Resolution No. 2016-09

A RESOLUTION AUTHORIZING AND CREATING THE CROSSINGS PUBLIC IMPROVEMENT DISTRICT TO FINANCE IMPROVEMENTS WITHIN AND/OR RELATED TO THE CROSSINGS RESIDENTIAL DEVELOPMENT PROJECT, IN ACCORDANCE WITH SUBCHAPTER A OF CHAPTER 372, AS AMENDED, TEXAS LOCAL GOVERNMENT CODE; AUTHORIZING AND DIRECTING PUBLICATION OF THIS RESOLUTION; MAKING CERTAIN FINDINGS RELATIVE TO THE IMPROVEMENTS THAT ARE TO RESULT FROM THE DISTRICT; PROVIDING FOR MATTERS RELATING TO THE FOREGOING; AND PROVIDING AN EFFECTIVE DATE

* * *

WHEREAS, on December 10, 2015, the owners of taxable real property (the *Owners*) representing greater than 50% of the appraised value of taxable real property liable for assessment, being a definable piece of property of approximately 88.18 contiguous acres located in the northeast portion (entirely within Precinct 3) of Comal County, Texas (the *County*) (such property, as described in Exhibit A hereto, the *Property*), delivered a petition (a copy of which is attached hereto as Exhibit B and made a part of this Resolution for all purposes as though reproduced herein in its entirety; referred to herein as the *Petition*) to the Commissioners Court (the *Court*) of the County requesting that a public improvement district be established upon the Property pursuant to Subchapter A of Chapter 372, as amended, Texas Local Government Code (the *PID Act*) for the purpose of improving and financing the costs of improving the Property (as further described below, the *Improvements*); and

WHEREAS, the Owners constitute more than 50% of all record owners of the Property that will be liable for any assessments imposed under the proposal described in the Petition; and

WHEREAS, the PID Act permits Texas counties, such as the County, to establish a public improvement district upon a definable area within its territory, such as the Property, provided that, as described in the PID Act, certain prerequisites to such designation are found to have been satisfied and findings in connection therewith made; and

WHEREAS, the Court has determined that the Petition was validly submitted and compliant with applicable laws of the State of Texas (the *State*); and

WHEREAS, in response to its receipt of the Petition (and determination of the validity thereof), the Court, by Resolution No. 2016-01 adopted on January 14, 2016, authorized publication of notice of the County's intention to conduct a public hearing (the *Hearing*) concerning the creation of a public improvement district (the *District*), to support the development project known as "The Crossings", upon the Property and the advisability of the Improvements, all in accordance with and as required by the PID Act, and established February 4, 2016 as the date of the Hearing; and

WHEREAS, notice of the Hearing (the *Notice*) was published on January 19, 2016, which was a date at least fifteen days prior to the date of the Hearing, in the *New Braunfels Herald-Zeitung*, which (because of its general availability throughout the County) is found by the Court to be a newspaper of general circulation in the County, the foregoing being compliant with Section 372.009(c) of the PID Act; and

WHEREAS, the Notice provided that the name of the proposed district would be the "Comal County Public Improvement District No. 1 (The Crossings Development Project)"; and

WHEREAS, at the Hearing, interested persons were allowed to speak for or against the establishment of the District, the advisability of the Improvements, and/or the concept of a public improvement district, and owners of property in the District were given a reasonable opportunity to protest the inclusion of their property in the District; and

WHEREAS, evidence and testimony was received and presented at the Hearing in favor of and against the establishment of the District and the advisability of the Improvements; and

WHEREAS, no owner of real property in the proposed District protested the inclusion of their property in the District; and

WHEREAS, as a result of the foregoing, the County has complied with the prerequisites to the adoption of this Resolution concerning the establishment of the District under the PID Act; and

WHEREAS, the Court has reviewed data and information, which data and information it determines to represent an adequate basis for the adoption of this Resolution, for the purpose of determining the feasibility and desirability of establishing the District; and

WHEREAS, the Court anticipates that, as a result of the establishment of the District and the entering into of a Financing Agreement (defined herein) between the Owner (defined herein) and the County, the County will be able to impose upon the Property development restrictions and conditions more stringent and more beneficial to the County and its inhabitants than otherwise could be required by the County under applicable and available State law; and

WHEREAS, the Court finds that the adoption of this Resolution is in the best interest of the residents of the County; and

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF COMAL COUNTY, TEXAS:

Section 1. **Findings; Establishment of District; Identification of Improvements.**

The Court hereby finds and determines:

(a) That the facts and recitations contained in the preamble of this Resolution are true and correct and are adopted as part of this Resolution for all purposes.

(b) That it is advisable to establish the District to provide the Improvements, which will promote the general interests of the County and will confer a special benefit on the Property, and the establishment of the District is necessary to fund the costs of the Improvements.

(c) That the District is hereby established, upon the effectiveness of this Resolution (as determined by Section 4 hereof).

(d) That the District's boundaries are contiguous with those of the Property.

