

**SECOND AMENDMENT TO WHISPER VALLEY PUBLIC IMPROVEMENT
DISTRICT FINANCING AGREEMENT**

This SECOND AMENDMENT TO WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT (this "Amendment") is made effective ___ day of _____, 2020 (the "Effective Date"), by and between Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees, the "Developer"), and the City of Austin, Texas (the "City"), a municipal corporation, acting by and through its duly authorized representative (each individually referred to as a "Party" and collectively as the "Parties").

RECITALS

A. The City and Developer are parties to that certain Whisper Valley Public Improvement District Finance Agreement dated effective November 1, 2011 (as amended by the First Amendment dated March 20, 2019, and by this Amendment, the "Agreement").

B. Pursuant to the Agreement, it was contemplated that Phased PID Bonds would be issued periodically in the future as individual Improvement Areas of the Project are developed and such Phased PID Bonds would fund Phased PID Bond Public Improvements within each Improvement Area.

C. The Parties agree that the Developer may receive reimbursements for the Phased PID Bond Public Improvements within each given Improvement Area once such Phased PID Bond Public Improvements have been constructed and accepted by the City or County, as applicable.

D. As contemplated by this Agreement, Special Assessments will need to be levied on the applicable Future Improvement Area(s). Since the Developer has agreed to allow for funding of construction of Phased PID Bond Authorized Improvements within each given Future Improvement Area via reimbursement payments and the Phased PID Bonds are not being issued upfront, the Special Assessments will need to be levied on the applicable Future Improvement Area(s) prior to Phased PID Bonds being issued and prior to any sales to Homeowners.

E. Developer has already commenced and completed the Improvement Area #2 Authorized Improvements, and pursuant to a 2020 Amended and Restated Whisper Valley Public Improvement District Service and Assessment Plan adopted contemporaneously herewith (the "2020 SAP"), additional Special Assessments will be levied on Improvement Area #2.

NOW, THEREFORE, Developer and City hereby agree as follows:

1. Recitals/Defined Terms. The foregoing Recitals are true and correct in all material respects and are incorporated by reference herein and made a part of this Amendment for all purposes. Unless otherwise defined in this Amendment, any capitalized terms used in this Amendment shall have the meanings given to them in the Agreement.

2. Definitions.

(a) The following definitions, as well as the defined terms in the Recitals above, are hereby added to Exhibit "A."

"Acquisition and Reimbursement Agreement" means those agreements to be entered into by the Developer and City in accordance with the terms of Section 4.02 hereof, and generally in the form of Exhibit K attached hereto.

"Improvement Area" shall mean each improvement area identified as such in the Whisper Valley Public Improvement District Service and Assessment Plan, as updated and amended from time to time, including Improvement Area #1, Improvement Area #2, and Future Improvement Areas.

"Improvement Area #2" shall be the area identified as such in the 2020 SAP.

"Improvement Area #2 Improvements" shall mean that infrastructure benefitting Improvement Area #2, identified in the 2020 SAP.

"Owner Expended Funds" means for any given Phased PID Bond issue (i) the amount of Actual Costs not previously reimbursed to Developer under the applicable Acquisition and Reimbursement Agreement and (ii) any other qualified and permitted costs submitted to and approved by the City (*e.g.* bond issuance costs and consultant fees).

"Phased PID Bond Public Improvements" means those Public Improvements to be funded by Phased PID Bonds (other than for Improvement Area #1 or Improvement Area #2).

(b) The following definitions are hereby deleted and replaced in with the following:

"Future Improvement Area(s)" means the Improvement Areas of the Property that do not include Improvement Area #1 or Improvement Area #2.

"Maximum Annual Assessment" means an amount that does not exceed the lesser of (i) 125% of such parcel's anticipated buildout value (as determined by the Administrator) times the City's tax rate in the fiscal year the assessment is determined or (ii) the equivalent tax rate as calculated at the time of the most recent Assessment levy increased by 2% per year to the date of the new Assessment levy.

3. Addition of Provisions Related to Apportionment, Levy and Collection of Assessments. The following is hereby added as a new Section 2.05 of the Agreement.

Section 2.05 Developer Consent to 2020 SAP. To the extent that there is any conflict between the 2020 SAP and any prior version of the Service and Assessment Plan, the Developer hereby ratifies, confirms, consents, accepts, agrees and approves the 2020 SAP, including the assessments rolls, exhibits and appendices therein.

4. Provisions Related to Improvement Area #2. The following is hereby added as a new Section 4.02(C) to the Agreement:

Section 4.02(C). Improvement Area #2

Notwithstanding the terms contained in Section 4.02, since Improvement Area #2 Improvements have been constructed and have been, or will be accepted by either the County or the City (as applicable), and the Special Assessments to fund the Improvement Area #2 Improvements will be levied contemporaneously herewith, the process set forth in Section 4.02(a) is hereby adjusted as follows as to Improvement Area #2 only:

(1) The outstanding Special Assessments associated with the Master PID Bonds allocated to Improvement Area #2 have been prepaid prior to the effective date of this Agreement, and prior to the levy of additional Special Assessments for the Improvement Area #2. As a result of such prepayment, the lien and Special Assessments associated with the Master PID Bonds allocable to Improvement Area #2 was extinguished. As set forth in the 2020 SAP, the first Annual Installment of Special Assessments for Improvement Area #2 is due and payable on January 31, 2022.

