimum Condition has been satisfied. If the Restricted Unit Minimum Condition has not been satisfied by the date that a final certificate of occupancy has been issued by the City of Austin for the improvements

constructed on the final block to be developed out of the Property, then the escrowed amount shall be disbursed by the escrow agent to the Designated Fund within 30 days after the issuance of such final certificate of occupancy. As used in this subsection (viii) commercial space shall mean any space used for office, hotel or other commercial uses (other than "for rent" or "for sale" multi-family residential uses, which are respectively covered in Sections 6.1(b)(i) and 6.1(b)(vii) above, and any space used as retail space including the Retail Space). It is the intent of the Declarant and the applicable Owner that the payment described in this subsection (viii) will be paid into the escrow account on a one time basis with respect to such Owner's Excess Commercial Space, if any, so developed and the obligation to deliver such payment as to such Owner's Excess Commercial Space shall automatically expire upon the payment of such amount by such Owner.

(ix) Under no circumstances shall an Owner be required to pay any such amount with respect to any space used as retail space including the Retail Space on any portion of the Property.

(c) Bicycle Storage Facilities. Each Owner shall maintain secured bicycle storage (either enclosed or covered) that will provide for bicycle storage at a ratio of one bicycle per 10,000 gross square feet of occupiable space (excluding garages). Such facilities shall be constructed and maintained on a block by block basis in a location determined by the Owner of such block within the applicable building or parking structure. These facilities will be in addition to any bicycle racks required as part of the Great Streets program. Developer agrees to work with the Austin Bicycle and Pedestrian Program on the selection of bicycle racks to be installed on the Property. Subject to applicable laws, each occupant(s) of a condominium or for rent unit will be allowed to store its bicycles on the patio/deck/balcony of such unit.

(d) Local Businesses. The Owner shall use diligent, good faith ongoing efforts to lease 35% of the Retail Space to "local businesses", defined as a person or entity:

(i) which is controlled and at least 51% owned by a person or entity residing or having its principal place of business in the MSA; or

(ii) whose business headquarters or first retail location is located in the MSA.

The term "local businesses" also includes any business that the Declarant agrees, in writing, constitutes a local business even if it does not qualify as a local business under the definitions found in the immediately preceding sentence. The Declarant encourages the Owner to include businesses that reflect the nature and character of Austin in their décor, merchandise, and cuisine.

(e) Alternative Energy Vehicles. The Property must contain at least 10 plug in stations for alternative energy automobiles.

(f) Car Share Spaces. The Property must contain at least 4 parking spaces for a car share program.

(g) Public Parking. The Property must contain at least 250 parking spaces which are available to the general public at prevailing market parking rates.

(h) Public Safety Storefront. Owner must provide the Declarant a 2,000 rentable square foot storefront space at the Property for public safety purposes (the "**Public Safety Storefront**"). The Public Safety Storefront must be provided at no cost in "shell" condition (i.e., the condition which the Owner generally provides retail shell space). Declarant will pay its utilities for the Public Safety Storefront, but will otherwise not be liable for rent or any other operating expenses. The Public Safety Storefront *will* count towards the Retail Space requirements in Section 2(b) above (other than the requirement for square footage which "fronts" 2nd Street). The City may terminate or decrease the square footage of this obligation upon written notice to the applicable Owner.

(i) Nonprofit Space. Owner must lease, or hold open for lease, to a nonprofit entity (i.e., an entity which has obtained 501(c)(3) status with the Internal Revenue Service [or a comparable successive designation]) a 5,000 rentable square foot space at the Property (the "**Nonprofit Space**"). The Nonprofit Space must be provided in "shell" condition (i.e., the condition which the Owner generally provides shell office space) and the tenant will pay for the tenant improvements to be installed in such space. The tenant thereof will pay 50% of the prevailing market rent for comparable space and otherwise lease the Nonprofit Space on a "triple net" basis. Regardless of location, the Nonprofit Space *will not* count towards the Retail Space requirements in Section 2(b) above. The Nonprofit Space may be located anywhere on the Property. Declarant will not have approval rights concerning the tenant of the Nonprofit Space, but, Owner will first consider local tenants or tenants with strong ties to the City of Austin (as opposed to nationally focused nonprofit organizations) for the Nonprofit Space. The City may terminate or decrease the square footage of this obligation upon written notice to the applicable Owner.

(j) Showers. Subject to applicable laws, the Owner of an office building on the Property must make shower facilities available to the commuting cyclists who are tenants of such office building.

At any time after the conveyance of a block of the Property under the MDA to Developer, Developer may "lock in" the restrictions in this Section 6 to such individual block(s) of the Property to satisfy the restrictions in this Section 6; provided however, the Owner(s) of the affected block(s) and Developer (so long as the MDA is in effect) may agree to reallocate such restrictions between themselves. No such allocation may affect a block without the written consent of the Developer (so long as the MDA is in effect) and the affected block Owner. By way of example and not of limitation, if Block 23 contains the Nonprofit Space, then the restriction that the Property must contain the Nonprofit Space will attach only to Block 23. The applicable Owner(s) will confirm such "lock in" of restrictions (and reallocations thereof) in a recorded document reasonably approved by

the Declarant. The City is not responsible for the allocations and any reallocations under this Section.

