# ORDINANCE NO. 20111103-055

**AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT); APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT; AN OFFICIAL STATEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS,** the City of Austin, Texas (the "City"), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the "PID Act"), has previously established the "Whisper Valley Public Improvement District" (the "District"), pursuant to Resolution No. 20100826-026 adopted by the City Council of the City (the "City Council") on August 26, 2010; and

**WHEREAS**, pursuant to the PID Act, the City Council published notice and held a public hearing on August 4, 2011 regarding the levy of special assessments within the District and on November 3, 2011 adopted Ordinance No. 20111103-012 (the "Assessment Ordinance"); and

**WHEREAS**, in the Assessment Ordinance, the City Council approved and accepted the "Service and Assessment Plan" (as defined and described in the Assessment Ordinance, the "Service and Assessment Plan") relating to the District and levied the "Assessments" (as defined in the Assessment Ordinance, the "Assessments") against the "Assessment Roll" (as defined and described in the Assessment Ordinance, the "Assessment Roll"). Capitalized terms used in this preamble and not otherwise defined shall have the meaning assigned thereto in the Service and Assessment Plan; and

**WHEREAS**, the City is authorized by the PID Act to issue its revenue bonds payable from the Assessments and other revenues received for the purposes of (i)

paying the costs of the Master PID Bond Authorized Improvements identified in the Service and Assessment Plan, (ii) paying interest on bonds during and after the period of acquisition and construction of the improvement projects, and (iii) establishing such other funds and accounts as described in the Indenture (defined below) or as may be required in connection with the issuance of such bonds; and

**WHEREAS**, the City Council has found and determined that it is in the best interests of the City to issue its bonds to be designated "City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District)" (the "Bonds"), such series to be payable from and secured by the Pledged Revenues, as defined in the Indenture; and

**WHEREAS**, the City Council has found and determined to (i) approve the issuance of the Bonds to finance the Authorized Improvements identified in the Service and Assessment Plan, (ii) approve the form, terms and provisions of an indenture of trust securing the City's bonds authorized hereby, (iii) approve the form, terms and provisions of a Bond Purchase Agreement (defined below) between the City and the purchasers of the Bonds, (iv) approve the form, terms and provisions of a Financing Agreement (defined below), (v) approve the form, terms and provisions of a Landowner Agreement (defined below), (vi) approve the form, terms and provisions of a Security, Assignment and Pledge Agreement (defined below), (vii) approve the form, terms and provisions of a First Amendment (defined below) to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, and (viii) approve the form, terms and provisions of a Third Amendment (defined below) to the Cost Reimbursement Agreement, (ix) approve an Official Statement (defined below), and (x) approve a Continuing Disclosure Agreement (defined below) relating to the Bonds and the Assessments between the City and Club Deal 120 Whisper Valley L.P., a Delaware limited partnership (the "Developer"); and

**WHEREAS**, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

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

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.

Section 2. Approval of Issuance of Bonds and Indenture of Trust.

(a) The issuance of the Bonds in the principal amount of $18,485,168.10 for the purpose of providing funds for (i) paying the costs of the Master PID Bond Authorized Improvements identified in the Service and Assessment Plan, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Master PID Bond Authorized Improvements, and (iii) establishing such other funds and accounts as described in the Indenture (defined below) or as may be required in connection with the issuance of such Bonds, is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust (the "Indenture") dated as of November 1, 2011, between the City and Deutsche Bank National Trust Company, as trustee (the "Trustee"), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor or Mayor Pro Tem of the City, such approval to be evidenced by the execution and delivery of the Indenture which Indenture is hereby approved in the substantially final form attached hereto as Exhibit A and incorporated herein as a part hereof for all purposes. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute the Indenture and the City Clerk or Deputy City Clerk is hereby authorized and directed to attest such signature of the Mayor or Mayor Pro Tem.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal or maturity amounts, shall bear interest, shall be subject to redemption and shall have such other terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture with such insertions, omissions and modifications as may be required to conform the form of bond to the actual terms of the Bonds. The Bonds shall be payable from and secured by the Pledged Revenues (as defined in the Indenture) and other assets of the "Trust Estate" (as defined in the Indenture) pledged to such series, and shall never be payable from ad valorem taxes.

Section 3. Sale of Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold to Piper Jaffray (the "Underwriter") at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the "Bond Purchase Agreement"), dated the date hereof, between the City and the Underwriter, attached hereto as Exhibit B and incorporated herein as a part hereof for all purposes, which terms of sale are declared to be in the best interests of the City.. The form, terms and provisions of the Bond Purchase Agreement are hereby authorized and approved and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. The Mayor's or Mayor Pro Tem's signature on the Bond Purchase Agreement may be attested by the City Clerk or Deputy City Clerk.

Section 4. Approval of Financing Agreement. That certain Whisper Valley Public Improvement District Financing Agreement (the "Financing Agreement"), between the City and the Developer is hereby authorized and approved in the substantially final form attached hereto as Exhibit C and incorporated herein as a part hereof for all purposes and the City Manager or an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such Financing Agreement with such changes as may be required to carry out the purposes of this Ordinance and approved by the City Manager or Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 5. Approval of Landowner Agreement. That certain Landowner Agreement (the "Landowner Agreement"), between the City and the Developer is hereby authorized and approved in the substantially final form attached hereto as Exhibit D and incorporated herein as a part hereof for all purposes and the City Manager or an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such Landowner Agreement with such changes as may be required to carry out the purposes of this Ordinance and approved by the City Manager or an Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 6. Approval of Security, Assignment and Pledge Agreement. That certain Security, Assignment and Pledge Agreement (the "Security Agreement"), between the City, and the Developer is hereby authorized and approved in the substantially final form attached hereto as Exhibit E and incorporated herein as a part hereof for all purposes and the City Manager or an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such Security Agreement with such changes as may be required to carry out the purposes of this Ordinance and approved by the City Manager or Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 7. Approval of First Amendment. That certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (the "First Amendment"), between the City and the Developer, together with any document attached to the First Amendment as an exhibit, are hereby authorized and approved in the substantially final form attached hereto as Exhibit F and incorporated herein as a part hereof for all purposes and the City Manager and an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such First Amendment as well as any document which is an exhibit to the First Amendment with such changes as may be required to carry out the purposes of this Ordinance and approved by the City Manager of an Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 8. Approval of Third Amendment. That certain Third Amendment to the Cost Reimbursement Agreement (the "Third Amendment"), between the City and the Developer is hereby authorized and approved in the substantially final form attached hereto as Exhibit G and incorporated herein as a part hereof for all purposes and the City Manager or an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such Third Amendment with such changes as may be required to carry out the purposes of this Ordinance and approved by the City Manager or an Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 9. Official Statement. The form and substance of the Preliminary Official Statement for the Bonds and any addenda, supplement or amendment thereto and the final Official Statement (the "Official Statement") presented to and considered at the meeting at which this Ordinance is considered are hereby in all respects approved and adopted. The Mayor or Mayor Pro Tem is hereby authorized and directed to execute such Official Statement with such changes and alterations therein as the Mayor or Mayor Pro Tem may approve, such approval to be conclusively evidenced by such execution thereof. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor or Mayor Pro Tem of the City and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds. The City Clerk or Deputy City Clerk is hereby authorized and directed to include and maintain a copy of the Preliminary Official Statement and Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement in the offering of the Bonds is hereby ratified, approved and confirmed. Notwithstanding the execution, approval and delivery of such Preliminary Official Statement and

Official Statement by the Mayor or Mayor Pro Tem, the Mayor or Mayor Pro Tem and this City Council are not responsible for and proclaim no specific knowledge of the information contained in the Preliminary Official Statement and Official Statement pertaining to the Whisper Valley Project, the Developer or its financial ability, any builders, any landowners, or the appraisal of the property in the District.

Section 10. Continuing Disclosure Agreement. That certain Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City, Deutsche Bank National Trust Company, and the Developer is hereby authorized and approved in substantially final form attached hereto as Exhibit H and incorporated herein as a part hereof for all purposes and the City Manager or an Assistant City Manager of the City is hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager or an Assistant City Manager, such approval to be evidenced by the execution thereof.

Section 11. Additional Actions. The Mayor, the Mayor Pro Tem, the City Manager, Assistant City Manager, the Chief Financial Officer, the City Treasurer, the City Clerk and the Deputy City Clerk are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the City Manager, Assistant City Manager, the Chief Financial Officer, the City Treasurer, the City Clerk and the Deputy City Clerk are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

Section 12. Effective Date. This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, and shall be effective immediately upon its passage and adoption.

*[remainder of page left blank intentionally]*

**PASSED AND APPROVED** §
§
§

November 3, 2011

Lee Leffingwell
Mayor

**APPROVED:**

Karen M. Kennard
City Attorney

**ATTEST:**

Shirley A. Gentry
City Clerk

# EXHIBIT A

# INDENTURE OF TRUST

# INDENTURE OF TRUST

**By and Between**

**CITY OF AUSTIN, TEXAS**

**and**

**DEUTSCHE BANK NATIONAL TRUST COMPANY,**
**as Trustee**

**DATED AS OF NOVEMBER 1, 2011**

**SECURING**

**$18,485,168.10**

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

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# INDENTURE OF TRUST

THIS INDENTURE, dated as of November 1, 2011, is by and between the CITY OF AUSTIN, TEXAS (the "City"), and Deutsche Bank National Trust Company, as trustee (together with its successors, the "Trustee"). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Article I.

WHEREAS, a petition was submitted by the Developer and filed with the City Clerk of the City (the "City Clerk") 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 located in the extraterritorial jurisdiction 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 is 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 improvement projects and services described in the petition as required by Sec. 372.009 of the PID Act and on August 26, 2010, the City Council made the findings required by Sec. 372.009(b) of the PID Act and, by Resolution No. 20100826-026, adopted by a majority of the members of the City Council, authorized the District in accordance with its finding as to the advisability of the improvement projects 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 of a public hearing in a newspaper of general circulation in 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, mailed 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 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 Service and Assessment Plan, the Assessment Roll, and the Assessments, 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, at the August 4, 2011 public hearing referenced above, 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 the Assessments; 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, approved and accepted the Service and Assessment Plan in conformity with the requirements of the PID Act and adopted the Assessment Ordinance and therein levied the Assessments; and

WHEREAS, the City Council hereby finds and determines that the Assessment Roll and the Service and Assessment Plan should be approved and that the Assessments should be levied as provided in the Service and Assessment Plan and the Assessment Roll; and

WHEREAS, the City Council is authorized by the PID Act to issue its revenue bonds payable from the Assessments and from other revenue to be received from the Developer for the purpose of (i) paying the Costs of the Improvement Projects, (ii) paying interest on the Bonds during and after the period of acquisition and construction of the Improvement Projects, and (iii) funding a reserve fund for payment of principal and interest on Bonds and for funding other funds as provided in Section 6.2; and

WHEREAS, the City Council now desires to issue its revenue bonds, in accordance with the PID Act, such bonds to be entitled "City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District)," (the "Bonds"), such Bonds being payable solely from the Assessments and other funds pledged under this Indenture to the payment of the Bonds and for the purposes set forth in this preamble, provided, however, that the use of the Assessments to pay the Bonds is subject and subordinate to the use of the Assessments to pay the City's outstanding Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) (the "Senior Bonds"), which are being issued concurrently with the issuance of the Bonds and to fund the funds and accounts associated with the Senior Bonds being issued concurrently with the issuance of the Bonds; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms set forth in this Indenture;

NOW, THEREFORE, the City, in consideration of the foregoing premises and acceptance by the Trustee of the trusts herein created, of the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, PLEDGE, TRANSFER, ASSIGN, and DELIVER to the Trustee for the benefit of the Owners, a security interest in all of the moneys, rights and properties described in the Granting Clauses hereof, as follows (collectively, the "Trust Estate"):

FIRST GRANTING CLAUSE

The Pledged Revenues, as herein defined, and all moneys and investments held in the Pledged Funds, including any contract or any evidence of indebtedness related thereto or other rights of the City to receive any of such moneys or investments, whether now existing or hereafter coming into existence, and whether now or hereafter acquired; and

SECOND GRANTING CLAUSE

Any and all other property or money of every name and nature which is, from time to time hereafter by delivery or by writing of any kind, conveyed, pledged, assigned or transferred, to the Trustee as additional security hereunder by the City or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property or money at any and all times and to hold and apply the same subject to the terms thereof;

TO HAVE AND TO HOLD the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors or assigns;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the benefit of all present and future Owners of the Bonds from time to time issued under and secured by this Indenture, and for enforcement of the payment of the Bonds in accordance with their terms, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture;

PROVIDED, HOWEVER, that if and to the extent Assessments have been prepaid, the real property associated with such Assessment prepayment shall be released from the Trust Estate and shall no longer constitute a part of the Trust Estate;

PROVIDED, FURTHER, HOWEVER, if the City or its assigns shall well and truly pay, or cause to be paid, the Accreted Value of the Bonds at the times and in the manner stated in the Bonds, according to the true intent and meaning thereof, then this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect;

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and the Trust Estate hereby created, assigned, and pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners from time to time of the Bonds as follows:

## ARTICLE I

## DEFINITIONS, FINDINGS AND INTERPRETATION

Section 1.1. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Indenture, the following terms shall have the meanings specified below:

"Account" means any of the accounts established pursuant to Section 6.1 of this Indenture.

"Accreted Value", as used herein with respect the Bonds, shall mean the original principal amount of a Bond plus the initial premium, if any, paid therefor with interest thereon compounded semiannually to June 1 and December 1, as the case may be, next preceding the date of such calculation (or the date of calculation, if such calculation is made on June 1 or December 1), at the respective stated yield(s) stated above therefor and, with respect to each $5,000 Accreted Value at maturity, as set forth in the Accreted Value table attached hereto as Schedule I and incorporated herein by reference as a part hereof for all purposes. For any day other than a June 1 and December 1, the Accreted Value of a Bond shall be determined by a straight-line interpolation between the values for the applicable semiannual compounding dates (based on 30-day months).

"Administrative Fund" means that Fund established by Section 6.1 and administered pursuant to Section 6.9 hereof.

"Administrator" means an employee or designee of the City who shall have the responsibilities provided in the Service and Assessment Plan, this Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

"Annual Collection Costs" mean the following actual or budgeted costs, as applicable, related to the annual collection costs of outstanding Assessments paid in installments, including the costs or anticipated costs of: (i) issuing, refunding or refinancing bonds, (ii) computing, levying, collecting and transmitting the Assessments (whether by the City, the Administrator or otherwise), (iii) remitting the Assessments to the Trustee, (iv) the City, the Administrator and Trustee (including legal counsel) in the discharge of their duties, (v) complying with arbitrage rebate requirements, (vi) complying with securities disclosure requirements, and (vii) the City in any way related to the collection of the Assessments in installments, including, without limitation, the administration of the District, maintaining the record of installments, payments and reallocations and/or cancellations of Assessments, and the repayment of the Bonds, including, without limitation, any associated legal expenses, the reasonable costs of other consultants and advisors and contingencies and reserves for such costs as deemed appropriate by the City Council. Annual Collection Costs collected and not expended for actual Annual Collection Costs shall be carried forward and applied to reduce Annual Collection Costs in subsequent years to avoid the over-collection of Annual Collection Costs.

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year.

"Annual Installment" means, with respect to each Assessed Parcel, each annual payment of the Assessment as shown on the Assessment Roll attached to the Service and Assessment Plan as Exhibit A and related to the Bonds and the Senior Bonds or as shown on an Annual Service Plan Update as defined in the Service and Assessment Plan related to the Bonds and the Senior Bonds.

"Applicable Laws" means the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State of Texas or of the United States, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.

"Assessed Parcel" means each respective parcel of land located within the District against which an Assessment is levied by the Assessment Ordinance in accordance with the Service and Assessment Plan.

"Assessment Ordinance" means Ordinance No. 20111103-012 adopted by the City Council on November 3, 2011, that levied the Assessments on the Assessed Parcels.

"Assessment Roll" means the document attached as Appendix A to the Service and Assessment Plan, showing the total amount of the Assessment against each Assessed Parcel, as updated, modified, or amended from time to time in accordance with the terms of the Service and Assessment Plan and the PID Act.

"Assessments" means the aggregate assessments shown on the Assessment Roll. The singular of such term means the assessment levied against an Assessed Parcel as shown on the Assessment Roll.

"Assessments Sub-Account" means the Sub-Account by that name established and held in the Prepayment Reserve Account.

"Authorized Denomination" means the Maturity Amounts (the Accreted Value at maturity) of $5,000, or any integral multiple thereof within a Stated Maturity.

"Bond" means any of the Bonds.

"Bond Counsel" means Fulbright & Jaworski L.L.P. or any other attorney or firm of attorneys designated by the City that are nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Date" means the date designated as the initial date of the Bonds by Section 3.2(a) of this Indenture.

"Bond Fund" means the Fund established pursuant to Section 6.1 and administered as provided in Section 6.4.

"Bond Ordinance" means Ordinance No. 20111103-055 adopted by the City Council on November 3, 2011 authorizing the issuance of the Bonds pursuant to this Indenture.

"Bonds" means the City's bonds authorized to be issued by Section 3.1 of this Indenture entitled "City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District)."

"Bond Year" means the one-year period beginning on January 1 in each year and ending on the day prior to January 1 in the following year.

"Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Texas observed as such by the City or the Trustee.

"Certification for Payment" means a certificate executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, specifying the amount of work performed and the cost thereof, presented to the Trustee to request funding for Costs from money on deposit in the Project Fund.

"City Certificate" means a certificate signed by the City Representative and delivered to the Trustee.

"City Order" means written instructions by the City, executed by a City Representative.

"City Representative" means that official or agent of the City authorized by the City Council to undertake the action referenced herein.

"Closing Date" means the date of the initial delivery of and payment for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

"Costs" means the costs of the Improvement Projects.

"Defeasance Securities" means Investment Securities then authorized by applicable law for the investment of funds to defease public securities.

"Delinquent Collection Costs" mean the costs related to the foreclosure on an Assessed Parcel and the costs of collection of a delinquent Assessment, including penalties and reasonable attorney's fees actually paid, but excluding amounts representing interest and penalty interest

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named in this Indenture, the transfer/payment office located in Jacksonville, Florida, or such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"Developer" means Club Deal 120 Whisper Valley, L.P., a Delaware limited partnership.

"DTC" shall mean The Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" shall mean brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"Financing Agreement" means the Whisper Valley Public Improvement District Financing Agreement between the City and the Developer dated as of November 1, 2011, which provides for the appointment, levying and collection of Assessments, the construction of the Improvement Projects, the maintenance of the Improvement Projects, the issuance of bonds and other matters related thereto.

"Foreclosure Proceeds" means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments against any Assessed Parcel or Assessed Parcels, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.

"Fund" means any of the funds established pursuant to Section 6.1 of this Indenture.

"Improvement Projects" mean the public improvements and other related costs defined as Master PID Bond Authorized Improvements in the Service and Assessment Plan.

"Indenture" means this Indenture of Trust as originally executed or as it may be from time to time supplemented or amended by one or more indentures supplemental hereto and entered into pursuant to the applicable provisions hereof.

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by the City who, or each of whom: (i) is judged by the City, as the case may be, to have experience in matters relating to the issuance and/or administration of the Bonds; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Initial Bonds" means the Initial Bonds authorized by Section 5.2 of this Indenture.

"Interest Payment Date" means the Stated Maturity dates of the Bonds.

"Investment Securities" means those authorized investments described in the Public Funds Investment Act, Chapter 2256, Government Code, as amended; and provided further investments are, at the time made, included in and authorized by the City's official investment policy as approved by the City Council from time to time.

"Maturity Amount" means the Accreted Value at maturity of $5,000 or any integral multiple thereof within a Stated Maturity.

"Maximum Annual Debt Service" means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

"Outstanding" means, as of any particular date when used with reference to Bonds, all Bonds authenticated and delivered under this Indenture except (i) any Bond that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond for which the payment of the Accreted Value of such Bond shall have been made as provided in Article IV, and (iii) any Bond in lieu of or in substitution for which a new Bond shall have been authenticated and delivered pursuant to Section 3.10 herein.

"Owner" means the Person who is the registered owner of a Bond or Bonds, as shown in the Register, which shall be Cede & Co., as nominee for DTC, so long as the Bonds are in book-entry only form and held by DTC as securities depository in accordance with Section 3.11 herein.

"Paying Agent/Registrar" means initially the Trustee, or any successor thereto as provided in this Indenture.

"Person" or "Persons" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"PID Act" means Chapter 372, Improvement Districts in Municipalities and Counties, Subchapter A, Public Improvement Districts, Texas Local Government Code, as amended.

"Pledged Funds" means the Pledged Revenue Fund, the Bond Fund and the Project Fund.

"Pledged Revenue Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.3 herein.

"Pledged Revenues" means the sum of (i) the Annual Installments, less the Annual Collection Costs and less the Annual Installments used to pay the debt service and fund the funds and accounts related to the Senior Bonds, (ii) any Prepayments received by the City, (iii) any Foreclosure Proceeds received by the City, (iv) any funds received from the Developer or its designee or assignee from the Reimbursement Agreement, or otherwise, which the Developer has deposited or caused to be deposited with the Trustee for deposit to the Bond Fund, and (v) the moneys held in any of the Pledged Funds.

"Prepayment" means the payment of all or a portion of an Assessment before the due date thereof.

"Project Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.5 herein.

"Purchaser" means the initial purchaser of the Bonds.

"Rebatable Arbitrage" means rebatable arbitrage as defined in Section 1.148-3 of the Regulations (as defined in Section 7.5 hereof).

"Rebate Fund" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.8 herein.

"Record Date" means the close of business on the 15th calendar (whether or not a Business Day) day of the month next preceding an Interest Payment Date.

"Register" means the register specified in Article III of this Indenture.

