

EXHIBIT D

LANDOWNER AGREEMENT

WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT

LANDOWNER AGREEMENT

among

THE CITY OF AUSTIN, TEXAS

and

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP

Dated as of:

November 1, 2011

LANDOWNER AGREEMENT

This **LANDOWNER AGREEMENT** (the or this "Agreement") is entered into among the CITY OF AUSTIN, TEXAS, a municipal corporation of the State of Texas (the "City"), and CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, a Delaware limited partnership "Landowner". This Agreement shall be effective on the latest date it is executed by all the Parties (the "Effective Date").

RECITALS

WHEREAS, the City and the Landowner are sometimes individually referred to as a "Party" and collectively as the "Parties";

WHEREAS, the Landowner owns all of the "Assessed Parcels" described on Exhibit A attached hereto;

WHEREAS, Club Deal 120 Whisper Valley, Limited Partnership, in addition to being the Landowner, is the developer (the "Developer") of the Development Land;

WHEREAS, the Assessed Parcels described on Exhibit A attached hereto are collectively referred to as the "Development Land";

WHEREAS, the Development Land constitutes taxable, privately-owned land located within the Whisper Valley Public Improvement District (the "District") created pursuant to the authority of Chapter 372, Texas Local Government Code (the "PID Act");

WHEREAS, Landowner and the City have entered into that certain Whisper Valley Public Improvement District Financing Agreement (as such agreement may be restated and amended by the City and Developer from time to time, the "PID Finance Agreement"), providing, among other matters, for the levy of assessments on the Development Land, the issuance of revenue bonds secured by such assessments, and the construction of the "Public Improvements" as defined therein;

WHEREAS, the City Council of the City (the "City Council") has adopted an assessment ordinance (Ordinance No. _____) (including all exhibits, the "Assessment Ordinance") that levied an assessment (each, an "Assessment") on each Assessed Parcel, which Assessments will be pledged as security for the payment of bonds issued by the City (the "Bonds") to pay for, among other things, the costs of constructing the Public Improvements that will confer a special benefit on the Development Land;

WHEREAS, a copy of the Assessment Ordinance is attached hereto as Exhibit B;

WHEREAS, the Assessment Ordinance includes a "Service and Assessment Plan";

WHEREAS, the Service and Assessment Plan includes an "Assessment Roll" setting forth the amount of the Assessment for each Assessed Parcel, including the amount of the "Annual Installment" for each Assessment paid in installments; and

WHEREAS, attached hereto as Exhibit C is a Declaration of Covenants, Conditions, and Restrictions (the "Declarations") that will be recorded against, and that will run with, the Development Land including, but not limited to, the statutory notice of the District required by Section 5.014 of the Texas Property Code to be provided by each seller to each purchaser of residential property located within the District.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I **DEFINITIONS; APPROVAL OF AGREEMENTS**

Definitions. Capitalized terms used but not defined in this Agreement (including the exhibits hereto) shall have the meanings given to them in the Assessment Ordinance, Service and Assessment Plan and PID Finance Agreement.

Affirmation of Recitals. The matters set forth in the Recitals of this Agreement are true and correct and are incorporated in this Agreement as official findings of the City Council.

ARTICLE II **AGREEMENT OF LANDOWNER**

A. Landowner ratifies, confirms, accepts, agrees to, and approves:

(i) the creation of the District, the boundaries of the District, and the boundaries of the Assessed Parcels;

(ii) the location and construction of the Public Improvements;

(iii) the determinations and findings of special benefit to the Assessed Parcels made by the City Council in the Assessment Ordinance and Service and Assessment Plan; and

(iv) the Assessment Ordinance and the Service and Assessment Plan.

B. Landowner consents, acknowledges, accepts, and agrees:

(i) to the Assessments levied against the Assessed Parcels as shown on the Assessment Roll;

(ii) that the Public Improvements confer a special benefit on the Assessed Parcels in an amount that exceeds the Assessments against the Assessed Parcels as shown on the Assessment Roll;

(iii) that the Assessments against the Assessed Parcels are final, conclusive, and binding upon the Landowner and its successors and assigns;

(iv) to pay the Assessments against the Assessed Parcels when due and in the amounts stated in the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(v) that each Assessment or reassessment against the Assessed Parcels, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Assessed Parcels, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Assessed Parcels regardless of whether the owner is named;

(vi) that the Assessment liens on the Assessed Parcels are liens and covenants that run with the land and are effective from the date of the Assessment Ordinance and continue until the Assessments are paid in full and may be enforced by the governing body of the City in the same manner that ad valorem tax liens against real property may be enforced;

(vii) that delinquent installments of Assessments against the Assessed Parcels shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) that the owner of an Assessed Parcel may pay at any time the entire Assessment against the Assessed Parcel, with interest that has accrued on the Assessment to the date of such payment;

(ix) that Annual Installments may be adjusted, decreased, and extended and that owners of the Assessed Parcels shall be obligated to pay such Annual Installments as adjusted, decreased, or extended, when due and without the necessity of further action, assessments, or reassessments by the City Council;

(x) that the Landowner has received, or hereby waives, all notices required by State law (including, but not limited to the PID Act) in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll; and

(xi) after the initial Bonds are paid, additional Assessments may be placed on the Development Land.