7. Modifications and Termination. Except as provided in Section 11(s) hereof, this Declaration may be modified or terminated upon the written consent of (a) Declarant, (b) the master Developer (as opposed to a single block developer) under the MDA (so long as the MDA is in effective) and (c) the Owner(s) of at least fifty-one percent (51%) of the floor area of the improvements within the Property (or land area if no improvements are located on a block within the Property); provided that no modification or termination that affects any block of the Property may be entered into without the written consent of the Owner of that block if the modification or termination would increase the obligations or decrease the rights of the Owner of that block.

8. Term. The term of this Declaration will commence upon the date of filing this instrument for record in the land records of Travis County, Texas and will continue for a term of forty (40) years; thereafter this Declaration will be renewed automatically for successive twenty (20) years terms unless, at any time, terminated pursuant to Section 7 of this Declaration, and such termination is filed of record.

9. Default.

(a) In the event of a default of the terms and conditions of this Declaration by any Owner, such Owner will have 20 days in which to cure such default after receipt of notice of said default from Declarant or another Owner. Declarant shall also deliver such written notice to any unaffiliated, third party lender ("**Lender**") of such defaulting Owner if Declarant is provided notice of such Lender in writing (with a contact name and address) prior to such default and such Lender will have the same right of cure hereunder as the defaulting Owner and the timeframe for cure will run concurrently with such Owner's cure period. If the default can not be cured, using reasonable due diligence, within 20 days of receipt of the notice of default, then the defaulting Owner or the applicable Lender will have such additional time as may be reasonably necessary to cure such default, conditioned upon the defaulting Owner or applicable Lender commencing the cure within such 20 day period and diligently pursuing the curing of the default through conclusion; provided however, such additional time will not apply for any situations, conditions or issues in which the health or safety of the public at large is compromised. If the default cannot be cured in a timely manner as required in this Section, Declarant or the notifying Owner will have the right to obtain an injunction from an applicable court of law to enforce specific performance on the part of the defaulting Owner, the amount of any bond for same being not more than $100. In addition to the foregoing, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against the defaulting Owner. With respect to a default of maintenance responsibilities under Section 4 hereof, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all costs incurred by the Declarant against such defaulting Owner; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. **THE DECLARANT AND ANY NOTIFYING OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR**

EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR NOTIFYING OWNER'S NEGLIGENCE OR STRICT LIABILITY) UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH OF THE DECLARANT OR NOTIFYING OWNER, AS THE CASE MAY BE, OR ONE OR MORE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES. NOTHING IN THIS DECLARATION SHALL OBLIGATE DECLARANT, IN ANY RESPECT, TO ENFORCE THIS DECLARATION OR ANY ALLOCATIONS/REALLOCATIONS OF RESTRICTIONS UNDER SECTIONS 2 OR 6 HEREOF.

(b) In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Owners, nor terminate the rights of any other Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Owner by reason of any default by such Owner, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Owner.

(c) No Owner of a block of the Property is responsible for any liability, obligations, breaches or defaults of an Owner of any other block of the Property.

10. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, except for minor amendments, modifications, clarifications or removals of property, the City Manager does not have the authority to execute any substantial modification or termination of this Declaration without the approval of the Austin City Council. With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval.

11. Miscellaneous.

(a) Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL ACTIONS OF DECLARANT TAKEN SOLELY WITH RESPECT TO THIS DECLARATION WILL BE ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION**

IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. OWNER ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

(b) Notices. Formal notices, demands and communications will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the Declarant may designate in writing from time to time:

If Declarant: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

With a copy to: City of Austin
Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

With a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

Notices to the Owners within the Property will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity).

(c) Consents. Whenever pursuant to this Declaration an Owner's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of such Owner and such consent or approval may be withheld by such Owner for any reason.

(d) Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Owner and that provide for sanctions against the Owner for the breach

hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall use commercially reasonable efforts to cause all occupants (including lessees) of the Owner's portion of the Property to comply with this Declaration and any rules and regulations adopted notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

(e) Estoppel. Upon 30 days' prior written notice and not more than once in any 12-month period, the Declarant agrees to deliver to any lender of any Owner of a block of the Property an estoppel certifying compliance with Sections 1-6 hereof, in form and content reasonably acceptable to the Declarant and such Owner and its lender. The estoppel may only be relied upon by the party requesting the estoppel and any parties specifically identified by name in the request (or any to be formed entity which is organized for the purpose for which the estoppel certificate is requested), may only be used to estop the responding party from claiming that the facts are other than as set forth in the estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows that the facts are other than as set forth in such estoppel.