"Reimbursement Agreement" means (a) the Cost Reimbursement Agreement, dated June 21, 2007 by and between the Developer and the City, as amended by that certain (i) First Amendment to the Cost Reimbursement Agreement, dated October 9, 2009, (ii) Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, dated November 1, 2010 and (iii) Third Amendment to the Cost Reimbursement Agreement, dated as of November 1, 2011, and (b) the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions by and between the City and the Developer, dated as of November 1, 2010, as amended by that certain First Amendment to the "Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions", dated as of November 1, 2011.

"Senior Bonds" means the "City of Austin, Texas, Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District)."

"Service and Assessment Plan" means the document, including the Assessment Roll, as amended, which is attached as Exhibit A to the Assessment Ordinance.

"Stated Maturity" means the date the Bonds, or any portion of the Bonds, as applicable are scheduled to mature.

"Supplemental Indenture" means an indenture which has been duly executed by the City Representative pursuant to an ordinance adopted by the City Council and which indenture amends or supplements this Indenture, but only if and to the extent that such indenture is specifically authorized hereunder.

"Tax Certificate" means the Certificate as to Tax Exemption delivered by the City on the Closing Date for the Bonds setting forth the facts, estimates and circumstances in existence on the Closing Date which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the interest on such Bonds to be included in the gross income of the Owners thereof for Federal income tax purposes.

"Trust Estate" means the Trust Estate described in the granting clauses of this Indenture.

"Trustee" means Deutsche Bank National Trust Company and its successors, and any other corporation or association that may at any time be substituted in its place, as provided in Article IX, such entity to serve as Trustee and Paying Agent/Registrar for the Bonds.

Section 1.2. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Indenture are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.3. Table of Contents, Titles and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Words importing persons include any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.

(c) Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

(d) This Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Indenture.

## ARTICLE II

## THE BONDS

Section 2.1. Security for the Bonds.

The Bonds, as to both principal and interest, are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Trust Estate; provided, however, that the use of the Assessments to pay the debt service on the Bonds is subject and subordinate to the use of the Assessments to pay the Senior Bonds and to fund the funds and accounts associated with the Senior Bonds.

The lien on and pledge of the Pledged Revenues shall be valid and binding and fully perfected from and after the Closing Date, which is the date of the delivery of this Indenture, without physical delivery or transfer of control of the Pledged Revenues, the filing of this Indenture or any other act; all as provided in Chapter 1208 of the Texas Government Code, as amended, which applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the City under this Indenture, and such pledge is therefore valid, effective and

perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Indenture is to be subject to the filing requirements of Chapter 9, Business and Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 2.2. Limited Obligations.

The Bonds are special and limited obligations of the City, payable solely from and secured solely by the Trust Estate, including the Pledged Revenues and the Pledged Funds; and the Bonds shall never be payable out of funds raised or to be raised by taxation or from any other revenues, properties or income of the City.

Section 2.3. Authorization for Indenture.

The terms and provisions of this Indenture and the execution and delivery hereof by the City to the Trustee have been duly authorized by official action of the City Council of the City. The City has ascertained and it is hereby determined and declared that the execution and delivery of this Indenture is necessary to carry out and effectuate the purposes set forth in the preambles of this Indenture and that each and every covenant or agreement herein contained and made is necessary, useful or convenient in order to better secure the Bonds and is a contract or agreement necessary, useful and convenient to carry out and effectuate the purposes herein described.

Section 2.4. Contract with Owners and Trustee.

(a) The purposes of this Indenture are to establish a lien and the security for, and to prescribe the minimum standards for the authorization, issuance, execution and delivery of, the Bonds and to prescribe the rights of the Owners, and the rights and duties of the City and the Trustee.

(b) In consideration of the purchase and acceptance of any or all of the Bonds by those who shall purchase and hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the City with the Owner, and shall be deemed to be and shall constitute a contract among the City, the Owners, and the Trustee.

## ARTICLE III

## AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.1. Authorization.

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, including particularly the PID Act, as amended. The Bonds shall be issued in the original principal amount of $18,485,168.10 and in the Maturity Amount of $21,020,000 for the purpose of (i) paying the Costs of the Improvement Projects, (ii)

paying a portion of the costs incidental to the organization of the District and (iii) paying costs of issuance of the Bonds.

Section 3.2. Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall be dated the date of the initial delivery thereof (the "Bond Date") and shall be issued in Authorized Denominations. The Bonds shall be in fully registered form, without coupons, and shall be numbered separately from CAB-1 upward, except the Initial Bond, which shall be numbered CAB-T1.

(b) The Bonds shall accrue interest at the interest rate(s) stated in the table below, and shall become due and payable on December 1 in each of the years in the Maturity Amounts set forth in the following table:

| Year of Maturity | Original Principal Amount | Maturity Amount | Stated Yield(s)* |
|---|---|---|---|
| 2015 | $ 5,508,161.40 | $ 6,090,000 | 2.50% |
| 2016 | 12,977,006.70 | $14,930,000 | 2.80% |

Interest on the Bonds shall accrue from the date of delivery of the Bonds to the initial purchasers (anticipated to be November 16, 2011), and shall be compounded semiannually on June 1 and December 1 in each year, commencing December 1, 2011, until the Stated Maturity thereof. The Accreted Value of the Bonds shall be payable only at maturity.

Section 3.3. Conditions Precedent to Delivery of Bonds.

The Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate the Bonds and, upon payment of the purchase price of the Bonds, shall deliver the Bonds upon the order of the City, but only upon delivery to the Trustee of:

(a) a certified copy of the Assessment Ordinance;

(b) a certified copy of the Bond Ordinance;

(c) a copy of the executed Financing Agreement;

(d) a copy of the Reimbursement Agreement and the document evidencing the assignment by the Developer to the Trustee of the amounts required to be paid to the Developer pursuant to the Reimbursement Agreement;

(e) a copy of this Indenture executed by the Trustee and the City; and

(f) a City Certificate directing the authentication and delivery of the Bonds, describing the Bonds to be authenticated and delivered, designating the purchasers to whom the

Bonds are to be delivered, stating the purchase price of the Bonds and stating that all items required by this Section are therewith delivered to the Trustee in form and substance satisfactory to the City.

Section 3.4. Medium, Method and Place of Payment

(a) The Maturity Amount of the Bonds shall be paid in lawful money of the United States of America, as provided in this Section.

(b) The Maturity Amount of the Bonds shall be paid to the Owner of such Bond on the due date thereof upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(c) If the date for the payment of the Maturity Amount of the Bonds or the principal shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in Section 3.2 of this Indenture.

(d) Unclaimed payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which such unclaimed payments pertain. Subject to any escheat, abandoned property, or similar law of the State of Texas, any such payments remaining unclaimed by the Owners entitled thereto for two (2) years after the applicable payment date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all Outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, none of the City, the Paying Agent/Registrar, or any other Person shall be liable or responsible to any holders of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat law or similar law of the State of Texas.

Section 3.5. Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Clerk or the Deputy City Clerk, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Indenture unless and until there appears thereon the Certificate of Trustee substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Trustee. It shall not be required that the same officer or authorized signatory of the Trustee sign the Certificate of Trustee on all of the Bonds. In lieu of the executed Certificate of Trustee described above, the Initial Bonds delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by her duly authorized agent, which certificate shall be evidence that the Initial Bonds have been duly approved by the Attorney General of the State of Texas, is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial Bond representing the entire Maturity Amount of the Bonds, payable in stated installments to the Purchaser, or its designee, executed with the manual or facsimile signatures of the Mayor and the City Clerk or Deputy City Clerk, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bonds, the Trustee shall cancel the Initial Bonds and deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the corresponding Bonds, in the aggregate Maturity Amount for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.6. Ownership.

(a) The City, the Trustee the Paying Agent/Registrar and any other Person may treat the Person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the Person in whose name such Bond is registered on the Record Date) and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Trustee, nor the Paying Agent/Registrar, shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of any Bond shall be valid and effectual and shall discharge the liability of the City, the Trustee and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.7. Registration, Transfer and Exchange.

(a) So long as any Bond remains outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Indenture. The Paying Agent/Registrar represents and warrants that it will file and maintain a copy of the Register with the City, and shall cause the Register to be current with all registration and transfer information as from time to time may be applicable.

(b) A Bond shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any Authorized Denomination and in an aggregate Maturity Amount of the Bond presented for exchange. The Trustee is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) The Trustee is hereby authorized to authenticate and deliver Bonds transferred or exchanged in accordance with this Section. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each transferred Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such transferred Bond is delivered.

(e) Each exchange Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(f) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Bond.

Section 3.8. Cancellation.

All Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Indenture, shall be cancelled, and proper records shall be made regarding such exchange or replacement. The Paying Agent/Registrar shall dispose of cancelled Bonds in accordance with the records retention requirements of the Trustee.

Section 3.9. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bonds and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Trustee shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Indenture.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Trustee the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and the Trustee shall authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the Authorized Denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.10. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Trustee shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Trustee, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount or Maturity Amount, as applicable, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the Trustee to save them and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Trustee and the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Trustee.

(c) After the delivery of such replacement Bond, if a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the Person to whom it was delivered or any Person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City, the Paying Agent/Registrar or the Trustee in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.11. Book-Entry Only System.

The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the letter of representations from the City to DTC. On the Closing Date the definitive Bonds shall be issued in the form of a single typewritten certificate for each maturity thereof registered in the name of Cede & Co., as nominee for DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any Person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant will respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other Person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any other Person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the Person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of the Accreted Value of Bonds, for the purpose of giving notices of matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay the Accreted Value of the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Indenture, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of the Accreted Value of the Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

Section 3.12. Successor Securities Depository: Transfer Outside Book-Entry-Only System.

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the letter of representations from the City to DTC, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

Section 3.13. Payments to Cede & Co.

Notwithstanding any other provision of this Indenture to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to Maturity Amounts on such Capital Appreciation Bonds, and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the blanket letter of representations from the City to DTC.

## ARTICLE IV

## REDEMPTION OF BONDS BEFORE MATURITY

Section 4.1. Limitation on Redemption.

The Bonds shall not be subject to redemption before their scheduled maturity.

## ARTICLE V

## FORM OF THE BONDS

Section 5.1. Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Trustee, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Indenture, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently

herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 5.2. Form of the Bonds.

(a) Form of Bonds.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE CITY, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND.

REGISTERED

REGISTERED
Maturity Amount

No. _____

$_____

United States of America
State of Texas

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

| STATED YIELD: | MATURITY DATE: | DATE OF DELIVERY | CUSIP NUMBER: |
|---|---|---|---|
| _____% | _____,____ | _____, 2011 | _____ |

The City of Austin, Texas (the "City"), for value received, hereby promises to pay, solely from the Pledged Revenues, to

_____

or registered assigns, on the Maturity Date specified above, the Maturity Amount stated above (without right of prior redemption). The Maturity Amount of this Bond represents the accretion

of the original principal amount of this Bond (including the initial premium, if any, paid herefor) from the Date of Delivery specified above to the Stated Maturity and such accretion in value occurring at the Stated Yield specified above and compounding on December 1, 2011 and semiannually thereafter on June 1 and December 1 until maturity.

A table of the "Accreted Values" per $5,000 "Accreted Value" at maturity is printed on the reverse side of this Bond or attached hereto. The term "Accreted Value", as used herein, means the original principal amount of this Bond plus the initial premium, if any, paid herefor with interest thereon compounded semiannually to December 1 and June 1, as the case may be, next preceding the date of such calculation (or the date of calculation, if such calculation is made on December 1 or June 1) at the Stated Yield for the Stated Maturity shown above and in the above referenced Table of Accreted Values. For any date other than December 1 or June 1, the Accreted Value of this Bond shall be determined by a straight line interpolation between the values for the applicable semiannual compounding dates (based on 30-day months).

The Accreted Value of this Bond is payable at its Stated Maturity to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of Deutsche Bank National Trust Company, as trustee and paying agent/registrar or, with respect to a successor trustee and paying agent/registrar at the Designated Payment/Transfer Office of such successor. Payments of principal of and accrued and compounded interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the Maturity Amount on this Bond (or the Accreted Value thereof) shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

Capitalized terms appearing herein that are defined terms in the Indenture defined below, have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.

This Bond is one of a duly authorized issue of assessment revenue bonds of the City having the designation specified in its title (herein referred to as the "Bonds"), dated as of the date of delivery and issued in the original principal amount of $18,485,168.10 and issued, with the limitations described herein, pursuant to an Indenture of Trust, dated as of November 1, 2011 (the "Indenture"), by and between the City and Deutsche Bank National Trust Company, as trustee (the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder to the holders of the Bonds, the Trustee, and the City, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each holder of this Bond hereby consents. All Bonds issued under the Indenture are equally and ratably secured by the amounts thereby pledged and assigned. The Bonds are being issued for the purpose of (i)

paying the Costs of the Improvement Projects, (ii) paying a portion of the costs incidental to the organization of the District; and (iii) paying the costs of issuing the Bonds.

The Bonds are limited obligations of the City payable solely from the Pledged Revenues as defined in the Indenture provided, however, that use of Assessments to pay the Bonds is subject and subordinate to the use of the Assessments to pay the City's outstanding Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District), being issued concurrently with the issuance of the Bonds. Reference is hereby made to the Indenture, copies of which are on file with and available upon request from the Trustee, for the provisions, among others, with respect to the nature and extent of the duties and obligations of the City, the Trustee and the Owners. The Owner of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms, conditions and provisions of the Indenture.

Notwithstanding any provision hereof, the Indenture may be released and the obligation of the City to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Defeasance Securities sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in Authorized Denominations, subject to the provisions of the Indenture authorizing redemption in denominations of $5,000 or integral multiples thereof.

The Bond is not subject to redemption prior to maturity.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the holders of the Bonds under the Indenture at any time Outstanding affected by such modification. The Indenture also contains provisions permitting the holders of specified percentages in aggregate of the Maturity Amount of the Bonds at the time Outstanding, on behalf of the holders of all the Bonds, to waive compliance by the City with certain past defaults under the Bond Ordinance or the Indenture and their consequences. Any such consent or waiver by the holder of this Bond or any predecessor Bond evidencing the same debt shall be conclusive and binding upon such holder and upon all future holders thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Trustee, and upon delivery to the Trustee of such certifications and/or opinion of counsel as may be required under the Indenture for the transfer of this Bond. Upon satisfaction of such requirements, one or more new fully registered Bonds of the same Stated Maturity, of Authorized Denominations, bearing the same rate of interest, and for the same aggregate Maturity Amount will be issued to the designated transferee or transferees.

The City, the Trustee, and any other Person may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the Person in whose name this Bond is registered on the Record

Date) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Trustee shall be affected by notice to the contrary.

NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY OF AUSTIN, TEXAS, TRAVIS COUNTY, TEXAS OR THE STATE OF TEXAS, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE BONDS.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any Constitutional or statutory limitation.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be executed under the official seal of the City.

| | |
|---|---|
| City Clerk, City of Austin, Texas | Mayor, City of Austin, Texas |

[Seal]

NOTE: Print the "Table of Accreted Values" on the reverse side of the Bonds or attach said Table of Accreted Values to the Bonds.

(b) Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

| | | |
|---|---|---|
| OFFICE OF THE COMPTROLLER | § | |
| OF PUBLIC ACCOUNTS | § | REGISTER NO._____ |
| | § | |
| THE STATE OF TEXAS | § | |

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this _____

_____
Comptroller of Public Accounts
of the State of Texas

[SEAL]

(c) Form of Certificate of Trustee.

CERTIFICATE OF TRUSTEE

It is hereby certified that this is one of the Bonds of the series of Bonds referred to in the within mentioned Indenture.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee

DATED: _____

By:_____
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and zip code of transferee):

_____

_____

_____

(Social Security or other identifying number: _____) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Date: _____

_____

Signature Guaranteed By:

_____

_____
Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Trustee.

(e) The Initial Bond shall be in the form set forth in paragraphs (a) through (d) of this section, except for the following alterations:

(i) immediately under the name of the Bond the heading "STATED YIELD" shall be completed with the expression "As Shown Below," and the reference to the "CUSIP NUMBER" shall be deleted;

(ii) in the first paragraph of the Bond, the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on December 1 in each of the years, in the Maturity Amount set forth in the following schedule:

| Year of Maturity: | Maturity Amount: | Stated Yield: |
|---|---|---|

(Information to be inserted from Section 3.2(b) hereof); and

(iii) the Initial Bond shall be numbered CAB-T1.

Section 5.3. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 5.4. Legal Opinion.

The approving legal opinion of Bond Counsel may be printed on or attached to each Bond over the certification of the City Clerk of the City, which may be executed in facsimile.

## ARTICLE VI

## FUNDS AND ACCOUNTS

Section 6.1. Establishment of Funds and Accounts.

(a) Creation of Funds. The following Funds are hereby created and established under this Indenture:

(i) Pledged Revenue Fund;

(ii) Bond Fund;

(iii) Project Fund;

(iv) Rebate Fund; and

(v) Administrative Fund.

(b) Creation of Accounts.

(i) A Principal and Interest Account is hereby created and established under the Bond Fund.

(ii) The following Accounts are hereby created and established under the Project Fund:

(A) Improvement Account; and

(B) Costs of Issuance Account

(c) Each Fund and Account created within such Fund shall be maintained by the Trustee separate and apart from all other funds and accounts of the City. The Pledged Funds shall constitute trust funds which shall be held in trust by the Trustee as part of the Trust Estate solely for the benefit of the Owners of the Bonds.

(d) Interest earnings and profit on each respective Fund and Account established by this Indenture shall be applied or withdrawn for the purposes of such Fund or Account as specified below.

Section 6.2. Initial Deposits to Funds and Accounts.

The proceeds from the sale of the Bonds shall be paid to the Trustee and deposited or transferred by the Trustee as follows:

(i) to the Improvement Account of the Project Fund: $17,617,771.22; and

(ii) to the Costs of Issuance Account of the Project Fund: $621,729.00.

Section 6.3. Pledged Revenue Fund.

(a) Immediately upon receipt thereof, the City shall deposit or cause to be deposited the Pledged Revenues into the Pledged Revenue Fund.

(b) From time to time as needed to pay the obligations relating to the Bonds, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account, including any amounts received pursuant to the Reimbursement Agreement, and any expected transfers to the Principal and Interest Account, such that the amount on deposit in the Principal and Interest Account equals the Accreted Value due on the Bonds on the next Interest Payment Date.

(c) The Trustee shall transfer Prepayments to an escrow fund or account promptly after deposit of such amounts into the Pledged Revenue Fund and such escrowed funds will be applied to the discharge of the Bonds in accordance with Article XIV hereof or otherwise to the payment of the Bonds in a manner permitted by this Indenture and applicable law.

(d) The Trustee shall transfer Foreclosure Proceeds to an escrow fund or account promptly after deposit of such amounts into the Pledged Revenue Fund and such escrowed funds will be applied to the discharge of the Bonds in accordance with Article XIV hereof or otherwise to the payment of the Bonds in a manner permitted by this Indenture and applicable law.

Section 6.4. Bond Fund.

On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account and transfer to the Paying Agent/Registrar the Accreted Value then due and payable on the Bonds.

Section 6.5. Project Fund.

(a) Money on deposit in the Project Fund shall be used for the purposes specified in Section 3.1 hereof.

(b) Any funds received at Closing pursuant to the Financing Agreement shall be applied as provided therein. Such provisions and procedures are herein incorporated by reference and deemed set forth herein in full.

(c) Disbursements from the Project Fund to pay Costs shall be made by the Trustee upon receipt by the Trustee of a properly executed and completed Certification for Payment. The disbursement of funds in the Project Fund pursuant to a Certification for Payment shall be pursuant to and accordance with the disbursement procedures described in the Financing Agreement. Such provisions and procedures are herein incorporated by reference and deemed set forth herein in full.

(d) If the City Representative determines in his or her sole discretion that amounts then on deposit in the Project Fund are not expected to be expended for purposes of the Project Fund due to the abandonment, or constructive abandonment, of the Improvement Projects such that, in the opinion of the City Representative, it is unlikely that the amounts in the Project Fund will ever be expended for the purposes of the Project Fund, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the Project Fund that are not expected to be used for purposes of the Project Fund. If such a City Certificate is so filed, the amounts on deposit in the Improvement Account shall be transferred to the Principal and Interest Account and used to pay the Accreted Value of the Bonds on the next Interest Payment Date.

(e) In making any determination pursuant to this Section, the City Representative may conclusively rely upon a certificate of an Independent Financial Consultant.

(f) Upon the filing of a City Certificate stating that all Improvement Projects have been completed and that all Costs of the Improvement Projects have been paid, or that any such Costs are not required to be paid from the Project Fund pursuant to a Certification for Payment, the Trustee shall transfer the amount, if any, remaining within the Improvement Account to the Principal and Interest Account.

Section 6.6. Reserved.

Section 6.7. Rebate Fund: Rebatable Arbitrage.

(a) There is hereby established a special fund of the City to be designated "City of Austin, Texas, Rebate Fund" (the "Rebate Fund") to be held by the Trustee in accordance with the terms and provisions of this Indenture. Amounts on deposit in the Rebate Fund shall be used solely for the purpose of paying amounts due the United States Government in accordance with the Code.

(b) In order to assure that Rebatable Arbitrage is paid to the United States rather than to a third party, investments of funds on deposit in the Rebate Fund shall be made in accordance with the Code and the Tax Certificate.

(c) The Trustee conclusively shall be deemed to have complied with the provisions of this Section and Section 7.5(h) and shall not be liable or responsible if it follows the

instructions of the City and shall not be required to take any action under this Section and Section 7.5(h) in the absence of instructions from the City.

(d) If, on the date of each annual calculation, the amount on deposit in the Rebate Fund exceeds the amount of the Rebatable Arbitrage, the City may direct the Trustee, pursuant to a City Order, to transfer the amount in excess of the Rebatable Arbitrage to the Bond Fund.

Section 6.8. Administrative Fund.

(a) Immediately upon receipt thereof, the City shall deposit or cause to be deposited to the Administrative Fund the Annual Collection Costs.

(b) Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered hereunder and used as directed by a City Order solely for the purposes set forth in the Service and Assessment Plan.