(2) It is hereby acknowledged that provisions for the redemption of the Senior Master PID Bonds that are allocable to Improvement Area #2 will be made in accordance with the indenture of trust related to the Senior Master PID Bonds through the application of such prepayment of assessments (plus any transfer of funds required by and held pursuant to the terms of the indenture of trust applicable to the Senior Master PID Bonds).

(3) Notwithstanding the terms contained in Section 4.02, since Improvement Area #2 Improvements have been constructed, prior to the City authorizing the issuance of the Improvement Area #2 PID Bonds or reimbursing Developer from the proceeds of additional Special Assessments levied in Improvement Area #2, Developer will be required to submit Certification for Payment in accordance with the provisions of Section 4.01 for the amount of Actual Costs for the Improvement Area #2 Improvements to be funded by the bonds or Special Assessment Revenues (as applicable) as well as any other qualified and permitted costs submitted to the City (e.g. bond issuance costs or consultant fees). Any disbursement of funds shall be made in accordance with the Improvement Area #2 Acquisition and Reimbursement Agreement, if applicable, and the trust indenture applicable to the Improvement Area #2 Bonds.

5. Amendment of Provisions Related to Funding of Phased PID Bond Authorized Improvements and Levy of Special Assessments (other than for Improvement Area #1 and Improvement Area #2). The following is hereby added as a new Section 4.02(D) to the Agreement:

Section 4.02(D) Future Improvement Areas

“(a) This Section 4.02(D) shall apply only to Future Improvement Areas.

(b) Developer, at its expense, shall have the right to construct Phased PID Bond Authorized Improvements for the benefit of any Future Improvement Area; provided, however, that prior to commencement of construction of any Phased PID Bond Authorized Improvements (whether one or more) within any such Future Improvement Area, the Parties shall enter into an Acquisition and Reimbursement Agreement specific to such Future Improvement Area, pursuant to which the Developer shall agree to convey, and upon approval of such improvements by the City, the City shall agree to acquire (subject to the terms and conditions contained herein regarding conveyances to the County), all Phased PID Bond Authorized Improvements situated within such Future Improvement Area for the Actual Cost upon completion and acceptance by the City. The general process for funding Phased PID Bond Authorized Improvements is as follows:

(1) Any time after Developer receives all permits required to begin construction of Phased PID Bond Authorized Improvements but prior to the earlier of (x) the date any Phased PID Bond Authorized Improvement for that Improvement Area has been dedicated to the City or (y) the date that is nine months before Developer intends to close the sale of a home to a homeowner in that Improvement Area, Developer shall provide written notice to the City (i) requesting approval and execution of an Acquisition and Reimbursement Agreement for the given Improvement Area, (ii) requesting the levy of Special Assessments on the Improvement Area, and (iii) requesting the collection of the Special Assessments in installments according to a payment schedule identified in an amended or updated Service and Assessment Plan: (an “**Assessment Levy Request**”). Within 120 days of receipt of an Assessment Levy Request, the City shall consider entering into an Acquisition and Reimbursement Agreement, substantially in the form provided in Exhibit “K” attached hereto, for the Improvement Area which will provide that Special Assessments will reimburse the Developer for Actual Costs incurred in connection with the Phased PID Bond Authorized Improvements until Phased PID Bonds are issued.

(2) Concurrently with the execution of the Acquisition and Reimbursement Agreement for the applicable Future Improvement Area, the Assessment Plan will be amended to reflect the Special Assessments on the applicable Future Improvement Area contemplated by the applicable Acquisition and Reimbursement Agreement. Prior to the levying of additional Special Assessments on any Future Improvement Area, the outstanding Special Assessments related to the Senior PID Bonds and allocated to such Future Improvement Area shall be prepaid in full, and the portion of the outstanding Senior PID Bonds that are allocable to the given Future Improvement Area shall be redeemed. On or before the effective date of the Acquisition and Reimbursement Agreement described in subsection (1) above, the City will adopt an Assessment Ordinance levying the Special Assessments on the applicable Future Improvement Area for the applicable

Phased PID Bond Authorized Improvements. The City will levy and collect such Special Assessments in accordance with the approved Service and Assessment Plan, as amended or updated, and the applicable Assessment Ordinance.

(3) Upon collection of such Special Assessments, the City will place such Special Assessments in a designated account separate from the City's other accounts. Until the Phased PID Bonds for such Future Improvement Area are issued, the City will use such amounts to reimburse Developer for the Actual Costs of the applicable Phased PID Bond Authorized Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement.