C. Landowner further agrees:

(i) that the Declarations shall be recorded by the Landowner in the real property records of Travis County, Texas and shall run with and be binding upon the Landowner's Assessed Parcels;

(ii) the City may record in the real property records of Travis County a "Notice of Creation of Special Assessment District" and "Imposition of Special

Assessment" (the contents of which shall be consistent with the Assessment Ordinance, the Service and Assessment Plan, and this Agreement as reasonably determined by the City) that evidence the lien and encumbrance created upon the Landowner's Assessed Parcels by the Assessment Ordinance;

(iii) that in the event of any subdivision, sale, or transfer of any interest in the Assessed Parcels, the Assessed Parcels shall continue to be bound by the Declarations, and any purchaser, transferee, or subsequent owner shall take the Assessed Parcels subject to the Declarations; and

(iv) to comply with, and contractually require any purchaser to comply with, the Homebuyer Education Program described on Exhibit D attached to this Agreement, but only if the Landowner or purchaser is a "Builder" in the business of constructing and/or selling to individual homebuyers residential structures that are eligible for "homestead" designation under Texas law. The obligation to comply with the Homebuyer Education Program only applies to the initial sale of a residential structure from a Builder to a homeowner and not to any subsequent sales. The obligation to comply automatically terminates with respect to each residential structure on the earlier to occur of the issuance by the City of the initial certificate of occupancy for the structure or the closing of the initial sale of the structure from a Builder to a homeowner.

D. The Declarations may be recorded with other written restrictions applicable to the Assessed Parcels.

ARTICLE III

OWNERSHIP OF PUBLIC IMPROVEMENTS

Landowner acknowledges that the Public Improvements, together with the land, easements, or other rights-of-way needed for the Public Improvements, shall be dedicated to and owned by the City or County (as applicable). Landowner will execute such conveyances and/or dedications as may be reasonably required to evidence such ownership, and will grant such easements or licenses as may be required or appropriate to store materials or to stage the construction of the Public Improvements until such time as the Public Improvements have been completed and accepted.

ARTICLE IV

MISCELLANEOUS

A. Notices. Any notice or other communication (a "Notice") required or contemplated by this Agreement shall be given at the addresses set forth below. Notices as to one or more Assessed Parcels shall only be given to the Landowner that owns the parcels. Notices as to all of the Development Land shall be given to all Landowners. Notices shall be in writing and shall be deemed given: (i) five business days after being deposited in the United States Mail, Registered or Certified Mail, Return Receipt Requested; or (ii) when sent by electronic or facsimile transmission simultaneously confirmed by United States Mail; or (iii) when delivered by a nationally recognized private delivery service (e.g., FedEx or UPS) with

evidence of delivery signed by any person at the delivery address. Each Party may change its address by written notice to the other Parties in accordance with this section.

CLUB DEAL 120 WHISPER VALLEY LIMITED
PARTNERSHIP
c/o Taurus Investment Holdings LLC
Attn: Douglas Gilliland
9285 Huntington Square
North Richland Hills, TX 76180

CITY OF AUSTIN, TEXAS
Attn: City Treasurer
PO Box 1088
Austin, Texas 78767

B. Parties in Interest. This Agreement is solely for the benefit of the Parties and is not assignable except by a Landowner in connection with the sale or transfer of an Assessed Parcel, in which case the purchaser or transferee shall assume the obligations of the Landowner with respect to such Assessed Parcel, and the seller or transferor shall be released with respect to such Assessed Parcel. Notwithstanding the foregoing, the holders of Bonds are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the Parties.

C. Amendments. This Agreement may be amended only by a written instrument executed by all the Parties.

D. Estoppels. Within 10 days after written request from any Party, the other Parties shall provide a written certification indicating whether this Agreement remains in effect as to an Assessed Parcel and whether any Party is then in default hereunder.

E. Termination. This Agreement shall terminate as to each Assessed Parcel upon payment in full of the Assessment against the Assessed Parcel.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED by the Parties on the dates stated below.

THE CITY OF AUSTIN, TEXAS

By: _____
Rudy Garza, Assistant City Manager

LANDOWNER

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
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared Douglas H. Gilliland, Manager of CD120 GP, LLC, a Delaware limited liability company, general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2011.

Notary Public, in and for the State of Texas

EXHIBIT A to LANDOWNER AGREEMENT
Assessed Parcels Owned by All Landowners

PARCEL DESCRIPTIONS	TAX ACCOUNT NUMBER	ASSESSMENT PER LOT/PARCEL
Parcel 1	806424	\$
Parcel 2	806425	\$
Parcel 3	806426	\$
Parcel 4	806427	\$
Parcel 5	806428	\$
Parcel 6	806429	\$
Parcel 7	806430	\$
Parcel 8	806431	\$
Parcel 9	806432	\$
Parcel 10	201773	\$
Parcel 11	201746	\$

EXHIBIT B to LANDOWNER AGREEMENT
Assessment Ordinance

[See Attached]

ORDINANCE NO. 20111103-_____

AN ORDINANCE ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR THE CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT) and CITY OF AUSTIN, TEXAS, SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT); MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS, PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS, PROVIDING FOR SEVERABILITY, AND DECLARING AN EMERGENCY

WHEREAS, a petition was submitted and filed with the City Clerk (the "City Clerk") of the City of Austin, Texas (the "City") pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the "PID Act"), requesting the creation of a public improvement district over a portion of the area of the City to be known as Whisper Valley Public Improvement District (the "District"); and

WHEREAS, the petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then current ad valorem tax rolls of the Travis Central Appraisal District and the signatures of property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that are liable for assessment by the District; and

WHEREAS, on August 5, 2010, after due notice, the City Council of the City (the "City Council") held the public hearing in the manner required by law on the advisability of the public improvements and services described in the petition as required by Sec. 372.009 of the PID Act and made the findings required by Sec.