Section 6.9. Investment of Funds.

(a) Money in any Fund established pursuant to this Indenture shall be invested by the Trustee as directed by the City pursuant to a City Order filed with the Trustee at least two (2) days in advance of the making of such investment in time deposits or certificates of deposit secured in the manner required by law for public funds, or be invested in direct obligations of, including obligations the principal and interest on which are unconditionally guaranteed by, the United States of America, in obligations of any agencies or instrumentalities thereof, or in such other investments as are permitted under the Public Funds Investment Act of 1987, Chapter 2256 Texas Government Code, as amended, or any successor law, as in effect from time to time; provided that all such deposits and investments shall be made in such manner (which may include repurchase agreements for such investment with any primary dealer of such agreements) that the money required to be expended from any Fund will be available at the proper time or times. Such investments shall be valued each year in terms of current market value as of December 31. For purposes of maximizing investment returns, to the extent permitted by law, money in such Funds may be invested in common investments of the kind described above, or in a common pool of such investment which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund are held by or on behalf of each such Fund. If necessary, such investments shall be promptly sold to prevent any default

(b) Obligations purchased as an investment of moneys in any Fund shall be deemed to be part of such Fund or Account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in Funds and Accounts. Whenever in this Indenture any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments.

(c) The Trustee and its affiliates may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee shall not incur any

liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the legality of any investments.

(d) Investments in any and all Funds and Accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular Funds or Accounts of amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture.

(e) The Trustee will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

Section 6.10. Security of Funds.

All Funds heretofore created or reaffirmed, to the extent not invested as herein permitted, shall be secured in the manner and to the fullest extent required by law for the security of public funds, and such Funds shall be used only for the purposes and in the manner permitted or required by this Indenture.

## ARTICLE VII

## COVENANTS

Section 7.1. Confirmation of Assessments.

The City hereby confirms, covenants, and agrees that, in the Assessment Ordinance, it has levied the Assessments against the respective Assessed Parcels from which the Pledged Revenues will be collected and received.

Section 7.2. Collection and Enforcement of Assessments.

(a) For so long as any Bonds are Outstanding, the City covenants, agrees and warrants that it will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and to cause no reduction, abatement or exemption in the Assessments.

(b) The City will determine or cause to be determined, no later than March 1 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessment or the corresponding Assessed Parcel.

Section 7.3. Against Encumbrances.

(a) The City shall not create and, to the extent Pledged Revenues are received, shall not suffer to remain, any lien, encumbrance or charge upon the Pledged Revenues or upon any other property pledged under this Indenture, except the pledge created for the security of the Bonds and the Senior Bonds, which are being issued concurrently with the issuance of the Bonds.

(b) So long as Bonds are Outstanding hereunder, the City shall not issue any bonds, notes or other evidences of indebtedness other than the Bonds secured by any pledge of or other lien or charge on the Pledged Revenues or other property pledged under this Indenture.

Section 7.4. Records, Accounts, Accounting Reports.

The City hereby covenants and agrees that so long as any of the Bonds or Outstanding Bonds or any interest thereon remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the Assessments. The Trustee and holder or holders of any Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all such records, accounts, and data relating thereto, upon written request to the City by the Trustee or duly authorized representative, as applicable. The City shall provide the Trustee or duly authorized representative, as applicable, an opportunity to inspect such books and records relating to the Bonds during the City's regular business hours and on a mutually agreeable date not later than thirty days after the City receives such request.

Section 7.5. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

> "*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.
>
> *"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.
>
> *"Computation Date"* has the meaning set forth in section 1.148-1(b) of the Regulations.
>
> *"Gross Proceeds"* means any proceeds as defined in section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in section 1.148-1(c) of the Regulations, of the Bonds.
>
> *"Investment"* has the meaning set forth in section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*"Yield"* of (1) any Investment has the meaning set forth in section 1.148-5 of the Regulations; and (2) the Bonds has the meaning set forth in section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced

directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan.

(i) Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(ii) The City covenants and agrees that the levied Assessments will meet the requirements of the "tax assessment loan exception" within the meaning of section 1.141-5(d) of the Regulations on the date the Bonds are delivered and will ensure that the Assessments continue to meet such requirements for so long as the Bonds are outstanding hereunder.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested) if, as a result of such investment, the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding

Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall, pursuant to a City Order, direct the Trustee to transfer to the Rebate Fund from the funds or subaccounts designated in such City Order and direct the Trustee to pay to the United States from the Rebate Fund the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Chief Financial Officer, City Treasurer, City Clerk, or Deputy City Clerk, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in

connection with the Bonds, in the Tax Certificate or similar or other appropriate certificate, form or document.

## ARTICLE VIII

## LIABILITY OF CITY

The City shall not incur any responsibility in respect of the Bonds or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own willful default or act of bad faith. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds, or as to the existence of a default or event of default thereunder.

In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Indenture. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Indenture, the Bonds, the Assessment Ordinance, or any agreement, document, instrument, or certificate executed, delivered or approved in connection with the issuance, sale, delivery, or administration of the Bonds (the "Bond Documents"), shall require the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Pledged Revenues and the Annual Collection Costs) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if in the judgment of the City there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it.

Neither the Owners nor any other Person shall have any claim against the City or any of its officers, officials, agents, or employees for damages suffered as a result of the City's failure to perform in any respect any covenant, undertaking, or obligation under any Bond Documents or as a result of the incorrectness of any representation in, or omission from, any of the Bond Documents, except to the extent that any such claim relates to an obligation, undertaking, representation, or covenant of the City, in accordance with the Bond Documents and the PID Act. Any such claim shall be payable only from Pledged Revenues or the Annual Collection Costs. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency, or instrumentality against the City or any of its officers, officials, agents, or employees to enforce the provisions of any of the Bond Documents or to enforce all rights of the Owners of the Bonds by mandamus or other proceeding at law or in equity.

The City may rely on and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party

or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Indenture the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Trustee, an Independent Financial Consultant, an independent inspector or City Manager or other person designated by the City Council to so act on behalf of the City, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Indenture upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.

## ARTICLE IX

## THE TRUSTEE

### Section 9.1. Trustee as Registrar and Paying Agent

The Trustee is hereby designated and agrees to act as Registrar and Paying Agent for and in respect to the Bonds.

### Section 9.2. Trustee Entitled to Indemnity

The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as the Trustee, without indemnity, and in such case the Trustee may make transfers from the Pledged Revenue Fund to pay all costs and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith and shall be entitled to a preference therefor over any Bonds Outstanding hereunder.

Section 9.3. Responsibilities of the Trustee.

The recitals contained in this Indenture and in the Bonds shall be taken as the statements of the City and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Bonds or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. Except as otherwise expressly provided in this Indenture, the Trustee shall have no responsibility or duty with respect to: (i) the issuance of Bonds for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the City or others in accordance with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; or (iv) any calculation of arbitrage or rebate under the Code.

The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture.

The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for its own gross negligence or willful misconduct.

Section 9.4. Property Held in Trust.

All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 9.5. Trustee Protected in Relying on Certain Documents.

The Trustee may rely upon any order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, or other document provided to the Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument The Trustee may consult with counsel, who may or may not be Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it in good faith and in accordance therewith.

Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed to be conclusively proved and established by a City Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such City Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Except as otherwise expressly

provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee shall be sufficiently executed if executed in the name of the City by the City Representative.

The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any Person of notice of the provisions hereof except as expressly required in Section 9.13 herein.

Section 9.6. Compensation.

Unless otherwise provided by contract with the Trustee, the Trustee shall transfer from the Administrative Fund, from time to time, reasonable compensation for all services rendered by it hereunder, including its services as Registrar and Paying Agent, together with all its reasonable expenses, charges, and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, subject to any limit on the amount of such compensation or recovery of expenses or other charges as shall be prescribed by specific agreement, and the Trustee shall have a lien therefor on any and all funds at any time held by it hereunder prior to any Bonds Outstanding. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the City shall fail to make any payment required by this Section, the Trustee may make such payment from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any Bonds Outstanding hereunder.

Section 9.7. Permitted Acts.

The Trustee and its directors, officers, employees, or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Bonds and may join in any action that any Owner of Bonds may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the City or any committee formed to protect the rights of holders of Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not such committee shall represent the holders of a majority of the Bonds.

Section 9.8. Resignation of Trustee.

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 30 days' notice, specifying the date when such resignation shall take effect, to the City and each Owner of any Outstanding Bond. Such resignation shall take effect upon the appointment of a successor as provided in Section 9.10 and the acceptance of such appointment by such successor.

Section 9.9. Removal of Trustee.

The Trustee may be removed at any time by (i) the Owners of at least a majority of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or by their attorneys-in-fact, duly authorized and delivered to the City, or (ii) so long as the City is not in default under this Indenture, the City. Copies of each such instrument shall be delivered by the City to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the City or the Owners of not less than 10% of the Bonds.

Section 9.10. Successor Trustee.

If the Trustee shall resign, be removed, be dissolved, or become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant

If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, a successor Trustee may be appointed within one year after any such vacancy shall have occurred by the Owners of at least twenty-five percent (25%) of the Bonds by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or their attorneys-in-fact, duly authorized and delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and the City.

Until such successor Trustee shall have been appointed by the Owners of the Bonds, the City shall forthwith appoint a Trustee to act hereunder. Copies of any instrument of the City providing for any such appointment shall be delivered by the City to the Trustee so appointed. The City shall mail notice of any such appointment to each Owner of any Outstanding Bonds within 30 days after such appointment. Any appointment of a successor Trustee made by the City immediately and without further act shall be superseded and revoked by an appointment subsequently made by the Owners of Bonds.

If in a proper case no appointment of a successor Trustee shall be made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 9.8 herein or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Owner of Bonds may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor and the City shall be responsible for the costs of such appointment process.

Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided profits aggregating at least $50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment

on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

Each successor Trustee shall mail, in accordance with the provisions of the Bonds, notice of its appointment to the Trustee, any rating agency which, at the time of such appointment, is providing a rating on the Bonds and each of the Owners of the Bonds.

Section 9.11. Transfer of Rights and Property to Successor Trustee.

Any successor Trustee appointed under the provisions of Section 9.10 shall execute, acknowledge, and deliver to its predecessor and the City an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations, and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the City or of such successor, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the rights, immunities, powers, and trusts of such Trustee and all the right, title, and interest of such Trustee in and to the Trust Estate, and shall pay over, assign, and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any deed, conveyance, or instrument in writing from the City be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties, or obligations, any and all such deeds, conveyances, and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged, and delivered by the City.

Section 9.12. Merger, Conversion or Consolidation of Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 9.10, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

Section 9.13. Trustee To File Continuation Statements.

If necessary, the Trustee shall file or cause to be filed, such continuation statements as may be required by the Texas Uniform Commercial Code, as from time to time in effect (the "UCC"), in order to continue perfection of the security interest of the Trustee in such items of tangible or intangible personal property and any fixtures as may have been granted to the Trustee pursuant to this Indenture in the time, place and manner required by the UCC.

Section 9.14. Construction of Indenture.

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners of the Bonds.

## ARTICLE X

## MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 10.1. Amendments Permitted.

This Indenture and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture, except as provided below, pursuant to the affirmative vote at a meeting of Owners of the Bonds, or with the written consent without a meeting, of the Owners of the Bonds of at least sixty-six and two-thirds percent (66-2/3%) of the aggregate Maturity Amount of the Bonds then Outstanding. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the Maturity Amount of any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Pledged Revenues superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by Applicable Laws or this Indenture), or reduce the percentage of Bonds required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Trustee without its written consent.

This Indenture and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds in any material respect;

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in regard to questions arising under this Indenture, as the City and the Trustee may deem necessary or desirable and not inconsistent with this Indenture, and that shall not adversely affect the rights of the Owners of the Bonds; and

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds.

Section 10.2. Owners' Meetings.

The City may at any time call a meeting of the Owners of the Bonds. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

Section 10.3. Procedure for Amendment with Written Consent of Owners.

The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture, to the extent that such amendment is permitted by Section 10.1 herein, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Trustee to each Owner of Bonds from whom consent is required under this Indenture, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the written consents of the Owners as required by this Indenture and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 11.6 herein. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). Proof of the mailing of such notice shall be filed with the Trustee. A record, consisting of the papers required by this Section 10.3 to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Indenture shall become effective upon the filing with the Trustee of the proof of mailing of such notice, and the Supplemental Indenture shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 10.4. Effect of Supplemental Indenture.

From and after the time any Supplemental Indenture becomes effective pursuant to this Article X, this Indenture shall be deemed to be modified and amended in accordance therewith,

the respective rights, duties, and obligations under this Indenture of the City and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.5. Endorsement or Replacement of Bonds Issued After Amendments.

The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the designated office of the Trustee or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed, and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the designated office of the Trustee without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 10.6. Amendatory Endorsement of Bonds.

The provisions of this Article X shall not prevent any Owner from accepting any amendment as to the particular Bonds held by such Owner, provided that due notation thereof is made on such Bonds.

Section 10.7. Waiver of Default

With the written consent of the Owners of at least sixty-six and two-thirds percent (66-2/3%) of the Maturity Amount of the Bonds then Outstanding, the Owners may waive compliance by the City with certain past defaults under the Indenture and their consequences. Any such consent shall be conclusive and binding upon the Owners and upon all future Owners.

## ARTICLE XI

## DEFAULT AND REMEDIES

Section 11.1. Events of Default.

Each of the following occurrences or events shall be and is hereby declared to be an "Event of Default," to wit:

(i) The failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;

(ii) The failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings; and

(iii) Default in the performance or observance of any covenant, agreement or obligation of the City under this Indenture and the continuation thereof for a period of 60 days after written notice specifying such default by the Owners of at least 25% of the Maturity Amount of the Bonds at the time Outstanding requesting that the failure be remedied.

Section 11.2. Immediate Remedies for Default.

(a) Subject to Article VIII, upon the happening and continuance of any of the Events of Default described in Section 11.1, the Owners of at least 25% of the Maturity Amount of the Bonds then Outstanding, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction; provided, however, that no action for money damages against the City may be sought or shall be permitted.

(b) THE PRINCIPAL OF THE BONDS SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

(c) If the assets of the Trust Estate are sufficient to pay all amounts due with respect to Outstanding Bonds, in the selection of Trust Estate assets to be used in the payment of Bonds due under this Article, the City shall determine, in its absolute discretion, and shall instruct the Trustee by City Order, which Trust Estate assets shall be applied to such payment and shall not be liable to any Owner or other Person by reason of such selection and application. In the event that the City shall fail to deliver to the Trustee such City Order, the Trustee shall select and liquidate or sell Trust Estate assets as provided in the following paragraph, and shall not be liable to any Owner, or other Person, or the City by reason of such selection, liquidation or sale.

(d) Whenever moneys are to be applied pursuant to this Article XI, irrespective of and whether other remedies authorized under this Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms as the Trustee may deem appropriate and as may be required by law and apply the proceeds thereof in accordance with the provisions of this Section. Upon such sale, the Trustee may make and deliver to the purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary or, in the judgment of the Trustee, proper for the purpose which may be designated in such request.

Section 11.3. Restriction on Owner's Action.

(a) No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (i) a default has occurred and is continuing of which the Trustee has been notified in writing as provided in Section 11.1, or of which by such Section it is deemed to have notice, (ii) such default has become an Event of Default and the Owners of 25% of the Maturity Amount of the Bonds then Outstanding have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in Section 9.2 herein, (iv) the Trustee has for 60 days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, (v) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of a majority of the Maturity Amount of the Bonds then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee; however, no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner provided herein, and that all proceedings at law or in equity shall be instituted and maintained in the manner provided herein and for the equal benefit of the Owners of all Bonds then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

(b) Subject to Article VIII, nothing in this Indenture shall affect or impair the right of any Owner to enforce, by action at law, payment of any Bond at and after the maturity thereof, or the obligation of the City to pay each Bond issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed herein and in the Bonds.

(c) In case the Trustee or any Owners shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 11.4. Application of Revenues and Other Moneys After Default.

(a) All moneys, securities, funds and Pledged Revenues and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such amounts, the expenses (including its counsel), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out this Indenture, during the continuance of an Event of Default, the Trustee, on behalf of the City,

notwithstanding Section 11.2 hereof, be applied by the Trustee to the payment of the Accreted Value then due on Bonds, as follows:

> To the payment to the Owners entitled thereto of the unpaid Maturity Amount of Outstanding Bonds in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal due and to the Owners entitled thereto, without any discrimination or preference.

Within ten (10) days of receipt of such good and available funds, the Trustee may fix a record and payment date for any payment to be made to Owners pursuant to this Section 11.4.

(b) In the event funds are not adequate to cure any of the Events of Default described in Section 11.1, the available funds shall be allocated to the Bonds that are Outstanding in proportion to the quantity of Bonds that are currently due and in default under the terms of this Indenture.

(c) The restoration of the City to its prior position after any and all defaults have been cured, as provided in Section 11.3, shall not extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

Section 11.5. Effect of Waiver.

(a) No delay or omission of the Trustee, or any Owner, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 11.6. Evidence of Ownership of Bonds.

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, or the holding by any Person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(i) The fact and date of the execution of such instruments by any Owner of Bonds or the duly appointed attorney authorized to act on behalf of such Owner may be provided by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation,

association or partnership, such signature guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(ii) The ownership of Bonds and the amount, numbers and other identification and date of holding the same shall be proved by the Register.

(b) Except as otherwise provided in this Indenture with respect to revocation of a consent, any request or consent by an Owner of Bonds shall bind all future Owners of the same Bond in respect of anything done or suffered to be done by the City or the Trustee in accordance therewith.

Section 11.7. No Acceleration.

In the event of the occurrence of an Event of Default under Section 11.1 hereof, the right of acceleration of any Stated Maturity is not granted as a remedy hereunder and the right of acceleration under this Indenture is expressly denied.

Section 11.8. Mailing of Notice.

Any provision in this Article for the mailing of a notice or other document to Owners shall be fully complied with if it is mailed, first class postage prepaid, only to each Owner at the address appearing upon the Register.

Section 11.9. Exclusion of Bonds.

Bonds owned or held by or for the account of the City will not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Indenture, and the City shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Indenture.

## ARTICLE XII

## GENERAL COVENANTS AND REPRESENTATIONS

Section 12.1. Representations as to Pledged Revenues.

(a) The City represents and warrants that it is authorized by Applicable Laws to authorize and issue the Bonds, to execute and deliver this Indenture and to pledge the Pledged Revenues in the manner and to the extent provided in this Indenture, and that the Pledged Revenues are and will be and remain free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Indenture except as expressly provided herein.

(b) The City shall at all times, to the extent permitted by Applicable Laws, defend, preserve and protect the pledge of the Pledged Revenues and all the rights of the Owners and the Trustee, under this Indenture against all claims and demands of all Persons whomsoever.

(c) The City will take all steps reasonably necessary and appropriate, and will direct the Trustee to take all steps reasonably necessary and appropriate, to collect all delinquencies in the collection of the Assessments and any other amounts pledged to the payment of the Bonds to the fullest extent permitted by the Act and other Applicable Laws.

(d) To the extent permitted by law, notice of the Annual Installments shall be sent by, or on behalf of the City, to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

Section 12.2. Accounts, Periodic Reports and Certificates.

The Trustee shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City, and the Owner or Owners of not less than 10% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

Section 12.3. General.

The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of this Indenture.

## ARTICLE XIII

## SPECIAL COVENANTS

Section 13.1. Further Assurances; Due Performance.

(a) At any and all times the City will duly execute, acknowledge and deliver, or will cause to be done, executed and delivered, all and every such further acts, conveyances, transfers, and assurances in a manner as the Trustee shall reasonably require for better conveying, transferring, pledging, and confirming unto the Trustee, all and singular, the revenues, Funds, Accounts and properties constituting the Pledged Revenues, and the Trust Estate hereby transferred and pledged, or intended so to be transferred and pledged.

(b) The City will duly and punctually keep, observe and perform each and every term, covenant and condition on its part to be kept, observed and performed, contained in this Indenture.

Section 13.2. Other Obligations or Other Liens.

(a) The City reserves the right to issue obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on the Trust Estate and are not payable from Pledged Revenues.

(b) The City will not create or voluntarily permit to be created any debt, lien or charge on the Trust Estate other than any debt, lien or charge on the Trust Estate associated with the Senior Bonds, which is hereby acknowledged and permitted, and will not do or omit to do or suffer to be or omitted to be done any matter or things whatsoever whereby the lien of this Indenture or the priority hereof or thereof might or could be lost or impaired; and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with this Indenture as a lien or charge upon the Pledged Revenues or Pledged Funds; provided, however, that nothing in this Section shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of Bond Counsel or counsel to the Trustee, the same would endanger the security for the Bonds.

Section 13.3. Books of Record.

(a) The City shall cause to be kept full and proper books of record and accounts, in which full, true and proper entries will be made of all dealing, business and affairs of the City, which relate to the Pledged Revenues, the Pledged Funds, and the Bonds.

(b) The Trustee shall have no responsibility with respect to the financial and other information received by it pursuant to this Section 13.3 except to receive and retain same, subject to the Trustee's document retention policies, and to distribute the same in accordance with the provisions of this Indenture.

## ARTICLE XIV

## PAYMENT AND CANCELLATION OF THE BONDS AND SATISFACTION OF THE INDENTURE

Section 14.1. Trust Irrevocable.

The trust created by the terms and provisions of this Indenture is irrevocable until the Bonds secured hereby are fully paid or provision is made for their payment as provided in this Article.

Section 14.2. Satisfaction of Indenture.

If the City shall pay or cause to be paid, or there shall otherwise be paid to the Owners, the Accreted Value applicable to the Bonds, at the times and in the manner stipulated in this Indenture, and all amounts due and owing with respect to the Bonds have been paid or provided for, then the pledge of the Trust Estate and all covenants, agreements, and other obligations of the City to the Owners of such Bonds, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City copies of all such documents as it may have evidencing that the Accreted Value applicable to the Bonds has been paid so that the City may determine if the Indenture is satisfied; if so, the Trustee shall pay over or deliver all moneys held by it in the in Funds and Accounts held hereunder to the Person entitled to receive such amounts, or, if no Person is entitled to receive such amounts, then to the City.