(4) Upon completion of some or all of the Phased PID Bond Authorized Improvements, the Developer may submit to the City the Bond Issuance Request. Subject to meeting the requirements and conditions stated in this Agreement and State law, the City will consider issuance of the applicable Phased PID Bonds to reimburse the Developer for an amount up to the Actual Cost of those Phased PID Bond Authorized Improvements that are completed at the time of the Bond issue less any amounts already reimbursed to Developer pursuant to the Acquisition and Reimbursement Agreement. Developer may provide the City a Bond Issuance Request including the anticipated completion date for the Phased PID Bond Authorized Improvements that are to be funded by the given Phased PID Bond issue 120 days prior to such anticipated date.

(c) Subject to the terms of Section 3.01, to receive funds from the proceeds of the Phased PID Bonds to pay the Actual Cost of the Phased PID Bond Authorized Improvements, the Developer shall deliver to the City and the Project Engineer (i) a Certification for Payment evidencing the Actual Cost, (ii) evidence of the acceptance by the City or County, as applicable, of the Phased PID Bond Authorized Improvements to be funded by the PID Bonds in question and the conveyance to the City or County, as applicable, of those Phased PID Bond Authorized Improvements to be funded by the PID Bonds in question as described in Section 3.01 above, and (iii) an assignment of the warranties and guaranties, if applicable, for the Phased PID Bond Authorized Improvements to be funded by the PID Bonds in question, in form reasonably acceptable to the City. Nothing herein shall prohibit Developer from being reimbursed for design costs associated with a Phased PID Bond Authorized Improvement.

(d) After the Certification for Payment is submitted to the City, the City shall conduct a review to confirm those Phased PID Bond Authorized Improvements to be funded by the PID Bond in question were constructed in accordance with the plans therefor and to verify the Actual Cost of the Phased PID Bond Authorized Improvements specified in such Certification for Payment. The City agrees to conduct such review after the Certification for Payment is submitted to the City and the Developer agrees to cooperate with the City in conducting each such review and to provide the City with such additional

information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that Phased PID Bond Authorized Improvements to be funded by the PID Bond in question have been constructed in accordance with the plans therefor, and verification and approval of the Actual Cost of those Phased PID Bond Authorized Improvements, the City shall accept those Phased PID Bond Authorized Improvements that have not been previously accepted by the City an authorized representative of the City shall sign the Certification for Payment and forward the same to the Administrator. The City shall then have up to fifteen (15) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(d) Prior to or concurrent with the closing of any Phased PID Bonds, Developer shall submit a Closing Disbursement Request to the City requesting payment for the Owner Expended Funds related to Phased PID Bond Authorized Improvements that have been approved and accepted by the City or County, as applicable. Prior to disbursement of proceeds of any Phased PID Bonds, the City will review the Closing Disbursement Request and, after verification of accuracy of the Closing Disbursement Request, the City will submit to the Trustee.

6. The following is hereby added as new Section 5.01(A)(1), and shall apply to any Phased PID Bonds (other than for Improvement Area #1):

Section 5.01(A)(1). Issuance of PID Bonds

Subject to the terms and conditions set forth in this Article V, the City has the authority to issue Phased PID Bonds to pay for the Actual Costs with respect to the Public Improvements as contemplated in Sections 4.02. The City will use good faith efforts to issue Phased PID bonds after receiving and thoroughly reviewing the Bond Issuance Request for the Developer provided that Developer can reasonably demonstrate to the City and its financial advisors that (i) an acceptable Market Study Analysis have been provided, (ii) there is sufficient security for the PID Bonds, based upon the market conditions existing at the time of such proposed sale, (iii) the City shall have obtained the Appraisal and any other financial analysis required hereby, and (iv) such request complies with the provisions for issuing PID bonds in any PID policy approved by the City, including any requirements related to level debt service for PID Bonds.

7. Section References. Unless expressly stated otherwise, any and all references to sections or other enumerated provisions in this Amendment shall refer to the corresponding sections or provisions in the Agreement.

8. Ratification; Entire Agreement. The Agreement, as amended by this Amendment, is hereby ratified and affirmed and continues in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment control.

9. Counterparts. This Amendment may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

This Amendment is signed as of the date of the acknowledgement below, but shall be effective as of the Effective Date of this Amendment.