(f) Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

(g) Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

(h) Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

(i) Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.

(j) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any

connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(k) Time. Time is of the essence of this Declaration.

(l) Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(m) No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

(n) Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

(o) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.

(p) Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only for the benefit of each Owner personally but also as Owners of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such party appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Owner or Owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Owners of the Property.

(q) Remedies Cumulative. All of the remedies permitted or available to the Declarant or Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

(r) Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.

(s) **TERMINATION OF MDA. IF THE MDA IS TERMINATED (INCLUDING AN ASSIGNMENT FACILITATED BY THE CITY TO ANOTHER DEVELOPER) FOR ANY REASON SUCH THAT DEVELOPER DOES NOT HAVE ANY FUTURE RIGHTS TO PURCHASE SUBSEQUENT PORTIONS OF THE PROPERTY, DECLARANT, IN ITS SOLE AND ABSOLUTE DISCRETION, MAY REMOVE SUCH THEN UNPURCHASED PORTIONS OF THE PROPERTY FROM THIS DECLARATION WITHOUT THE CONSENT OR NOTICE TO DEVELOPER OR ANY OWNER. SUCH REMOVAL WILL BE CONCLUSIVELY EVIDENCED BY A WRITTEN CERTIFICATE OF DECLARANT RECORDED IN THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS.** In the case of such termination, the restrictions contained herein with respect to the Property as a whole (e.g., minimum square footage or affordable housing units) will be automatically modified to equal those aspects of the remaining Property as exist as of the date of such removal.

(t) Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Declaration by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Declaration or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a force majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances,

regulations, orders or similar action by such party or a subdivision thereof), and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(i) The affected party shall give prompt written notice of such occurrence to the other party; and

(ii) The affected party shall diligently use commercially reasonable efforts to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination;

provided however, an affected party will not be permitted to benefit from a delay which was a direct result of such affected party's acts or omissions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: _____
Name:_____
Title:_____

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20___, by _____, _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
(Printed name)

My Commission Expires:

_____

EXHIBIT A
TO DECLARATION OF RESTRICTIVE COVENANTS

PROPERTY

EXHIBIT D
TO GWTP MASTER DEVELOPMENT AGREEMENT

FORM OF SPECIAL WARRANTY DEED

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.

After Recording Return To:
DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

SPECIAL WARRANTY DEED
(WITH RESERVATION OF DECLARATION RIGHTS)
(BLOCK ____)

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

1. Grant. THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**City**"), for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration paid to City by TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company ("**Developer**"), the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN and DELIVER to Developer the real property described in Exhibit A-1 attached hereto and made a part hereof, together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto and all and singular the rights and appurtenances pertaining to such real property (the "**Property**"), subject to the encumbrances described in Exhibit B attached hereto and made a part hereof and the reservations in Sections 6 (the "**Permitted Encumbrances**").

2. Warranty. TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Developer, its successors and assigns, forever, and City does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto Developer, its successors and assigns against every person whomsoever lawfully claiming, or to claim the same, or any part thereof by, through or under City, but not otherwise; subject, however, to the Permitted Encumbrances.

3. AS-IS. **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THAT GWTP MASTER DEVELOPMENT AGREEMENT DATED _____, 2012 BETWEEN CITY AND DEVELOPER RELATING TO THE PROPERTY (THE "MDA")**

TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN AS SET FORTH IN THE MDA AND CITY'S SPECIAL WARRANTY OF TITLE CONTAINED HEREIN), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING THIS SPECIAL WARRANTY DEED WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND THE MDA) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. DEVELOPER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA). DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO DEVELOPER.

4. Defined Terms.

"**City Caused Delay**" means any actual delay to the extent caused solely by the City (a) with respect to its obligations which *are not specified* hereunder in its capacity as a governmental entity (such as building permit issuance or plat approval), by its unlawful action or inaction; provided however, if Developer is obligated under this document to perform an action within a specified time period, and that time period is shorter than the specific time frame established by Legal Requirements for a related regulatory action by the City acting in its governmental capacity, then the time for Developer's performance will be extended beyond the contractual time period at least to the date of the related City regulatory action, or (b) in its capacity as a landowner (such as design approval, and financial approvals), by its failure to meet the specific timeframes for action set forth herein.

"**Commencement of Construction**" mean the commencement of bona-fide pouring of concrete footings for construction of the proposed improvements on the Property or similar activity for construction of the proposed "build out" of the applicable improvements on the Property.

"**Declaration**" means the Declaration of Restrictive Covenants executed by the City concerning the Property, as it may be amended from time to time in accordance therewith.

"**Delinquency Interest Rate**" means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Developer is authorized to pay and the City is authorized to charge under the laws of the State of Texas with respect to the relevant obligation.