Section 14.3. Bonds Deemed Paid.

All Outstanding Bonds shall prior to the Stated Maturity thereof be deemed to have been paid and to no longer be deemed Outstanding if (i) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide moneys which, together with any moneys deposited with the Trustee at the same time, shall be sufficient to pay when due the Accreted Value of the Bonds to become due on such Bonds on and prior to the maturity date thereof, (ii) the Trustee shall have received a report by an independent certified public accountant selected by the City verifying the sufficiency of the moneys or Defeasance Securities deposited with the Trustee to pay when due the Accreted Value of the Bonds to become due on such Bonds on and prior to the maturity date thereof, and (iii) if the Bonds are then rated, the Trustee shall have received written confirmation from each rating agency that such deposit will not result in the reduction or withdrawal of the rating on the Bonds. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Accreted Value of the Bonds. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, be reinvested in Defeasance Securities as directed by the City maturing at times and in amounts sufficient to pay when due the Accreted Value of the Bonds on and prior to such maturity date thereof. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

## ARTICLE XV

## MISCELLANEOUS

Section 15.1. Benefits of Indenture Limited to Parties.

Nothing in this Indenture, expressed or implied, is intended to give to any Person other than the City, the Trustee and the Owners, any right, remedy, or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Trustee.

Section 15.2. Successor is Deemed Included in All References to Predecessor.

Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 15.3. Execution of Documents and Proof of Ownership by Owners.

Any request, declaration, or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys duly appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration, or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such request, declaration, or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number, and date of holding the same shall be proved by the Register.

Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Trustee in good faith and in accordance therewith.

Section 15.4. Waiver of Personal Liability.

No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

Section 15.5. Notices to and Demands on City and Trustee.

(a) Except as otherwise expressly provided in this Indenture, all notices or other instruments required or permitted under this Indenture shall be in writing and shall be telexed, cabled, delivered by hand, or mailed by first class mail, postage prepaid, and addressed as follows:

| | |
|---|---|
| If to the City: | City of Austin, Texas<br>P.O. Box 1088<br>Austin, Texas 78767<br>Attn: City Manager |
| If to the Trustee<br>or the<br>Paying Agent/Registrar: | Deutsche Bank National Trust Company<br>Trust & Securities Services<br>101 California Street, 47th Floor<br>San Francisco, CA 92111<br>Attn: US Global Debt Services |

Any such notice, demand, or request may also be transmitted to the appropriate party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change given to the other party by the party effecting the change. Notices and consents given by mail in accordance with this Section shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

(b) The Trustee shall mail to each Owner of a Bond notice of (i) any substitution of the Trustee; or (ii) the defeasance of all Bonds Outstanding.

Section 15.6. Partial Invalidity.

If any Section, paragraph, sentence, clause, or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The City hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause, or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid, or unenforceable.

Section 15.7. Applicable Laws.

This Indenture shall be governed by and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas.

Section 15.8. Payment on Business Day.

In any case where the date of the payment of the Accreted Value of the Bonds is scheduled to be paid or the date any action is to be taken pursuant to this Indenture is other than a Business Day, the payment of the Accreted Value or the action need not be made on such date but may be made on the next succeeding day that is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 15.9. Counterparts.

This Indenture may be executed in counterparts, each of which shall be deemed an original.

*[signature page follows]*

IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture of Trust to be executed all as of the date hereof.

CITY OF AUSTIN, TEXAS

By: _____
LEE LEFFINGWELL, Mayor

[SEAL]

Attest:

_____
SHIRLEY A. GENTRY
City Clerk

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: _____
Authorized Officer

By: _____
Authorized Officer

*Signature Page to Indenture of Trust*

# SCHEDULE 1
# TABLE OF ACCRETED VALUES

**$18,485,168 City of Austin**

Special Assessment Revenue Bonds Series 2011

Subordinate Reimbursement PID Bonds

# Accreted Value Table

| DATE | 12/01/2015 @ 2.5000458% | 12/01/2016 @ 2.8001188% |
|---|---|---|
| 11/16/2011 | 4,522.30 | 4,345.95 |
| 12/01/2011 | 4,526.98 | 4,350.99 |
| 06/01/2012 | 4,583.57 | 4,411.90 |
| 12/01/2012 | 4,640.87 | 4,473.67 |
| 06/01/2013 | 4,698.88 | 4,536.31 |
| 12/01/2013 | 4,757.62 | 4,599.82 |
| 06/01/2014 | 4,817.09 | 4,664.22 |
| 12/01/2014 | 4,877.30 | 4,729.52 |
| 06/01/2015 | 4,938.27 | 4,795.74 |
| 12/01/2015 | 5,000.00 | 4,862.88 |
| 06/01/2016 | - | 4,930.96 |
| 12/01/2016 | - | 5,000.00 |

# EXHIBIT B

# BOND PURCHASE AGREEMENT

**$15,500,000**
**CITY OF AUSTIN, TEXAS,**
**SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011**
**(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)**

**AND**

**$18,485,168.10**
**CITY OF AUSTIN, TEXAS,**
**SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011**
**(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)**

# BOND PURCHASE AGREEMENT

November 3, 2011

City of Austin, Texas
301 W. 2nd St.
Austin, Texas 78701

Club Deal 120 Whisper Valley LP
c/o Taurus of Texas
9285 Huntington Sq.
North Richland Hills, Texas 76108

Ladies and Gentlemen:

The undersigned, Piper Jaffray & Co. (the "Underwriter"), offers to enter into this Agreement (this "Agreement") with the City of Austin, Texas (the "City") and Club Deal 120 Whisper Valley Limited Partnership, a Delaware limited partnership authorized to do business in the State of Texas (the "Developer") which will be binding upon the City, the Developer and the Underwriter upon the acceptance hereof by the City and the Developer. This offer is made subject to its acceptance by the City and the Developer by execution of this Agreement and its delivery to the Underwriter on or before 10:00 p.m., Central Time, on the date hereof and, if not so accepted, will be subject to withdrawal by the Underwriter upon written notice delivered to the City and the Developer at any time prior to the acceptance hereof by the City and the Developer. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Indentures described herein between the City and Deutsche Bank, National Trust Company as trustee (the "Trustee"), authorizing the issuance of the Bonds (defined herein), and in the Official Statements (defined herein).

1. Purchase and Sale of Bonds. Upon the terms and conditions and upon the basis of representations, warranties and agreements hereinafter set forth, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to sell to the Underwriter, all (but not less than all) of $15,500,000 aggregate principal amount of the City of Austin, Texas, Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) (the "Senior Bonds"), at a purchase price of $14,225,982.40 (representing the aggregate principal amount of the Senior Bonds, less a reoffering discount of $840,017.60 and less an Underwriter's discount of $434,000.00), and $18,485,168.10 aggregate original principal amount of the City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) (the "Subordinate Bonds" and, together with the Senior Bonds, the "Bonds"), at a purchase price of $18,239,500.22 (representing the aggregate original principal amount of the Subordinate Bonds less an Underwriter's discount of $245,667.88).

Inasmuch as this purchase and sale represents a negotiated transaction, the City and the Developer understand, and hereby confirm, that the Underwriter is not acting as a fiduciary of the City or the Developer, but rather is acting solely in its capacity as Underwriter for its own account. The City and the Developer acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction among the City, the Developer and the Underwriter, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent or fiduciary of the City or the Developer, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City or the Developer with respect to the offering described herein or the discussions, undertakings, and procedures leading thereto (regardless of whether the Underwriter has provided other services or are currently providing other services to the City or the Developer on other matters) and the Underwriter has no obligation to the City or the Developer with respect to the offering described herein except the obligations expressly set forth in this Agreement, and (iv) the City and the Developer have consulted their own legal, financial, and other advisors to the extent they have deemed appropriate.

The Bonds shall be dated the date of their issuance and delivery and shall have the maturities and redemption features, if any, and bear interest at the rates per annum shown on Appendix A hereto. Payment for and delivery of the Bonds, and the other actions contemplated hereby, shall take place on November 1, 2011 (or such other date as may be agreed to by the City, the Developer and the Underwriter) (the "Closing Date").

2. Authorization Instruments and Law. The Senior Bonds were authorized by an Ordinance enacted by the City Council of the City (the "City Council") on November 3, 2011 (the "Senior Bond Ordinance") and shall be issued pursuant to the provisions of Chapter 372, Texas Local Government Code, as amended (the "Act") and the Indenture of Trust, dated November 1, 2011, between the City and the Trustee, authorizing the issuance of the Senior Bonds (the "Senior Indenture"). The Subordinate Bonds were authorized by an Ordinance enacted by the City Council of the City (the "City Council") on November 3, 2011 (the "Subordinate Bond Ordinance" and, together with the Senior Bond Ordinance, the "Bond Ordinances") and shall be issued pursuant to the provisions of the Act and the Indenture of Trust, dated November 1, 2011, between the City and the Trustee, authorizing the issuance of the Subordinate Bonds (the "Subordinate Indenture" and, together with the Senior Indenture, the

"Indentures"). The Senior Bonds shall be substantially in the form described in, and shall be secured under the provisions of, the Senior Indenture and the Subordinate Bonds shall be substantially in the form described in, and shall be secured under the provisions of, the Subordinate Indenture.

The Senior Bonds and interest thereon shall be secured by (i) the proceeds of the special assessments (the "Special Assessments") levied on the taxable parcels within the Whisper Valley Public Improvement District (the "District") established by Resolution No. 20100826-026 (the "Creation Resolution"), enacted by the City Council on August 26, 2010, in accordance with the Act, and (ii) certain payments made to the Trustee on behalf of the City pursuant to an Escrow Agreement, dated as of November 1, 2011, by and among the City, the Developer and the escrow agent named therein (the "Escrow Agreement"), which payments have been assigned by the City to the Trustee and pledged to secure payment of the Senior Bonds pursuant to the Security, Assignment and Pledge Agreement dated as of November 1, 2011, between the City and the Trustee (the "Senior Pledge Agreement"). A Service and Assessment Plan (the "Service and Assessment Plan") which sets forth the costs of the Improvements (as defined in the Indentures) and the method of payment of the Special Assessments was adopted by the City Council on November 3, 2011, pursuant to Ordinance No. 20111103-012 (the "Special Assessment Ordinance" and, together with the Creation Resolution, the Senior Pledge Agreement, the Senior Indenture and the Senior Bond Ordinance, the "Senior Authorizing Documents"). The Senior Bonds shall be further secured by certain applicable funds and accounts created under the Senior Indenture.

The Subordinate Bonds and interest thereon shall be secured by (i) certain contract payments due to the Developer from the City pursuant to the Cost Reimbursement Agreement, by and between the City and the Developer (as amended, the "Wastewater CRA"), and the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) - Indian Hills and Whisper Valley Subdivisions (as amended, the "Water CRA" and, together with the Wastewater CRA, the "Reimbursement Agreements"), which have been assigned by the Developer and the City and pledged to secure payment of the Subordinate Bonds pursuant to the Security, Assignment and Pledge Agreement dated as of November 1, 2011, among the City, the Developer and the Trustee (the " Subordinate Pledge Agreement" and, together with the Senior Pledge Agreement, the "Pledge Agreements"), and (ii) the proceeds of the Special Assessments, provided that the use of such proceeds to pay debt service requirements of the Subordinate Bonds shall be subject and subordinate to the use of such proceeds to pay debt service requirements of, funding of debt service reserve requirements for and other costs related to the Senior Bonds. The Subordinate Bonds shall be further secured by certain applicable funds and accounts created under the Subordinate Indenture. The Creation Resolution, the Special Assessment Ordinance, the Pledge Agreement, the Subordinate Indenture, and the Subordinate Bond Ordinance are referred to collectively herein as the "Subordinate Authorizing Documents." The Senior Authorizing Documents and the Subordinate Authorizing Documents are together referred to herein as the "Authorizing Documents."

The Senior Bonds shall be as described in Appendix A, the Senior Indenture and the Official Statement (defined below). The Subordinate Bonds shall be as described in Appendix A, the Subordinate Indenture and the Official Statement.

The proceeds of the Senior Bonds shall be used for (i) the payment of a portion of the costs of construction, acquisition or purchase of certain water, wastewater and roadway public improvements for the benefit of the District, (ii) the funding of the Reserve Fund in the amount of the Reserve Fund Requirement for the Senior Bonds, (iii) the payment of a portion of the costs incidental to the organization of the District, (iv) the funding of capitalized interest on the Senior Bonds, and (v) the payment of the costs of issuance of the Senior Bonds.

The proceeds of the Subordinate Bonds shall be used for (i) the payment of a portion of the costs of construction, acquisition or purchase of certain water and wastewater public improvements for the benefit of the District, (ii) the payment of a portion of the costs incidental to the organization of the District, and (iii) the payment of the costs of issuance of the Subordinate Bonds.

3. Public Offering. The Underwriter agrees to make a bona fide public offering of all of the Bonds at prices not to exceed the public offering prices set forth on the inside cover pages of the Official Statements (defined below) and may subsequently change such offering prices without any requirement of prior notice. The Underwriter may offer and sell Bonds to certain dealers (including dealers depositing Bonds into investment trusts) and others at prices lower than the public offering prices (or yields higher than the public offering yields) stated on the inside cover pages of the Official Statements. On or before the third (3rd) business day before Closing, the Underwriter shall execute and deliver to Bond Counsel the Issue Price Certificates, in substantially the forms attached hereto as Appendix B.

4. Official Statements.

(a) Delivery of Official Statements. The City previously has delivered, or caused to be delivered, to the Underwriter the Preliminary Official Statement for the Senior Bonds dated August 4, 2011, the Updated Preliminary Official Statement for the Senior Bonds dated September 8, 2011, and the Supplement to Updated Preliminary Official Statement for the Senior Bonds dated October 26, 2011 (together, the "Senior Bonds Preliminary Official Statement") and the Preliminary Official Statement for the Subordinate Bonds dated September 8, 2011, and the Updated Preliminary Official Statement dated October 26, 2011 (the "Subordinate Bonds Preliminary Official Statement" and, together with the Senior Bonds Preliminary Official Statement, the "Preliminary Official Statements"), both in a "designated electronic format," as defined in the Municipal Securities Rulemaking Board ("MSRB") Rule G-32 ("Rule G-32"). The City will prepare, or cause to be prepared, a final Official Statement relating to the Senior Bonds (the "Senior Bonds Official Statement") and a final Official Statement relating to the Subordinate Bonds (the "Subordinate Bonds Official Statement"), which will be (i) dated the date of this Agreement, (ii) complete within the meaning of the United States Securities and Exchange Commission's Rule 15c2-12, as amended (the "Rule"), (iii) in a "designated electronic format" and (iv) substantially in the form of the most recent version of the Senior Bonds Preliminary Official Statement or the Subordinate Bonds Preliminary Official Statement, as the case may be, provided to the Underwriter before the execution hereof. The Senior Bonds Official Statement and the Subordinate Bonds Official Statement, including the cover pages thereto, all exhibits, schedules, appendices, maps, charts, pictures, diagrams, reports, and statements included or incorporated therein

or attached thereto, and all amendments and supplements thereto that may be authorized for use with respect to either series of the Bonds are collectively referred to herein as the "Official Statements." Until the Official Statements have been prepared and are available for distribution, the City shall provide to the Underwriter sufficient quantities (which may be in electronic format) of the Preliminary Official Statements as the Underwriter deems necessary to satisfy the obligation of the Underwriter under the Rule with respect to distribution to each potential customer, upon request, of a copy of the applicable Preliminary Official Statement.

(b) Preliminary Official Statements Deemed Final. The Preliminary Official Statements have been prepared for use by the Underwriter in connection with the public offering, sale and distribution of the Bonds. The City hereby represents and warrants that the Preliminary Official Statements have been deemed final by the City as of their date, except for the omission of such information which is dependent upon the final pricing of the Bonds for completion, all as permitted to be excluded by Section (b)(1) of the Rule.

(c) Use of Official Statements in Offering and Sale. The City hereby authorizes the Official Statements and the information therein contained to be used by the Underwriter in connection with the public offering and the sale of the Bonds. The City consents to the use by the Underwriter prior to the date hereof of the Preliminary Official Statements in connection with the public offering of the Bonds. The City shall provide, or cause to be provided, to the Underwriter as soon as practicable after the date of the City's acceptance of this Agreement (but, in any event, not later than within seven (7) business days after the City's acceptance of this Agreement and in sufficient time to accompany any confirmation that requests payment from any customer) copies of the Official Statements which are complete as of the date of their delivery to the Underwriter. The City shall provide the Official Statements, or cause the Official Statements to be provided, (i) in a "designated electronic format" consistent with the requirements of Rule G-32 and (ii) in a printed format in such quantity as the Underwriter shall request in order for the Underwriter to comply with Section (b)(4) of the Rule and the rules of the MSRB.

(d) Updating of Official Statements. If, after the date of this Agreement, up to and including the date the Underwriter is no longer required to provide an Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) ninety (90) days from the "end of the underwriting period" (as defined in the Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than twenty-five (25) days after the "end of the underwriting period" for the Bonds), the City or the Developer becomes aware of any fact or event which might or would cause either Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary to amend or supplement either Official Statement to comply with law, the City or the Developer, as applicable, will notify the Underwriter (and for the purposes of this clause provide the Underwriter with such information as it may from time to time request), and if, in the reasonable judgment of the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to either Official Statement, the City will

forthwith prepare and furnish, at the City's own expense (in a form and manner approved by the Underwriter), either an amendment or a supplement to applicable Official Statement(s) so that the statements therein as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or so that the applicable Official Statement(s) will comply with law; provided, however, that for all purposes of this Agreement and any certificate delivered by the City or the Developer in accordance herewith, (i) neither the City nor the Developer makes any representations with respect to the descriptions in the Preliminary Official Statements or the Official Statements of The Depository Trust Company, New York, New York, or its book-entry-only system, (ii) the City makes no representations with respect to the information in the Preliminary Official Statements or the Official Statements under the captions "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER," "BONDHOLDER RISKS" (only as it pertains to the Developer and the Development) and "LEGAL MATTERS — Litigation — The Developer;" and (iii) the Developer makes no representations with respect to the information in the Preliminary Official Statements and the Official Statements under the captions "THE CITY," "THE DISTRICT," "THE IMPROVEMENTS" and "LEGAL MATTERS — Litigation - The City." If such notification shall be subsequent to the Closing, the City, at the expense of the Developer, shall furnish such legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement(s). The City shall provide any such amendment or supplement, or cause any such amendment or supplement to be provided, (i) in a "designated electronic format" consistent with the requirements of Rule G-32 and (ii) in a printed format in such quantity as the Underwriter shall request in order for the Underwriter to comply with Section (b)(4) of the Rule and the rules of the MSRB.

(e) Filing with MSRB. The Underwriter hereby agrees to timely file the Official Statements with MSRB through its Electronic Municipal Market Access ("*EMMA*") system on or before the date of Closing. Unless otherwise notified in writing by the Underwriter, the City can assume that the "end of the underwriting period" for purposes of the Rule is the date of the Closing.

5. City Representations, Warranties and Covenants. The City represents, warrants and covenants to the Underwriter and the Developer that:

(a) Due Organization, Existence and Authority. The City is a political subdivision of the State of Texas (the "State"), and has, and at the Closing Date will have, full legal right, power and authority (i) to enter into this Agreement, the Indentures, the Financing Agreement, the Reimbursement Agreements, the Escrow Agreement, the Pledge Agreements, the Landowner Agreement, dated as of November 1, 2011, executed and delivered by the City and the Developer (the "Landowner Agreement") and the Continuing Disclosure Agreements with respect to the Bonds, both dated as of November 1, 2011 (the "Continuing Disclosure Agreements"), executed and delivered by the City, the Developer and the Trustee, (ii) to issue, sell and deliver the Bonds to the Underwriter as provided herein, and (iii) to carry out and consummate the transactions on its part

contemplated by the Authorizing Documents, this Agreement, the Financing Agreement, the Reimbursement Agreements, the Escrow Agreement, the Pledge Agreements, the Landowner Agreement, the Official Statements, the Continuing Disclosure Agreements and any other documents and certificates contemplated by any of the foregoing (collectively, the "City Documents").

(b) Due Authorization and Approval of City. By all necessary official action of the City, the City has duly authorized and approved the adoption or execution and delivery by the City of, and the performance by the City of the obligations on its part contained in, the City Documents and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded. When validly executed and delivered by the other parties thereto, the City Documents will constitute the legally valid and binding obligations of the City enforceable upon the City in accordance with their respective terms, except insofar as enforcement may be limited by principles of sovereign immunity, bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally. The City has complied, and will at the Closing (defined herein) be in compliance in all respects, with the obligations on its part to be performed on or prior to the Closing Date under the City Documents.

(c) Due Authorization for Issuance of the Bonds. The City has duly authorized the issuance and sale of the Bonds pursuant to the Bond Ordinances, the Indentures and the Act. The City has, and at the Closing Date will have, full legal right, power and authority (i) to enter into, execute, deliver and perform its obligations under this Agreement and the City Documents, (ii) to issue, sell and deliver the Bonds to the Underwriter pursuant to the Indentures, the Bond Ordinances, the Act and as provided herein, and (iii) to carry out, give effect to and consummate the transactions on the part of the City contemplated by the City Documents and the Bond Ordinances.

(d) No Breach or Default. As of the time of acceptance hereof, and to the best of its knowledge, the City is not, and as of the Closing Date the City will not be, in breach of or in default in any material respect under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument related to the Bonds and to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which breach, default or event could have a material adverse effect on the City's ability to perform its obligations under the Bonds or the City Documents; and, as of such times, the authorization, execution and delivery of the Bonds and the City Documents and compliance by the City with obligations on its part to be performed in each of such agreements or instruments does not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the City (or any of its officers in their respective capacities as such) is subject, or by which it

or any of its properties are bound, nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be permitted by the City Documents.