372.009(b) of the PID Act and, on August 26, 2010, by Resolution No. 20100826-026, authorized the District in accordance with its finding as to the advisability of the public improvement and services; and

WHEREAS, on September 7, 2010, the City published notice of its authorization of the District in the Austin American-Statesman, a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after September 7, 2010; and

WHEREAS, the City Council, pursuant to Section 372.016(b) of the PID Act, published notice on July 23, 2011 in the Austin American-Statesman of a public hearing in a newspaper of general circulation in the City and the extraterritorial jurisdiction of the City to consider the proposed "Assessment Roll" and the "Service and Assessment Plan" and the levy of the "Assessments" on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the PID Act, by causing the mailing of the notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, the City Council convened the hearing at 4:00 p.m. on August 4, 2011, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Plan, the Assessment roll, and each proposed assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessment, the allocation of Costs, the purposes of the Assessment, the special benefits of the Assessment, and the penalties and interest on annual installments and on delinquent annual installments of the Assessment; and

WHEREAS, the City Council finds and determines that the Assessment Roll and the Service and Assessment Plan should be approved and that the Assessments (as defined in the Service and Assessment Plan) should be levied as provided in this Ordinance and the Service and Assessment Plan and Assessment Roll; and

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Clerk in opposition to the Service and

Assessment Plan, the allocation of Costs, the Assessment Roll, and the levy of Assessments; and

WHEREAS, prior to the issuance of bonds secured by the Assessments, the owners (the "Landowners" or the "Assessed Parties") of 100% of the privately-owned and taxable property located within the District, and who are the persons to be assessed pursuant to this Ordinance, will have executed and presented to the City Council for approval and acceptance a Landowner Agreement (the "Landowner Agreement") in the form and substance acceptable to the City, in which the Assessed Parties approve and accept the Service and Assessment Plan, approve the Assessment Roll, approve this Ordinance and approve the levy of the Assessments against their property located within the District, and agree to pay the Assessments when due and payable subject to the credits provided for herein and in the Service and Assessment Plan; and

WHEREAS, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the PID Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN, TEXAS, THAT:

Section 1. Terms.

Terms not otherwise defined herein are defined in the Service and Assessment Plan substantially in the form attached hereto as Exhibit A (the "Service and Assessment Plan").

Section 2. Findings.

The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determines, and ordains, as follows:

(a) The apportionment of the Master PID Bond Authorized Improvements and the Annual Installment pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the construction of the public improvements identified in the Service and Assessment Plan, and is hereby approved;

(b) The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Authorized Improvements;

(c) The Service and Assessment Plan apportions the cost of a public improvement to be assessed against property in the District and such apportionment is made on the basis of special benefits accruing to the property because of the improvement.

(d) All of the real property in the District which is being assessed in the amounts shown in the Assessment Roll will be benefited by the services and improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property will receive special benefits in each year equal to or greater than each annual Assessment and will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;

(e) The method of apportionment of the Master PID Bond Authorized Improvements and Annual Installment associated with the Master PID Bonds set forth in the Service and Assessment Plan results in imposing equal shares of the Master PID Bond Authorized Improvements and Annual Installment associated with the Master PID Bonds on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs of the improvements;

(f) The Service and Assessment Plan should be approved as the service plan and assessment plan for the District as described in Sections 372.013 and 372.014 of the PID Act;

(g) The Assessment Roll in the form attached as Appendix A to the Service and Assessment Plan (the "Assessment Roll") should be approved as the assessment roll for the District;

(h) The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures in connection with the imposition and collection of Assessments should be approved and will expedite collection of the Assessments in a timely manner in order to provide the services and improvements needed and required for the area within the District; and

(i) A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon.

Section 3. Assessment Plan.

The Service and Assessment Plan substantially in the form attached to this Ordinance is hereby accepted and approved pursuant to the PID Act Sections 372.013 and 372.014 as the service plan and the assessment plan for the District.

Section 4. Assessment Roll.

The Assessment Roll is hereby accepted and approved pursuant to the PID Act Section 372.016 as the assessment roll of the District.

Section 5. Levy and Payment of Special Assessments for Costs of Improvement Project.

(a) The City Council hereby levies an assessment on each tract of property located within the District, as shown and described on the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll as a special assessment on the properties set forth in the Assessment Roll.

(b) The levy of the Assessments shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(c) The collection of the Assessments shall be as described in the Service and Assessment Plan.

(d) Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

(e) Each Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.

(f) Each Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.

(g) The Annual Installments for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 6. Method of Assessment.

The method of apportioning the Actual Costs is as set forth in the Service and Assessment Plan.

Section 7. Penalties and Interest on Delinquent Assessments.

Delinquent Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the PID Act and the Service and Assessment Plan.

Section 8. Prepayments of Assessments.

As provided in subsection 372.018(f) of the PID Act and in Section VI G. of the Service and Assessment Plan, the owner (the "Owner") of any Assessed Property may prepay the Assessments levied by this Ordinance.

Section 9. Lien Priority.

As provided in the Landowner Agreement, the City Council and the Landowners intend for the obligations, covenants and burdens on the Landowners of Assessed Property, including without limitation such Landowners' obligations related to payment of the Assessments and the Annual Installments, to constitute a covenant running with the land. The Assessments and the Annual Installments levied hereby shall be binding upon the Assessed Parties, as the Landowners of Assessed Properties, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the Service and Assessment Plan and the PID Act.

Section 10. Appointment of Administrator and Collector of Assessments.

(a) Appointment of Administrator.

The City Treasurer of the City or his designee is hereby appointed and designated as the initial Administrator of the Service and Assessment Plan and of the assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall constitute an Annual Installment.

(b) Appointment of Temporary Collector.

The City Treasurer of the City or his designee is hereby appointed as the temporary collector of the Assessments (the "Collector"). The Collector shall serve in such capacity until such time as the City shall arrange for the Collector's duties to be performed by any other qualified collection agent selected by the City.