[Signature pages to follow]

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

By: _____
Name: _____
Title: _____

[CITY SIGNATURE PAGE]

**CLUB DEAL 120 WHISPER VALLEY,
LIMITED PARTNERSHIP**, a Delaware limited
partnership qualified to do business in Texas

By: CD120 GP, LLC, a Delaware limited
liability company qualified to do business in Texas
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

[DEVELOPER SIGNATURE PAGE]

EXHIBIT K

WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT ACQUISITION AND REIMBURSEMENT AGREEMENT [IMPROVEMENT AREA #_]

This Whisper Valley Public Improvement District Acquisition and Reimbursement Agreement Improvement Area #__ (this "Acquisition and Reimbursement Agreement") is executed between the City of Austin, Texas ("City") and _____ (the "Owner") to be effective _____, 20__ (each individually referred to as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, on August 26, 2010, the City Council of the City of Austin, Texas (the "City Council") passed and approved Resolution No. 20100826-026 (the "Creation Resolution") authorizing the creation of the Whisper Valley Public Improvement District (the "District") covering approximately 2,066 acres of land shown on a map thereof in the Creation Resolution (the "District Property"); and

WHEREAS, on November 3, 2011, the City Council approved that certain Whisper Valley Public Improvement District Financing Agreement by and between the Owner and the City (as amended by the First Amendment dated March 28, 2019, and the Second Amendment dated _____, 2020, the "PID Finance Agreement"); and

WHEREAS, the purpose of the District is to finance certain improvements authorized by Chapter 372, Texas Local Government Code (as may be amended, the "Act") that promote the interests of the City and confer a special benefit on the Assessed Property within the District ("Authorized Improvements"); and

WHEREAS, on November 3, 2011, the City Council approved the Master Improvement Area Assessment Ordinance, levied the Master Improvement Area Assessments ("Special Assessments") on property located within the District; and

WHEREAS, the District Property is being developed in phases (each an "Improvement Area") and the Owner intends to construct certain Authorized Improvements over time to serve District Property (or portions thereof); and

WHEREAS, the City issued City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) ("Senior Bonds") on November 3, 2011, which Senior Bonds remain outstanding; however, those Special Assessments levied in connection with the Senior Bonds that cover Improvement Area #____ have been paid off prior to or contemporaneously herewith; and

WHEREAS, On _____, 20__, the Owner submitted an Assessment Levy Request relating to Improvement Area #_, requesting that the City Council consider (i) the approval of the Improvement Area #_ Acquisition and Reimbursement Agreement, and (ii) the adoption of an

Order (the “Assessment Order”) that (A) approves the Service and Assessment Plan (or amendment or update thereto) (as the same may be amended from time to time, the “Service and Assessment Plan”) identifying, among other things, the costs of the Authorized Improvements benefitting Improvement Area #_ (the Improvement Area #_ Improvements) and the special assessments to be levied on parcels within Improvement Area #_ receiving a benefit from such Authorized Improvements (the “Improvement Area #_ Special Assessments”) and (B) levies said Improvement Area #_ Special Assessments; and

WHEREAS, Improvement Area #__ consists of approximately __ acres of land and is more particular described in **Exhibit A** attached hereto. The Improvement Area #__ Improvements are more particularly described in the Service and Assessment Plan and generally described in **Exhibit B** attached hereto; and

WHEREAS, upon completion and approval, the Improvement Area #__ Improvements will be conveyed to the City or to another governmental entity approved by the City; and

WHEREAS, the Parties intend for all or a portion of the Actual Cost (as defined in the [Service and Assessment Plan] of the Improvement Area #_ Improvements to be reimbursed to Owner, in accordance with the terms of this Acquisition and Reimbursement Agreement, the PID Finance Agreement, and, if bonds are issued to finance the Improvement Area #_ Improvements (“Improvement Area #_ Bonds”), the indenture for Improvement Area #__ (the “Improvement Area #_ Indenture”) from (i) Improvement Area #__ Special Assessments on deposit in the Improvement Area #__ Project Fund (herein called “Improvement Area #__ Project Fund” as created by Improvement Area #__ Indenture), (ii) the proceeds of Improvement Area #__ Bonds issued by the City pursuant to the Improvement Area #__ Indenture, or (iii) a combination of (i) and (ii) above; and

WHEREAS, upon the City’s receipt of a Bond Issuance Request from the Owner and evidence that the conditions precedent in the PID Finance Agreement have been satisfied, the City will consider an ordinance issuing the Improvement Area #__ Bonds to finance all or a portion of the Actual Costs of the Improvement Area #__ Improvements, which Improvement Area #__ Bonds shall be secured by first lien and security interest in the Trust Estate (defined below) established pursuant to the Improvement Area #__ Indenture; and

WHEREAS, if Improvement Area #__ Bonds are issued, the City will deposit, or cause to be deposited, the Improvement Area #__ Special Assessments into a segregated fund held by the Trustee under the Indenture for further transfer to the appropriate accounts pursuant to the Indenture, including accounts for the payment of debt services on the Improvement Area #__ Bonds; and

WHEREAS, prior to issuance of the Improvement Area #__ Bonds, the City will create a separate segregated account into which Special Assessments will be deposited for Improvement Area #__ (the “City Project Fund”); and

WHEREAS, this Acquisition and Reimbursement Agreement is a “reimbursement agreement” authorized by the PID Act; and

WHEREAS, the Parties intend that the Reimbursement Agreement Balance (defined below) shall only be reimbursed to Owner from (i) the City Project Fund or (ii) the net proceeds of Improvement Area #__ Bonds (defined below) issued by the City; and

WHEREAS, capitalized terms not defined herein shall have the meaning ascribed to them in the PID Finance Agreement or Service and Assessment Plan.