"**Dry-In Condition**" means (a) the applicable portion of the Improvements has been completed to be protected from the elements including wind, rain, and groundwater (except as may occur due to hurricanes, tropical storms, severe rain storms and other weather events) , with the permanent glazing system (subject to temporary measures) and temporary roof, if necessary, (b) the applicable portion of the Improvements has controlled air such that the space can accommodate the permanent installation of finished materials, including gypsum board, paint, ceiling material, flooring, doors, and interior infrastructure, and (c) the surrounding property landscaped (as appropriate based on seasonal conditions and construction phasing of a building), each in accordance with plans approved by the City, and consistent with the Declaration, the MDA and Legal Requirements.

"**Force Majeure**" means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this document or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof).

"**Improvements**" means the improvements constructed on the Property.

"**Legal Requirements**" mean applicable restrictive covenants, service extension requests, zoning ordinances, and building codes; access, health, safety, environmental,

and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions, including without limitation, the Waterfront Overlay District, Downtown Creek Overlay, Capital View Corridor restrictions, Great Streets Development Program and Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines).

"**Owner**" means the owner of the Property.

"**Prescribed Rate**" means the "prime rate" published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day (as defined in the MDA) following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by the City publicly announces (whether or not actually charged in each instance) from time to time (adjusted daily) as its "prime rate" (or if there is no "prime rate," a similar borrowing reference rate).

5. Liquidated Damages – Work Stoppage.

(a) Upon Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition.

(b) If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 30 or more consecutive days (a "**Delay Period**"), such event will be deemed an event of default hereunder and Owner will pay to City as liquidated damages the sum of $1,000 per day for each day past the Delay Period for which bona-fide construction does not occur (such amount, "**Liquidated Damages - Work Stoppage**"). The calculation of each potential Delay Period will be extended on a day for day basis for each day of actual delay due to Force Majeure and City Caused Delays which directly caused such Delay Period. City and Owner agree that the Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate.

(c) Upon termination of the Liquidated Damages – Work Stoppage provision (including payment of any Liquidated Damages – Work Stoppage) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Work Stoppage. This Section 5 will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Work Stoppage).

6. Reservation of Declaration. City is executing and encumbering, or has executed and encumbered, the Property with the Declaration. The execution and encumbrance of the Property pursuant to the Declaration is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor's lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

7. Estoppel. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City agrees to deliver to any lender of Owner an estoppel certifying compliance with Section 5 hereof, in form and content reasonably acceptable to the City and such Owner and its lender. The estoppel may only be relied upon by the party requesting the estoppel and any parties specifically identified by name in the request (or any to be formed entity which is organized for the purpose for which the estoppel certificate is requested), may only be used to estop the responding party from claiming that the facts are other than as set forth in the estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows that the facts are other than as set forth in such estoppel.

8. Run with the Land. The terms of this Special Warranty Deed constitute covenants running with, and will be appurtenant to, the land affected by this Special Warranty Deed.

9. Miscellaneous. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions hereof. If any action or suit is brought by reason of any breach of this Special Warranty Deed or any other dispute between the parties concerning this Special Warranty Deed, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable attorney's fees. This Special Warranty Deed shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Special Warranty Deed is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Special Warranty Deed. This Special Warranty Deed shall be binding upon and inure to the benefit of City and Owner and their respective heirs, successors, legal representatives and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Special Warranty Deed is executed by City on the date of acknowledgment set forth below to be effective as of the ____ day of _____, 20____.

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: _____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20___, by _____, _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
(Printed name)

My Commission Expires:

_____

EXHIBIT E
TO GWTP MASTER DEVELOPMENT AGREEMENT

M/WBE Resolution

[see attached]

RESOLUTION NO. 20120112-058

The City Council repeals and replaces Resolution No. 20071108-127 with the following:

WHEREAS, each year, the City of Austin enters into multiple third-party agreements, which provide for the construction of public improvements or improvements to City real property by a third party rather than through a direct contract between the City and a general contractor; and

WHEREAS, the City may enter into agreements with private entities requesting City investment for private improvements to private land; and

WHEREAS, such third-party agreements include developer participation agreements, economic development agreements under Chapter 380 of the Texas Local Government Code ("Chapter 380 Agreements"), ground lease agreements, all third-party agreements negotiated between the City and private entities desiring to develop City-owned property; and any agreements pertaining to facilities constructed by private entities in conjunction with reliance on the City's endorsement pursuant to the Texas Major Events Trust Fund Act ("Eligible Third-party Agreements"); and

WHEREAS, the City values ensuring certified minority-owned and women-owned businesses are provided an equal opportunity to participate as

suppliers of material and services on projects resulting from Eligible Third-party Agreements;

WHEREAS, the City desires that the City's Eligible Third-party Agreements comply with the standards and principles of Chapters 2-9A through 2-9D of the City Code regarding minority-owned and women-owned business enterprises (the "City's M/WBE Ordinance");

WHEREAS, the City desires that the City's Eligible Third-party Agreements require efforts be made to provide minority-owned, women-owned, and local small businesses an equal opportunity to participate as suppliers of material and services for the subject project;

WHEREAS, the City desires to redress the unemployment and under-employment in the Austin area by expecting efforts be made to recruit local candidates for employment at the subject project;

WHEREAS, the City desires such efforts will increase the availability of new full-time jobs for local residents; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. It is the policy of the City that Eligible Third Party Agreements comply with the standards and principles of the City's M/WBE Ordinance.