Section 11. Applicability of Tax Code.

To the extent not inconsistent with this Ordinance, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code shall be applicable to the imposition and collection of Assessments by the City.

Section 12. Severability.

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

Section 13. Effective Date/Emergency.

The Council finds that the adoption of this Ordinance to provide for special assessment pledged to the payment of the special assessment revenue bonds authorized at the meeting at which this Ordinance is considered constitutes an emergency. Because of this emergency, this Ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health and safety.

[Remainder of page left blank intentionally]

PASSED AND APPROVED

§
§
§

November 3, 2011

Lee Leffingwell
Mayor

APPROVED:

ATTEST:

Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

EXHIBIT C to LANDOWNER AGREEMENT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (as amended, this "Declaration") is made as of _____, 2011, by CLUB DEAL 120 WHIPSER VALLEY, LIMITED PARTNERSHIP (the "Landowner").

RECITALS:

- A. The Landowner holds record title to the real property located in Travis County, Texas, and described on the attached Exhibit A (the "Assessed Parcels").
- B. The City Council of the City of Austin, Texas (the "City Council"), upon the receipt of a petition by the Landowner requesting the establishment of a public improvement district to be known as Whisper Valley Public Improvement District (the "District"), created the District in accordance with Chapter 372, Texas Local Government Code, as amended (the "PID Act").
- C. The City Council, pursuant to the PID Act, adopted an "Assessment Ordinance" that included a "Service and Assessment Plan" and "Assessment Roll" and levied "Assessments" against private, taxable property within the District, including the Assessed Parcels.
- D. The statutory notice required by Section 5.014 of the Texas Property Code to be given by sellers of residential property to purchasers of residential property within the District is incorporated as part of this Declaration.

DECLARATIONS:

NOW THEREFORE, Landowner, on its own behalf and on behalf of its successors and assigns hereby declares that the Assessed Parcels are, and shall be subject to and perpetually burdened by, the following covenants, conditions, and restrictions:

- 1. **Acceptance and Approval of Assessments and Assessment Liens.**
 - (a) Landowner accepts the Assessments levied against the Assessed Parcels.
 - (b) The Assessment against each Assessed Parcel (including any reassessment, the expense of collection, and reasonable attorney's fees, if incurred) is: (1) a first and prior lien (an "Assessment Lien") against the Assessed Parcel superior to all other liens or claims except liens or claims for State, county, school district, or municipal ad valorem property taxes whether now or hereafter payable; and (2) a personal liability of and charge against the owners of the Assessed Property regardless of whether the owners are named. The Assessment Lien against each Assessed Parcel is effective from the date of the Assessment Ordinance until the Assessment against the Assessed Parcel is paid and may be enforced by the City

of Austin, Texas (the "City") in the same manner as an ad valorem property tax levied against real property may be enforced by the City. The owner of each Assessed Parcel may pay, at any time, the entire Assessment levied against the Assessed Parcel. Additional Assessments may be placed on an Assessed Parcel after the initial Assessments are paid off. Foreclosure of an ad valorem property tax lien against an Assessed Parcel shall not extinguish the Assessment or any unpaid but not yet due annual installment of the Assessment and shall not accelerate the due date for any unpaid and not yet due annual installment of the Assessment.

- (c) The obligations of each Landowner to pay the Assessments (including each annual installment thereof, as adjusted, decreased, or extended) levied against the Assessed Parcels (as set forth in the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll, each as amended) are covenants that run with the Assessed Property and specifically bind Landowner and its successors and assigns.
- (d) In the event of a delinquency in the payment of any annual installment of an Assessment for an Assessed Parcel, the City is empowered to institute an action in district court to foreclose the related Assessment Lien, to enforce personal liability against the owner of the Assessment Parcel for the Assessment, or both. In such action the Assessed Parcel subject to the delinquent Assessment may be sold at judicial foreclosure sale for the amount of such delinquent property taxes and Assessment, plus penalties, interest, and costs of collection.

2. Waivers. Landowner unconditionally waives:

- (a) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the District, defining the Assessed Parcels, adopting the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll, levying of the Assessments, and determining the amount of the annual installments of the Assessments;
- (b) any and all notices and time periods provided by the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the approval of the Assessment Ordinance, Service and Assessment Plan, and Assessment Role and regarding the levying of the Assessments determining the amount of the annual installments of the Assessments;
- (c) any and all actions and defenses against the adoption or amendment of the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;
- (d) any and all actions and defenses against the City's finding of "special benefit" pursuant to the PID Act and as set forth in the Service and Assessment Plan and the levying of the Assessments and determining the amount of the annual installments of the Assessments; and

- (e) any right to object to the legality of the Assessment Ordinance, Service and Assessment Plan, Assessment Roll, or Assessments or to any proceedings connected therewith.
3. **Amendments.** This Declaration may be terminated or amended only by a document duly executed and acknowledged by the City and by the then-current owners of all Assessed Parcels burdened by this Declaration. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners and recorded in the Real Property Records of Travis County, Texas.
4. **Third Party Beneficiary:** The City is a third party beneficiary to this Declaration and may enforce its terms.
5. **Texas Property Code Section 5.014 Notice.**

**NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT
DISTRICT ASSESSMENT TO THE CITY OF AUSTIN, TRAVIS
COUNTY, TEXAS, CONCERNING ASSESSED PARCELS.**

As the purchaser of a parcel of residential real property located in a public improvement district, you are obligated to pay an Assessment to the City of Austin, Texas, for improvement projects undertaken by the district under Chapter 372, Local Government Code. The amount of the Assessment against your parcel is based on [insert assessment methodology]. Information about the Assessment (such as its due date or how it is paid) may be obtained by contacting the City. The Assessment against your parcel will be determined as follows:

[Insert assessments]

The Assessment against your parcel may be paid in full at any time together with interest through the date of payment. If you do not elect to pay the Assessment in full, it will be due and payable in annual installments, including interest and collection costs. Your failure to pay the Assessment or any annual installment could result in a lien on and the foreclosure of your parcel.