NOW THEREFORE, FOR VALUABLE CONSIDERATION THE RECEIPT AND ADEQUACY OF WHICH ARE ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals to this Acquisition and Reimbursement Agreement are true and correct, and are incorporated as part of this Acquisition and Reimbursement Agreement for all purposes.
2. Deposit of Improvement Area #__ Special Assessments
 - a. Prior to the issuance of the Improvement Area #__ Bonds, the City will deposit, or cause to be deposited the Improvement Area #__ Special Assessments into the City Project Fund. Prior to the issuance of Improvement Area #__ Bonds, the Reimbursement Agreement Balance (as defined herein) is payable solely from Improvement Area #__ Special Assessments on deposit in the City Project Fund.
 - b. Upon the issuance of the Improvement Area #__ Bonds, the City will transfer, or cause to be transferred, the Improvement Area #__ Special Assessments on deposit in the City Project Fund to the Bond Trustee for deposit to the “Improvement Area #__ Project Fund” in accordance with the provisions of the Improvement Area #__ Indenture. Any Reimbursement Agreement Balance remaining after the issuance of the Improvement Area #__ Bonds is extinguished and shall no longer be due and payable.
 - c. After issuance of the Improvement Area #__ Bonds and the transfer of Improvement Area #__ Special Assessments described in Subsection (b) above, the City will deposit or cause to be deposited into the Improvement Area #__ Special Assessments collected annually into the Pledged Revenue Fund established under the Improvement Area #__ Indenture in accordance with the provisions of that Improvement Area #__ Indenture.
3. City Collection Efforts. The City will use all reasonable efforts to receive and collect, or cause to be received and collected by the Travis County Central Appraisal District, Improvement Area #__ Special Assessments (including the foreclosure of liens resulting from the nonpayment of the Improvement Area #__ Special Assessments or other charges due and owing under the Service and Assessment Plan), and upon receipt and collection, immediately deposit the same into the Improvement Area #__ Pledged Revenue Fund. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Improvement Area #__ Special Assessments, such failure and inability shall not constitute default by the City under this Acquisition and Reimbursement Agreement. This Acquisition and Reimbursement Agreement and/or the Improvement Area #__ Bonds shall never give rise to or create:

- a. a charge against the general credit or taxing powers of the City or any other taxing unit; or
 - b. a debt or other obligation of the City payable from any source of revenue, taxes, income, or properties of the City other than from the Improvement Area #__ Special Assessments or from the net proceeds of the Improvement Area #__ Bonds.
4. Improvement Area #__ Reimbursement Obligation. The Actual Costs of the Improvement Area #__ Improvements are identified in the Service and Assessment Plan. To finance [all or] a portion of the Actual Costs, the City has levied the Improvement Area #__ Special Assessments in the amount of \$_____. The Owner may advance funds to pay for the Actual Costs of the Improvement Area #__ Improvements and is entitled to be reimbursed for such advances in an amount not to exceed the lesser of \$_____ and the Actual Costs of the Improvement Area #__ Improvements (the "Improvement Area #__ Reimbursement Obligation"), plus simple interest on such advance, as provided in this Acquisition and Reimbursement Agreement. [Notwithstanding anything herein to the contrary, the City shall be under no obligation to reimburse the Owner for the Actual Costs of any Improvement Area #__ Improvements that are not accepted by the City or another governmental entity with the City's approval.]
5. Reimbursement Agreement Balance.
 - a. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse the Owner, and the Owner shall be entitled to receive from City, an amount equal to the Actual Costs of the Improvement Area #__ Improvements (in the aggregate not to exceed the Improvement Area #__ Reimbursement Obligation), plus simple interest on any unpaid principal balance of the Actual Costs on any given Improvement Area #__ Authorized Improvement submitted and approved for payment pursuant to a Certification for Payment, which interest payment shall begin to accrue upon the City's execution of such Certification for Payment in accordance with the terms of the PID Finance Agreement and will continue until amounts due under such Certification for Payment are paid by the City to the Owner at a rate of __%, and this rate was determined by the City Council not to exceed 2% above the highest average index rate for tax-exempt bonds reported in the Bond Buyer 20 Bond Index published in *The Bond Buyer* (a daily publication that publishes this interest rate index) and reported in the month before the effective date of this Acquisition and Reimbursement Agreement (the unpaid principal balance, together with accrued but unpaid interest is referred to as the "Reimbursement Agreement Balance"). Notwithstanding the foregoing, if any portion of the Reimbursement Agreement Balance remains unpaid after the City issues the Improvement Area #__ Bonds, such amount shall be discharged and shall no longer be due and owing. The Owner hereby acknowledges that the Actual Cost of the Improvement Area #__ Improvements may exceed the amount of the Improvement Area #__ Special Assessments collected by the City. Therefore, the Owner hereby acknowledges that City is not responsible hereunder for any amount

in excess of the amount of the Improvement Area #__ Special Assessments collected by the City or, if issued, the proceeds of Improvement Area #__ Bonds.