(e) No Litigation. At the time of acceptance hereof there is, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body (collectively and individually, an "Action") pending against the City with respect to which the City has been served with process, nor to the knowledge of the City is any Action threatened against the City, in which any such Action (i) in any way questions the existence of the City or the rights of the members of the City Council to hold their respective positions, (ii) in any way questions the formation or existence of the District, (iii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the City Documents or the consummation of the transactions on the part of the City contemplated thereby, or contests the exclusion of the interest on the Bonds from federal income taxation, or (iv) which may result in any material adverse change in the financial condition of the City; and, as of the time of acceptance hereof there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (i) through (iv) of this sentence.

(f) Bonds Issued Pursuant to Indentures. The City represents that the Bonds, when issued, executed and delivered in accordance with the Indentures and sold to the Underwriter as provided herein, will be validly issued and outstanding obligations of the City subject to the terms of the Indentures, entitled to the benefits of the Indentures and, (i) with respect to the Senior Bonds, the security of the pledge of the proceeds of the levy of the Special Assessments received by the City, and any payments received by the Trustee pursuant to the Escrow Agreement and the Senior Pledge Agreement, and (ii) with respect to the Subordinate Bonds, the security of the pledge of the payments by the City pursuant to the Reimbursement Agreements and the proceeds of the levy of the Special Assessments received by the City (subject and subordinate to the use of such proceeds to pay debt service requirements of, funding of debt service reserve requirements for and other costs related to the Senior Bonds), all to the extent provided for in the Indentures. The Indentures create valid pledges of the monies in certain funds and accounts established pursuant to the Indentures to the extent provided for in the Indentures, including the investments thereof, subject in all cases to the provisions of the Indentures permitting the application thereof for the purposes and on the terms and conditions set forth therein.

(g) Special Assessments. The Special Assessments constituting the security for the Bonds have been levied by the City in accordance with the Act on those parcels of land identified in the Assessment Roll (as defined in the Service and Assessment Plan). According to the Act, such Special Assessments constitute a valid and legally binding first and prior lien against the properties assessed, superior to all other liens and claims, except liens or claims for State, county, school district, or municipality ad valorem taxes.

(h) Reimbursement and Pledge Agreements. The Reimbursement Agreements and the Pledge Agreements have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors rights, or by the application of equitable principles if equitable remedies are sought and to the application of Texas law relating to governmental immunity applicable to governmental entities.

(i) Consents and Approvals. All authorizations, approvals, licenses, permits, consents, elections, and orders of or filings with any governmental authority, legislative body, board, agency or commission having jurisdiction in the matters which are required by the Closing Date for the due authorization of, which would constitute a condition precedent to or the absence of which would adversely affect the due performance by the City of, its obligations in connection with the City Documents have been duly obtained or made and are in full force and effect, except the approval of the Bonds by the Attorney General of the State, registration of the Bonds by the Comptroller of Public Accounts of the State, the approvals, consents and orders as may be required under Blue Sky or securities laws of any jurisdiction.

(j) No Adverse IRS Listing. The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is an issuer whose arbitrage certifications may not be relied upon.

(k) Public Debt. Prior to the Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by a pledge of the Special Assessments which secure the Bonds or the payments by the City pursuant to the Reimbursement Agreements which secure the Subordinate Bonds without the prior approval of the Underwriter.

(l) Preliminary Official Statements. The information contained in the Preliminary Official Statements with respect to the City under the captions "THE CITY," "THE DISTRICT," "THE IMPROVEMENTS" and "LEGAL MATTERS — Litigation - The City" is true and correct in all material respects, and such information does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(m) Official Statements. At the time of the City's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 4 of this Agreement) at all times subsequent thereto during the period up to and including twenty-five (25) days subsequent to the "end of the underwriting period," the information contained in the Official Statements with respect to the City under the captions "THE CITY," "THE DISTRICT," "THE IMPROVEMENTS" and "LEGAL MATTERS — Litigation - The City" does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or

necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 4(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Official Statement, then the Official Statement in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

(n) Supplements or Amendments to Official Statements. If either of the Official Statements is supplemented or amended pursuant to paragraph (d) of Section 4 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including twenty-five (25) days subsequent to the "end of the underwriting period," the Official Statement(s) as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading; provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 4(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Official Statement, then the Official Statement in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

(o) Compliance with the Rule. During the last five (5) years, the City has complied in all material respects with its previous continuing disclosure undertakings made by it in accordance with the Rule.

(p) Use of Bond Proceeds. The City will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Indentures and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(q) Blue Sky and Securities Laws and Regulations. The City will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may request, at no expense to the City, (i) to (y) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (ii) to continue such qualifications in effect so long as required for the initial distribution of the Bonds by the Underwriter (provided, however, that the City will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the City of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose.

(r) Information Delivered to Underwriter. The City, to the extent heretofore requested by the Underwriter, has delivered to the Underwriter true, correct, complete, and legible copies of all information, applications, reports, or other documents of any nature whatsoever submitted to any rating agency for the purpose of obtaining a rating for the Subordinate Bonds and, in each instance, true, correct, complete, and legible copies of all correspondence or other communications relating thereto.

(s) Certificates of the City. Any certificate, signed by any official of the City authorized to do so in connection with the transactions described in this Agreement shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein and can be relied upon by the Underwriter as to the statements made therein.

(t) Intentional Actions Regarding Representations and Warranties. The City covenants that between the date hereof and the Closing it will not intentionally take actions which will cause the representations and warranties made in this Section to be untrue as of the Closing.

By delivering the Official Statements to the Underwriter, the City shall be deemed to have reaffirmed, with respect to such Official Statements, the representations, warranties and covenants set forth above with respect to the Preliminary Official Statements.

6. Developer Representations, Warranties and Covenants. The Developer represents, warrants and covenants to the Underwriter and the City that:

(a) Due Organization, Existence and Authority. The Developer is duly formed and validly existing under the laws of the State of Delaware, qualified to do business in, and in good standing under the laws of, the State of Texas, with full rights, power and authority to execute, deliver and perform its obligations under this Agreement, the Escrow Agreement, the Reimbursement Agreements, the Subordinate Pledge Agreement, the Financing Agreement, the Landowner Agreement, the Continuing Disclosure Agreements and any other documents and certificates contemplated by any of the foregoing (collectively, the "Developer Documents").

(b) Organizational Documents. The copies of the organizational documents of the Developer delivered on the Closing Date (the "Developer Organizational Documents") are fully executed, true, correct and complete copies of such documents and such documents have not been amended or supplemented and are in full force and effect as of the date hereof.

(c) Due Authorization and Approval. By all necessary action, the Developer has duly authorized and approved the execution and delivery of the Developer Documents, as applicable, and the performance by the Developer of its obligations contained in the Developer Documents and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(d) No Breach or Default. The execution and delivery of the Developer Documents and compliance with the provisions thereof, under the circumstances

contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Developer a breach or default under any agreement or instrument to which the Developer is a party or by which it is bound, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would, in any material respect, constitute a default or an event of default under the Developer Documents.

(e) No Litigation. Other than as described in the Preliminary Official Statements and the Official Statements, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the knowledge of the Developer, threatened by or against the Developer: (i) in any way questioning the due formation and valid existence of the Developer; (ii) in any way contesting or affecting the validity of the Developer Documents or the consummation of the transactions contemplated thereby; (iii) in any way questioning or contesting the validity of any governmental approval of the District or any aspect thereof; (iv) in any way questioning or contesting the construction and development of Whisper Valley (as more fully described in the Preliminary Official Statements, the "Development") or (v) which would have a material adverse effect upon the financial condition of the Developer or its ability to own or develop property within the District.

(f) Information. The information prepared and submitted by the Developer to the City or the Underwriter in connection with the preparation of the Preliminary Official Statements and the Official Statements was, and is, as of this date, true and correct in all material respects.

(g) Preliminary Official Statements and Official Statements. The Developer represents and warrants that, to the best of its knowledge after due inquiry, the information set forth in the Preliminary Official Statements and Official Statements under the captions "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER," "BONDHOLDER RISKS" (only as it pertains to the Developer and the Development) and "LEGAL MATTERS — Litigation — The Developer" is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Developer agrees to provide a certificate dated the Closing Date affirming, as of such date, the representations contained in this subsection (g) with respect to the Preliminary Official Statements and the Official Statements.

(h) Consent to Bond Issuance. The Developer hereby consents to the issuance of the Bonds.

(i) Consent to Terms of Indentures. The Developer hereby consents to all of the terms and conditions contained in the Indentures.

(j) Agreement. The Developer covenants that, while the Bonds are outstanding, it will not bring any action, suit, proceeding, inquiry or investigation at law

or in equity, before any court, regulatory agency, public board or body which in any way seeks to challenge or overturn the District, the validity of the Developer Documents, the levy of the Special Assessments or the validity of the Bonds or the proceedings relating to their issuance.

(k) Permits, Licenses, Etc. The Developer has obtained and there are currently in force and effect, or the Developer is not aware of any fact that will prevent it from receiving at or prior to the Closing Date or the date required therefor, all consents, permits, licenses, certificates and other approvals (governmental or otherwise) required of it that:

(i) are necessary to conduct its business as it is currently being conducted;

(ii) (with the exception of the Authorizing Documents) would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance of its obligations under this Agreement, the Developer Documents and any other material agreement or instrument to which it is a party and which is to be used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statements relating to the financing and construction of the Improvements; or

(iii) are necessary for the acquisition, construction and operation of the Improvements.

(l) Events of Default. No "Event of Default" or "event of default" under any of the Developer Documents, any documents to which Developer is a party described in the Official Statements, or under any material documents relating to the financing and construction of the Improvements to which the Developer is a party, or event that, with the passage of time or the giving of notice or both, would constitute such "Event of Default" or "event of default," has occurred and is continuing.

(m) Financing. Other than the Bonds, no additional financing is required to complete the construction of the Improvements.

(n) Taxes and Assessments. All ad valorem taxes and assessments are current on the property which the Developer owns within the District.

7. The Closing. At 10:00 a.m., Central time, on the Closing Date, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by the City, the Developer and the Underwriter, (i) the City will deliver or cause to be delivered to The Depository Trust Company, New York, New York ("DTC") through its "FAST" System, the Bonds in the form of one fully registered Bond for each series and maturity, registered in the name of Cede & Co., as nominee for DTC, duly executed by the City and authenticated by the Trustee as provided in the Indentures, and (ii) the City will deliver the closing documents hereinafter mentioned to Fulbright & Jaworski L.L.P. ("Bond Counsel"), or a place to be mutually agreed upon by the City, the Developer and the Underwriter. Settlement will be through the facilities of DTC. The Underwriter will accept delivery and pay the purchase prices

of the Bonds as set forth in Section 1 hereof by wire transfer in federal funds payable to the order of the City or its designee. These payments and deliveries, together with the delivery of the aforementioned documents, are herein called the "Closing." The Bonds will be made available to the Underwriter for inspection not less than twenty-four (24) hours prior to the Closing.

8. Closing Conditions. The Underwriter has entered into this Agreement in reliance upon the representations and covenants herein and the performance by the City and the Developer of their respective obligations hereunder, both as of the date hereof and as of the date of the Closing. The Underwriter's obligations under this Agreement are and shall be subject to the following additional conditions:

(a) Bring-Down Representations of the City and the Developer. The representations and covenants of the City and the Developer contained herein shall be true and correct in all material respects as of the date hereof and at the time of the Closing, as if made on the Closing Date.

(b) Executed Agreements and Performance Thereunder. At the time of the Closing (i) the City Documents and the Developer Documents shall be in full force and effect, and shall not have been amended, modified or supplemented except with the written consent of the Underwriter, (ii) the Authorizing Documents shall be in full force and effect; (iii) there shall be in full force and effect such other resolutions or actions of the City as, in the opinion of Bond Counsel and Counsel to the Underwriter, shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the City contemplated by this Agreement and the City Documents, (iv) there shall be in full force and effect such other resolutions or actions of the Developer as, in the opinion of Metcalfe Williams LLP, Austin, Texas ("Developer's Counsel) shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the Developer contemplated by this Agreement and the Developer Documents and (v) the City and the Developer shall perform or have performed their respective obligations required or specified in the City Documents and the Developer Documents, respectively, to be performed at or prior to Closing.

(c) No Default. At the time of the Closing, no default shall have occurred or be existing and no circumstances or occurrences that, with the passage of time or giving of notice, shall constitute an event of default under this Agreement, the Indentures, the Developer Documents, the City Documents or other documents relating to the financing and construction of the Improvements and the Development, and the Developer shall not be in default in the payment of principal or interest on any of its indebtedness which default shall materially adversely impact the ability of such Developer to pay the Special Assessments when due.

(d) Concurrent Closing of Indian Hills Public Improvement Bonds. The City shall issue concurrently with the issuance of the Bonds hereunder its two series of bonds with respect to the Indian Hills Public Improvement District.

(e) Closing Documents. At or prior to the Closing, the Underwriter shall have received each of the documents required under Section 9 below.

(f) Termination Events. The Underwriter shall have the right to terminate this Agreement without liability therefor, by written notification to the City and the Developer if at any time at or prior to the Closing:

(i) legislation shall have been introduced in or enacted by the Congress of the United States or adopted by either House thereof, or legislation pending in the Congress of the United States shall have been amended, or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice, or otherwise) by the President of the United States, the Treasury Department of the United States, or the Internal Revenue Service or legislation shall have been proposed for consideration by either the U.S. Senate Committee on Finance or the U.S. House of Representatives Committee on Ways and Means or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision by a court of the United States or the Tax Court of the United States shall be rendered or a ruling, regulation, or official statement (final, temporary, or proposed) by or on behalf of the Treasury Department of the United States, the Internal Revenue Service, or other federal agency shall be made, which would result in federal taxation of revenues or other income of the general character expected to be derived by the City or upon interest on securities of the general character of the Bonds or which would have the effect of changing, directly or indirectly, the federal income tax consequences of receipt of interest on securities of the general character of the Bonds in the hands of the holders thereof, and which in either case, makes it, in the reasonable judgment of the Underwriter, impracticable or inadvisable to proceed with the offer, sale, or delivery of the Bonds on the terms and in the manner contemplated in the Official Statements; or

(ii) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statements, is in violation or would be in violation of, or that obligations of the general character of the Bonds, or the Bonds, are not exempt from registration under, any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, or that the Indentures need to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect; or

(iii) any state blue sky or securities commission or other governmental agency or body in any state in which more than 10% of the Bonds have been offered and sold shall have withheld registration, exemption or clearance of the

offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto;

(iv) a general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(v) the New York Stock Exchange or other national securities exchange or any governmental authority, shall impose, as to the Bonds or as to obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(vi) any amendment to the federal or state Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the City, its property, income securities (or interest thereon), or the validity or enforceability of the Assessments, the Reimbursement Agreements or the Pledge Agreements to pay principal of and interest on, or Maturity Amount of, as the case may be, the Bonds;

(vii) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriter, makes untrue in any material respect any statement or information contained in either of the Official Statements, or has the effect that either of the Official Statements contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(viii) there shall have occurred since the date of this Agreement any materially adverse change in the affairs or financial condition of the City, except for changes which the Official Statements disclose are expected to occur;

(ix) there shall have occurred any outbreak of hostilities (including, without limitation, an act of terrorism) or other national or international calamity or crisis, including, but not limited to, an escalation of hostilities that existed prior to the date hereof, and the effect of any such event on the financial markets of the United States shall be such as would make it impracticable, in the reasonable judgment of the Underwriter, for it to sell the Bonds on the terms and in the manner contemplated by the Official Statements;

(x) any fact or event shall exist or have existed that, in the Underwriter's reasonable judgment, requires or has required an amendment of or supplement to either of the Official Statements;

(xi) there shall have occurred any downgrading or published negative credit watch or similar published information from a rating agency that at the date of this Agreement has published a rating (or has been asked to furnish a rating) on the Subordinate Bonds, which action reflects a change or possible change in the ratings accorded the Subordinate Bonds;

(xii) a material disruption in securities settlement, payment or clearance services shall have occurred; and

(xiii) the purchase of and payment for the Bonds by the Underwriter, or the resale of the Bonds by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

9. Closing Documents. At or prior to the Closing, the Underwriter shall receive the following documents:

(a) Bond Opinions. Approving opinions of Bond Counsel, dated the Closing Date and substantially in the form included as Appendix C to the Official Statements, together with a reliance letter from Bond Counsel, dated the date of the Closing and addressed to the Underwriter, to the effect that the foregoing opinion may be relied upon by the Underwriter to the same extent as if such opinion were addressed to it.

(b) Supplemental Opinions. Supplemental opinions of Bond Counsel dated the Closing Date and addressed to the City, the Developer and the Underwriter, in form and substance acceptable to counsel for the Underwriter, to the following effect:

(i) Except to the extent noted therein, Bond Counsel has not verified and is not passing upon, and does not assume any responsibility for, the accuracy, completeness or fairness of the statements and information contained in the Official Statements but that Bond Counsel has reviewed the statements and information appearing under the captions "PLAN OF FINANCE," "DESCRIPTION OF THE BONDS," "SECURITY FOR THE BONDS," "TAX MATTERS," "LEGAL INVESTMENT AND ELIGIBILITY TO SECURE PUBLIC FUNDS IN TEXAS," "REGISTRATION AND QUALIFICATION OF BONDS FOR SALE," "CONTINUING DISCLOSURE," "APPENDIX A - FORM OF INDENTURE," "APPENDIX B - FORM OF DISCLOSURE AGREEMENT" and "APPENDIX G - SECURITY, ASSIGNMENT AND PLEDGE AGREEMENT" and Bond Counsel is of the opinion that the information relating to the Bonds and legal issues contained under such captions and subcaptions is an accurate and fair description of the laws and legal issues addressed therein and, with respect to the Bonds, such information conforms to the Bond Ordinances and Indentures;

(ii) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Indentures are exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(iii) The City has full power and authority to adopt the Authorizing Documents and perform its obligations thereunder and such Authorizing Documents have been duly adopted; and the Authorizing Documents are in full force and effect and have not been modified, amended or rescinded; and

(iv) The City Documents have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors rights, or by the application of equitable principles if equitable remedies are sought and to the application of Texas law relating to governmental immunity applicable to governmental entities.

(c) City Attorney Opinion. An opinion of the City Attorney, dated the Closing Date and addressed to the Underwriter, the Developer and the Trustee, with respect to matters relating to the City, substantially in the form of Appendix C hereto or in form otherwise agreed upon by the Underwriter.

(d) City Certificate. A certificate or certificates of the City, dated the Closing Date, in form and substance satisfactory to Bond Counsel and counsel to the Underwriter.

(e) Developer Counsel Opinion. An opinion of Developer's Counsel, substantially in the form of Appendix D hereto, dated the Closing Date and addressed to the City, Bond Counsel, the Underwriter and the Trustee, or in form otherwise agreed upon by the City and the Underwriter.

(f) Developer Certificate. A certificate or certificates of the Developer, dated the Closing Date, to the effect that, to the best of its knowledge after due inquiry:

(i) the representations and warranties of the Developer contained herein and in the Developer Documents are true and correct in all material respects on and as of the Closing Date as if made on the date thereof;

(ii) the Developer Documents are in full force and effect and have not been amended, modified or supplemented;

(iii) there is no action, suit, proceeding or investigation before any court, public board or body pending, with respect to which the Developer has been served with process, or, to the knowledge of the Developer threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the Developer or its respective officers to their respective offices; or (b) in any way question or affect this Agreement or the transactions contemplated by this Agreement or the Developer Documents;

(iv) the Developer has complied in all material respects with all of its agreements and covenants and satisfied all conditions required to be complied with or satisfied by the Developer hereunder at or prior to the Closing;

(v) the information set forth in the Official Statements under the captions "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER," "BONDHOLDERS' RISKS" (only as it pertains to the Developer and the Development) and "LEGAL MATTERS — Litigation – The Developer" is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as of the date thereof; and

(vi) although it has not verified and does not assume any responsibility for the accuracy, completeness or fairness of the information contained in the Preliminary Official Statements or the Official Statements other than those described in clause (v), it has participated in the preparation of the Preliminary Official Statements and the Official Statements and without independent verification, no facts came to its attention to lead it to believe that the Preliminary Official Statements, as of their date or as of the date of this Agreement, or the Official Statements, as of their date or as of the date of Closing (except for financial, forecast, technical and statistical statements and data therein and the information regarding The Depository Trust Company and its book-entry only system, in each case as to which it is not called upon to comment) contained or contains any untrue statement of a material fact, or omitted or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) City Certificate. A certificate of the City, dated the Closing Date, to the effect that, to the best of its knowledge after due inquiry:

(i) the representations and warranties of the City contained herein and in the City Documents are true and correct in all material respects on and as of the Closing Date as if made on the date thereof;

(ii) the Authorizing Documents and City Documents are in full force and effect and have not been amended, modified or supplemented;

(iii) except as disclosed in the Official Statements, no litigation or proceeding against the City is pending or, to the knowledge of such persons, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officials of the City to hold and exercise their respective positions, (b) contest the due organization and valid existence of the City or the establishment of the District, (c) contest the validity, due authorization and execution of the Bonds or the City Documents or (d) attempt to limit, enjoin or otherwise restrict or prevent the City from (I) levying

and collecting the Special Assessments pledged or to be pledged to pay the principal of and interest on the Senior Bonds and the Maturity Amounts of the Subordinate Bonds, or the pledge thereof, (II) pledging amounts due to the Trustee on behalf of the City pursuant to the Escrow Agreement to pay the principal of and interest on the Senior Bonds, or (III) paying the amounts due by the City pursuant to the Reimbursement Agreements or pledging such amounts to pay the Maturity Amounts of the Subordinate Bonds; and

(iv) the City has, to the best of its knowledge, complied with all agreements and covenants and satisfied all conditions set forth in the City Documents, on its part to be complied with or satisfied hereunder at or prior to the Closing.