_____ Purchaser	Date: _____
_____ Purchaser	Date: _____

6. **Release of Declaration.** Once Assessments are paid in full on an Assessed Parcel, this Declaration shall be released as to that Assessed Parcel. Upon the request of the owner of said Assessed Parcel, the City shall execute documentation evidencing such Assessed Parcel's release from the terms and conditions of this Declaration and such release shall be recorded (at the owner's expense) in the Official Public Records of Travis County, Texas.

[Signature Page Follows]

EXECUTED by the undersigned on the dates set forth below to be effective as of the date first above written.

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
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared Douglas H. Gilliland, Manager of CD120 GP, LLC, a Delaware limited liability company, general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said entity.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____, 2011.

Notary Public, in and for the State of Texas

Exhibit A to
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
Description of the Assessed Parcels

PARCEL DESCRIPTIONS	TAX ACCOUNT NUMBER	ASSESSMENT PER LOT/PARCEL
Parcel 1	806424	\$
Parcel 2	806425	\$
Parcel 3	806426	\$
Parcel 4	806427	\$
Parcel 5	806428	\$
Parcel 6	806429	\$
Parcel 7	806430	\$
Parcel 8	806431	\$
Parcel 9	806432	\$
Parcel 10	201773	\$
Parcel 11	201746	\$

**EXHIBIT D to LANDOWNER AGREEMENT
HOMEBUYER EDUCATION PROGRAM**

As used in this Exhibit D, the term "Recorded Notices" shall mean: (i) the Notice of Creation of Special Assessment District, (ii) the Imposition of Special Assessment, and (iii) the Declaration set forth as Exhibit C of this Agreement. Any Landowner who is a Builder:

1. shall include, as an attachment, addendum, or exhibit to each residential homebuyer's contract to purchase an Assessed Parcel, a copy of (i) the Recorded Notices and (ii) the Assessment Roll applicable to the Assessed Parcel being purchased or, if the Assessment Roll is not available, then a written schedule showing the amount of the Assessment against the Assessed Parcel being purchased, including the amounts of the annual installments required to pay the Assessment;
2. shall prominently display signage in each of its model homes giving notice of the Recorded Notices to prospective residential homebuyers and making copies of the Recorded Notices available to them;
3. shall make available in each of its model homes copies of informational materials prepared and provided by the City for prospective residential homebuyers (subject to the reasonable approval of the Landowner) regarding the existence of the District; and
4. and who estimates monthly ownership costs for prospective residential homebuyers shall include in such estimates the amount of the annual installments required to pay the Assessment for the Assessed Parcel being purchased.

EXHIBIT E

CONTINUING DISCLOSURE AGREEMENT

**CITY OF AUSTIN, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)**

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement dated as of November 1, 2011 (this "Disclosure Agreement") is executed and delivered by and among the City of Austin, Texas (the "Issuer") and Deutsche Bank National Trust Company (the "Trustee") and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (the "Developer") with respect to the Issuer's Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) (the "Bonds"). The Issuer, the Trustee and the Developer covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Trustee and the Developer for the benefit of the Owners and beneficial owners of the Bonds.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture of Trust dated as of November 1, 2011 (the "Indenture"), which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Bond Disclosure Report" shall mean any Annual Bond Disclosure Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Disclosure Representative" shall mean the City Treasurer of the Issuer and the general partner of the Developer or his or her designee, or such other officer or employee as the Issuer or the Developer, as applicable, may designate in writing to the Trustee from time to time.

"Dissemination Agent" shall mean the Trustee, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

"District" means the Whisper Valley Public Improvement District established by the Issuer and related to the Bonds.

"Fiscal Year" means the calendar year from October 1 through September 30.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"MSRB" means the Municipal Securities Rulemaking Board.

“Owner” means the registered owner of any Bonds.

“Participating Underwriter” shall mean Piper Jaffray & Co. and its successors and assigns.

“Responsible Officer” shall mean, in the case of the Trustee, the officer or officers specifically administering the Indenture.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax liability.

“Trustee” shall mean Deutsche Bank National Trust Company, or any successor trustee pursuant to the Indenture.

SECTION 3. Provision of Annual Bond Disclosure Reports.

(a) The Issuer and the Developer shall cause and hereby direct the Dissemination Agent to, not later than six months after the end of the Issuer’s Fiscal Year, commencing with the Fiscal Year ending in 2011, provide to the MSRB, in the electronic or other form required by the MSRB, an Annual Bond Disclosure Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. In each case, the Annual Bond Disclosure Report may be submitted as single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the balance of the Annual Bond Disclosure Report, and later than the date required in this paragraph for the filing of the Annual Bond Disclosure Report if audited financial statements are not available by that date and unaudited financial statements are submitted not later than six months after the end of the Issuer’s Fiscal Year. If the Issuer’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(d). All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

(b) Not later than ten (10) Business Days prior to the date specified in subsection (a) for providing the Annual Bond Disclosure Report to the MSRB, the Dissemination Agent shall provide the Annual Bond Disclosure Report to the Issuer, the Developer and the Trustee. If by the date specified in this subsection 3(b), the Trustee has not received a copy of the Annual Bond Disclosure Report, the Trustee shall contact the Issuer, the Developer and the Dissemination Agent to determine if the Issuer and the Developer are intending to comply with subsection (a).