- b. The Improvement Area #__ Reimbursement Obligation, as evidenced by the Reimbursement Agreement Balance, is authorized by the PID Act, was approved by the City Council, and represents the total allowable costs to be assessed against the Assessed Parcels (as defined in the Service and Assessment Plan) in Improvement Area #__ for the Improvement Area #__ Improvements. The interest rate, as specified in Section 5(a) herein, has been approved by the City Council and complies with the PID Act.
 - c. The Reimbursement Agreement Balance, as described above, is payable to the Owner and secured under this Acquisition and Reimbursement Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Reimbursement Agreement Balance is not paid in full by the earlier of (i) one (1) year after the last Annual Installment of Improvement Area #__ Special Assessments is collected or (ii) the issuance of the Improvement Area #__ Bonds (each, a “Maturity Date”), and the Reimbursement Agreement Balance is not a debt of the City within the meaning of Article VIII, Section 9, of the State Constitution.
 - d. The City acknowledges and agrees that until the Reimbursement Agreement Balance is paid in full or discharged as otherwise provided herein, the obligation of the City to use amounts on deposit in the City Project Fund, or to direct the Bond Trustee to use amounts on deposit in the Improvement Area #__ Project Fund to pay the Reimbursement Agreement Balance to the Owner is absolute and unconditional and City does not have, and will not assert, any defenses to such obligation.
6. Payment of Actual Costs prior to the Issuance of Improvement Area #__ Bonds. Prior to the issuance of Improvement Area #__ Bonds, the Owner may elect to make advances to pay Actual Costs of the Improvement Area #__ Improvements. The Reimbursement Agreement Balance shall be payable to the Owner pursuant to executed and approved Certifications for Payment, in accordance with the PID Finance Agreement, solely from the Improvement Area #__ Special Assessments on deposit in the City Project Fund.
7. Payment of Actual Costs after Issuance of Improvement Area #__ Bonds.
- a. Following the issuance of Improvement Area #__ Bonds, the Reimbursement Agreement Balance shall be payable to the Owner solely from the net proceeds (after payment of costs of issuance and deposits into any reserve fund or administrative fund that may be created under the Improvement Area #__ Indenture) of the Improvement Area #__ Bonds issued by the City.
 - b. Upon receipt of a Bond Issuance Request from the Owner, the City may consider the adoption of an ordinance authorizing the issuance of Improvement Area #__ Bonds.

- c. The Improvement Area #__ Bonds, if issued, will be secured by and paid solely from the “Trust Estate” established pursuant to the Improvement Area #__ Indenture, consisting primarily of the Improvement Area #__ Special Assessments transferred to the Bond Trustee for deposit as provided in the Improvement Area #__ Indenture.
 - d. After Improvement Area #__ Bonds are issued, the Bond Trustee shall pay the Owner for the Actual Costs of Improvement Area #__ Improvements pursuant to executed and approved Certification for Payment, in accordance with the PID Finance Agreement, from the appropriate account or fund as provided for in the Improvement Area #__ Indenture and this Acquisition and Reimbursement Agreement.
8. Process for Payment.
- a. Prior to the issuance of Improvement Area #__ Bonds, but after completion of construction of an Improvement Area #__ Authorized Improvement [(or a segment thereof)], the Owner may submit a Certification for Payment, to the City Representative substantially in the form shown on Schedule 1 attached hereto, for payment of the Actual Costs of an Improvement Area #__ Authorized Improvement [(or segment thereof)] from funds then available in the City Project Fund. After the initial request, the Owner may deliver additional Certifications for Payment to the City Representative but not more than one (1) per quarter. This process will continue until (i) payment in full of the Reimbursement Agreement Balance as described in this section of this Acquisition and Reimbursement Agreement or (ii) issuance of Improvement Area #__ Bonds (at which time the repayment process shall be in accordance with subpart (b) below). Each payment from the City Project Fund shall be accompanied by a written accounting that certifies the Reimbursement Agreement Balance as of the date of the payment and itemizes all deposits to and disbursement from such City Project Fund since the last payment date.
 - b. Following the issuance of Improvement Area #__ Bonds, the Owner may be reimbursed pursuant to executed and approved Certifications for Payment, in accordance with the procedures described in the PID Finance Agreement and the Improvement Area #__ Indenture.
9. Termination. This Acquisition and Reimbursement Agreement shall terminate immediately at the earlier of (i) date all payments paid to the Owner under this Acquisition and Reimbursement Agreement equal the Reimbursement Agreement Balance or (ii) the Maturity Date; provided, however that if on the Maturity Date, any portion of the Reimbursement Agreement Balance remains unpaid, such Reimbursement Agreement Balance shall be canceled and for all purposes of this Acquisition and Reimbursement Agreement shall be deemed to have been conclusively and irrevocably PAID IN FULL.