(e) That the District shall be known as The Crossings Public Improvement District.

(f) That the purpose of the District is to fund the following improvements upon the Property (referred to herein as the *Improvements*):

(1) Expenses incurred in the establishment, administration, and operation of the District; and

(2) Costs of the design, acquisition, construction, and installation of public improvement projects, as authorized by the PID Act, that are necessary for the development of the Property, which public improvements will include (but are not limited to) improvements to utilities; establishment of streets and roadway improvements, including related sidewalks, drainage, utility relocation, signalization, landscaping, lighting, signage and right of way; establishment or improvement of parks and open space, together with the design, construction and maintenance of any ancillary structures, features of amenities such as trails, walkways, sidewalks and landscaping; acquisition, construction and improvement of water, wastewater and drainage improvements and facilities; and other infrastructure improvements within the District.

(g) That the estimated cost to fund the design, acquisition, construction, and installation of the Improvements, together with bond issuance costs, eligible legal and financial fees, eligible credit enhancement costs and eligible costs incurred in the establishment, administration and operation of the District is $5,000,000.00 (which amount is exclusive of (1) interest costs, if any, incurred in connection with the financing of any Improvements and (2) the costs of maintenance thereof).

(h) That the costs of Improvements shall be paid from the assessments and from other sources of funds lawfully available to the District (including, but not limited to, contributions from private third parties and proceeds from bond sales, time warrants, and/or permanent or temporary notes issued by the County on the District's behalf and to be paid solely from a lien on and pledge of revenues generated by or otherwise available to the District); provided, however, that the County's issuance of indebtedness for the benefit of the District, regardless of source of security or repayment, shall be undertaken at the sole and absolute discretion of the Court; provided further, however, that notwithstanding the fact that the County is not obligated to provide any County funds (other than those

resultant from the creation of the District that are described above and in Section 2 hereof) to support the operations or undertakings of the District, nothing shall prevent it from doing so at the Court's discretion.

(i) That the District shall be managed by the County, with the assistance of a consultant, who shall, from time to time, advise the County regarding certain operations of the District.

Section 2. Assessments.

(a) The County shall levy assessments on all Assessable Property (defined herein) within the District in a manner that results in the imposition of an assessment that equally apportions the costs of the Improvements to Assessable Property that is similarly benefited by such Improvements.

(b) All assessments may be paid in full at any time (including accrued and unpaid interest, if any), and certain assessments may be paid in annual installments (including accrued and unpaid interest, if any). If an assessment is allowed to be paid in installments, then the installments must be paid in amounts sufficient to meet annual debt service (including any interest and costs of principal amortization) and maintenance costs of Improvements that have been financed, and must continue for a period required to fully retire any such indebtedness.

(c) "Assessable Property" means property on which special assessments have been levied, but specifically excludes property within the boundaries of the District that accrue no special benefit from the Improvements, including public property and easements that create an exclusive use for a public utility provider (as reflected on the official tax rolls of the Comal Appraisal District for the year in which the assessment is made).

Section 3. PID Fund.

There is hereby created and established a special fund of the County for the benefit of the District, to be designated The Crossings Special Improvement District Fund (the *PID Fund*), which may be divided into subaccounts as authorized by subsequent orders or resolutions of the Court. The PID Fund and any subaccount shall be maintained at the depository bank of the County and shall be secured in the manner prescribed by law for funds of counties of the State. Money shall be disbursed from the PID Fund only to pay costs of Improvements, costs of the County incurred to administer the District (as such costs are approved by the Court), debt service on debt obligations issued in support of the District, or maintenance costs of any Improvement (the foregoing to include any lawful reimbursement to the Owner under a reimbursement agreement (a *Reimbursement Agreement*)). The County shall deposit to the PID Fund, upon receipt, assessments paid by owners of Assessable Property.

Section 4. Effective Date.

The Crossings Public Improvement District is hereby authorized and created as a public

improvement district under the PID Act in accordance with this findings of the Commissioners Court as to the advisability of the Improvements contained in this Resolution, the nature and estimated costs of the Improvements, the boundaries of the District, the method of assessment, and the apportionment of costs as described herein; and the conclusion that the District is needed to fund such Improvements.

Once approved by the Court, this Resolution, in accordance with Section 372.010 of the PID Act, shall take effect immediately upon its publication in a newspaper of general circulation in the County. The Court hereby authorizes and directs publication of this Resolution in the *New Braunfels Herald-Zeitung*, being a newspaper found to meet this general circulation requirement, on a date not later than April 21, 2016 (which date is not later than six months from the date of the Hearing). The notice that will precede the Resolution in the publication is attached hereto as Exhibit C.

Section 5. Effect of Financing Agreement.

The Court anticipates that the Improvements will be designed, acquired, constructed, and installed by the Owner pursuant to a financing agreement (a *Financing Agreement*) and the Reimbursement Agreement (together with the Financing Agreement, the *Agreements*) by and among the County and the Owner. No funds deposited to or held in the PID Fund shall be expended until the Agreements has been entered into by all parties thereto and such Agreements represents a valid and enforceable obligation of each such party.

