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

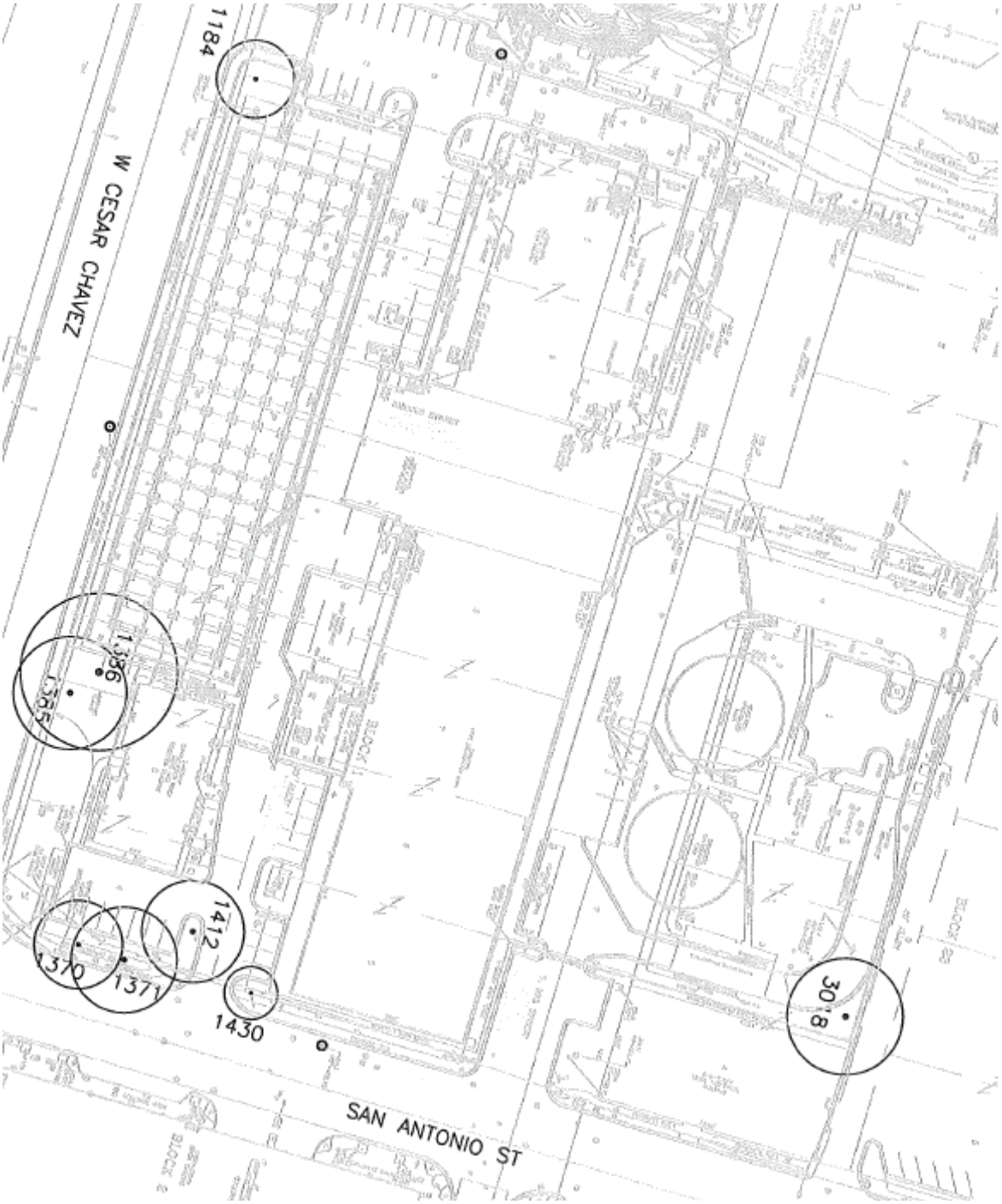

EXHIBIT C
TO GWTP MASTER DEVELOPMENT AGREEMENT

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) Unless otherwise approved by Declarant, 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 thrift shop (e.g., Goodwill or St. Vincent de Paul), flea market or 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 pet store (other than a "boutique" pet store, pet day care and pet grooming), veterinary hospital, veterinary office or 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) A store selling alcoholic beverages for off-premises consumption, other than (a) an "upscale" store selling wines and similar alcoholic beverages, (b) stores in which beverages represent less than 15% of the store's merchandise calculated on the basis of approximate number of individually sold items in such store and (c) other specialty concept stores such as Royal Blue Grocer, Dean & Deluca, Hubble & Hudson, Trader Joe's and other similar concept stores regardless of whether they comply with (b) above, it not being Declarant's intent, for example, to prohibit use of the Property for a market in which alcoholic beverages for off-premises consumption represent only a portion of the merchandise available in such market.

(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) Bowling alleys on the ground level.

(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) Workers compensation offices.

(b) Unless otherwise approved by Declarant, 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) A daycare center larger than 5,000 square feet.

(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) Doctor or dentist offices or other medical facilities (other than incidental first aid facilities).

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

(vii) Tobacco shop (other than a "high end" 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.

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-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 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 7 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**"):

(A) The applicable Owner agrees to lease, or hold available to lease 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.

(B) At least 5 units must be leased, or available to lease, to households whose income is equal to or less than 30% of the median income for households of equivalent size as determined by HUD for the MSA. A unit that is leased, or held available for lease, to persons who meet the above criteria is hereinafter also 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. If there are two blocks in the Property which must provide Restricted Units under this paragraph, one property must provide 2 Restricted Units and the other Property must provide 3 Restricted Units.

The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but 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.

(ii) During the Affordable Housing Period, 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 Owner of its covenants in this Section:

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

(B) Should Owner breach a covenant in this Section and until such time as the breach is cured, as Declarant's sole and exclusive remedies, (i) 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, (ii) Owner shall pay to Declarant liquidated damages in the amount of $2,000 per month for each unrestricted unit that would need to be restricted in order to maintain the 30% MFI requirement set forth above and (iii) Declarant shall have the right to specifically enforce the covenants set forth in this Section.

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

(iv) The Declarant may, but will not be obligated to, extend the Affordable Housing Period beyond the initial 7 years, at the Declarant's expense; provided however, the number and percentage of the Restricted Units cannot exceed the numbers and percentages 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 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, 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 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 Owner shall continue to be subject to the breach of covenant provisions above, including the requirements for liquidated damages.

(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.

(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.

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. García

Gustavo L. Garcia
Mayor

APPROVED: Sedora Jefferson
Sedora Jefferson
City Attorney

ATTEST: Shirley A. Brown
Shirley A. Brown
City Clerk

EXHIBIT G
TO GWTP MASTER DEVELOPMENT AGREEMENT

Shoal Creek Bridge Construction Easement Area

TO BE PROVIDED PRIOR TO COUNCIL ACTION

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 3.2 (Developer's General Covenants and Agreements)

(viii) Article VII (Insurance and Indemnity)

(ix) 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(g) (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