10. Non-Recourse Obligation. The obligations of the City under this Acquisition and Reimbursement Agreement are non-recourse and payable only from (i) Improvement Area #__ Special Assessments, or (ii) net proceeds of Improvement Area #__ Bonds; and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its employees shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of this Acquisition and Reimbursement Agreement or their acts or omission under this Acquisition and Reimbursement Agreement.
11. No Defense. Following the City's inspection and acceptance of the applicable Authorized Improvements, there will be no conditions or defenses to the obligation of the City to use the proceeds of the Improvement Area #__ Special Assessments or Improvement Area #__ Bonds to pay the Improvement Area #__ Reimbursement Obligation pursuant to the terms of this Acquisition and Reimbursement Agreement.
12. No Waiver. Nothing in this Acquisition and Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Acquisition and Reimbursement Agreement against any person or entity involved in the design, construction, or installation of the Applicable Authorized Improvements.
13. Governing Law, Venue. This Acquisition and Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Acquisition and Reimbursement Agreement. In the event of a dispute involving this Acquisition and Reimbursement Agreement, venue for such dispute shall lie in any court of competent jurisdiction in Travis County, Texas.
14. Notice. Any notice required or contemplated by this Acquisition and Reimbursement Agreement shall be deemed given at the addresses shown below: (i) when delivered by a national company such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person was the named addressee; or (ii) 24 hours after the notice was deposited with the United States Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section.

If to City: City of Austin
 PO Box 2106
 Austin, Texas 78767
 Attn: City Treasurer
 Facsimile: 512.370.3838

With copies to: City of Austin
 PO Box 1088
 Austin, Texas 78767
 Attn: City Attorney
 Facsimile: 512.974.6490

If to Owner: Taurus of Texas
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Facsimile: 817.788.1670

With a copy to: Metcalfe Wolff Stuart & Williams, LLP
Attn: Steven C. Metcalfe
221 W. 6th, Suite 1300
Austin, Texas 78701
Facsimile: 512.404.2245

15. Invalid Provisions. If any provision of this Acquisition and Reimbursement Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions, and the remainder of this Acquisition and Reimbursement Agreement shall remain in full force and effect.

16. Exclusive Rights of Owner.

- a. Owner's right, title and interest in the Reimbursement Agreement Balance, as described herein, shall be the sole and exclusive property of Owner (or its Transferee), and no other owner or third party shall have any claim or right to such funds unless Owner transfers its rights to be receive such funds (whether via Improvement Area #__ Bonds proceeds or Improvement Area #__ Special Assessments) to a Transferee in writing and otherwise in accordance with the requirements set forth herein.
- b. Owner has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest in and to payment of its Reimbursement Agreement Balance (whether via Improvement Area #__ Bonds proceeds or Improvement Area #__ Special Assessments) (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"). Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including (A) the name and address of the Transferee and (B) a representation by the Owner that the Transfer does not and will not result in the issuance of or security for municipal securities by any other state of the United States or political subdivision thereof, is provided to the City and the Trustee, if any.
- c. The Owner agrees that the City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.
- d. Any sale of all or a portion of the District Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed a Transfer.

17. Assignment.

- a. This Acquisition and Reimbursement Agreement and the rights and obligations of Owner hereunder may be assigned by Owner to an affiliate of Owner without the consent of the City, provided that the assignee assumes all of the obligations of Owner hereunder.

For assignments to other than an affiliate as provided above, Owner may, at its sole and absolute discretion, assign this Acquisition and Reimbursement Agreement from time to time to any party (a “Designated Successor or Assign”) that (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with the City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Acquisition and Reimbursement Agreement. Owner shall provide the City thirty (30) days prior written notice of any such assignment. If the City has objections to such assignment satisfying the requirements described above, the City shall provide written notice of such objections to the Owner within twenty (20) days of receiving the assignment notice from Owner. Owner will not be released from its obligations under this Acquisition and Reimbursement Agreement if the City objects to the assignment as described above and such objections are not resolved by and between Owner and the City; provided, however, the City shall not unreasonably withhold Owner’s release from its obligations under this Acquisition and Reimbursement Agreement.

Upon such assignment, Owner shall be deemed to be automatically released of any obligations under this Acquisition and Reimbursement Agreement.

- b. Any sale of a portion of the District Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.
- c. Notwithstanding anything to the contrary contained herein, this Section 17 shall not apply to Transfer which shall be covered by Section 16 above.

