

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

Page 1

below) for each Improvement Area, in order to reimburse the Developer for the Actual Costs of Public Improvements in that Improvement Area (each term as defined in the PID Financing Agreement).

G. Although the Original Agreement contemplated construction of Park Improvements, it did not detail a specific requirement for Developer to construct any given Park Improvement on a specified schedule; as such, it is the intention of the parties to provide a general timeline as to when and what Park Improvements Developer will construct, to coincide with the issuance of Phased PID Bonds, currently contemplated to begin in 2022, and to continue through 2031.

H. Traditionally, the City obligates itself to maintain publicly dedicated open space and parkland. The City and Developer have agreed that prior to the City's full purpose annexation of the Whisper Valley Ranch Park, first the Developer and then, at Developer's election, the Owner's Association (hereinafter defined) will maintain the Whisper Valley Ranch Park. Due to the location of this Project in the City's Desired Development Zone, the City's desire to achieve superior development in this area, Developer's consent for the Project to be limited purpose annexed in order to allow the City to obtain land use controls over the Project, Developer's construction of regional infrastructure for this area, Developer's dedication of the Whisper Valley Ranch Park, Developer's desire to create a pedestrian-friendly, mixed-use project that encourages and promotes outdoor recreational activities and frequent use of the open space, the City's desire for certain amenities to be constructed within the publicly accessible open space and the City's traditional obligations with respect to maintenance of publicly accessible open space, the City has agreed to provide Developer with the special arrangement evidenced hereby.

I. The Developer and the City have determined that the most efficient and cost-effective way of providing the maintenance and operation services for the Whisper Valley Ranch Park, is to delegate various duties and responsibilities in connection therewith to the Park Operations Manager (hereinafter defined) until such time as the Whisper Valley Ranch Park (or the applicable portions thereof) is full purposed annexed by the City.

NOW THEREFORE, in consideration of the mutual covenants and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City hereby agree as follows:

Article I

Defined Terms/Term of Agreement

1.1 Defined Terms. As used in this Agreement, the following terms will have the meanings indicated:

Applicable Laws mean the current access, health, safety, environmental and natural resource protection laws and regulations; public finance

laws (i.e., relevant Texas statutes dealing with public finance, and the provisions of the Internal Revenue Code pertaining to the issuance of tax-exempt obligations); and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations, and court decisions.

Applicable Requirements means those City Codes, ordinances, regulations, manuals, design criteria, or other law in effect as of June 18, 2009, including, without limitation, commercial design standards.

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

City Codes means the City Code of Austin, together with all its related administrative rules and technical criteria manuals in effect as of June 18, 2009.

City Council means the City Council of the City.

Construction Manager means initially the Developer, and thereafter subject to change in accordance with Section 8.9 of this Agreement.

Construction Phase means a given construction phase outlined in the Park Improvement Phasing Plan and the Park Improvement Schedule.

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

Default means any default by either party of any material provision in this Agreement which does not constitute a Material Event of Default.

Director means the Director of the Parks and Recreation Department or their designee.

Design Phase means the initial Phase during which the Developer shall engage consultants of the Developer's choice to complete the design plans and permitting for the Park Improvements.

Designated Successors and Assigns shall mean an entity to which Developer assigns (in writing) all or a portion of its rights and obligations contained in this Agreement pursuant to Section 8.9 herein.

District means the Whisper Valley Public Improvement District authorized by the City pursuant to Resolution No. 20100826-026 on August 26, 2010.

Draw Request is defined in Section 4.7(1).

Escrow Account is defined in Section 4.6(1).

Escrow Agent is defined in Section 4.6(1).

Escrow Deposit is defined in Section 4.6(1).

Final Phase Costs means, depending on context, (i) the actual costs to design the construction plans for the Park Improvements, and/or (ii) the actual costs for the construction of a given construction phase, each as evidenced by a certified bid.

Improvements shall mean collectively the Park Improvements, the Private Improvements and the City Facilities (as defined in the Master License Agreement).

Instruction Letter is defined in Section 4.6(1) in substantially the form as Exhibit “L” attached hereto.

Master License Agreement means that certain Master License Agreement substantially in the same form as Exhibit “E” attached hereto.

Material Event of Default means (a) failure by the Developer to submit a PID bond issuance request within one year of City and/or County (as applicable) acceptance of final Public Improvements (as defined in the PID Financing Agreement) within an Improvement Area; (b) failure by the Developer to achieve Substantial Completion (as defined herein) of Park Improvements within 12 months of an escrow being funded in accordance with Sections 4.6(1), 4.7(2)(a), and 4.7(3)(a), as applicable, and permits being issued; or (c) failure of the Developer to make deposits in compliance with Sections 4.7(2)(a), and 4.7(3)(a), as applicable.

Owner’s Association means a property owners association or homeowner’s association for the Property that may be created by Developer.

Park Improvement Budget means the Whisper Valley Signature Park – Preliminary Cost Estimate prepared on January 19, 2022, and attached hereto as Exhibit “C”.

Park Improvement Master Plan means the overall conceptual plan for the Whisper Valley Ranch Park and the Improvement to be constructed therein as set forth on Exhibit “F” attached hereto.

Park Improvement Phasing Plan means the phasing plan prepared on January 19, 2022 and attached hereto as Exhibit “H”.

Park Improvement Schedule means the schedule of probable costs attached hereto as Exhibit “I”.

Park Improvements means improvements constructed by the Developer within the Whisper Valley Ranch Park that serve the community and residents of the Project. Examples include, but are not limited to, pedestrian trails/path/bridges, sports fields, community swimming pools and related facilities, playgrounds, community centers and other recreational amenities, signs, trash receptacles, landscaping and irrigation systems.

Park Operations Manager means Developer, the Owner’s Association, or such other entity appointed by Developer and approved by the City (such approval not to be unreasonably withheld, conditioned or delayed) to perform the duties set forth in Article VI herein. Permitted Exceptions mean (a) general real estate taxes on the Whisper Valley Ranch Park for the year of Takedown, if any, (b) the encumbrances provided for in this Agreement (including, but not limited to, the Permitted Activities in Section 4.3), (c) the terms and conditions contained in the Master License Agreement, (d) all exceptions of record which do not materially and adversely impact the use of the Whisper Valley Ranch Park as parkland, (e) all matters shown on the subdivision plat for Whisper Valley Ranch Park, and (f) any other encumbrances approved, or caused, by the City.

