

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING THE 2020 AMENDED AND RESTATED SERVICE AND ASSESSMENT PLAN FOR THE WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT (PID), MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN IMPROVEMENT AREA #2 OF THE DISTRICT, ADOPTING THE IMPROVEMENT AREA #2 ASSESSMENT ROLL, LEVYING ASSESSMENTS FOR PROPERTY IN IMPROVEMENT AREA #2, APPROVING THE SECOND AMENDMENT TO THE WHISPER VALLEY PID FINANCING AGREEMENT, APPROVING AND AUTHORIZING A WHISPER VALLEY PID ACQUISITION AND REIMBURSEMENT AGREEMENT, AND DECLARING AN EMERGENCY.

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

**PART 1.** The Council finds that:

- (A) Chapter 372 of the Texas Local Government Code (Act) authorized the creation of the Whisper Valley Public Improvement District (District).
- (B) On August 26, 2010, the City Council passed a resolution which approved the creation of the District in accordance with its findings.
- (C) The City and the Developer (as defined below) are parties to the Whisper Valley Public Improvement District Financing Agreement, dated November 1, 2011, as amended by the First Amendment (PID Financing Agreement”).
- (D) On September 3, 2020, the City Council approved a resolution adopting a preliminary amended and restated Service and Assessment Plan for the District (2020 Amended and Restated Service and Assessment Plan) and proposed assessment roll (Improvement Area #2 Assessment Roll) for the second phase of the District (Improvement Area #2), attached as Exhibit A.
- (E) Pursuant to Section 372.016(b) of the Act, the City Council published notice on September 10, 2020 in the *Austin American-Statesman*, a newspaper of general circulation in the City and the extraterritorial jurisdiction of the City, of a public hearing to consider the 2020 Amended and Restated Service and Assessment Plan, the Improvement Area #2 Assessment Roll, and the levy of assessments on benefitted property in Improvement Area #2 (Improvement Area #2 Assessments).

- 1 (F) Pursuant to Section 372.016(c) of the Act, the City Council caused the mailing  
2 of notice of the public hearing to consider the 2020 Amended and Restated  
3 Service and Assessment Plan, the Improvement Area #2 Assessment Roll, and  
4 the levy of Improvement Area #2 Assessments on property in Improvement Area  
5 #2 to the last known addresses of the owners of the property liable for the  
6 Improvement Area #2 Assessments.
- 7 (G) On October 1, 2020, the City Council held a public hearing, properly noticed  
8 under the Act, to consider the levy of the proposed assessments on property  
9 within Improvement Area #2 of the District.
- 10 (H) At the October 1, 2020 public hearing, the City Council heard each objection to  
11 a proposed assessment, found in each case that the assessments levied against  
12 each parcel are reasonable and consistent with the special benefits conferred by  
13 the District, and passed on each objection before it closed the public hearing.
- 14 (I) The assessments set out in the Improvement Area #2 Assessment Roll, attached  
15 as Exhibit B:
- 16 (1) should be made and levied against the property and property owners within  
17 Improvement Area #2 of the District;
- 18 (2) are in proportion to the benefits to the property for the services and public  
19 improvements in Improvement Area #2 of the District; and
- 20 (3) establish substantial justice, equality, and uniformity in the amount  
21 assessed against each property owner for the benefits received and burdens  
22 imposed.
- 23 (J) Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited  
24 partnership (Developer), is the developer of the District.
- 25 (K) In order to memorialize the rights and responsibilities of the City and the  
26 Developer related to the construction of public improvements to serve  
27 Improvement Area #2 of the District, which public improvements will be  
28 acquired by the City and for which the City will reimburse the Developer, the  
29 City and the Developer wish to enter into a Whisper Valley Public Improvement  
30 District Acquisition and Reimbursement Agreement (Acquisition and  
31 Reimbursement Agreement) in substantially the form attached as Exhibit C.
- 32 (L) In order to memorialize the rights and responsibilities of the City and the  
33 Developer related to the development of the District, the City and the Developer

1 wish to enter into a Second Amendment to the PID Financing Agreement in  
2 substantially the form attached as Exhibit D.

3 **PART 2. 2020 Amended and Restated Service and Assessment Plan.** The 2020  
4 Amended and Restated Service and Assessment Plan, attached as Exhibit A, is hereby  
5 approved.

- 6 (A) In each case, the property assessed is benefited by the services and improvements  
7 provided in Improvement Area #2 of the District.
- 8 (B) The exclusion of certain property from assessment is reasonable because the  
9 excluded property will not receive a benefit from Improvement Area #2 of the  
10 District that is sufficient to justify an assessment and the exclusions promote  
11 efficient management of the District.
- 12 (C) The procedures followed and apportionment of the cost of the services and  
13 improvements in the District comply with applicable law and the purpose for  
14 which the District was formed.