(h) Trustee's Certificate. A Certificate of the Trustee, dated the date of Closing, in form and substance acceptable to counsel for the Underwriter to the following effect:

(i) The Trustee is duly organized and validly existing as a trust company under the laws of the State of New York, having the full power and authority, including trust powers, to accept and perform its duties under the Indentures; and

(ii) No consent, approval, authorization or other action by any governmental authority having jurisdiction over the Trustee that has not been obtained is or will be required for the authentication of the Bonds or the consummation by the Trustee of the other transactions contemplated to be performed by the Trustee in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Indentures.

(i) Underwriter Counsel's Opinion. An opinion, dated the Closing Date and addressed to the Underwriter, of Andrews Kurth LLP, counsel to the Underwriter, to the effect that although such counsel has not verified and is not passing upon, and does not assume any responsibility for, the accuracy, completeness or fairness of the information contained in the Official Statements, it has participated in the preparation of the Official Statements and without independent verification, no facts came to its attention that caused it to believe that the Official Statements (except for the Appendices as well as any other financial, engineering and statistical data contained therein or included therein by reference or any litigation disclosed therein, as to which it expresses no view) as of its date contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) Official Statement. The Official Statement and each supplement or amendment, if any, thereto, executed on behalf of the City by the Mayor.

(k) Delivery of City Documents and Developer Documents. The City Documents and Developer Documents shall have been executed and delivered in form and content satisfactory to the Underwriter.

(l) Organizational Documents. The Developer shall have delivered to the Underwriter and the City fully executed copies of each of the Developer's organizational documents.

(m) Form 8038. Evidence that the federal tax information form 8038-G has been prepared by Bond Counsel for filing.

(n) Federal Tax Certificates. Certificates of the City in form and substance satisfactory to Bond Counsel and counsel to the Underwriter (a) setting forth the facts, estimates and circumstances in existence on the date of the Closing, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code, and (b) certifying that to the best of the knowledge and belief of the City there are no other facts, estimates or circumstances that would materially change the conclusions, representations and expectations contained in such certificate.

(o) Attorney General Opinion and Registration. The approving opinion of the Attorney General of the State regarding the Bonds and the Comptroller of the State's Certificate of Registration for the initial Bonds;

(p) Continuing Disclosure Agreement. The Continuing Disclosure Agreements shall have been executed by the parties in substantially the form attached to the Preliminary Official Statements as Appendix D.

(q) Letter of Representation of the Appraiser. Letter of Representation of the Appraiser, substantially in the form of Appendix D hereto, dated the Closing Date and addressed to the City, Bond Counsel, the Underwriter and the Trustee, or in form otherwise agreed upon by the Underwriter.

(r) UCC Financing Statement. Evidence that form UCC-1 with respect to the Subordinate Pledge Agreement has been prepared by Bond Counsel for filing.

(s) Additional Documents. Such additional legal opinions, certificates, instruments and other documents as the Underwriter or their counsel may reasonably deem necessary.

If either the City or the Developer shall be unable to satisfy the conditions contained in this Agreement, or if the obligations of the Underwriter shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriter nor the City shall be under further obligation hereunder, except as further set forth in Sections 11 and 13 hereof.

10. Indemnification.

(a) The Developer will indemnify and hold harmless the City and the Underwriter and each of their officers, directors, employees and agents against any losses, claims, damages or liabilities to which any of them may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in the Official Statements under the captions "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER," "BONDHOLDERS' RISKS" (only as it pertains to the Developer and the Development) and "LEGAL MATTERS — Litigation – The Developer," or any amendment or supplement to the Official Statements amending or supplementing the information contained under the aforementioned captions (as qualified above), or arise out of or are based upon the omission or alleged untrue statement or omission to state therein a material fact necessary to make the statements under the aforementioned captions (as qualified above) not misleading under the circumstances under which they were made and will reimburse any indemnified party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred. Notwithstanding any provision in this Agreement to the contrary, the Developer shall have no liability to the Underwriter, the City or any other person for any untrue, inaccurate or misleading statement set forth in the introductory paragraph of this Agreement or numbered Sections 2 through 5, 7, 8(d) through 8(f), 9(a) through 9(e), 9(g) through 9(j), 9(m) through 9(o), 9(q) through 9(s) or 10.

(b) The Underwriter will indemnify and hold harmless the Developer and the City against any losses, claims, damages or liabilities to which the Developer or the City may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Official Statements, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading under the circumstances under which they were made, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Official Statement(s) or any such amendment or supplement in reliance upon and in conformity with information under the heading "UNDERWRITING" in the Official Statements, and will reimburse the Developer and the City for any legal or other expenses reasonably incurred by the Developer and the City in connection with investigating or defending any such actions or claims as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party otherwise than under such

subsection. In case any such action shall be brought against an indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. The indemnifying party shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the indemnifying party or if there is a final judgment for the plaintiff in any such action, the indemnifying party will indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. The indemnity agreement in this Section 10 shall survive delivery of the Bonds and shall survive any investigation made by or on behalf of the City, the Developer or the Underwriter.

11. Costs and Expenses.

(a) The Underwriter shall be under no obligation to pay, and the City shall cause to be paid the following expenses incident to the issuance of the Bonds and performance of the City's obligations hereunder: (i) the costs of the preparation and printing of the Bonds; (ii) the cost of preparation, printing and mailing of the Preliminary Official Statements, the final Official Statements and any supplements and amendments thereto; (iii) the fees and disbursements of the City's financial advisor, the Trustee's counsel, Bond Counsel, Developer's counsel, counsel to the Underwriter and the Trustee relating to the issuance of the Bonds, (iv) the fees for bond ratings, (v) the Attorney General's review fees, (vi) the fees and disbursements of accountants, advisers and any other experts or consultants retained by the City or the Developer, including but not limited to the fees and expenses of the Appraiser, and (vii) the expenses incurred by or on behalf of City employees and representatives that are incidental to the issuance of the Bonds and the performance by the City of its obligations under this Agreement.

(b) The Underwriter shall pay the following expenses: (i) all advertising expenses in connection with the limited offering of the Bonds; and (ii) all other expenses, including CUSIP fees (including out-of-pocket expenses and related regulatory expenses), incurred by it in connection with its public offering and distribution of the Bonds, except as noted in Subsection 10(a) above.

(c) The Issuer acknowledges that the Underwriter will pay from the underwriters' expense allocation of the underwriting discount the applicable per bond assessment charged by the Municipal Advisory Counsel of Texas, a non-profit corporation whose purpose is to collect, maintain and distribute information relating to issuing entities of municipal securities. An employee of the Underwriter serves on the Board of the Municipal Advisory Council of Texas

12. Notice. Any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to: City of Austin, Texas, 301 W. 2nd St., Austin, Texas 78701, Attention: City Treasurer.

Any notice or other communication to be given to the Developer under this Agreement may be given by delivering the same in writing to: Club Deal 120 Whisper Valley LP, c/o Taurus of Texas, 9285 Huntington Sq., North Richland Hills, Texas 76108, Attention: Doug Gilliland.

Any notice or other communication to be given to the Underwriter under this Agreement may be given by delivering the same in writing to: Piper Jaffray & Co., 345 California St., Suite 2400, San Francisco, California 94101, Attention: Mark Curran, Managing Director.

13. Entire Agreement. This Agreement is made solely for the benefit of the City, the Developer and the Underwriter (including their respective successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. All of the City's and the Developer's representations, warranties and agreements contained in this Agreement shall remain operative and in full force and effect regardless of: (i) any investigations made by or on behalf of the Underwriter, provided the City and the Developer shall have no liability with respect to any matter of which the Underwriter has actual knowledge prior to the purchase of the Bonds; or (ii) delivery of any payment for the Bonds pursuant to this Agreement. The agreements contained in this Section and in Section 14 shall survive any termination of this Agreement.

14. Survival of Representations and Warranties. All representations and warranties of the parties made in, pursuant to or in connection with this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigation by the parties. All statements contained in any certificate, instrument or other writing delivered by a party to this Agreement or in connection with the transactions contemplated by this Agreement constitute representations and warranties by such party under this Agreement to the extent such statement is set forth as a representation and warranty in the instrument in question.

15. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

16. Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

17. State Law Governs. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State.

18. No Assignment. The rights and obligations created by this Agreement shall not be subject to assignment by the Underwriter, the Developer or the City without the prior written consent of the other parties hereto.

19. No Personal Liability. None of the members of the City Council, nor any officer, agent, or employee of the City, shall be charged personally by the Underwriter with any liability,

or be held liable to the Underwriter under any term or provision of this Agreement, or because of execution or attempted executing, or because of any breach or attempted or alleged breach of this Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

**PIPER JAFFRAY & CO.,**
as Underwriter

By:_____
Name: Mark Curran
Title: Managing Director

Accepted as of the date first stated above:

**CITY OF AUSTIN, TEXAS**

By:_____
Mayor

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

By: CD120 G.P., LLC, a Delaware limited liability company qualified to do business in Texas, its general partner

By: _____
Name: Douglas H. Gilliland
Title: Manager

# APPENDIX A

$15,500,000
CITY OF AUSTIN, TEXAS,
(a municipal corporation of the State of Texas located in Travis County)
SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

$1,795,000 8.500% Term Bonds, Due September 1, 2018, Priced to Yield 8.875% [a]

$1,870,000 8.375% Term Bonds, Due September 1, 2020, Priced to Yield 8.875% [b]

$1,495,000 8.375% Term Bonds, Due September 1, 2022, Priced to Yield 8.875% [c]

$1,260,000 8.375% Term Bonds, Due September 1, 2022, Priced to Yield 8.875% [d]

$9,080,000 7.875% Term Bonds, Due September 1, 2026, Priced to Yield 8.750% [e]

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(a) The Term Bonds maturing on September 1, 2018, are subject to (i) redemption, in whole or in part, prior to stated maturity, at the option of the City, on any Interest Payment Date on or after September 1, 2013, at a price of par plus accrued interest to the date of redemption; and (ii) mandatory sinking fund redemption prior to their respective maturities at a price of 100% of the principal amount thereof, plus accrued interest to the redemption date, on the dates and in the respective principal amounts set forth in the following schedule:

| Redemption Date | Principal Amount |
|---|---|
| September 1, 2015 | $255,000 |
| September 1, 2016 | 370,000 |
| September 1, 2017 | 510,000 |
| September 1, 2018 | 660,000 |

(b) The Term Bonds maturing on September 1, 2020, are subject to (i) redemption, in whole or in part, prior to stated maturity, at the option of the City, on any Interest Payment Date on or after September 1, 2015, at a price of par plus accrued interest to the date of redemption; and (ii) mandatory sinking fund redemption prior to their respective maturities at a price of 100% of the principal amount thereof, plus accrued interest to the redemption date, on the dates and in the respective principal amounts set forth in the following schedule:

| Redemption Date | Principal Amount |
|---|---|
| September 1, 2019 | $ 835,000 |
| September 1, 2020 | 1,035,000 |

(c) The $1,495,000 Term Bonds maturing on September 1, 2022, are subject to (i) redemption, in whole or in part, prior to stated maturity, at the option of the City, on any Interest Payment Date on or after September 1, 2017, at a price of par plus accrued interest to the date of redemption; and (ii) mandatory sinking fund redemption prior to their respective maturities at a price of 100% of the principal amount thereof, plus accrued interest to the redemption date, on the dates and in the respective principal amounts set forth in the following schedule:

| Redemption Date | Principal Amount |
|---|---|
| September 1, 2021 | $680,000 |
| September 1, 2022 | 815,000 |

(d) The $1,260,000 Term Bonds maturing on September 1, 2022, are subject to (i) redemption, in whole or in part, prior to stated maturity, at the option of the City, on any Interest Payment Date on or after September 1, 2021, at a price of par plus accrued interest to the date of redemption; and (ii) mandatory sinking fund redemption prior to their respective maturities at a price of 100% of the principal amount thereof, plus accrued interest to the redemption date, on the dates and in the respective principal amounts set forth in the following schedule:

| Redemption Date | Principal Amount |
|---|---|
| September 1, 2021 | $575,000 |
| September 1, 2022 | 685,000 |

(e) The Term Bonds maturing on September 1, 2026, are subject to (i) redemption, in whole or in part, prior to stated maturity, at the option of the City, on any Interest Payment Date on or after September 1, 2021, at a price of par plus accrued interest to the date of redemption; and (ii) mandatory sinking fund redemption prior to their respective maturities at a price of 100% of the principal amount thereof, plus accrued interest to the redemption date, on the dates and in the respective principal amounts set forth in the following schedule:

| Redemption Date | Principal Amount |
|---|---|
| September 1, 2023 | $1,780,000 |
| September 1, 2024 | 2,085,000 |
| September 1, 2025 | 2,420,000 |
| September 1, 2026 | 2,795,000 |

$17,854,617.50
CITY OF AUSTIN, TEXAS,
(a municipal corporation of the State of Texas located in Travis County)
SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

| Maturity December 1 | Original Principal Amount | Offering Price per $5,000 of Maturity Amount | Initial Yield to Maturity | Maturity Amount |
|---|---|---|---|---|
| 2015 | $ 5,508,161.40 | $4,522.30 | 2.500% | $ 6,090,000.00 |
| 2016 | 12,977,006.70 | 4,345.95 | 2.800 | 14,930,000.00 |

APPENDIX B

Form of Issue Price Certificates

ISSUE PRICE CERTIFICATE

The undersigned hereby certifies as follows with respect to the sale of the CITY OF AUSTIN, TEXAS, SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT), in the principal amount of $15,500,000 (the "Bonds"):

1. The undersigned is the underwriter that purchased the Bonds from the City of Austin, Texas (the "Issuer") by negotiated sale.

2. The undersigned has made a bona fide offering of all of the Bonds of each maturity to the public at the initial offering prices set forth in the Issuer's Official Statement with respect to the Bonds, dated November 3, 2011 (the "Official Statement").

3. The initial offering price (expressed as a dollar amount, yield percentage, or percentage of principal amount and exclusive of accrued interest) at which a substantial amount (at least 10%) of the Bonds of each maturity was sold to the public (as defined in paragraph 4) is as set forth on the inside cover page of the Official Statement.

4. The term "public," as used herein, means persons other than bondhouses, brokers, dealers, and similar persons or organizations acting in the capacity of underwriters or wholesalers.

5. The initial offering prices described above reflect current market prices at the time of such sales.

6. The undersigned understands that the statements made herein will be relied upon by the Issuer in its effort to comply with the conditions imposed by the Internal Revenue Code of 1986 on the exclusion of interest on the Bonds from the gross income of their owners.

EXECUTED and DELIVERED this _____.

PIPER JAFFRAY & CO.

By: _____

Title: _____

## ISSUE PRICE CERTIFICATE

The undersigned hereby certifies as follows with respect to the sale of the CITY OF AUSTIN, TEXAS, SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT), in the principal amount of $18,485,168.10 (the "Bonds"):

1. The undersigned is the underwriter that purchased the Bonds from the City of Austin, Texas (the "Issuer") by negotiated sale.

2. The undersigned has made a bona fide offering of all of the Bonds of each maturity to the public at the initial offering prices set forth in the Issuer's Official Statement with respect to the Bonds, dated November 3, 2011 (the "Official Statement").

3. The initial offering price (expressed as a dollar amount, yield percentage, or percentage of principal amount and exclusive of accrued interest) at which a substantial amount (at least 10%) of the Bonds of each maturity was sold to the public (as defined in paragraph 4) is as set forth on the inside cover page of the Official Statement.

4. The term "public," as used herein, means persons other than bondhouses, brokers, dealers, and similar persons or organizations acting in the capacity of underwriters or wholesalers.

5. The initial offering prices described above reflect current market prices at the time of such sales.

6. The undersigned understands that the statements made herein will be relied upon by the Issuer in its effort to comply with the conditions imposed by the Internal Revenue Code of 1986 on the exclusion of interest on the Bonds from the gross income of their owners.

EXECUTED and DELIVERED this _____.

PIPER JAFFRAY & CO.

By: _____

Title: _____

APPENDIX C

[Letterhead of the City of Attorney]

[Closing Date]

[Include Developer, Trustee, Underwriter,
Developer's Counsel and Bond Counsel as addressees]

$15,500,000
CITY OF AUSTIN, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

AND

$18,485,168.10
CITY OF AUSTIN, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

I am the City Attorney for the City of Austin, Texas (the "City"), and am rendering this opinion in connection with the issuance and sale of $15,500,000 City of Austin, Texas, Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) and $18,485,168.10 City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) (together, the "Bonds"), by the City, a political subdivision of the State of Texas.

The Bonds are authorized pursuant to Ordinance Nos. 20111103-054 and 20111103-055 enacted by the City Council of the City (the "City Council") on November 3, 2011 (together, the "Bond Ordinances") and shall be issued pursuant to the provisions of the Public Improvement District Act, Chapter 372, Texas Local Government Code, as amended (the "Act") and the Indentures of Trust dated as of November 1, 2011 (together, the "Indentures") by and between the City and Deutsche Bank National Trust Company, as trustee (the "Trustee"). Capitalized terms not defined herein shall have the same meanings as in the Indentures, unless otherwise stated herein.

In connection with rendering this opinion, I have reviewed the:

(a) The Bond Ordinances.

(b) The Resolution No. 20100826-026 (the "Creation Resolution") enacted by the City Council on August 26, 2010.

(c) The Ordinance No. 20111103-012 accepted and approved by City Council on November 3, 2011, and the Service and Assessment plan attached as an exhibit thereto (the "Special Assessment Ordinance").

(d) The Indentures.

(e) The Escrow Agreement, dated as of November 1, 2011, executed and delivered by the City, the Developer and the escrow agent named therein (the "Escrow Agreement").

(f) The Security, Assignment and Pledge Agreement, dated as of November 1, 2011, executed and delivered by the City and the Trustee with respect to the Senior Bonds (the "Senior Pledge Agreement").

(g) The Cost Reimbursement Agreement, as amended, by and between the City and the Developer, and the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) - Indian Hills and Whisper Valley Subdivisions, as amended, by and between the City and the Developer (together, the "Reimbursement Agreements").

(h) The Security Assignment and Pledge Agreement, dated as of November 1, 2011, executed and delivered by the City, the Developer and the Trustee with respect to the Subordinate Bonds (the "Subordinate Pledge Agreement" and, together with the Senior Pledge Agreement, the "Pledge Agreements").

(i) The Pledge Agreement, dated as of November 1, 2011, executed and delivered by the City, the Developer and the Trustee (the "Pledge Agreement").

(j) The Landowner Agreement, dated as of November 1, 2011, executed and delivered by the City and the Developer (the "Landowner Agreement")

(k) The Continuing Disclosure Agreements, dated as of November 1, 2011, executed and delivered by the City, the Developer and the Trustee (the "Disclosure Agreements").

The Bond Ordinances, the Creation Resolution, the Special Assessment Ordinance, the Escrow Agreement, the Reimbursement Agreements, the Pledge Agreements, the Financing Agreement and the Landowner Agreement shall herein after be referred to as the "Authorizing Documents" and the remaining documents shall herein after be collectively referred to as the "City Documents."

In all such examinations, I have assumed that all signatures on documents and instruments executed by the City are genuine and that all documents submitted to me as copies conform to the originals. In addition, for purposes of this opinion, I have assumed the due authorization, execution and delivery of the City Documents by all parties other than the City.

Based upon and subject to the foregoing and the additional qualifications and assumptions set forth herein, I am of the opinion that:

1. The City is a Texas political subdivision and has all necessary power and authority to enter into and perform its obligations under the City Documents. The City has taken or obtained all actions, approvals, consents and authorizations required of it by applicable laws in connection with the execution of the City Documents and the performance of its obligations thereunder.

2. There is no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, public board or body, pending or, to the best of my knowledge, threatened against the City (a) affecting the organization and existence of the City or the titles of its officers to their respective offices, (b) in any way questioning the formation or existence of the District, (c) affecting, contesting or seeking to prohibit, restrain or enjoin the delivery of any of the Bonds, or the payment, collection or application of any amounts pledged or to be pledged to pay the principal of and interest on, or Maturity Value of, as the case may be, the Bonds, including the special assessments in the Whisper Valley Public Improvement District pursuant to the provisions of the Special Assessment Ordinance and the Service and Assessment Plan referenced therein, (d) contesting or affecting the validity or enforceability or the City's performance of the City Documents, (e) contesting the exclusion of the interest on the Bonds from federal income taxation, or (f) which may result in any material adverse change relating to the financial condition of the City; and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (a) through (f) of this sentence.

3. The Authorizing Documents were duly enacted by the City and remain in full force and effect on the date hereof.

4. The City Documents have been duly authorized, executed and delivered by the City and remain legal, valid and binding obligations of the City enforceable against the City in accordance with their terms. However, the enforceability of the obligations of the City under the City Documents may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, and (c) the application of Texas law relating to governmental immunity applicable to governmental entities.

5. The performance by the City of the obligations under the City Documents will not violate any provision of any Federal or Texas constitutional or statutory provision.

6. No further consent, approval, authorization or order of any court or governmental agency or body or official is required to be obtained by the City as a condition precedent to the performance by the City of its obligations under the City Documents.

7. The adoption of the Authorizing Documents and the execution and delivery of the City Documents and the compliance with the provisions of the Authorizing Documents and the City Documents under the circumstances contemplated thereby (a) do not and will not to my knowledge in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement to which the City is a party or by which it is bound, and (b) do not and will not in any material respect conflict with or constitute on the part of the City a violation, breach of or default under any existing law, regulation, court order or consent decree to which the City is subject.

This opinion may not be relied upon by any other person except those specifically addressed in this letter.