Phase means a design or construction phase as outlined in the Park Improvement Schedule.

Phased PID Bonds means the bond styled (generally) as “City of Austin, Texas, Public Improvement District Special Assessment Revenue Bonds (Whisper Valley Improvement Area #_ Project)” to be issued by the City in one or more series for each Improvement Area within the District.

PID Bond Closing Date means the date a series of Phased PID Bonds issued by the City with respect to a given Improvement Area.

Preserved Open Space means areas within the Whisper Valley Ranch Park that are to be left in their natural condition, subject to the Permitted Activities provided for in Section 4.3 below.

Private Improvements means improvements constructed by the Developer within Whisper Valley Ranch Park that are solely for the benefit of the Project and not the community at large. Examples include, but are not limited to, those improvements provided for in Sections 4.3 (1)-(3) and (6) herein, landscaping and other similar type improvements.

Programmed Open Space means areas within the Whisper Valley

Ranch Park that are designed to include improvements that serve the community and residents of the Project, such as the Park Improvements.

Project Engineer means the civil engineer or firm of civil engineers selected by the Developer to perform the duties set forth herein.

Qualified Assignee is defined in Section 8.9.

Takedown means the conveyance, in whole or in part, by Developer of the Whisper Valley Ranch Park to the City (or City's designee) in accordance with this Agreement.

Takedown Date means the Business Day on which a Takedown actually occurs.

Takedown Notice means the City's written request to Developer to convey, in whole or in part, the Whisper Valley Ranch Park to the City. In no event shall a Takedown Notice be delivered prior to the issuance of the first series of Phased PID Bonds on the Property.

Title Binder means (a) a Commitment for Title Insurance issued by the Title Company, committing to issue an owner's title policy ("**Title Policy**") concerning the Whisper Valley Ranch Park and (b) copies of all documents referred to as exceptions to title in such Commitment for Title Insurance.

Title Company means a title company selected by Developer that is licensed by and in good standing with the Texas Department of Insurance.

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

References and Titles. All references in this Agreement to exhibits, articles, paragraph, subparagraph, sections, subsections and other subdivisions refer to the exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this paragraph" and "this subparagraph" and similar phrases

refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word “or” is not exclusive, and the word “including” (in its various forms) means “including without limitation.” Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context clearly otherwise requires.

1.3 Term of Agreement. The term of this Agreement commenced on the Effective Date of the Original Agreement and shall continue until the earliest to occur of: (a) the termination of the Master Development Agreement, (b) the date this Agreement is earlier terminated pursuant to the terms hereof, or (c) upon completion and City acceptance of all Improvements. Upon termination of this Agreement, the City shall hereby assume the maintenance and other obligations of the Whisper Valley Ranch Park. Notwithstanding the foregoing, the City or its assigns shall hereby assume the maintenance and other obligations of the Whisper Valley Ranch Park, at such time and as otherwise provided in Article VI hereof.

Article II

Representations and General Covenants

2.1 Representations of the Developer. The Developer represents to the City as follows:

a. Title. The Developer presently has and will convey to the City good and indefeasible title to the Whisper Valley Ranch Park on the Takedown Date, subject to the applicable Permitted Exceptions.

b. Parties in Possession. On the Takedown Date, there will not be any party in possession of the Whisper Valley Ranch Park (other than Developer or its assigns pursuant to rights granted hereby) and no party shall have a then current right or any future right to occupy any portion of a structure or improvement on the Whisper Valley Ranch Park other than those rights expressly set forth in this Agreement or in another agreement contemplated by this Agreement.

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

d. Performance Will Not Result in Breach. Performance of this Agreement pursuant to the terms hereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the Developer is a party or by which the Developer or the Property might be bound.

e. Execution. The execution and delivery of, and the Developer’s performance under, this Agreement are within the Developer’s powers

and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of the Developer has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Developer enforceable in accordance with its terms, subject to the principles of equity.

f. Not a Foreign Person. The Developer is not a “foreign person” within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder.

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

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

a. Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City is a party or by which the City might be bound.

b. Execution. The execution and delivery by the City, and the City’s performance under, this Agreement are within the City’s powers and have been duly authorized by all requisite municipal action. The person executing this Agreement on behalf of the City has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, subject to the principles of equity.

2.3 Change in Representations. If, after the Effective Date and prior to the Takedown, either party obtains actual knowledge of any fact, matter or circumstance which causes any of its representations made in Sections 2.1 or 2.2 to be inaccurate or untrue in any material respect, such party shall submit written notice thereof to the other party (a “**Disclosure Notice**”) specifying in reasonable detail such fact, matter or circumstance. The disclosure of such fact, matter or circumstance by a Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct, then such party shall be obligated to cause the representation to be true

as of the Takedown, and the other party shall have no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct, then, in the case of the City, it may elect not to consummate the Takedown, and, in the case of the Developer, it may elect not to consummate the transfer on the Takedown Date. The failure to elect not to close within the period described in the preceding sentence will be deemed to be a waiver of the fact, matter or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect hereto.

2.4 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT IS UNDERSTOOD AND AGREED THAT THE WHISPER VALLEY RANCH PARK IS 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 THE DEVELOPER. THE DEVELOPER HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE WHISPER VALLEY RANCH PARK (OTHER THAN THE DEVELOPER'S SPECIAL WARRANTY OF TITLE CONTAINED IN THE DEED(S), 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 THE DEVELOPER HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TAKEDOWN, NOT MERGE WITH THE PROVISIONS OF ANY TAKEDOWN DOCUMENT AND BE INCORPORATED INTO THE DEED. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN THE DEVELOPER'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE WHISPER VALLEY RANCH PARK TO THE CITY.

2.3 General Covenants of Developer and the City.

a. No Further Sales. Developer covenants to, and agrees with, the City that from and after the Effective Date of the Original Agreement, Developer will not sell, convey or otherwise transfer ownership of any portion of the Whisper Valley Ranch Park except to the Owner's Association or a dedication to the public without the prior written consent of the City. No Further Leases. The

City covenants to, and agrees with, the Developer that the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any portion of the Whisper Valley Ranch Park that has been conveyed to the City which adversely interferes with (i) the Developer's development of the Property as a high quality, mixed-use development or (ii) the use and enjoyment of any occupants or residents of any portion of the Property.