2. Eligible Third-party Agreements are to contain contract terms requiring the third party or private entity entering into the contract (the "Third Party") to comply with the standards and principles of the City's M/WBE Ordinance.

3. Consistent with the standards and principles of the M/WBE Ordinance, Eligible Third-party Agreements will include the establishment of ethnic specific M/WBE utilization goals, and a requirement that contractors and consultants on the subject project either meet the ethnic specific M/WBE utilization goals or demonstrate a good faith effort to meet the goals with respect to any design or construction projects including, but not limited to, construction of any leasehold improvements for the subject project. In the event the subject project is assisted by the City's financial investment (either the payment of dollars or waiver of taxes or fees), the goals shall be applied to the value of the entire subject project (as that term is defined in the agreement)—not limited to the value of financial investment provided by the City. In the event the Third Party enters into a build-to-suit lease or turn-key tenant improvement lease for the subject project, it is the Third Party's responsibility to

ensure the landlord complies with this provision for all construction and design relating to the Third Party's move-in.

4. When the Eligible Third-party Agreement is a developer participation agreement, the obligations of the City and the private entity are governed solely by the requirements contained in this paragraph. First, the City shall encourage the private entity to comply with the standards and principles of the M/WBE Ordinance on (a) the design of the water and wastewater infrastructure and related facilities; and (b) the design and construction of the subject project. Second, the City shall inform in writing all applicants for a service extension request that they are encouraged to comply with the standards and principles of the M/WBE Ordinance in the design of the water and wastewater infrastructure and related facilities. Nothing in this resolution modifies the continued applicability of the full M/WBE Ordinance to the procurement and construction of the subject infrastructure resulting from a service extension request under Chapter § 25-9 of the City Code.

5. When a request is made for the extension of electrical facilities, the City's full M/WBE Ordinance shall apply to the procurement, design, and construction of the electrical facilities.

6. When applicable, Eligible Third-party Agreements shall include the requirement of an outreach program designed to solicit participation of minority-owned businesses, women-owned businesses and small businesses.

7. The Third Party shall apprise the City's Department of Small Business and Minority Business Resources ("SMBR") when the Third Party desires assistance from SMBR in its efforts to meet the ethnic specific M/WBE utilization goals. This assistance may include identifying potential scopes of work (including, but not limited to, design, construction, and supply services), providing availability lists, establishing the bid packages available, scheduling and hosting outreach meetings, and otherwise assisting in soliciting bids from M/WBEs.

8. When applicable, the Eligible Third-party Agreement shall include a requirement that the Third Party use commercially reasonable efforts to provide minority-owned, women-owned, and local small businesses an equal opportunity to participate as suppliers of materials and services for the subject project (the "Suppliers Diversity Commitment").

9. The requirement to comply with the standards and principles of the M/WBE Ordinance and the Suppliers Diversity Commitment shall be included in the City's solicitation documents, if any, for the subject project.

10. The obligation to comply with the standards and principles of the City's M/WBE Ordinance and the Suppliers Diversity Commitment shall be material terms of the contract. Failure to comply with the standards and principles of the M/WBE Ordinance and/or the Suppliers Diversity Commitment shall be treated as breach of the contract, which will be subject to breach of contract remedies. The breach of contract remedies shall include the appropriate sanctions provided in the M/WBE Ordinance. Additionally, under Chapter 380 Agreements, if the Third Party (or landlord) fails to comply with the standards and principles of the M/WBE Ordinance, it shall be required to forfeit the City's financial investment (either the payment of dollars or waiver of taxes or fees) for the applicable compliance period as defined in the agreement. In the event the Third Party has received an up-front monetary contribution from the City or a waiver of taxes or fees on the front-end of the compliance period and the Third Party (or landlord) fails to comply with the standards and

principles of the M/WBE Ordinance, it shall be required to promptly return all monies or reimburse the City for any waiver of taxes or fees received from the City with interest.

11. The requirement to comply with the standards and principles of the M/WBE Ordinance shall be addressed and negotiated at the earliest stages of negotiation of Eligible Third-party Agreements so as to allow ample opportunity for the standards and principles of the M/WBE Ordinance to be fully incorporated into the agreement and other contract documents.

12. The City employees who negotiate Eligible Third-party Agreements will be trained in the standards and principles of the M/WBE Ordinance in order to carry out the directives of this resolution.

13. Eligible Third-party Agreements will include monthly reporting requirements to allow SMBR to track compliance with the requirements contained herein.

14. Eligible Third-party Agreements shall include the requirement that the Third Party make commercially reasonable efforts to recruit residents of the Austin area for available employment opportunities.