(c) If the Trustee is able to verify that an Annual Bond Disclosure Report has not been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) on behalf of the Issuer prepare and file the Annual Bond Disclosure Report (excluding the audited financial statements of the Issuer, if any, which shall be filed by the Dissemination Agent upon receipt from the Issuer) containing or incorporating by reference the information set forth in Section 4 hereof; and

(ii) file a report with the Issuer, the Developer and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Bond Disclosure Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content of Annual Bond Disclosure Reports. The Annual Bond Disclosure Report for the Bonds shall contain or incorporate by reference, and the Issuer and the Developer agree to provide or cause to be provided to the Dissemination Agent, the following:

(a) If prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If audited financial statements of the Issuer are not available by the date required by Section 3(a), the Issuer shall provide unaudited financial statements not later than such date.

(b) Tables setting forth the following information, as of the end of such Fiscal Year:

(i) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount and principal amount remaining Outstanding.

(ii) The amounts in the funds and accounts securing the Bonds and a description of the related investments.

(c) Updates to the information in the final Service and Assessment Plan ("SAP").

(d) Listing of any District property or property owners representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, all as of the previous October 1.

(e) The result of any foreclosure sales of assessed property within the District.

(f) Any changes to the identity of the Administrator.

(g) The total amount of Assessments on all property subject to Assessments by the Issuer as of the first and last days of such Fiscal Year, together with the amount of Assessments prepaid during such Fiscal Year.

(h) The amount of Annual Installments levied during such Fiscal Year, and assessed valuation and Assessments for all parcels within the District, as of the previous October 1.

(i) The amount of Assessments collected from the property owners during such Fiscal Year.

(j) The amount of Assessment delinquencies greater than six months, one year and two years, and, if delinquencies amount to more than five percent (5%) of aggregate amount of Assessments due in any year, a list of property owners whose Assessments are delinquent.

(k) The amount of delinquent Assessments by Fiscal Year: (1) which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted); (2) which are currently subject to foreclosure proceeding which have not been concluded; (3) which have been reduced to judgment but not collected; and (4) which have been reduced to judgment and collected and the results of any foreclosure sales of assessed property within the District.

(l) The principal and interest paid on the Bonds during the most recent Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year;

(m) Any changes to the methodology for levying the Assessments in the District since the report of the most recent Fiscal Year;

(n) Any changes to the land use designation for the property in the District that might negatively impact its development for those purposes identified in the final SAP, as the same may be amended and supplemental from time to time.

(o) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer's financial statements.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraph.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults.
3. Modifications to rights of Bondholders.
4. Optional or unscheduled redemptions or repayments of the Bonds.

5. Defeasances.
6. Rating changes.
7. Unscheduled draws on debt service reserves reflecting financial difficulties.
8. Unscheduled draws on credit enhancements reflecting financial difficulties.
9. Substitution of credit or liquidity providers, or their failure to perform.
10. Release, substitution, or sale of property securing repayment of the Bonds.

11. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.

12. Tender offers to any Bondholder.

13. Bankruptcy, insolvency, receivership or similar event of the Issuer or the Developer.

14. The consummation of a merger, consolidation, or acquisition of the Issuer or the Developer, or the sale of all or substantially all of the assets of the Issuer or the Developer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

15. Appointment of a successor or additional trustee under the Indenture or the change of name of a trustee.

Whenever the Issuer or the Developer obtains knowledge of the occurrence of a Listed Event under number 1, 5, 6, 7, 8, 9, 11, 12, 13 or 14 above, it shall promptly notify the Trustee in writing and the Issuer shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Whenever the Issuer or the Developer obtains knowledge of any other Listed Event (under number 2, 3, 4, 10, or 15 above), it shall promptly determine if such event would constitute material information to the Owners of the Bonds. If the Issuer determines that knowledge of the event would be material, it shall immediately notify the Developer, the Trustee and the Dissemination Agent in writing and shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the two (2) preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the

Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures.

(b) The Trustee shall, within one (1) Business Day of a Responsible Officer obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative of such Listed Event. It is agreed and understood that the duty to make the disclosures herein is that of the Issuer or the Developer and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Trustee has agreed to give the foregoing notice to the Issuer and the Developer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, "actual knowledge" means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Trustee be liable in damages or in tort to the Participating Underwriter, the Issuer, the Developer or any Bondholder or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a request under subsection (b), the Issuer determines that the Listed Event under number 2, 3, 4, 10, or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly notify the Developer, the Dissemination Agent and the Trustee in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (d).

(d) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall immediately file a notice of such occurrence with the MSRB.

SECTION 6. Quarterly Reporting Obligations of the Developer. The Developer shall provide, or cause to provide at its cost and expense, to the Administrator and the Dissemination Agent (if different from the Administrator) the information described in this Section 6, and the Dissemination Agent shall, upon receipt from the Developer or its designee, promptly provide such information to the MSRB. The Developer shall provide, or cause to be provided, the information described in paragraphs (i) through (vii) below during the period from the delivery of the Bonds until the later of December 31, 2015 or until such time as the Developer no longer is responsible for the payment of Assessments equal to at least 15% of the annual debt service of the Bonds for any year. Thereafter, the Developer shall provide, or cause to be provided, the information described in paragraph (iv) below until its obligation under this Disclosure Agreement terminates. Such information shall be provided not later than thirty (30) days after each January 1, April 1, July 1 and October 1 (beginning January 1, 2012), and shall include information concerning:

(i) Statement with respect to the Developer or any affiliate of the Developer as to the status of development loans and any permanent financing with respect to any development undertaken by the Developer in the District not financed with Bond proceeds, including loan balance, interest rate, existence of deeds of trust or other similar encumbrances against the property within the District, existence of any default and remaining term;

(ii) Statement as to available funds to complete the District development under construction as contemplated (both Bond financed and non-Bond financed development undertaken by the Developer or any affiliate of the Developer);

(iii) Status of lot sales by type and pricing, as well as anticipated future absorption sales;

(iv) Update of lot ownership composition as set forth within the SAP as well as the number of homes which are completed and/or under construction;

(v) A statement as to material changes, if any, in the form, organization or controlling ownership of the Developer;

(vi) The status of any governmental approvals (other than customary home building permits required after a delivery of a finished lot) required for completion of improvements within the District; and

(vii) Any information regarding the Improvement Projects or other information as may be reasonably requested by the Administrator relating to the ability of the Developer or any affiliate of the Developer to fulfill its obligations under the Indenture or the SAP.