18. Failure; Default; Remedies.

- a. If either Party fails to perform an obligation imposed on such Party by this Acquisition and Reimbursement Agreement (a “Failure”) and such Failure is not cured after written notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a “Default.” Upon the occurrence of a Failure by a non-performing Party, the other Party shall notify the non-performing Party in writing specifying in reasonable detail the nature of the Failure. The non-performing Party to whom notice of a Failure is given shall

have at least 30 days from receipt of the notice within which to cure the Failure; however, if the Failure cannot reasonably be cured within 30 days and the non-performing Party has diligently pursued a cure within such 30-day period and has provided written notice to the other Party that additional time is needed, then the cure period shall be extended for an additional period (not to exceed 90 days) so long as the non-performing Party is diligently pursuing a cure.

- b. If the Owner is in Default, the City's sole and exclusive remedy shall be to seek specific enforcement of this Acquisition and Reimbursement Agreement. No Default by the Owner, however, shall: (1) affect the obligations of the City to use the net proceeds of Improvement Area #__ Bonds as provided in Section 6 of this Acquisition and Reimbursement Agreement; or (2) entitle the City to terminate this Acquisition and Reimbursement Agreement. In addition to specific enforcement, the City shall be entitled to attorney's fees, court costs, and other costs of the City to obtain specific enforcement.
- c. If the City is in Default, the Owner's sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance of a non-discretionary duty by the City; or (2) seek specific enforcement of this Acquisition and Reimbursement Agreement.

19. Miscellaneous.

- a. The failure by a Party to insist upon the strict performance of any provision of this Acquisition and Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Acquisition and Reimbursement Agreement.
- b. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Owner to enforce its remedies under this Acquisition and Reimbursement Agreement.
- c. Nothing in this Acquisition and Reimbursement Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owner any rights, remedies, or claims under or by reason of this Acquisition and Reimbursement Agreement, and all covenants, conditions, promises, and agreements in this Acquisition and Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Owner.
- d. This Acquisition and Reimbursement Agreement may be amended only by written agreement of the Parties.
- e. This Acquisition and Reimbursement Agreement may be executed in counterparts, each of which shall be deemed an original.

20. Estoppel Certificate. Within thirty (30) days after the receipt of a written request by Owner or any Transferee, the City will certify in a written instrument duly executed and acknowledged to any person, firm or corporation specified in such request as to (i)

the validity and force and effect of this Reimbursement Agreement in accordance with its terms, (ii) modifications or amendments to this Reimbursement Agreement and the substance of such modification or amendments; (iii) the existence of any default to the best of the City's knowledge; and (iv) such other factual matters that may be reasonably requested.

21. Anti-Boycott Verification. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Reimbursement Agreement is a contract for goods or services, will not boycott Israel during the term of this Reimbursement Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owner understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.
22. Iran, Sudan and Foreign Terrorist Organizations. The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owner understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

23. Form 1295. Submitted herewith is a completed Form 1295 in connection with the Owner's participation in the execution of this Reimbursement Agreement generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Owner, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Owner and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the

City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the City nor its consultants have verified such information.

24. Exhibits: The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A - Description of Improvement Area #___
- Exhibit B - Improvement Area #___ Improvements
- Schedule 1 - Form of Certification for Payment

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Acquisition and Reimbursement Agreement to be executed as of _____, 20__, to be effective as of the date written on the first page of this Acquisition and Reimbursement Agreement.

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

By: _____
Name: _____
Title: _____

[Signatures Continue on Next Page]

[Developer Signature Block]

EXHIBIT A

Improvement Area #__

EXHIBIT B

Improvement Area #__ Improvements

SCHEDULE 1

FORM OF CERTIFICATION FOR PAYMENT

_____ (“**Construction Manager**”) hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the “**Draw Actual Costs**”). Capitalized undefined terms shall have the meanings ascribed thereto in the Whisper Valley Public Improvement District Financing Agreement between Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, and the City of Austin, Texas (the “**City**”), dated as _____, 20__ (as heretofore or hereinafter amended, the “**Finance Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.

2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.

3. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed [through the previous Certification for Payment]. 4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

5. Attached hereto as Attachment D are documents of evidencing the acceptance by the City or another governmental entity, as applicable, of the Segment described in Attachment A.

6. Attached hereto as Attachment E is a true and correct waiver of liens for work on the Segment described in Attachment A through the previous Certification for Payment and receipts for payment from the contractor and, if requested by the City, any subcontractors, for the current Certification for Payment.

7. Attached hereto as Attachment F is a true and correct assignment of all warranties and guarantees, as applicable, related to the Segment described in Attachment A.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date : _____

[Construction Manager Signature Block to
Be inserted]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

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

By: _____

Name: _____

Title: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

<u>Segment</u>	<u>Description of Work Completed under this Certification for Payment</u>	<u>Draw Actual Costs</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[receipts – attached]

ATTACHMENT D
FORM OF ACCEPTANCE

ATTACHMENT E
WAIVER OF LIENS

ATTACHMENT F
ASSIGNMENT OF WARRANTIES AND GUARANTEES