15. SMBR shall report its determinations of compliance or noncompliance with the negotiated standards and principles of the

M/WBE Ordinance to the SMBR Advisory Committee and the MBE/WBE & Small Business Council Subcommittee.

16. Eligible Third Party Agreements do not include (1) agreements for the sale of land in which no continuing contractual relationship will exist between the purchaser and the City, (2) interlocal agreements administered by another governmental entity, and (3) agreements for privately-funded public improvements incidental to private development.

17. Any provisions of this Resolution that are inconsistent with its predecessor, Resolution No. 20071108-127, are inapplicable to Third-party Agreements executed prior to the effective date of this Resolution.

ADOPTED: January 12, 2012 **ATTEST:** Shirley A. Gentry

Shirley A. Gentry
City Clerk

EXHIBIT F
TO GWTP MASTER DEVELOPMENT AGREEMENT

Prevailing Wage Ordinance

[see attached]

RESOLUTION NO. 20080605-047

WHEREAS, the City of Austin may participate with private developers and others in redevelopments that include the construction of buildings meant for residential, commercial, industrial, and civic uses, and

WHEREAS, such participation would include work on projects similar to the redevelopment of the former Seaholm Power Plant, the former Green Water Treatment Plant, and the former Energy Control Center, and

WHEREAS, the City wishes to ensure equitable treatment for workers hired by contractors for redevelopment projects in which the City participates, **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

When the City of Austin participates in public - private projects to redevelop public or formerly public land, the City Manager is hereby directed to establish a requirement for contractors and subcontractors to pay the prevailing wage, as defined in Ordinance No 20030508-031, as part of an agreement authorized by the City Council after the passage of this resolution The signed agreement shall provide that the City Manager is authorized to monitor and enforce the developer's agreement to pay the prevailing wage on a public-private project

ADOPTED: June 5, 2008 **ATTEST:** Shirley A Gentry
Shirley A Gentry
City Clerk

ORDINANCE NO. 030508-31

AN ORDINANCE ADOPTING THE RATES OF WAGES TO BE PAID ON CITY PROJECTS; AND REPEALING ORDINANCE NO. 970904-H.

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

PART 1. The City adopts the general prevailing rate of per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of public buildings. The rates to be paid are the rates in effect for Travis County at the time the City advertises the project for bids.

PART 2. The City adopts the general prevailing rate of per diem wages established in the U. S. Department of Labor's annual survey of Highway-Heavy and Utilities Construction wage rates for work of a similar character in the locality in which the work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of an improvement other than a building. The rates to be paid are the rates in effect for Travis County at the time the City advertises the project for bids.

PART 3. All laborers, workers and mechanics employed in connection with a City of Austin public improvement project shall be paid not less than the general prevailing rate of per diem wages adopted under this ordinance, including the applicable rate of per diem wages established for work performed on legal holidays and overtime work.

PART 4. Ordinance 970904-H, establishing the rates of wages to be paid in connection with construction of a City of Austin public improvement, is repealed.

PART 5. The Council waives the requirements of Sections 2-2-3 and 2-2-7 of the City Code for this ordinance.

PART 6. This ordinance takes effect on May 19, 2003.

PASSED AND APPROVED

May 8, 2003

§
§
§

Gustavo L. Garcia
Mayor

APPROVED:
Sedora Jefferson
City Attorney

ATTEST:
Shirley A. Brown
City Clerk

EXHIBIT G
TO GWTP MASTER DEVELOPMENT AGREEMENT

Shoal Creek Bridge Construction Easement Area

To be provided once scope of easement is finalized. Approval and incorporation of this exhibit is a minor amendment to the MDA.

EXHIBIT H
TO GWTP MASTER DEVELOPMENT AGREEMENT

OSHA Resolution

RESOLUTION NO. 20110728-106

WHEREAS, each year, the City of Austin enters into multiple third party agreements, which provide for the construction of public improvements or improvements to City real property by a third party rather than through a direct contract between the City and a general contractor; and

WHEREAS, such third party agreements include developer participation agreements, economic development agreements, ground lease agreements, and other third-party agreements negotiated between the City and private entities desiring to develop City-owned property ("Eligible Third-party Agreements"); and

WHEREAS, the City desires that the City's Eligible Third Party Agreements comply with the standards and principles of the City's OSHA Worker Safety Training Requirements, which include a mandatory 10 hour OHSA approved worker safety class and a 30 hour OSHA approved supervisor safety class (the "Safety Training Requirements"); **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. The City Manager is directed that it is the policy of the City that Eligible Third Party Agreements comply with the standards and principles of the City's Safety Training Requirements.

2. Eligible Third Party Agreements authorized by Council after passage of this Resolution are to contain contract terms requiring compliance with the standards and principles of the City's Safety Training Requirements.

3. The requirement to comply with the standards and principles of the Safety Training Requirements shall be included in the City's solicitation documents, if any, for the subject project.