Additionally, the Developer or the Issuer, as applicable, shall provide or cause to be provided filings by the construction manager (who shall be retained by the Developer on a contractual basis or, if there is a failure of the Developer to complete the Improvement Projects and the Issuer assumes construction management, by the Issuer) as follows:

1. Design-Engineering and Construction Project Funds

For each of the Improvement Projects the construction manager will establish an accounting and budgeting system that will show:

(viii) Total expected design and engineering costs;

(ix) Total expected construction budget;

(x) Construction budget allocated to progress "Milestones;"

(xi) Expected design completion date;

(xii) Forecast "bidding" schedule;

(xiii) Forecast commencement of construction;

(xiv) Forecast construction "Milestones" of progress;

(xv) Forecast completion date; and

(xvi) Forecast Issuer acceptance date.

The construction manager shall prepare, within 90 days of the Bond closing, a schedule reflecting the nine points listed above for each of the primary Improvement Projects to be funded by the Bond proceeds, including:

1. Water Line 1;
2. Water Line 2;
3. the Wastewater Interceptor Line;
4. the Wastewater Treatment Plant;
5. Decker Road; and
6. Braker Lane.

Monthly design and construction expenditure progress reports, reflecting the nine points listed above, will be summarized on a quarterly basis and sent to the Trustee, reflecting the progress and conformance with the overall project budget. These quarterly reports will be filed with the Dissemination Agent. Budget overruns in excess of \$250,000 or delays of greater than 60 days will be highlighted and explained and the Developer shall include a plan to remedy the situation.

SECTION 7. Event Reporting Obligations of Developer. Whenever the Developer or an affiliate of the Developer obtains actual knowledge of the occurrence of one or more of the following events, the Developer shall notify, or cause such affiliate to notify, the Administrator and Dissemination Agent (if different from the Administrator) of such occurrences and the Dissemination Agent shall immediately report and file a notice of such event in the manner as provided in Section 5 for the Listed Events specified therein:

(i) Failure to pay any real property taxes or Assessments levied within the District on a parcel owned by the Developer, or an affiliate of the Developer

(ii) Material damage to or destruction of any development or improvements within the District;

(iii) Material default by the Developer or any affiliate of the Developer on any loan with respect to the development or permanent financing of District development undertaken by the Developer or any affiliate of the Developer;

(iv) Material default by the Developer or any affiliate of the Developer on any loan secured by property within the District owned by the Developer or any affiliate of the Developer;

(v) The bankruptcy filing of the Developer or of any affiliate of the Developer or any determination that the Developer or any affiliate of the Developer is unable to pay its debts as they become due;

(vi) The filing of any lawsuit with claim for damage, in excess of \$1,000,000 against the Developer or any affiliate of the Developer which may adversely affect the completion of the District development or litigation which would materially adversely affect the financial condition of the Developer or any affiliate of the Developer; and

(vii) Any change in the legal structure, chief executive officer or controlling ownership of the Developer or any affiliate of the Developer.

For purposes of Section 6 and 7, the term “affiliate” shall mean an entity that owns property within the District and is controlled by, controls, or is under common control of the Developer.

SECTION 8. Termination of Reporting Obligations. The Issuer’s and the Developer’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to such series under Section 5(d).

SECTION 9. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be the Deutsche Bank National Trust Company.

SECTION 10. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer, the Developer and the Trustee may amend this Disclosure Agreement with consent of Dissemination Agent (and the Trustee shall not unreasonably withhold its consent to any amendment so requested by the Issuer and the Developer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Bond Disclosure Report, and shall

include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(d), and (ii) the Annual Bond Disclosure Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Trustee may be made without its consent (which consent will not be unreasonably withheld or delayed).

SECTION 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Bond Disclosure Report or notice of occurrence of a Listed Event.

SECTION 12. Default. In the event of a failure of the Issuer, the Developer or the Trustee to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, upon being indemnified to its satisfaction as provided in the Indenture), or any Owner or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to cause the Issuer, the Developer or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer, the Developer or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 13. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Neither the Trustee nor the Dissemination Agent shall have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent or the Trustee. To the extent permitted by law, the Issuer and the Developer agree to hold harmless the Dissemination Agent, its officers, directors, employees and agents, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Issuer and the Developer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that either the Trustee or the Dissemination Agent is an "obligated person" under the Rule. Neither the Trustee nor the Dissemination Agent is acting in a fiduciary capacity in connection with the performance of their respective obligations hereunder. The fact that the Trustee may have a

banking relationship with the Issuer or the Developer or any person with whom the Issuer or the Developer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Trustee or a Responsible Officer thereof has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Trustee pursuant to this Disclosure Agreement or the Indenture. Neither the Trustee nor the Dissemination Agent shall in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Trustee hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to them and believed to be genuine and to have been signed or presented by the proper party or parties.