Article III Takedown Agreement

3.1 Takedown Agreement. Subject to the terms hereof, the City and the Developer agree to effectuate a Takedown within 180 days after the City delivers to Developer a Takedown Notice.

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

a. Plat. The Whisper Valley Ranch Park is final platted as a separately platted lot(s). All plats covering the Property and the IH Property (as defined in the Master Development Agreement) will contain a note indicating that the City's parkland dedication requirements have been satisfied pursuant to this Agreement.

b. Due Diligence. Developer, at Developer's expense, shall provide the City with the following items at least thirty (30) days prior to an anticipated Takedown Date:

1. A copy of Developer's existing survey of the Property;
2. A Title Binder of the Whisper Valley Ranch Park; and
3. A copy of Developer's existing Phase I Environmental Site Assessment of the Property.

The City acknowledges that these items may cover the entire Project and not just the Whisper Valley Ranch Park.

3.3 Takedown Obligations. Subject to the satisfaction of the conditions set forth in Section 3.2 above, the City shall Takedown the Whisper Valley Ranch Parkland on each Takedown Date.

3.4 The Takedown. A Takedown will take place at the offices of the Title Company on each applicable Takedown Date or such other time and place mutually agreed upon by the parties. At a Takedown, the following will occur, each of which will be a concurrent condition to the Takedown:

a. The Developer shall deliver to the Title Company a duly executed and acknowledged Deed to the City covering the Whisper Valley Ranch

Park, subject only to the Permitted Exceptions.

b. The Developer shall deliver possession of the Whisper Valley Ranch Park to the City, subject only to the Permitted Exceptions.

c. In the event access, construction and/or utility facilities are necessary for the construction, maintenance or repair of Park Improvements or Private Improvements, the Developer shall reserve these rights in the Deed.

d. Execution of the Master License Agreement.

e. The Developer shall deliver such other documentation or instruments as reasonably required by the Title Company for a Takedown to occur in accordance with this Agreement.

f. Real estate taxes and assessments, if any, concerning the Whisper Valley Ranch Park through each applicable Takedown Date will be the responsibility of Developer.

g. The Developer shall cause the Title Company to issue a TitlePolicy for the Whisper Valley Ranch Park in favor of the City.

Article IV **Open Space Categories/Activities**

4.1 Categories of Open Space. Areas within the Whisper Valley Ranch Park shall generally consist of the two (2) following categories:

(1) Preserved Open Space. The location of the Preserved Open Space is generally shown on the Park Improvement Master Plan which is attached hereto as Exhibit "F".

(2) Programmed Open Space. The location of the Programmed Open Space is generally shown on the Park Improvement Master Plan which is attached hereto as Exhibit "F".

4.2 Prohibited Uses. Any activity on or use of the Whisper Valley Ranch Park inconsistent with the purposes of this Agreement are prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited and shall be contained in the Deeds:

(1) Biocides. There shall be no use of pesticides or biocides, including, but not limited to insecticides, fungicides, rodenticides, and herbicides, except as permitted by the approved PARD Integrated Pest Management System.

(2) Dumping. There shall be no storage or dumping of ashes, trash, garbage or hazardous materials, except as is typically permitted in open space and parkland (e.g. trash receptacles, etc.).

(3) Storage Tanks. There shall be no placement or use of any underground storage tanks for petroleum products within the Whisper Valley Ranch Park, unless approved in advance by the City.

4.3 Permitted Activities. Notwithstanding anything to the contrary contained herein, the following activities shall be permitted within the Whisper Valley Ranch Park and shall be contained in the Deed:

(1) Water Quality and Detention Controls. Developer shall have the right to construct and maintain water quality and detention controls in the Whisper Valley Ranch Park to serve the Project, provided such improvements must be designed, constructed and maintained as aesthetic amenities and in accordance with Applicable Requirements to ensure compatibility with recreational features.

(2) Other Utilities and Improvements. Developer (or any applicable utility company [subject to agreed-upon easements or use agreements]) shall have the right to place landscaping, utilities, road crossings and drainage discharge points within the Whisper Valley Ranch Park to serve the Project, provided such improvements must be designed, constructed and maintained in accordance with the Applicable Requirements to ensure compatibility with recreational features.

(3) Signage. Developer shall have the right to install and maintain project identity and directional signage within the Whisper Valley Ranch Park in accordance with such terms and conditions as are mutually agreed to among Developer and the City.

(4) Private Improvements. Subject to the City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, Developer shall have the right to construct Private Improvements provided such improvements must be designed, constructed and maintained in accordance with the Applicable Requirements.

(5) Sales Center. Developer shall have the right to construct and maintain a sales/marketing center ("**Sales Center**") within the Whisper Valley Ranch Park in the location generally shown on the Park Improvements Master Plan. The area upon which the Sales Center is to be located shall not exceed two and one half (2 ½) acres of land and shall not be dedicated to the City until the time set forth in the following sentence. Upon the earlier to occur of: (i) 20 years following the Effective Date of the Original Agreement or (ii) full purpose annexation of the Whisper Valley Ranch Park by the City, use of the Sales Center will cease (unless otherwise agreed to by the City) and the land (and at the City's option, the Sales Center) shall be dedicated to the City. If the City elects not to keep the Sales Center, Developer will remove the Sales Center prior to dedication if the Sales Center is designed in a way that makes removal and re-use of the Sales Center feasible, otherwise, the Sales Center and the land on which it is located will

either become City property or, at City's election, be dedicated to the Owner's Association, who will undertake responsibility for future maintenance.

Notwithstanding anything to the contrary contained herein, in no event shall the Developer use more than 27.21 acres of the surface of the Whisper Valley Ranch Park for a private use described in subsections (2), (3) and (5) above without the prior written consent of the City.

(6) Whisper Valley Northwest Line. Developer shall have the right to construct that certain 30-inch gravity wastewater line and related appurtenances referred to as the "Whisper Valley Northwest Line" in that certain Cost Reimbursement Agreement dated June 21, 2007 (as the same may be amended from time to time) by and between the City and Developer.