4. The requirement to comply with the standards and principles of the Safety Training Requirements shall be addressed and negotiated at the earliest stages of negotiation of Eligible Third-party Agreements so as to allow ample opportunity for the Safety Training Requirements to be fully incorporated into the agreement and other contract documents.

5. The City employees who negotiate Eligible Third Party Agreements will be trained in the standards and principles of the Safety Training Requirements in order to carry out the directives of this resolution.

6. Eligible Third Party Agreements will include periodic reporting requirements to allow the City to track compliance with the Safety Training Requirements.

7. Eligible Third Party Agreements do not include (1) agreements for the sale of land in which no continuing contractual relationship will exist between the

purchaser and the City, (2) interlocal agreements administered by another governmental entity, and (3) agreements for privately-funded public improvements incidental to private development.

ADOPTED: July 28, 2011 **ATTEST:** Shirley A. Gentry
Shirley A. Gentry
City Clerk

EXHIBIT I
TO GWTP MASTER DEVELOPMENT AGREEMENT

MASTER DEVELOPMENT AGREEMENT JOINDER

THIS MASTER DEVELOPMENT AGREEMENT JOINDER (this "Joinder") is executed to be effective as of _____, 20___, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**"), TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company ("**Master Developer**") and _____ (the "**Block Developer**").

RECITALS:

A. The City and the Master Developer entered into that certain GWTP Master Development Agreement dated as of _____, 2012 (as amended or modified from time to time, the "**MDA**") relating to the sale, purchase and development of certain property commonly known as Block 1, Block 23, Block 185 and Block 188 in the City of Austin, Texas;

B. Pursuant to Section 9.15(d) of the MDA, the Master Developer has transferred the property commonly known as Block ___ (the "**Block**") to Block Developer.

C. The City, Master Developer and Block Developer desire to confirm their agreements with respect to the Block Developer and the MDA.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City, Master Developer and Block Developer agrees as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the MDA.

2. Joinder.

(a) Representations. The Block Developer hereby consents to being joined in and hereby makes in its own name each and every representation of the Master Developer under the following Sections of the MDA (as applied to the Block only to the extent such representations concern the Block): Section 2.2 (Representations of Developer).

(b) Obligations. The Block Developer hereby consents to being joined and obligated to each and every obligation of the Master Developer under the following Sections of the MDA (as applied only to the Block only to the extent such obligations concern the Block):

(i) Section 3.1(a) (Improvements Design and Performance)

(ii) Section 3.1(b) (Subdivision Plat, if the Block is unplatted)

(iii) Section 3.1 (c) (Design and Construction of the Improvements)

(iv) Section 3.1(d) (Design and Construction of Public Improvements)

(v) Section 3.1(f) (Chilled Water Agreement)

(vi) Section 3.1(g) (Trees)

(vii) Section 3.1 (h) (Heritage Tree Provision Added from the Dais)

(viii) Section 3.1(i) (Difficult to Employ Provision Added from the Dais)

(ix) Section 3.2 (Developer's General Covenants and Agreements)

(x) Article VII (Insurance and Indemnity)

(xi) Article (IX) (Miscellaneous Provisions) (other than Sections 9.15[a-c])

Block Developer agrees that it is bound by the foregoing provisions and assumes in full, and acknowledges that it is liable for the satisfaction and performance of such obligations as if it were an original developer signatory to the MDA, but that it is not liable for the satisfaction of the Master Developer's separate obligations under the MDA.

(c) Benefits. Block Developer shall be deemed a third party beneficiary of, and shall have the same rights as, the Master Developer under the following Sections of the MDA to the extent such rights concern the Block:

(i) Section 3.1(d) (Design and Construction of Public Improvements)

(ii) Section 3.2(h) (Shoal Creek Construction Easement)

(iii) Section 3.3(d) (Dedicated Team)

(iv) Section 3.3(e) (Controlling Ordinances, Manuals and Rules)

(v) Section 3.3 (f) (Environmental) ***[only as to Block 23 and 188, as applicable, if Master Developer does not perform such Environmental Remediation]***

(vi) Section 3.3(h) (Interlocking Stairs; Area of Refuge)

(vii) Section 3.3(i) (Managed Growth Agreement)

(viii) Section 3.3(k) (Staging Right)

(ix) Section 3.3(l) (License for Underground Parking)

(x) Section 3.3(m) (License for Certain Development Functions)

(xi) Section 8.3 (Events of Default – City) (applied only to the Block)

(xii) Section 8.4 (Remedies of Developer) (applied only to the Block)

(xiii) Section 8.6 (Limited Waiver of Sovereign Immunity)