Very truly yours,

APPENDIX D

[Letterhead of Counsel to the Developer]

[Closing Date]

[Include City, Underwriter, Bond Counsel and Trustee as addressees]

$15,500,000
CITY OF AUSTIN, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SENIOR SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

AND

$18,485,168.10
CITY OF AUSTIN, TEXAS,
SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

We have acted as special counsel for Club Deal 120 Whisper Valley, Limited Partnership (the "Developer"), in connection with the issuance and sale by the City of Austin, Texas (the "City"), of $15,500,000 City of Austin, Texas, Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) (the "Senior Bonds") and $18,485,168.10 City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) (the "Subordinate Bonds" and, together with the Senior Bonds, the "Bonds"), pursuant to Indentures of Trust dated as of November 1, 2011 (together, the "Indentures"), by and between the City and Deutsche Bank National Trust Company, as trustee (the "Trustee"). Proceeds from the sale of the Bonds will be used, in part, to fund certain public infrastructure improvements in the development known as "Whisper Valley" (the "Development") located in the City.

The Bonds are being sold to Piper Jaffray & Co. (the "Underwriter"), pursuant to that certain Bond Purchase Agreement dated November 3, 2011 (the "Bond Purchase Agreement"), by and among the City, the Developer and the Underwriter. This opinion is being delivered pursuant to Section 9(e) of the Bond Purchase Agreement.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Bond Purchase Agreement.

**Assumptions and Bases for Opinions and Assurances**

In our capacity as special counsel to the Developer, and for purposes of rendering the opinions set forth herein, we have examined originals or copies, certified or otherwise identified to our satisfaction, of:

(a) The following documents being executed, entered into and/or issued, as the case may be, in connection with the issuance of the Bonds (collectively, the "Documents"):

(1) The Indentures;

(2) The Bond Purchase Agreement;

(3) The Reimbursement Agreements;

(4) The Escrow Agreement;

(5) The Subordinate Pledge Agreement;

(6) The Financing Agreement;

(7) The Landowner Agreement; and

(8) The Continuing Disclosure Agreements.

(b) Certificates of the Developer dated as of the closing date certifying as to (i) the Developer's organization documents as such are in effect as of the date hereof (the "Developer Basic Documents"); (ii) the resolution of the Developer adopted as of _____, 2011, authorizing its execution of the applicable Documents to which it is a party and related matters; and (iii) certain other matters (collectively, the "Developer Certificates");

(c) Evidence that the Developer is authorized to do business in the State of Texas and is in good standing;

(d) The Preliminary Official Statement, dated August 4, 2011, the Updated Preliminary Official Statement, dated September 8, 2011, and the Supplement to Updated Preliminary Official Statement, dated October 26, 2011, all relating to the issuance of the Senior Bonds, and the Preliminary Official Statement, dated September 8, 2011, and the Updated Preliminary Official Statement, dated October 26, 2011, relating to the issuance of the Subordinate Bonds (collectively, the "Preliminary Official Statements");

(e) The final Official Statement relating to the issuance of the Senior Bonds, dated November 3, 2011, and the final Official Statement relating to the issuance of the Subordinate Bonds, dated November 3, 2011 (together, the "Official Statements"); and

(f) Such other documents, records, agreements and certificates of the Developer and such other parties as we have deemed necessary or appropriate to enable us to render the opinions expressed below.

In basing the opinions and other matters set forth herein on "our knowledge," the words "our knowledge" signify that, in the course of our representation of the Developer the principal attorneys in this firm involved in the current actual transaction do not have actual knowledge or actual notice that any such opinions or other matters are not accurate or that any of the documents, certificates, reports and information on which we have relied are not accurate and complete. Except as otherwise stated herein, we have undertaken no independent investigation or certification of such matters. The words "our knowledge" and similar language used herein are intended to be limited to the knowledge of the attorneys within our firm who have worked on the matters contemplated by our representation as special counsel.

In rendering the opinions set forth herein, we have assumed, without independent investigation, that (i) all persons other than the Developer have duly and validly executed and delivered each instrument, document, and agreement constituting a Document or executed in connection therewith to which such party is a signatory, and each such party's obligations set forth therein are its legal, valid, and binding obligations, enforceable in accordance with the terms thereof; (ii) each person executing any such instrument, document, or agreement other than the Developer is duly authorized and has the legal power to do so; (iii) each natural person executing any such instrument, document, or agreement is legally competent to do so; (iv) there are no oral or written modifications of, or amendments to, the Documents, and there has been no waiver of any of the provisions thereof, by actions or conduct of the parties or otherwise; (v) all representations of fact set forth in the Documents are complete and accurate, insofar as such facts pertain to the subject matter of the opinions rendered hereby; and (vi) all documents submitted to us as originals are complete and authentic, all documents submitted to us as certified, conformed or photostatic copies conform to the original documents, all signatures on all documents submitted to us for examination are genuine, and all public records and certificates of public officials are accurate and complete.

In addition, we have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder. We have also assumed that the terms and conditions of the transaction as reflected in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents.

We assume that none of the parties to the Documents (other than Developer) is a party to any court or regulatory proceeding relating to or otherwise affecting the Documents or is subject to any order, writ, injunction or decree of any court or federal, state or local governmental agency or commission that would prohibit the execution and delivery of the Documents, or the

consummation of the transactions therein contemplated in the manner therein provided, or impair the validity or enforceability thereof. We assume that each of the parties to the Documents (other than Developer) has full authority to close this transaction in accordance with the terms and provisions of the Documents.

We assume that neither the Underwriter nor the City nor their respective counsel has any current actual knowledge of any facts not known to us or any law or judicial decision which would make the opinions set forth herein incorrect, and that no party upon whom we have relied for purposes of this opinion letter has perpetrated a fraud.

We have only been engaged by our clients in connection with the Documents (and the transactions contemplated in the Documents) and do not represent these clients generally.

**Opinions and Assurances**

Based solely upon the foregoing, and subject to the assumptions and limitations set forth herein, we are of the opinion that:

1. The general partner of the Developer is in good standing and the Developer is qualified to do business in and in good standing under the laws of the State of Texas.

2. The Developer has the full legal right, power and authority to execute, deliver and perform its obligations under each of the Documents to which it is a party and has taken all necessary actions to authorize the execution, distribution and delivery by it of such Documents and the performance by it of such obligations.

3. The execution, delivery and performance by the Developer of the Documents to which it is a party, and compliance and performance by the Developer with the terms and provisions thereof and obligations thereunder, will not:

(i) to our knowledge, violate or conflict with any provision of any existing law, statute, rule or regulation applicable to the Developer by reason of the general conduct of its business and operation of its assets:

(ii) based solely upon the Developer Certificates and our knowledge, conflict with or result in the breach of any court decree or order of any governmental body binding upon or affecting the Developer, the conflict with which or breach of which would have a material, adverse effect on the ability of the Developer to perform its obligations under the Documents to which it is a party; or

(iii) contravene or conflict with the Developer Basic Documents.

4. To our knowledge, no consent, approval, authorization or other action by, or filing with, any governmental authority is required for the execution and delivery by the Developer of the Documents to which the Developer is a party or the performance of its obligations thereunder, other than as are required with respect to the financing transaction evidenced thereby, or if required, and not otherwise obtained, with respect to which the requisite consent,

approval or authorization has been obtained, the requisite filing has been accomplished or the requisite action has been taken at or prior to the date required therefor.

5. The Developer has duly executed and delivered each of the Documents to which it is a party, and each of such Documents constitutes the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

6. Based solely upon the Developer Certificates, to our knowledge after reasonable inquiry, there are no actions, suits or proceedings pending against the Developer in any court of law or equity, or before or by any governmental instrumentality with respect to (i) its organization or existence or qualification to do business in the State of Texas; (ii) its authority to execute or deliver the Documents to which it is a party; (iii) the validity or enforceability against it of such Documents or the transactions contemplated thereby; (iv) the titles of its officers executing the Documents; (v) the execution and delivery of the Documents on behalf of the Developer; or (vi) the operations or financial condition of the Developer that would materially adversely affect those operations or the financial condition of the Developer.

7. Based solely upon the Developer Certificates, to our knowledge, no taxes or other charges, including, without limitation, intangible or documentary stamp taxes, mortgage or recording taxes, transfer taxes or similar charges, are payable to the State of Texas by the Developer on account of its execution or delivery of any of the Documents or the creation of the indebtedness evidenced or secured by any of the Documents or the recording or filing of any of the Documents, except for normal filing or recording fees.

8. In addition, we advise you that no facts have come to our attention that would lead us to believe that the information set forth in the Official Statement under the captions "THE IMPROVEMENTS," "THE DEVELOPMENT," "THE DEVELOPER" and "BONDHOLDERS' RISK FACTORS" (only as it pertains to the Developer and the Development) fairly and accurately presents the information purported to be shown therein and (except for Appendices A, C and E, as well as any other financial, engineering and statistical data contained therein or elsewhere in the Official Statement or included therein by reference, as to which we express no view) as of the date hereof, nothing has come to the attention of those individuals working on this matter on behalf of this firm which would lead us to believe that such information contains an untrue statement of a material fact or that such information omits to state a material fact required to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

9. Based solely on the Developer Certificates, to our knowledge, the execution and delivery of the Developer Basic Documents and the Documents do not, and the transactions contemplated thereby may be consummated and the terms and conditions thereof may be observed and performed in a manner that does not, conflict with or constitute a breach of or default under any loan agreement, indenture, bond note, resolution, agreement or other instrument to which the Developer is a party or is otherwise subject which violation, breach or default would materially adversely affect the Developer or the transactions contemplated by the Documents; nor will any such execution, delivery, adoption, fulfillment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Developer, except as expressly

contemplated by the Documents (a) under the terms of any such law, administrative regulation, judgment or decree or (b) under any such loan agreement, indenture, bond note, resolution, agreement, or other instrument.

## Qualifications

In addition to any assumptions, qualifications and other matters set forth elsewhere herein, the opinions set forth above are subject to the following assumptions and qualifications:

(a) We have not examined any court dockets, agency files or other public records regarding the entry of any judgments, writs, decrees or orders or the pendency of any actions, proceedings, investigations or litigation.

(b) We have relied upon the Developer Certificates, as well as the representations of the Developer contained in the Documents, with respect to certain facts material to our opinion. Except as otherwise specifically indicated herein, we have made no independent investigation regarding any of the foregoing documents or the representations contained therein.

(c) Our opinion delivered pursuant to Section 5 above is subject to the effect of any applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting creditors' rights generally and to the effect of general principles of equity, including (without limitation) remedies of specific performance and injunctive relief and concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

(d) Except for the Documents, we have not reviewed, and express no opinion as to, any other contracts or agreements to which the Developer is a party or by which the Developer is or may be bound.

(e) The opinions expressed herein are based upon and limited to the applicable laws of the State of Texas and the laws of the United States of America, excluding the principles of conflicts of laws thereof, as in effect as of the date hereof, and our knowledge of the facts relevant to such opinions on such date. In this regard, we note that we are members of the Bar of the State of Texas, we do not express any opinion herein as to matters governed by the laws of any other jurisdiction, except the United States of America, we do no purport to be experts in any other laws and we can accept no responsibility for the applicability or effect of any such laws. In addition, we assume no obligation to supplement the opinions expressed herein if any applicable laws change after the date hereof, or if we become aware of any facts or circumstances that affect the opinions expressed herein.

(f) This letter is strictly limited to the matters expressly set forth herein and no statements or opinions should be inferred beyond such matters.

(g) Notwithstanding anything contained herein to the contrary, we express no opinion whatsoever concerning the status of title to any real or personal property.

(h) We express no opinion as to the laws of any jurisdiction other than the laws of the State of Texas and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws, except as specifically provided herein) of the State of Texas and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

(i) The opinions expressed herein regarding the enforceability of the Documents is subject to the qualification that certain of the remedial, waiver or other provisions thereof may not be enforceable; but such unenforceability will not, in our judgment, render the Documents invalid as a whole or substantially interfere with the practical realization of the principal legal benefits provided in the Documents, except to the extent of any economic consequences of any procedural delays which may result therefrom.

(j) The opinion expressed herein as to the enforceability of the Documents is specifically subject to the qualification that enforceability of the Documents is limited by the following: (i) the rights of the United States under the Federal Tax Lien Act of 1966, as amended; (ii) principles of equity, public policy and unconscionability which may limit the availability of certain remedies; (iii) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, liquidation, probate, conservatorship and other laws applicable to creditors' rights or the collection of debtors' obligations generally; and (iv) requirements of due process under the United States Constitution, the Constitution of the State of Texas and other laws or court decisions limiting the rights of creditors to repossess, foreclose or otherwise realize upon the property of a debtor without appropriate notice or hearing or both.

(k) We express no opinion as to whether a court would grant specific performance or any other equitable remedy with respect to the enforcement of the Documents.

(l) We express no opinion as to the validity, binding effect, or enforceability of: (i) provisions which purport to waive rights or notices, including rights to trial by jury, counterclaims or defenses, jurisdiction or venue; (ii) provisions relating to consent judgments, waivers of defenses or the benefits of statutes of limitations, marshaling of assets, the transferability of any assets which by their nature are nontransferable, sales in inverse order of alienation, or severance; (iii) provisions purporting to waive the benefits of present or of future laws relating to exemptions, appraisement, valuation, stay of execution, redemption, extension of time for payment, setoff and similar debtor protection laws; or (iv) provisions requiring a party to pay fees and expenses regardless of the circumstances giving rise to such fees or expenses or the reasonableness thereof.

(m) The opinions expressed herein are subject to the effect of generally applicable rules of law that provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected.

(n) We express no opinion as to the enforceability of any provisions in the Documents purporting to entitle a party to indemnification in respect of any matters arising in whole or in part by reason of any negligent, illegal or wrongful act or omission of such party.

This opinion is furnished to you solely in connection with the transactions, for the purposes and on the terms described above and may not be relied upon by you for any other purpose or by any other person in any manner or for any purpose.

Very truly yours,

APPENDIX E

[Letterhead of Appraiser]

[Date]

[Include City, Underwriter, Bond Counsel and Trustee as addressees]

Re: City of Austin, Texas, Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) (the "Senior Bonds"), and City of Austin, Texas, Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) (the "Subordinate Bonds" and, together with the Senior Bonds, the "Bonds")

Ladies and Gentlemen:

The undersigned, _____, of Paul Hornsby & Company, appraiser of the territory contained in the Whisper Valley Public Improvement District (the "District"), does hereby represent the following:

1. On behalf of Paul Hornsby & Company, I have supplied certain information contained in the Preliminary Official Statement, dated August 4, 2011, the Updated Preliminary Official Statement, dated September 8, 2011, and the Supplement to Preliminary Official Statement, dated October 26, 2011, all in connection with the Senior Bonds, the Preliminary Official Statement, dated September 8, 2011, and the Updated Preliminary Official Statement, dated October 26, 2011 both in connection with the Subordinate Bonds, the Official Statement for the Senior Bonds, dated November 3, 2011, and the Official Statement for the Subordinate Bonds, dated November 3, 2011 (collectively, the "Official Statements"), relating to the issuance of the Bonds by the City of Austin, Texas, as described above. The information I have provided is the real estate appraisal of the District, located in Appendix E to the Official Statements.

2. To the best of my professional knowledge and belief, as of the date of my report, the portion of the Official Statement described above does not contain an untrue statement of a material fact as to the information and data set forth therein, and does not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

3. I agree to the use of the name of my firm in the Official Statements for the Bonds.

4. I agree that, to the best of my ability, I will inform you immediately should I learn of any event(s) or information of which you are not aware subsequent to the date of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or about November 1, 2011) which would render any such information in the Official Statements untrue, incomplete, or incorrect, in any material fact or render any statement in such document materially misleading.

5. The undersigned hereby represents that he/she has been duly authorized to execute this letter of representation.

Sincerely yours,

PAUL HORNSBY & COMPANY

By: _____

Its: _____

# EXHIBIT C

# FINANCING AGREEMENT

# WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT
# FINANCING AGREEMENT

BETWEEN

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP

AND

THE CITY OF AUSTIN, TEXAS

WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

This Whisper Valley Public Improvement District Financing Agreement (this "**Agreement**"), dated as of November 1, 2011 (the "**Effective Date**"), is entered into between Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees, the "**Developer**"), and the City of Austin, Texas (the "**City**"), a municipal corporation, acting by and through its duly authorized representative.

Recitals:

WHEREAS, Developer owns a total of approximately 2,066 acres of land located in Travis County, Texas, contained within the area described in the attached Exhibit "B" (the "**Property**"). The Property is located in the City's extraterritorial jurisdiction ("**ETJ**"), and has been annexed by the City for limited purposes;

WHEREAS, the Developer desires to develop the Property with a high quality, master-planned residential, commercial, office, and mixed-use area (the "**Project**");

WHEREAS, the Project is located in the SH 130 Corridor (herein so called) which the City has identified as one of its "**Desired Development Zones**";

WHEREAS, in an effort to ensure that development along the SH 130 Corridor would meet the City's overall vision and plan, the City supported House Bill No. 3719 and Senate Bill No. 1688 (the "**SH 130 Legislation**") during the 80th Texas Legislative Session;

WHEREAS, the City's main goals with the SH 130 Legislation were as follows (collectively, the "**Goals**"): (i) to obtain land use and planning controls over the SH 130 Corridor, the majority of which is within the City's ETJ; (ii) to provide for dense growth and mixed use development along the SH 130 Corridor; (iii) to create a funding mechanism that would encourage the extension of public infrastructure along the SH 130 Corridor; and (iv) to maintain control over the governing body of any "infrastructure districts" created pursuant to the SH 130 Legislation;

WHEREAS, the SH 130 Legislation was not enacted. In order to accomplish the Goals contemplated by the SH 130 Legislation, Developer, Club Deal 116 Indian Hills TX, Limited Partnership ("**IH Developer**") and the City executed that certain WHISPER VALLEY AND INDIAN HILLS ANNEXATION AND DEVELOPMENT AGREEMENT ("**Development Agreement**") dated effective as of June 18, 2009, wherein the parties established goals and a process for limited purpose annexation of the Property to give the City land use controls and planned unit development (**"PUD"**) zoning to achieve superior development in the Project, and using the City's PID Policy adopted on December 18, 2008, ("**PID Policy**") to allow City financing of the infrastructure via public improvement districts to finance the Developer's infrastructure for development of the Property;

WHEREAS, pursuant to the Development Agreement, the City has (i) adopted Ordinance No. 20100826-26 establishing a Planned Unit Development (PUD) for the Project, (ii) limited purposed annexed the Property and (iii) authorized the formation of the Whisper Valley Public Improvement District (the "**District**") in accordance with the PID Act (as hereinafter defined);

WHEREAS, the City acknowledges that Developer's cooperation in this endeavor enables the City to establish, define, and protect the City's jurisdiction and regulatory authority over the Property, and that Developer would not have consented to the limited purpose annexation of the Property and creation of the PUD but for the intention to enter into this Agreement;

WHEREAS, the Developer proposes to construct certain improvements over time to serve property located in the District (or portions thereof) and transfer some of those improvements to the City or County in accordance with the terms and provisions of this Agreement;

WHEREAS, contemporaneously herewith the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement), at the request, and with the consent, approval and agreement of the Developer, adopt the Assessment Ordinance (as defined herein) and adopt the Assessment Plan (as defined herein) that provides for the construction and financing of certain improvements within the District pursuant to the Assessment Plan, payable in whole or in part, by and from assessments levied against property within the District, as more specifically provided for in the Assessment Plan;

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy assessments on all or a portion of the property located within the District and issue, in one or more series, bonds for payment of costs associated with construction and/or acquisition of the Public Improvements (as defined herein) included in the Assessment Plan, as such plan may be amended from time to time;

WHEREAS, the City has determined that it is in its best interests to contract with the Developer for the construction of the Public Improvements, which will result in the efficient and effective implementation of the Assessment Plan;

WHEREAS, from the proceeds of the bonds the City issues in connection with the Public Improvements in the District, the City will, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, construct or cause to be constructed or acquire those certain Public Improvements provided for in this Agreement and the Developer will be paid or reimbursed for all or a portion of the costs of acquisition, construction, and improvement of the Public Improvements at the time the Public Improvements are complete and operative or certain Segments are complete and operative and have been accepted by the City;

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

## ARTICLE I. SCOPE OF AGREEMENT

**Section 1.01.** Outline of Agreement

This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property (Article II), the Construction of Public Improvements to be Acquired by the City (Article III), advancement of construction funds for the Master PID Bonds, City's acquisition and maintenance of Public Improvements within the District (Article IV), and the issuance of bonds for the financing of CRA and Non-CRA Improvements (Article V). Definitions used herein are set forth in Exhibit "A" attached hereto and made a part hereof and in the Assessment Plan.

**Section 1.02.** Agreement Does Not Supersede CRAs

This Agreement sets forth the terms and conditions concerning the construction, financing, and City's acquisition (where applicable) of Non-CRA Improvements. In addition, this Agreement provides the terms and conditions concerning the construction, financing, and City's acquisition (where applicable) of CRA Improvements, but only to the extent indicated in this Agreement and if such terms are not otherwise addressed in the CRAs. The Parties do not intend for this Agreement to supersede, replace, or conflict with the CRAs. The terms and provisions of the CRAs shall control the terms and conditions for constructing any infrastructure to be constructed pursuant to the CRAs.

**Section 1.03** *Annexation*

Timing of the City's full purpose annexation of the Project shall be in accordance with Article V of the Development Agreement.

## ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

**Section 2.01.** Preliminary Matters

(a) On August 26, 2010, the City authorized the formation of the District in Resolution No.20100826-026. The District includes all of the Property.

(b) The Developer shall develop the Property in phases. It is anticipated that some Public Improvements will benefit only a portion of the Property while other Public Improvements will benefit the entire District. As a result, Special Assessments will be levied on all or portions of the Property from time to time. It is currently contemplated that there will be three different types of bonds issued:

(i) Senior Master PID Bonds will be issued at the beginning of the Project in order to fund a portion of the construction of the Master PID Bond Authorized Improvements and other improvements specified in the Assessment Plan, which will benefit all of the Property and result in Special Assessments levied against the entire Property.