(7) City Facilities. After dedication of the Whisper Valley Ranch Park, the City shall have the right to install and maintain City Facilities (as defined in the Master License Agreement) within the Whisper Valley Ranch Park, subject to Developer's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed.

4.4 Park Improvement Master Plan. The Parties agree that no further approval by either Party will be necessary for construction of the types of Improvements included on the Park Improvement Master Plan; provided, however that the City must approve the actual Park Improvements and the location of said Improvements in accordance with the Applicable Requirements, such approval not to be unreasonably withheld, conditioned or delayed. The Developer will be required to submit plans and schedules prior to the construction or permitting of any of the Permitted Uses described in 4.3. Prior to commencing construction of any additional Park Improvements within any portion of the Whisper Valley Ranch Park that contains Programmed Open Space, the City and the Developer must have mutually agreed upon such additional Park Improvements, if any, that will be constructed within that portion of the Whisper Valley Ranch Park. Such approval by either Party shall not be unreasonably withheld, conditioned or delayed. the City hereby acknowledges that the Improvements and the location of said Improvements, including the Programmed Open Space, will be as generally depicted on the Park Improvement Phasing Plan and Park Improvement Master Plan attached hereto.

4.5 Construction of Improvements.

(1) Subject to the terms and conditions of this Agreement, Developer has the obligation to construct all the Park Improvements that are part of the Park Improvement Master Plan and further depicted on the Park Improvement Phasing Plan. The Improvements shall generally be completed in accordance with Applicable Laws, Applicable Requirements, the Park Improvements Schedule (Exhibit "I"), Park Improvement Phasing Plan (Exhibit "H"), Park Improvement Budget (Exhibit "C"), and plans and specifications approved by the City, subject to

funds being available in the Escrow Account (hereinafter defined) in accordance with the provisions of this Agreement. Notwithstanding anything to the contrary contained herein, if the Developer elects to consolidate two or more Phases into a single issuance of PID Bonds, the corresponding Phases attributable to such Improvement Area (as outlined in the Park Improvement Master Plan and the Park Improvement Phasing Plan) shall be consolidated and financed in accordance with the provisions of Sections 4.6(1), 4.7(2)(a), and 4.7(3)(a), as applicable.

(2) The Parties agree that the issuance of PID Bonds is subject to the discretion of and approval by City Council. If the issuance of PID Bonds for a specific Phase is requested by the Developer but not authorized by the City, the Developer's obligation to construct Park Improvements attributable to such Phase is relieved and such actions shall not constitute a Default by either Party pursuant to the terms of this Agreement.

4.6 Escrow.

(1) Escrow Agent and Escrow Deposits. The Parties hereby designate U.S. Bank, National Association as escrow agent ("**Escrow Agent**"), and further agree to enter into an escrow agreement with Escrow Agent (the "**Escrow Agreement**") substantially in the form attached hereto as Exhibit "J". It is contemplated that Phased PID Bonds will be issued periodically for Improvement Areas, and it is expected that Phased PID Bonds will be issued Improvement Area #2 in 2022. With respect to each Phased PID Bond issuance, the Developer hereby agrees to deposit a sum equal to five percent of the par amount of the corresponding Phased PID Bond (an "**Escrow Deposit**") with Escrow Agent according to an irrevocable letter of instruction ("**Instruction Letter**") provided to the Trustee as designated in the applicable Indenture (each as defined in the PID Financing Agreement). The Instruction Letter shall provide that the Escrow Deposit shall be transferred from the applicable Project Fund (as defined in the PID Financing Agreement) directly to the Escrow Agent for deposit to the applicable Escrow Account, as outlined in Section 4.6(2) below. The Instruction Letter shall be submitted to the Trustee on the applicable PID Bond Closing Date.

(2) Escrow Accounts. The Developer shall make the Escrow Deposits to a subaccount maintained by Escrow Agent corresponding to the applicable Phase, as follows (each a "**Subaccount**" and collectively the "**Escrow Account**"):

(a) "**Design Phase Subaccount**" shall be funded by the Escrow Deposits corresponding to the second and third series of Phased PID Bonds.

(b) "**Construction Phase 1A Subaccount**" shall be funded by the Escrow Deposit corresponding to the fourth series of Phased PID Bonds.

(c) **“Construction Phase 1B Subaccount”** shall be funded by the Escrow Deposit corresponding to the fifth series of Phased PID Bonds.

(d) **“Construction Phase 1C, 1D, and 2 Subaccount”** shall be funded by the Escrow Deposit corresponding to the sixth series of Phased PID Bonds.

(e) **“Construction Phase 3A Subaccount”** shall be funded by the Escrow Deposit corresponding to the seventh series of Phased PID Bonds.

(f) **“Construction Phase 3B Subaccount”** shall be funded by the Escrow Deposit corresponding to the eighth series of Phased PID Bonds.

(3) Flow of Funds. Upon City acceptance of a Phase, the City shall provide a written authorization to the Escrow Agent instructing the Escrow Agent to transfer the balance, if any, in the Subaccount corresponding to said completed Phase to the subaccount corresponding to the subsequent Phase (**“Transfer Authorization”**). The transfers described herein shall be made in the order of the subaccounts as listed in Section 4.6(2) above.

(4) Any balance remaining in any Subaccount of the Escrow Account created under this Agreement and the Escrow Agreement after City acceptance of the final Phase shall be disbursed to the Developer according to a written request signed by the Developer.

4.7 Escrow Draws. The Developer may make draws on the Escrow Account in accordance with the procedures outlined herein and in the Escrow Agreement.

(1) Escrow Deposits and Draws. The Escrow Deposits held by Escrow Agent in the various segregated Subaccounts listed in Section 4.6(2) will be reimbursed to the Developer by the Escrow Agent to fund the costs of the Design Phase and Construction Phases pursuant to a completed draw request (**“Draw Request”**) in substantially the form attached hereto as Exhibit “K”, submitted by the Developer. Payments shall be made upon completion of the Design Phase or a Construction Phase, as applicable. The procedures for such payments are contained in this Section 4.7 and the Escrow Agreement. Such payments shall be made by the Escrow Agent following the Escrow Agent’s receipt of a Draw Request, which shall be forwarded by the Director following approval of the Draw Request by the Director and the City’s PID administrator. The Director and the City’s PID administrator shall give their response to a completed Draw Request within ten (10) business days following receipt of the

items required to be submitted pursuant to Section 4.7(3)(c) or 4.7(4)(c), as applicable. If the Director or the City's PID administrator disapproves a Draw Request, they shall provide a written explanation of the reasons for such disapproval, and if the Draw Request is revised in accordance with the comments, it shall be promptly submitted to the Escrow Agent for payment.