(d) Defaults. **An MDA Event of Default caused by the act or omission of the Block Developer as applied to the obligations the Block Developer has assumed in this Joinder will constitute an Event of Default under Section 8.1 of the MDA and will entitle the City to exercise the remedies under Section 8.2 of the MDA; provided however, the City's exercise of remedies under Section 8.2 of the MDA (other than Section 8.2[a]) will only be applicable to the Block Developer and the Block. It is the intention of the parties that a default by any "Block Developer" under the MDA obligations such Block Developer assumes under Section 2(b) hereof entitles the City to cause the termination/assignment of the MDA under Section 8.2(a), but the exercise of other remedies under the MDA be available only against the defaulting "Block Developer" and only on a defaulting Block basis. Further, an Event of Default caused by the act or omission of the Master Developer under the MDA will constitute an Event of Default under Section 8.1 of the MDA and will entitle the City to exercise the remedies under Section 8.2 of the MDA as to the Master Developer, but not as to the Block Developer or the Block. The Block Developer has no responsibility for any obligations or liabilities (i) with respect to any other block out of the Property other than the Block and (ii) except to the extent expressly assumed in this Joinder, under the MDA.**

(e) Notices; Cure Period. All notices provided to Block Developer under the MDA shall be provided to:

_____

_____

_____

Attention:_____

Copies of any default notices sent to Block Developer will also be contemporaneously sent to Master Developer and Master Developer will have the right to cure any such default within any applicable cure periods set forth in the MDA for such default.

3. Conflicting Obligations/Benefits. To the extent the obligations assumed by Block Developer hereunder or benefits granted to the Block Developer hereunder conflict with the Master Developer's MDA obligations and/or benefits or with another block developer's MDA obligations and/or benefits assumed or granted under a separate joinder with that block developer, Master Developer, Block Developer and any other block developer will be solely responsible, as applicable, to resolve such conflict among themselves without assistance from the City - it being the intention of the parties that this Joinder is an accommodation to Master Developer and Block Developer and that the City will be entitled to receive the benefit of its

bargains under the MDA without the possible adverse affect of conflicting obligations or obligors.

4. Miscellaneous. No lender or receiver appointed for the assets of a Block Developer may receive the benefit of this Joinder unless it also enters into a Master Development Agreement Joinder with the City and Master Developer concerning any period for which such entity owns the Block. This joinder is deemed to be a part of the MDA in all respects. No party hereto may assign its rights under this Joinder without the express written consent of the other parties hereto. Any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City or its designee; provided however, except for minor amendments, modifications, clarifications or removals of property, the City Manager does not have the authority to execute any substantial modification or termination of this Joinder without the approval of the Austin City Council.

[add signatures]

EXHIBIT J
TO GWTP MASTER DEVELOPMENT AGREEMENT

Excluded Contracts

Contracted Entity	Description	Project or Phase	Effective Date
Walker Parking Consultants	Parking Study & TIA	RFP Response, Master Planning	10/20/2009
Parking Planners	Parking Consultant	RFP Response, Master Planning	3/26/2008
Gensler	Architect	Master Planning, Block 23	9/21/2010
Mithun	Architect	Master Planning	3/17/2009
Enviroplan Architects	Retail Planners	Master Planning	11/19/2008
Jones & Carter	Civil Engineer	Master Planning, City Site Infrastructure, Block 1, Block 23	6/22/2011
Jones & Carter	Civil Engineer	Surveys, Preliminary Engineering & Due Diligence - Block 1	1/5/2012
Blum Consulting	MEP Engineer	Master Planning, Block 1, Block 23	6/14/2011
Blum Consulting	MEP Engineer	Conceptual/Design Development Block 1	10/24/2011
Haynes Whaley Associates	Structural Engineer	Master Planning, Block 23	6/22/2011
Blue Plate Design	Design & Concept Mktg Pkg	RFP Response	5/1/2008
Bury + Partners	Site Development Assessment	RFP Response	3/26/2008
Capital Market Research	Market Feasibility Study	Master Planning	12/1/2010
Terracon	Geotechnical Study	Master Planning, Block 1, Block 23	2/11/2011
RWDI Consulting Engineers	Wind Consultant	Block 1	3/13/2012
HFP Acoustical Consultants	Acoustical Consultant	Block 1	2/8/2012
The Access Partnership	ADA/FHA Consultant	Block 1	2/8/2012
Rolf Jenson & Associates	Code Consultant	Block 1	1/30/2012
Lerch Bates Inc.	Elevator Consultant	Block 1	2/8/2012
PEER Review LLC	Consulting	Block 1	2/7/2012
Soloman, Cordwell, Buenz Architecture (SCB)	Architect	Block 1	10/14/2011
SCA Consulting Engineers	Structural Engineer	Block 1	10/26/2011
GWH Landscape Architects	Landscape Architect	Block 1	3/14/2012
Weston Solutions, Inc.	Environmental Consultant	Environmental Remediation	3/5/2012
CBRE	Broker	Listing Agent for Blocks 1 and 23	5/25/2011
Randy Distefano	Interior Architectural Design	Block 1	3/14/2012
La Jolla Pacific	Construction Inspection Services	Block 1	3/12/2012
Dubois Bryant and Campbell	Legal	MDA	7/28/2008