The Trustee and the Dissemination Agent may, from time to time, consult with legal counsel of their own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE TRUSTEE, THE DEVELOPER, OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, THE DEVELOPER, THE DISSEMINATION AGENT OR THE TRUSTEE, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE TRUSTEE IS UNDER NO OBLIGATION NOR IS IT REQUIRED TO BRING SUCH AN ACTION.

SECTION 14. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments.

SECTION 15. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Developer, the Trustee, the Dissemination Agent, the Participating Underwriter and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[remainder of page left blank intentionally]

CITY OF AUSTIN, TEXAS

By: _____
MARC OTT, City Manager

DEUTSCHE BANK NATIONAL TRUST
COMPANY
(as Trustee and Dissemination Agent)

By: _____
Authorized Officer

CLUB DEAL 120 WHISPER VALLEY,
LIMITED PARTNERSHIP, a Delaware Limited
Partnership qualified to do business in Texas

By: CD 120 GP, LLC, a Delaware limited liability
company qualified to do business in Texas

By: _____

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE
ANNUAL BOND DISCLOSURE REPORT**

Name of Issuer: City of Austin, Texas

Name of Bond Issue: Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District)

Date of Delivery: _____, 2011

NOTICE IS HEREBY GIVEN that the City of Austin, Texas has not provided an Annual Bond Disclosure Report with respect to the above-named bonds as required by the Continuing Disclosure Agreement dated as of _____, 2011, between the Issuer, Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (the "Developer"), and Deutsche Bank National Trust Company, as trustee. The Issuer anticipates that the Annual Bond Disclosure Report will be filed by _____.

Dated: _____

_____, on behalf of the City of
Austin, Texas

By: _____

Title: _____

cc: City of Austin, Texas

EXHIBIT B

CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

ANNUAL BOND DISCLOSURE REPORT*

Delivery Date: _____, 20__

TRUSTEE

Name: _____

Address: _____

City: _____

Telephone: _____

Contact Person: _____

BONDS OUTSTANDING

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Accrued Interest

INVESTMENTS

Fund/ Account Name	Investment Type	Principal Balance	Accrued Interest	Investment Rate	Maturity Date

*Excluding Audited Financial Statements of the Issuer

ASSETS & LIABILITIES OF PLEDGED TRUST ESTATE

Bonds (Principal Balance)	_____
Funds and Accounts [list]	_____
Accrued Interest (if any)	_____
TOTAL ASSETS	_____

LIABILITIES

Outstanding Bond Principal	_____
Accrued Interest (if any)	_____
Outstanding Program Expenses (if any)	_____
TOTAL LIABILITIES	_____

EQUITY

Assets Less Liabilities	_____
Parity Ratio	_____

Form of Accounting ☐ Cash ☐ Accrual ☐ Modified
Accrual

ITEMS REQUIRED BY SECTION 4(c) - (p)
[Insert a line item for each applicable listing]

EXHIBIT C

BASIC TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES

<u>Date:</u>	<u>Delinquency Clock:</u>	<u>Activity</u>
Prior to February 1		Assessments are due
February 1	1	Issuer to have received Assessment payments
		Assessments Delinquent if not received
February 5	5	Issuer to forward payments to Trustee as soon as possible after received
February 15	15	Issuer and/or Administrator should be aware of actual and specific delinquencies
February 20	20	Issuer should be aware if Reserve Fund needs to be utilized for debt service payment on March 1. If there is to be a shortfall, the Trustee should be immediately notified and EMMA should be notified.

Issuer should also be aware if, based on collections; there will be a shortfall for September payment.

Issuer and/or Administrator should determine if previously collected surplus funds plus actual collections will be fully adequate for debt service in March and September.

At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payment, no further action is anticipated for collection of Assessments except that Administrator, working with the City Attorney or an appropriate designee, will send supplemental billings/demand letters at least monthly to all delinquent property owners. **For properties delinquent by more than one year or if the delinquency exceeds \$10,000 the matter will be referred for commencement of foreclosure.**

If there are over 5% delinquencies or if there is inadequate funding in the Pledged Revenue Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payment, the collection-foreclosure procedure will proceed against all delinquent properties.

March 1

30

Bond interest payment due from January collections.

Reserve Fund payment to Bond Fund may well be required if Assessments are below approximately 50% collection rate

EMMA to be notified if Reserve Fund utilized

for debt service.

Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.

March 5	35	Issuer to notify Trustee for disclosure to EMMA of all delinquencies.
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March 5	35	If any property owner with ownership of property responsible for more than \$10,000 of the Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the City Treasurer shall work with City Attorney's office, or the appropriate designee, to commence the collection process for all delinquent Assessments.
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April 15	75	Issuer shall notify Trustee (Trustee shall notify EMMA) of the plan of collections and foreclosure.
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May 1	90	Preliminary Foreclosure activity commences with final demand letters and commencement of actual foreclosure analysis including ordering of title reports, etc.
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If Trustee has not received Foreclosure Schedule and Plan of Collections, Trustee to request same from Issuer.

May 10	100	If Issuer has not provided Trustee with Foreclosure Schedule and Plan of Collections, bondholders (via EMMA) to be notified that foreclosure has not commenced and Trustee to again request that Issuer commence foreclosure or provide plan for collection.
June 1	120	The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Trustee for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 30 (day 149).
June 30	149	Foreclosure action to be filed with the Courts.
July 1	150	Trustee notified of Foreclosure filing status and notifies EMMA and bondholders.
July 15	160	If bondholders and Trustee have not been notified of a foreclosure action, Trustee will notify bondholders (via EMMA) and Issuer that it is appropriate to file action.

A committee of not less than 25% of the bondholders may request a meeting with the City Treasurer to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day 30 if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed 5%, bondholders may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the bondholders may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Assessments.