(2) Design Phase.

(a) Within sixty (60) days after the pricing of the latest-in-time Phased PID Bond corresponding to the Design Phase outlined in Section 4.7(1), the Developer shall obtain a certified bid for the Final Phase Costs for the Design Phase. Within sixty (60) days of receipt of such certified bid, the Developer shall deposit into the Design Phase Subaccount the difference, if any, between the Final Phase Costs for the Design Phase and the balance of the Design Phase Subaccount. Once the balance of the Design Phase Subaccount equals or exceeds the Final Phase Costs for the Design Phase, the Developer shall engage consultants of the Developer's choice to complete the design plans and permitting for the Park Improvements (the "**Design Plans**").

(b) Upon completion of the Design Plans:

(i) The Developer shall submit the Design Plans to the City for review and written approval.

(ii) The Developer shall submit an initial Design Phase Draw Request, with the documentation outlined in Section 4.7(2)(d), for a sum equal to fifty percent (50%) of the Final Phase Costs for the Design Phase.

(c) Upon the City's approval of the Design Plans, the Developer shall submit a final Design Phase Draw Request, with the documentation outlined in Section 4.7(2)(d), for a sum equal to the remaining fifty percent (50%) of the Final Phase Costs for the Design Phase.

(d) The following documentation shall be submitted by the Developer to the Director and the City's PID administrator in conjunction with each Design Phase Draw Request:

(i) A Draw Request executed by the Construction Manager;

(ii) A Bills Paid Affidavit from the Construction Manager;

(iii) Copies of all supporting invoices with respect to such design payment; and

(iv) Proof of approved permits for construction and any design and construction documents associated with permitting.

(3) Construction Phases.

(a) Within sixty (60) days after the pricing of the Phased PID Bond corresponding to a given Construction Phase, the Developer shall obtain a certified bid for the Final Phase Costs for the corresponding construction phase, commencing with Construction Phase 1A. Within sixty (60) days of receipt of such certified bid, the Developer shall deposit into the applicable Subaccount the difference, if any, between the Final Phase Costs for the applicable Construction Phase and the balance of the applicable Subaccount. Once the balance of the applicable Subaccount equals or exceeds the Final Phase Costs for the corresponding construction phase and the Developer executes a construction contract, the Developer shall, without unreasonable delay, commence construction of the applicable construction phase. Notwithstanding the above, the Developer shall have no obligation to commence construction of a construction phase until the City's final approval of the Design Plans for that Phase. After commencement of construction, the Developer shall have twelve (12) months to substantially complete construction of the applicable Phase. The Developer may draw on the applicable Subaccount upon providing a Draw Request to Escrow Agent in accordance with Section 4.7(1).

(b) Developer shall notify the Director in writing upon completion of a Construction Phase and the Director shall within ten (10) business days, or such additional time as the Parties may agree to in writing, provide a list of items still requiring completion or accept the Park Improvements in writing.

(c) Upon Substantial Completion of a Construction Phase, the Developer shall submit an initial Draw Request, with the documentation outlined in Section 4.7(3)(e), for a sum equal to fifty percent (50%) of the Final Phase Costs for that Construction Phase. For the purposes of this Agreement, "Substantial Completion" means construction of Park Improvements in compliance with the Park Improvement Phasing Plan and City Codes, as evidenced by the Project Engineer's certification attached to the Draw Request.

(d) Upon City acceptance of a Construction Phase, the Developer shall submit a final Construction Phase Draw Request, with the documentation outlined in Section 4.7(3)(e), for a sum equal to the remaining fifty percent (50%) of the Final Phase Costs for that Construction Phase.

(e) The following documentation shall be submitted by the Developer to the Director and the City's PID administrator in conjunction with each Construction Phase Draw Request:

(i) A Draw Request executed by the Project Engineer and the Construction Manager confirming the completion of work;

(ii) A Bills Paid Affidavit from the contractor; and

(iii) Waivers of liens for work on the applicable Park Improvements through the previous Draw Request and receipts for payment from the contractor and, if requested by the City, for the current Draw Request.

(iv) Proof of inspection and acceptance by the Director of the applicable Park Improvements. This Section 4.7(3)(e)(iv) shall not apply to the initial Draw Request submitted for a Construction Phase outlined in Section 4.7(3)(c).

4.8 Cost Overruns.

(1) Developer shall be solely responsible for paying all cost overruns, defined for purposes of this Agreement as the amount by which the actual cost of a Phase exceeds the Final Phase Costs (the "Cost Overrun"), unless such Cost Overrun is the result of written agreement between the Parties pursuant to Section 4.8(2) below, in which case the Cost Overrun shall be paid pursuant to such agreement.

(2) Any work beyond the scope of work specified in this Agreement and in the Design Plans approved by the City pursuant to Section 4.7(2)(b) must be agreed to in writing by the Parties.

Article V License

5.1 License Agreement. Prior to the Takedown, the Developer and the City will execute and record the Master License Agreement in substantially the same form as Exhibit "E" attached hereto. The parties anticipate that, as Improvements are constructed within the Whisper Valley Ranch Park, such improvements will be brought into the scope of the Master License Agreement, as applicable.

Article VI Operations and Management

6.1 Park Operations. In addition to its other rights and responsibilities

under this Agreement, Developer (through the designation of the Park Operations Manager) will manage the programming of the Whisper Valley Ranch Park in accordance with the provisions of this Article prior to the full purpose annexation of any portion of the Property or twenty (20) years after the Effective Date of the Original Agreement, whichever occurs first. The City agrees to coordinate and cooperate with the Developer and the Park Operations Manager in the administration of the Whisper Valley Ranch Park in accordance with designated provisions of Chapter 11-1 of the Code of the City of Austin and the Park Rules of the City's Parks and Recreation Department. Specifically, the permitting of events and reservation of the Whisper Valley Ranch Park will be delegated to the Park Operations Manager, provided such events are open to the public. In consideration for the assumption of such management responsibilities, Developer will not be required to pay any fees for use of the Whisper Valley Ranch Park events in connection with the Project; provided however, that the Developer (acting by and through the Park Operations Manager) shall comply with any permitting provisions in Chapter 11-1 of the Code or the Park Rules which are related to public health and safety and will not discriminate against or exclude any person from the use of the Whisper Valley Ranch Park for permissible park purposes.