15 **PART 3. Exemptions and Exclusions.** The Council exempts the following from payment  
16 of the assessment and excludes from the roll:

- 17 (A) property of the City used for public purpose;
- 18 (B) property owned by the County and property owned by political subdivisions of  
19 the State of Texas and used for public purpose; and
- 20 (C) other property that is excluded by law or by agreement of the City and the  
21 petitioners.

22 **PART 4. Assessment and Levy.** The respective assessments shown on Exhibit B are  
23 levied and assessed against the property in Improvement Area #2 of the District and against  
24 the record owners of the property identified by the Travis Central Appraisal District  
25 records.

- 26 (A) The levy of the Improvement Area #2 Assessments shall be effective on effective  
27 date of this Ordinance levying Improvement Area #2 Assessments and strictly in  
28 accordance with the terms of the 2020 Amended and Restated Service and  
29 Assessment Plan and the Act.
- 30 (B) The collection of the Improvement Area #2 Assessments shall be as described in  
31 the 2020 Amended and Restated Service and Assessment Plan and the Act.

- 1 (C) Each Improvement Area #2 Assessment may be paid in a lump sum at any time  
2 or may be paid in annual installments (Annual Installments) pursuant to the terms  
3 of the 2020 Amended and Restated Service and Assessment Plan.
- 4 (D) Each Improvement Area #2 Assessment shall bear interest at the rate or rates  
5 specified in the 2020 Amended and Restated Service and Assessment Plan.
- 6 (E) Each Annual Installment shall be collected each year in the manner set forth in  
7 the Service 2020 Amended and Restated Service and Assessment Plan.
- 8 (F) The Administrative Expenses for Improvement Area #2 Assessed Property shall  
9 be calculated and collected pursuant to the terms of the 2020 Amended and  
10 Restated Service and Assessment Plan.

11 **PART 5. Due Date and Collection.** An assessment is due and payable in full on or before  
12 January 31, 2021. If a property owner defaults on payment of an assessment against the  
13 owner's property, the City Manager's designee may file suit on behalf of the City to collect  
14 the assessment and may initiate a lien foreclosure, including interest, penalties, costs and  
15 attorney's fees, as set forth in the 2020 Amended and Restated Service and Assessment  
16 Plan and as allowed by law.

17 **PART 6. Approval of the Acquisition and Reimbursement Agreement.** The Council  
18 approves the Acquisition and Reimbursement Agreement attached as Exhibit C. The City  
19 Manager, Mayor, and Mayor Pro Tem are each authorized and directed to execute and  
20 deliver the Acquisition and Reimbursement Agreement with such changes as may be  
21 required to carry out the purpose of this Ordinance and as approved by the City Manager,  
22 Mayor or Mayor Pro Tem, such approval to be evidenced by the execution of the  
23 Agreement.

24 **PART 7. Approval of the Second Amendment to the PID Financing Agreement.** The  
25 City hereby approves the Second Amendment to the PID Financing Agreement attached as  
26 Exhibit D. The City Manager, Mayor and Mayor Pro Tem are each authorized and directed  
27 to execute and deliver the Second Amendment to the PID Financing Agreement with such  
28 changes as may be required to carry out the purpose of this Ordinance and as approved by  
29 the City Manager, Mayor or Mayor Pro Tem, such approval to be evidenced by the  
30 execution of the Agreement.

31 **PART 8. Statutory Authority.** The assessments levied by this ordinance and the  
32 approval and execution of the Acquisition and Reimbursement Agreement and the Second  
33 Amendment to the PID Financing Agreement are each made under the authority of the Act.

1 **PART 10. Severability.** The provisions of this ordinance are severable. If any provision  
2 of this ordinance or its application to any person or circumstances is held invalid, the  
3 invalidity does not affect other provisions or applications of this ordinance.

4 **PART 11. Declaring an Emergency.** Section 372.018 of the Act provides that an  
5 assessment creates a lien against the property assessed that is effective from the date of the  
6 ordinance levying the assessment, which is prior to the standard effective date of an  
7 ordinance, and the Council finds this constitutes an emergency. Because of this emergency,  
8 this ordinance takes effect immediately upon its passage for the immediate preservation of  
9 the public peace, health, and safety.

10 **PART 12.** This ordinance takes effect on \_\_\_\_\_, 2020.

11  
12 **PASSED AND APPROVED**

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14 §  
15 §  
16 \_\_\_\_\_, 2020 § \_\_\_\_\_  
17 Steve Adler  
18 Mayor

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20  
21 **APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
22 Anne L. Morgan Jannette S. Goodall  
23 City Attorney City Clerk  
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