Section 6. Severability.

If any provision, section, subsection, sentence, clause or phrase of this Resolution, or the application of same to any person or to any set circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining provisions of this Resolution or their application to other persons or set of circumstances shall not be affected thereby, it being the intent of the Court in adopting this Resolution that no portion hereof or regulations connected herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any portion hereof, and all provisions of this Resolution are declared severable for that purpose.

Section 7. Governing Law.

This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 8. Inconsistent Provisions.

All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict or inconsistency, and the provisions of this Resolution shall be and remain controlling as to the matters herein provided.

Section 9. Open Meetings.

It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the Court at which this Resolution was adopted

was posted at a place convenient and readily accessible at all times to the general public at the Comal County Courthouse for the time required by law preceding its meeting, as required by the Open Meetings Law, Chapter 551, as amended, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter hereof has been discussed, considered and formally acted upon. The Court further ratifies, approves and confirms such written notice and the contents and posting thereof.

* * *

APPROVED this 14th day of April, 2016.

COMAL COUNTY, TEXAS

County Judge

ATTEST:

Bobbie Koepp

County Clerk and Ex-Officio Clerk
of the Commissioners Court

COMMISSIONERS' COURT
COMAL COUNTY, TEXAS

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

PID PETITION

EXHIBIT C

Legal Notice for Publication

COMAL COUNTY, TEXAS
NOTICE OF THE AUTHORIZATION AND CREATION OF THE CROSSINGS PUBLIC IMPROVEMENT DISTRICT BY RESOLUTION NO. 2016-09 PASSED AND APPROVED ON APRIL 14, 2016

Notice is hereby given that at the regular meeting of the Commissioners Court of Comal County, Texas (the *Court*) held on April 14, 2016 in the Commissioners Courtroom of the Comal County Courthouse, 100 Main Plaza, New Braunfels, Texas 78130, the Court passed Resolution No. 2016-09 (the *Resolution*) authorizing and establishing The Crossings Public Improvement District (the *District*). The Resolution text is as follows:

[*Insert Resolution*]

CERTIFICATE OF COUNTY CLERK

THE STATE OF TEXAS §
§
COUNTY OF COMAL §

THE UNDERSIGNED HEREBY CERTIFIES that:

1. The Commissioners Court (the *Court*) of Comal County, Texas (the *County*), convened on the 14th day of April, 2016 in a regular session of the Court in the County Courthouse (the *Meeting*), which Meeting was at all times open to the public, the duly constituted officers and members of the Court being as follows:

Sherman Krause	County Judge
Donna Eccleston	Commissioner, Precinct No. 1
Scott Haag	Commissioner, Precinct No. 2
Kevin Webb	Commissioner, Precinct No. 3
Jen Crownover	Commissioner, Precinct No. 4

and all of such persons were present at the public hearing, except the following: n/a, thus constituting a quorum. Among other business considered at the public hearing, the attached resolution (the *Resolution*) entitled:

> A RESOLUTION AUTHORIZING AND CREATING THE CROSSINGS PUBLIC IMPROVEMENT DISTRICT TO FINANCE IMPROVEMENTS WITHIN AND/OR RELATED TO THE CROSSINGS RESIDENTIAL DEVELOPMENT PROJECT, IN ACCORDANCE WITH SUBCHAPTER A OF CHAPTER 372, AS AMENDED, TEXAS LOCAL GOVERNMENT CODE; AUTHORIZING AND DIRECTING PUBLICATION OF THIS RESOLUTION; MAKING CERTAIN FINDINGS RELATIVE TO THE IMPROVEMENTS THAT ARE TO RESULT FROM THE DISTRICT; PROVIDING FOR MATTERS RELATING TO THE FOREGOING; AND PROVIDING AN EFFECTIVE DATE

was introduced for the due consideration of the Court. After presentation and discussion of the Resolution, a motion was made by Commissioner Webb that the Resolution be passed and adopted. The motion was seconded by Commissioner Haag and carried by the following vote:

4 voted "For" 1 voted "Against" ___ "Abstained"

all as shown in the official Minutes of the Court for the Meeting.

2. The attached Resolution is a true and correct copy of the original on file in the official records of the County; the duly qualified and acting members of the Court on the date of the public hearing are those persons shown above, and, according to the records of my office, each member of the Court was given actual notice of the time, place, and purpose of the public

hearing and had actual notice that the Resolution would be considered; and the Meeting and deliberation of the aforesaid public business, including the subject of the Resolution, was open to the public and written notice of said public hearing, including the subject of the Resolution, was posted and given in advance thereof in compliance with the provisions of Chapter 551, as amended, Texas Government Code.

IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the Commissioners Court, this 14th day April, 2016.

Bobbie Koepp

County Clerk and Ex-Officio Clerk of the Commissioners Court of Comal County, Texas

(SEAL OF COMMISSIONERS COURT)

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