6.2 Park Operations Manager. The Park Operations Manager shall be responsible for the performance of all of the duties and obligations that are specified in this Article VI and the City agrees to look primarily to the Park Operations Manager for the performance of such duties, responsibilities and obligations, provided however, that the Developer (or its Designated Successors and Assigns) will be responsible for such performances upon the default of the Park Operations Manager.

6.3 Routine Maintenance. The Park Operations Manager shall provide ordinary and ongoing routine maintenance (i.e. mowing, trimming, litter control, etc.) to the Preserved Open Space within Whisper Valley Ranch Park at a level consistent with other City maintained publicly accessible parks. The maintenance and operation of the Whisper Valley Ranch Park (including the items referenced in Section 6.4 below) shall be funded by (i) assessments or fees established pursuant to a Public Improvement District (or special district) for the Project and/or (ii) Owner Association dues. The assessment for each lot/parcel should not exceed that of a typical homeowner's association annual fee for a development similar in size and nature to that of the Project.

6.4 Repairs and Improvements. The Park Operations Manager shall be responsible for making any necessary repairs or replacement of the Park Improvements and the Private Improvements. The City shall be responsible for the maintenance, repair and replacement of all City Facilities (as defined in the Master License Agreement) located within the Whisper Valley Ranch Park.

6.5 Compliance With Park Rules. Except as otherwise specifically

provided herein, the Park Operations Manager shall perform all of its duties, responsibilities and obligations under this Agreement in accordance with, and subject to, the requirements and conditions of Chapter 8-1 of the Austin City Code relating to the administration of public parks, and the guidelines and rules established by the City of Austin Parks and Recreation Department (“**PARD**”) for the use of and enjoyment of public parks (collectively the “**Park Rules**”).

6.6 Special Events and Activities. In connection with any special events or activities within the Whisper Valley Ranch Park, the Park Operations Manager will comply with the Park Rules and the applicable provisions of this Agreement the Master License Agreement. In addition, the Manager will comply with the permitting provisions of Chapter 8-1 of the Code and the Park Rules to the extent such special events and activities are related to public health and safety and no person will be discriminated against or excluded from the use of the Whisper Valley Ranch Park for permissible park purposes. Subject to such provisions, the Park Operations Manager shall be responsible for authorizing, scheduling and coordinating all special events and activities within Whisper Valley Ranch Park in accordance with the conditions and requirements set forth in this Section 6.6.

a. Reservations. The Park Operations Manager shall have the authority to temporarily reserve all or any portion of the Whisper Valley Ranch Park for use by individuals, organizations and businesses for special events and activities. The Park Operations Manager shall give written notice of all reservations to PARD not less than 14 days before the scheduled event or activity and establish other procedures consistent with PARD reservation policies for making reservations and scheduling such special events and activities. PARD shall not schedule events during the term of this Agreement without the approval of the Park Operations Manager.

b. Schedule. Subject to the notice requirement in paragraph (h) below, the Park Operations Manager shall be responsible for establishing the dates and times, not to exceed 72 hours, during which all or portions of the Whisper Valley Ranch Park may be reserved for special events and activities.

c. Permitted Uses. The Park Operations Manager shall schedule events and activities with due regard for the residents and customers of the surrounding businesses and the public in general. Such permitted uses may include, but not limited to, musical performances and other entertainment; outdoor movies; art and craft fairs; holiday celebrations; recreational activities; contests; farmers’ markets; festivals; private parties celebrating birthdays, anniversaries, weddings, sporting events, and other special occasions; and the incidental sale of food, beverages and merchandise, subject to any additional permitting requirements, including but not limited any applicable TABC requirements.

d. Reservation Fees. In accordance with the provisions of the Master License Agreement, the Park Operations Manager shall not be required to pay any fee or other charge to the City for its use of the Whisper Valley Ranch Park

for special events and activities. The Park Operations Manager may collect reservation fees and deposits from other parties to whom it gives approval for special events and activities in amounts not to exceed the standard reservation fee and deposit charged by the City at the closest comparable facility or for a comparable activity, provided the collected funds are used to offset any administrative and operational costs incurred under this Agreement.

e. Admission Fees. Consistent with the Park Rules, the Park Operations Manager shall have the authority to charge a reasonable admission fee to cover the cost of musical performances and entertainment and other special events and activities that involve the payment of performers, equipment rental and related expenses, provided the collected funds are used to offset any administrative and operational costs incurred under this Agreement.

f. Public Access. Except for those portions of the Whisper Valley Ranch Park that may be temporarily reserved for private events, all special events and activities within the Whisper Valley Ranch Park shall be open to the public.

g. Concessions. The Park Operations Manager may (with PARD's approval, such approval not to be unreasonably withheld, conditioned or delayed) authorize concessions for the sale of food, beverages and merchandise and the rental of recreational equipment within the Whisper Valley Ranch Park, in accordance with the following standards and subject to the following conditions. If the Park Operations Manager submits a request to authorizing concessions and PARD does not approve or deny such request in writing within ten (10) business days after the date of the request, such request shall be deemed approved.

1. Purpose. The concessions must (i) promote the use of the Whisper Valley Ranch Park as a lively, people-oriented activity center; (ii) complement and enhance the retail stores, restaurants and other business in the Project; (iii) provide items for sale or rental that would enhance the use and enjoyment of the Whisper Valley Ranch Park, and (iv) must be a park related activity.

2. No Disruption. The concessions must be operated with due regard to the residents and customers of the nearby businesses and the persons using the Whisper Valley Park.

3. Sales and Rental Receipts. The Park Operations Manager shall require concessionaires to keep true and correct accounts and shall provide copies of such accounts to PARD upon request.

4. Concession Fee. In consideration of the services provided and expenses incurred by the Park Operations Manager with respect to the operation and maintenance of the Whisper Valley Ranch Park, the Park

Operations Manager shall be entitled to charge a fee to be paid by the recipient of any concession granted by the Park Operations Manager (the “**Concession Fee**”), which amount may be based on a negotiated percentage of the sales or rental receipts or other mutually agreeable amount. Concession Fees in excess of the Park Operations Manager’s ordinary and reasonable expenses in maintaining and operating the Whisper Valley Ranch Park shall be used by the Park Operations Manager to make additional improvements to the Whisper Valley Ranch Park.

5. Rules and Regulations. The Park Operations Manager shall establish rules and regulations for the orderly operation and management of the concessions in a manner similar to operation and management of concessions in other City parks.

h. PARD Notice. Subject to the applicable provisions of the Park Rules, if the Park Operations Manager wishes to schedule any special events or activities on the premises, the Park Operations Manager shall give written notice of such special event or activity to PARD, together with a brief description of the event not less than 30 days before the proposed date of such special event or activity. Such special event or activity shall not be conducted if the Park Operation Manager receives written objection thereto from PARD within 15 days after the receipt of such notice by PARD; provided, however that approval by PARD shall not be unreasonably withheld, conditioned or delayed.

6.7 Duties and Responsibilities of PARD and the City. Except for the duties, responsibilities and obligations to be performed by the Park Operations Manager by this Agreement, PARD shall continue to have the duty and responsibility for enforcing the Park Rules within the Whisper Valley Ranch Park (to the extent such land has been conveyed to the City), and for exercising its duties and powers with regard to public health and safety. Prior to full purpose annexation of any portion of the Whisper Valley Ranch Park, Travis County shall have the duty and responsibility of enforcing penal ordinances and state laws and taking the appropriate action with regard to any violation thereof or other illegal conduct. Upon full purpose annexation of any portion of the Whisper Valley Ranch Park, the City shall have the duty and responsibility of enforcing penal ordinances and state laws and taking the appropriate action with regard to any violation thereof or other illegal conduct.

6.8 Insurance. The Park Operations Manager shall secure and maintain insurance in amounts and types as may be reasonably required by the City.

6.9 Indemnification. **Subject to the limitations and exceptions in the last sentence of this Section 6.9, the Park Operations Manager hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, licensees, and invitees(collectively called “Indemnitees”) against any and all liability, damage, loss,claims, demands, and actions of any nature whatsoever, on account of personal injury (including, without limitation, Workers’**

Compensation and death claims), or property loss or damage of any land whatsoever, which arises or is claimed to arise out of or is claimed to be in any manner connected with the performance of the duties, responsibilities and obligations of the Park Operations Manager pursuant to this Agreement. This indemnification provision does not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City has been compensated by insurance provided under Section 6.8 hereof, or (ii) to the extent arising from the willful or negligent acts of the City.

6.10 Termination. The rights and obligations of the Park Operations Manager and the Developer, including the obligation to maintain the Park Improvements, shall terminate twenty (20) years after the effective date of the Original Agreement.

Article VII

Private Open Space

7.1 Private Open Space. Subject to Section 7.2 below, Developer shall reserve a portion of the Property as “**Private Open Space**” (herein so called) for the benefit of some or all of the residents, tenants and invitees of the owners of the Project. Developer may develop the Private Open Space only as pocket parks, neighborhood parks, and open space corridors. Lands allocated for Private Open Space shall be readily accessible to a broad range of users, and of a size and dimension that provides for a diversity of recreation uses, both active and passive. Where possible, Private Open Space shall include existing trees, vegetation and natural topography that provide for the development of safe, sustainable, and family friendly park facilities. Private Open Space shall be selected so as to preserve environmentally sensitive lands, while providing an adequate amount of developable property for park improvements and facilities. In no event will any pocket park, neighborhood park or open space corridor less than a quarter (1/4) of an acre in size be considered part of the Private Open Space for purposes of meeting the 700-acre requirement. General descriptions and illustrations of these areas are provided on Exhibit “G” attached hereto; provided, however, the descriptions and illustrations depicted on Exhibit “G” are set forth for illustrative purposes only and Developer shall not be required to build any neighborhood park exclusively in conformity with any such specific description or illustration.

7.2 Transfer / Maintenance of Private Open Space. Pursuant to the terms of this Agreement, Developer shall be required to sell, gift, lease, or otherwise convey (collectively, “**transfer**”) the Private Open Space to the City, an Owner’s Association, Open Space Owners Association, non-profit organization, conservancy organization or other similar type entity reasonably acceptable to the City. In connection with the transfer of the Private Open Space, Developer shall file deed restrictions reasonably acceptable to the City against the Private Open Space in the Official Records of Travis County, Texas that are consistent with the provisions contained in Section 4.2 and 4.3 herein. Notwithstanding the above, if at any time during the term of this Agreement, Developer intends to transfer all or a

portion of the Private Open Space, Developer shall first offer to transfer (at no charge to the City) such portion of the Private Open Space to the City (the “Offer”). The City shall have a period of ninety (90) days from the date of its receipt of the Offer to notify Developer in writing of its intent to accept a transfer of the Private Open Space pursuant to the terms and conditions of the Offer. If the City fails to respond to such offer within such 90-day period, the City shall be deemed to have refused such Offer. In the event the City elects to accept a transfer of any portion of the Private Open Space, Developer may elect in writing within sixty (60) days after the City’s acceptance of the Offer to continue maintaining the applicable portion of the Private Open Space for a period of up to five (5) years.

7.3 Notwithstanding anything to the contrary contained in this Article VII, it is hereby agreed that Private Open Space may be owned by the Developer and its affiliates.

Article VIII General Provisions

8.1 Binding Effect. This Agreement runs with the land and shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

8.2 Complete Agreement. This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

8.3 Executed Counterparts. This Agreement 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.

8.4 Choice of Laws. This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is Travis County, Texas.

8.5 Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Section headings in this Agreement are for reference only and are not intended to restrict or define the text of any Section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

8.6 Recitals. The recitals in this Agreement are represented by the

parties to be accurate and constitute a part of the substantive agreement.

8.7 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 parties may designate in writing from time to time:

If to the City:

City of Austin
P.O. Box 1088
Austin, Texas 78767-8839
Attention: Parks and Recreation Department

With a copy to:

Norton Rose Fulbright US LLP
c/o Stephanie Leibe
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255

If to Developer:

Club Deal 120 Whisper Valley, Limited Partnership
c/o Tony Brannon
9285 Huntington Square
North Richland Hills, Texas 76182

And to:

Club Deal 120 Whisper Valley, Limited Partnership
c/o Doug Gilliland
600 Northlake Blvd., Suite 130
Altamonte Springs, Florida 32701

With copy to:

Metcalf, Wolff, Stuart, & Williams, LLP
321 W. Sixth Street, Suite 1300
Austin, Texas
78701
Attn: Steven C. Metcalfe

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of certified mail two (2) business days following deposit of such instrument in the United States Mail.

8.8 Amendment. This Agreement may be amended, modified or terminated, in whole or in part, only by the written agreement of the parties hereto or their successors or assigns.

8.9 Assignment.

a. Developer may only assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale of stock or sale of assets), mortgage, pledge or otherwise transfer its obligations under this Agreement to make the Escrow Deposits and construct the Improvements to a single assignee which is buying all of the remaining Property (such assignee a “**Designated Successor and Assign**”), it being agreed that there shall be no partial assignment of such obligations. Developer shall not assign the obligation to make the Escrow Deposits or to construct the Improvements to a Designated Successor and Assign without the prior written consent of the City, which consent may be withheld in the City’s sole and absolute discretion unless the assignee is a Qualified Assignee (defined herein). For the purposes of this section, a “**Qualified Assignee**” means a developer that has: (i) developed at least two (2) master-planned projects, each consisting of at least five hundred (500) acres with amenities and parkland, (ii) developed at least two (2) public parks of at least 100 acres with comparable amenities (iii) a financial net worth of at least \$20,000,000.00, as evidenced by certified financial statements; and (iv) participated in at least one (1) public financing for infrastructure projects related to a master planned development. Following the City’s written approval of an assignment, Developer shall promptly provide a fully executed copy of the assignment document to the City and upon the City’s receipt of same, Developer shall be fully released from any and all assigned obligations under this Agreement and shall have no further liability with respect to the assigned obligations.

b. The mere transfer of title to a portion of the Property to a third party should not make such party a Designated Successor or Assign. In order for a third party to become a Designated Successor or Assign, there must be an express assignment of such rights.

8.10 Contingency. If Developer submits a Request (defined below) for the issuance of Phased PID bonds for the any given Improvement Area and the City does not subsequently issue the Phased PID bonds, Developer shall have no obligation to construct the Park Improvements pursuant to this Agreement. For purposes herein, a “**Request**” shall mean a written request made by Developer to the City Manager and City’s Chief Financial Officer in good faith as evidenced by Developer’s expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence sufficient to support the request to the full degree that the City Council may act on it and issue Phased PID bonds.

8.11 Private Improvements. The Private Improvements will be controlled by the Developer and in no event will the Private Improvements ever become controlled by the City. Developer (or its Designated Successors and Assigns) will remain also responsible for the maintenance of said Private

Improvements after annexation of the Whisper Valley Ranch Park or earlier termination of this Agreement.

8.12 Dispute Resolution.

a. In the event of a dispute related to this Agreement, the Parties agree to attempt in good faith to informally negotiate a resolution.

b. If the Parties fail to resolve the dispute through informal negotiation, then:

1. Either Party may make a written request for a meeting between representatives of each Party, and the meeting will occur within 14 calendar days after receipt of the request, or at such time as agreed by the Parties. The Parties may agree in writing to additional meetings, and each Party shall send at least one representative with decision-making authority to each meeting. The Parties may agree by a written agreement signed by both Parties to proceed directly to mediation as described below.

2. If the Parties have not succeeded in negotiating a resolution of the dispute within 21 days of the last meeting, they shall proceed directly to mediation. The Parties will act in good faith to select a mediator within 21 calendar days of the date of the written agreement waiving informal negotiations or within 21 calendar days of the last informal negotiation meeting. If the time period for selecting a mediator has expired with no agreement, the mediator shall be selected by the Travis County Dispute Resolution Center.

3. Mediation shall take place in Austin, Texas and the Parties shall share the costs of mediation equally. The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. Neither Party may file suit until at least 45 calendar days after the date of the first mediation session.

4. The time periods in this Section may be modified by written agreement of the Parties.

8.13 Default.

a. Notice of a Default or Material Event of Default shall be provided to the defaulting party within ninety (90) days of the event of default. The defaulting party shall then have one hundred and eighty (180) days to cure such Default or Material Event of Default.

b. If the Developer fails to cure a Material Event of Default within the time period described in Section 8.13(a), the City may, after completion of the cure period, and in the City's sole discretion, withhold approval of site plan,

subdivision, and building permit applications on single family property (i.e., not commercial or multifamily) within the boundaries of the Property related to the construction of any Public Improvements. If the Developer cures its Material Event of Default to the City's satisfaction, the City shall no longer withhold approval of development permits based on the Developer's failure to comply with its obligations.

d. In addition, the Developer shall not request additional PID bond issuances until any Default or Material Event of Default is cured. If the Developer cures its Default or Material Event of Default to the City's satisfaction, the Developer may request additional PID bond issuances.

e. If the Developer fails to cure a Default within the time period described in Section 8.13(a), the City may avail itself of all legal remedies available to it.

8.14 Exhibits.

Exhibit "A" – Property
Exhibit "B" – Whisper Valley Ranch Park
Exhibit "C" – Park Improvement Budget
Exhibit "D" – Special Warranty Deed
Exhibit "E" – Master License Agreement
Exhibit "F" – Park Improvement Master Plan
Exhibit "G" – Private Open Space
Exhibit "H" – Park Improvement Phasing Plan
Exhibit "I" – Park Improvement Schedule
Exhibit "J" – Form of Escrow Agreement
Exhibit "K" – Form of Draw Request
Exhibit "L" – Form of Instruction Letter

CITY:

CITY OF AUSTIN, TEXAS, a municipal
corporation

By: _____
Authorized Official

DEVELOPER:

CLUB DEAL 120 WHISPER VALLEY, LIMITED
PARTNERSHIP, a Delaware limited partnership
qualified to do business in Texas
(as Developer)

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

By: _____
Douglas H. Gilliland, Manager