(ii) Subordinate Master PID Bonds will also be issued at the beginning of the Project contemporaneously with the Senior Master PID Bonds and will fund a portion of the costs to construct the CRA Improvements as specified in the Assessment Plan, which therefore will result in additional Special Assessments being levied on the entire Property. In addition to the Special Assessments, the Subordinate Master PID Bonds will also be secured by the Developer's pledge of (and are expected to be fully repaid by) a portion of the reimbursements due to the Developer under the CRAs pursuant to the CRA Pledge Agreement. There will only be one combined Special Assessment for the Master PID Bonds and the method by which the Special Assessment will be applied to the obligations under the Master PID Bonds will be provided in the Initial Indentures and the Assessment Plan. The use of the Special Assessments to pay the Subordinate Master PID Bonds will be subject and subordinate to the use of the Special Assessments to pay the Senior Master PID Bonds.

(iii) Phased PID Bonds will be issued periodically in the future as individual Improvement Areas of the Project are developed and will fund micro infrastructure improvements within each given Improvement Area. In connection with the Phased PID Bonds, Special Assessments will be levied only on Property located in the Improvement Area in question.

(c) The initial Assessment Plan for the Property is attached hereto as Exhibit "C." The Developer acknowledges and agrees that the Assessment Plan must meet the requirements of Texas Local Government Code §§ 372.013 and 372.014 and be presented to the City Council for review and approval prior to Bonds being issued. Thereafter, the Assessment Plan will be updated and amended by the Administrator at least once per year, and submitted for the City Council's review and approval. Notwithstanding the above, it is hereby understood and acknowledged by the Parties that the Special Assessments associated with the Master PID Bonds are the only Special Assessments that can be addressed with reasonable certainty in the Assessment Plan. As a result, the Assessment Plan will need to be amended over time as subsequent Improvement Areas are developed (and corresponding Phased PID Bonds are issued) in accordance with the terms set forth in this Agreement. Nevertheless, the basic terms and methodology described in the Assessment Plan will generally apply to the Phased PID Bonds.

(d) Special Assessments on any portion of the Property will bear a direct proportional relationship to the special benefit of the Public Improvements to that Improvement Area.

(e) Special Assessment on any given portion of the Property may be adjusted in connection with subsequent Bond issues as long as the Maximum Annual Assessment rate is not exceeded, and so long as the Special Assessments are determined in accordance with the Assessment Plan.

(f) Prior to the levy of Special Assessments, the Developer shall provide a Feasibility and Market Study Analysis to the City for the City's review and approval, as described in Section 5.01 hereof.

(g) The Property may be subject to an Owner's Association assessment or a PID Maintenance and Operation assessment for the provision of public services, including but not limited to maintaining public areas (e.g. parks and open space) within the District.

(h) Promptly following submission to the City of the initial Assessment Plan (or any subsequent amendment to the Assessment Plan) acceptable to Developer and the City in form and substance, the City Council shall consider an Assessment Ordinance relating to the applicable plan or amendment. If the ordinance is adopted, the City shall use reasonable, good faith efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate the Assessment Plan and Assessment Ordinance.

**Section 2.02.** Apportionment and Levy of Assessments.

The City intends to levy Special Assessments on property in the District in accordance herewith and with the Assessment Plan (as such plan is amended from time to time) at such time as Bonds are issued in accordance with Article IV hereof. The City's apportionment and levy of assessments shall be made in accordance with the PID Act.

**Section 2.03.** Collection of Assessments.

The City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to the Assessment Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance or otherwise. The City shall use good and sound practices to collect the Special Assessments consistent with the City's policies and standard practices applicable to the collection of City taxes and assessments.

**Section 2.04.** Approval and Recordation of Special Assessments through Landowner Agreement.

Prior to or concurrently with the levy of the Special Assessments for any portion of the Property, the Developer shall execute (and shall cause any other owner of any of the Property that will be subject to the future special assessments to execute) a Landowner Agreement (herein so called) in which the Landowner shall approve and accept the apportionment of assessments in the Assessment Plan and the levy of the Special Assessments by the City. The Landowner Agreement further shall (a) evidence the Developer's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property, subject only to liens for ad valorem taxes of the State or any municipality (if any), county, school district, special district or other political subdivision.

## ARTICLE III. CONSTRUCTION AND ACQUISITION

**Section 3.01.** Acquisition of Public Improvements

Some of the Public Improvements are intended to be acquired by the City and/or County, and some will be retained by the Developer. The Public Improvements to be acquired by the City shall be determined through mutual agreement of the Parties before construction of such Public Improvements is initiated. Construction of the Master PID Bond Authorized Improvements has been agreed to by the Parties and is described in the Assessment Plan. Each acquisition of Public Improvements not paid for simultaneously with conveyance of said Public Improvements (e.g., a portion of the price is being paid over time) shall be evidenced by an Acquisition Agreement. For any such improvements that will ultimately be accepted and maintained by the County, the City and Developer shall enter into an Acquisition Agreement and then the City shall assign its rights to receive the Public Improvement to the County (provided the County agrees to maintain such Public Improvement), but the Developer shall retain the right to receive future Bond proceeds as payment for said Public Improvement.

**Section 3.02.** Designation of Construction Manager, Construction Engineers

(a) The City hereby designates the Developer as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Public Improvements in accordance with the provisions of this Article III.

(b) Inspection of all Public Improvements construction shall be by City inspectors. If the Bonds have not been issued, the Developer shall pay the inspection fee which shall be included in the Actual Cost and may later be reimbursed to Developer when Bonds are issued. If the Bonds have been issued, the Developer may collect the inspection fee out of Bond proceeds.

(c) The Developer shall be entitled to a separate construction management fee of 4% of the costs incurred by or on behalf of Developer for the construction of each Segment.

(d) The City shall cooperate with the Developer in connection with its services as Construction Manager.

(e) The Developer shall designate the consulting engineers for the Public Improvements for the compensation specified by the Developer.

**Section 3.03.** Designation of Construction Manager

The Developer may change its designated "Construction Manager" for the Project or any phase thereof at any time (except during the first six months of this Agreement during which the Developer may only change its designated "Construction Manager" for cause) upon written notification to the City and subject to the approval of the Director of Public Works, whose approval shall not be unreasonably withheld. Only the designated Construction Manager may

receive a construction management fee, and only for the period of time during that designation; *further, the total fee shall not exceed the amount provided for in the definition of "Actual Costs"* in this Agreement. The Parties hereby acknowledge that the Construction Manager may be an individual, company, or partnership, or other entity, as reasonably determined by Developer.

**Section 3.04.** Performance Bonds

If there are funds in a segregated account within the Project Fund of an Indenture sufficient both to pay for completion of a Public Improvement and to meet all other obligations of the Public Improvement, it is intended that Developer not be required to post fiscal security for the applicable Public Improvement. For example, if a separate account is formed within the Project *Fund under the Initial Indenture for the Subordinate Master PID Bonds for the wastewater* treatment plant to be built by the Developer pursuant to the Wastewater Cost Reimbursement Agreement, then no fiscal security will be required for the wastewater treatment plant, so long as there are sufficient funds in the account to construct the wastewater treatment plant. The City acknowledges that it will accept fiscal security for the Public Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the City. If no such account exists or such account is not appropriately funded, then the Developer shall be required to post fiscal security for CRA Improvements in accordance with the CRA and for Non-CRA Improvements in accordance with Section 3.07 (a) below.

**Section 3.05.** Maintenance of Project, Warranties

Unless otherwise provided for, the Developer shall maintain each Non-CRA Improvement (or Segment thereof) in good and safe condition until such Non-CRA Improvement (or Segment thereof) is accepted by the City. The City's acceptance of Non-CRA Improvements shall be in accordance with the City standard rules and procedures for the type of improvements being constructed. Prior to such acceptance, the Developer shall be responsible for performing any required maintenance on such Non-CRA Improvement. Notwithstanding the above, the Parties acknowledge and agree that: (i) the CRA Improvements shall be maintained in accordance with the applicable CRA and (ii) open space and parkland within the Project shall be maintained in accordance with the terms of the Parkland Agreement. On or before the acceptance by the City of a Non-CRA Improvement (or Segment thereof), the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidences of contingent obligations of third persons with respect to such Non-CRA Improvement (or Segment thereof).

**Section 3.06.** Sales and Use Tax Exemptions.

(a) The parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Public Improvements to be acquired by the City are exempt under the Tax Code from sales and use taxes levied by the State of Texas, or by any city, county, special district, or other political subdivision of the State, as set forth in 34 Tex. Admin. Code, sec. 3.291.

(b) Subject to the terms of the Acquisition Agreement(s), but in furtherance of and to assure such exemptions, title to all property, materials, and services associated with and used in connection with or related to the construction of the Public Improvements shall vest in the City immediately upon delivery at the site of such construction, and before they are incorporated into the realty or used by the contractor or any other person.

(c) The City Manager (or such other duly authorized representative of the City) is directed to provide such certifications to the Developer and/or to suppliers and contractors as may be required to assure the exemptions claimed herein.

(d) The City Manager (or such other duly authorized representative of the City) and the Developer shall cooperate in structuring the construction contracts for the Public Improvements to comply with requirements (including those set forth in 34. Tex. Admin. Code, sec. 3.291) for exemption from sales and use taxes.

**Section 3.07.** Regulatory Requirements.

(a) The Non-CRA Improvements shall be designed, constructed, installed, and operated, using the City's construction, bidding, and contract documents, in accordance with and subject to compliance with commercially accepted construction practices, applicable City policies, rules and ordinances, and any other Regulatory Requirements, including valid requirements that are uniformly applicable within the City and promulgated by the City, as such requirements may have been modified, varied or waived in the PUD or the Development Agreement. For those Non-CRA Improvements for which the City does not have bid specifications, Developer and the City shall work together in good faith to develop bid specifications.

(b) Notwithstanding the foregoing, Braker Lane shall be designed, constructed, installed and operated in accordance with the Braker Lane Agreement. In the event of omissions or errors in the Braker Lane Agreement, the most current City standards and requirements will be applied.

(c) The CRA Improvements shall be designed, constructed, installed and operated in accordance with the applicable CRA.

**Section 3.08.** *Additional Requirements for CRA Improvements*

The following additional requirements shall be applicable to CRA Improvements funded by the Subordinate Master PID Bonds:

(a) Prior to commencing construction of any such CRA Improvements, the Project Engineer shall review all plans and specifications, construction contract and related materials for the applicable CRA Improvement, and shall certify to the Developer, City, Underwriter, Financial Advisor and Trustee that the amount of funding under the Master PID Bonds (as specified in the Assessment Plan and Indenture) is sufficient to fund the full cost of design and construction of the applicable CRA Improvements.

(b) The Construction Manager will maintain an ongoing monthly updated accounting of funds dispersed, work progress and remaining funding needed to complete each applicable CRA Improvement. Such accounting to include a reconciliation of any unadvanced amounts out of the segregated accounts in the Project Fund under the Initial Indentures as compared to the remaining costs to complete each applicable CRA Improvement. The Construction Manager will provide such monthly reports to the Developer, the City's Director, the Underwriter, the Financial Advisor and the Trustee. Furthermore, the Construction Manager will maintain a website (that may be accessed by the City, the Trustee, the Financial Advisor and the Underwriter) which will include updates of such monthly accounting.

(c) All change orders or costs increases for applicable CRA Improvements must be approved by the Developer, Construction Manager and the Director, to the extent any such change order is in excess of $100,000.00. The Construction Manager shall provide copies of all approved change orders to the Financial Advisor, Underwriter and Trustee within ten (10) days after approval. Notwithstanding the foregoing, it is hereby acknowledged that the City is not required to increase the amount of reimbursement due under any CRA to the extent such reimbursement would cause the amount of reimbursement to exceed the maximum reimbursement provided in the applicable CRA. Any increase of the amount of reimbursement above the maximum reimbursement provided in the applicable CRA must be approved by the City Council.

(d) All construction contracts for applicable CRA Improvements must include completion bonds for the amount of all work funded by the proceeds of the Subordinate Master PID Bonds, and each such contract shall contain provisions for liquidated damages in the event the contractor does not meet completion schedules for the CRA Improvements as required to allow the Construction Manager to complete the applicable CRA Improvement and to enable the City to fund the reimbursement payments under the CRAs within the timeframe necessary to timely pay off the Subordinate Master PID Bonds.

(e) Each construction contract for applicable CRA Improvements shall include a provision requiring 10% retainage to be dispersed only upon completion and acceptance by the City of applicable CRA Improvement, subject however to early disbursement for subcontractors whose work has been completed.

(f) Upon completion of each applicable CRA Improvement and acceptance thereof by the City, which acceptance shall not be unreasonably withheld, conditioned, or delayed, the City will notify the Developer, Financial Advisor, Underwriter and Trustee that the conditions for funding the reimbursement payment due under the applicable CRA for such CRA Improvement have been met and will timely pay the respective dollar amount of the reimbursement.

## ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS

**Section 4.01.** Payments for Master PID Bonds

(a) With respect to those Public Improvements funded by the Master PID Bonds,

Developer shall deliver and the City shall accept the given Public Improvements. The net Bond Proceeds from the issuance of the Master PID Bonds will be held by the Trustee in various segregated accounts under the Project Funds for each of the Initial Indentures. Those sums held in the various segregated accounts will be advanced to the Developer by the Trustee to fund the costs of design and construction, including project management, City inspection and administrative costs, and other soft costs (as more specified in the Assessment Plan) upon receipt of a completed Certification for Payment. Payments will be made to Developer periodically as design and construction progresses. The procedures for such progress payments are contained in this Section 4.01 and the Initial Indentures. Such payments shall be made by Trustee on a monthly basis and within five (5) business days of the Trustee's receipt of the completed Certification for Payment from the Director. The Director or its designee shall deliver his concurrence to pay pursuant to a completed Certification for Payment within fifteen (15) calendar days after its receipt of the required submittal items pursuant to either subpart (b) or (c) below, as applicable. Notwithstanding anything to the contrary contained herein, the Director shall not be obligated to authorize payments of funds for any given Public Improvement if the monthly reconciliation provided by the Construction Manager pursuant to Section 3.08(b) above for that given Public Improvement shows there are not enough funds in the segregated account (including the CRA Holdback under the Projects Fund in the Master PID Bonds) to fund the remaining design and construction costs of that Public Improvement after taking into consideration any contingencies, until funds sufficient to cover the costs overruns are provided to secure such overruns by the Developer or otherwise.

(b) During the design phase for any Public Improvement to be funded by the Master PID Bonds, payments for design costs shall be made by the Trustee on a monthly basis; provided, however, in no event shall the Developer be entitled to aggregate draws equal to more than 30%, 60%, 90% or 100% of the total design costs until such time as the City has approved the design plans for the applicable level of completion (i.e., either 30%, 60%, 90% or 100%). For example, Developer shall be entitled to receive monthly draws based on the percentage of design work completed up to the date of the draw until 30% of the design is complete, but shall not be entitled to any draws past 30% until the City approves the 30% design drawings after which the Developer will be entitled to additional draws up to the 60% design complete date and so on. The Director shall not be required to authorize any design draws until such time as the applicable contract for the design services (including the costs thereof) have been approved by the City, such approval not to be unreasonably withheld, conditioned or delayed. The submittal items necessary for a design payment are as follows:

(i) A Certification for Payment executed by the Construction Manager specifying the percentage of design that has been completed on the applicable Public Improvement;

(ii) A Bills Paid Affidavit from the contractor;

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

(iv) Evidence of the City's acceptance of the design phase documents.

(c) During the construction phase for any Public Improvements to be funded by the Master PID Bonds, payments shall be made by the Trustee based on the Actual Cost of the construction completed and the receipt of a completed Certification for Payment. The City is not obligated to authorize any construction payments until such time the City has approved the plans, specifications and the construction contract (including a Construction timeline) for the applicable Public Improvement. The items required for a construction payment are as follows:

(i) A Certification for Payment executed by the Project Engineer and Construction Manager specifying the amount of work that has been performed and the cost thereof;

(ii) A Bills Paid Affidavit from the contractor;

(iii) Waivers of liens for work on the applicable Public Improvements through the previous Certification for Payment and receipts for payment from the contractor and, if requested by the City, any subcontractors, for the current Certification for Payment.

(d) In addition to the submitted items required in 4.01(c) above, in order to obtain the final payment for a Public Improvement funded by the Master PID Bonds, the following are required:

(i) With respect to any CRA Improvement, all requirements for acceptance of such improvement by the City as provided in the applicable CRA shall have been complied with;

(ii) The Developer shall have provided to the City an assignment of the warranties and guaranties, if applicable, for such CRA Improvement;

(iii) After the final Certification for Payment is submitted to the City, the Project Engineer shall conduct a review for the City to confirm that such Public Improvement was constructed in accordance with the plans therefor and the Project Engineer will verify and approve the Actual Cost of such Public Improvement specified in such Certification for Payment. The City agrees to instruct the Project Engineer to conduct each such review in an expeditious manner not to exceed 15 calendar days after the Certification for Payment is submitted to the City and the Developer agrees to cooperate with the Project Engineer in conducting each such review and to provide the Project Engineer with such additional information and documentation as is reasonably necessary for the Project Engineer to conclude each such review. Upon confirmation by the Project Engineer to the City that such Public Improvement has been constructed in accordance with the plans therefor, and verification and approval of the Actual Cost of such Public Improvement, the City shall within fifteen (15) calendar days thereafter accept such Public Improvement and the Director shall sign the Certification for Payment and forward the same to the Trustee. The time period for the Director to sign the Certificate for Payment and forward the same to the Trustee in this Section 4.01(d)(iii) will control over the time period specified in Section 4.01(a) hereof.

(e) The terms, conditions and procedures set forth in Section 4.01(a) – (c) shall also apply to Braker Lane, except as follows:

(i) The City will not be purchasing Braker Lane. The City will assign its right to purchase Braker Lane to the County.

(ii) The County will be approving the plans, specifications and the construction contract for Braker Lane, not the City.

(iii) No material changes to the Braker Lane Agreement will be made without the City's consent.

In addition to the submitted items required in 4.01(c) above, in order to obtain the final payment for Braker Lane a written acknowledgement from the County that all requirements for acceptance of Braker Lane as provided in the Braker Lane Agreement have been complied with shall be provided to the City. Upon receipt of such written acknowledgement from the County, the City shall, within fifteen (15) days thereafter, and the Director of the City shall sign the Certification for Payment and forward the same to the Trustee.

**Section 4.02.** Payments for Phased PID Bonds

(a) The City shall not be obligated to provide funds for any Non-CRA Improvement except from the proceeds of the Bonds. The City makes no warranty, either express or implied, that the proceeds of the Bonds available for the payment of the Actual Cost of the Non-CRA Improvements to be constructed for or acquired by the City or County will be sufficient for the construction or acquisition of all of those particular Non-CRA Improvements. The Parties anticipate that the cost to construct the Non-CRA Improvements will be greater than the proceeds of the Bonds available for Non-CRA Improvements.

(b) Subject to the terms and conditions of any applicable Acquisition Agreement, the Developer shall convey, and the City shall acquire the given Public Improvement for the Actual Cost, when such Public Improvement is completed and has been accepted by the City; provided, however, if the City assigns its rights to receive any such Public Improvement to the County pursuant to Section 3.01 above, then the County shall actually obtain title to such Public Improvement in accordance with the applicable Acquisition Agreement.

(c) To receive the Actual Cost for a Public Improvement under the Phased PID Bonds, the Developer shall deliver to the City and the Project Engineer (x) documentation evidencing the Actual Cost, (y) an assignment of the warranties and guaranties, if applicable, for such Non-CRA Improvement, in form reasonably acceptable to the City. Nothing herein or in subparagraph and (d) below shall prohibit Developer from being reimbursed for design costs associated with a Non-CRA Improvement prior to the completion of construction of said Non-CRA Improvement.

(d) Upon receipt of a Payment Request (and accompanying documentation) for a Segment, the City shall instruct the Project Engineer to conduct a review in order to confirm that such Segment was constructed in accordance with the Plans therefore and to verify and approve the Actual Cost of such Segment specified in such Payment Request. The City agrees to instruct the Project Engineer to conduct each such review in an expeditious manner not to exceed 30 calendar days and the Developer agrees to cooperate with the Project Engineer in conducting

each such review and to provide the Project Engineer with such additional information and documentation as is reasonably necessary for the Project Engineer to conclude each such review. Upon confirmation that such Segment has been constructed in accordance with the Plans therefore, and verification and approval of the Actual Cost of such Segment, the City shall, within thirty (30) days thereafter accept such Segment and the Project Engineer and Director of the City shall sign the Payment Request and forward the same to the Finance Director of the City and payments will be made to Developer, or other person as applicable, within thirty (30) days after receipt by the Finance Director.

**Section 4.03.** Payments to Co-Developer

The Developer may enter into agreements with one or more real estate developers or builders (commercial or residential) to sell or develop a portion of the Property and/or to construct certain Public Improvements (each such developer, a "**Co-Developer**"). The Developer may submit Actual Costs paid for by a Co-Developer and obtain reimbursement of such Actual Costs (or in the case of certain CRA Improvements, the costs eligible for reimbursement) on behalf of and to be paid to such Co-Developer.

**Section 4.04.** Acceptance and Maintenance of Improvements.

Upon written acceptance of a Non-CRA Improvement, and subject to any applicable maintenance-bond period, the City shall be responsible for all operation and maintenance of such Non-CRA Improvement, including all costs thereof and relating thereto. Notwithstanding the foregoing, if the City assigns its right to receive a Non-CRA Improvement to the County as provided in Section 3.01 above, then the County shall be responsible for operation and maintenance as provided in the applicable Acquisition Agreement. Operation and maintenance of CRA Improvements shall be in accordance with the applicable CRAs.

**Section 4.05** PID Bond Reimbursements to City.

The Parties hereby acknowledge and agree that the Developer will reimburse the City for funds advanced by the City under the Water Cost Reimbursement Agreement according to the schedule and amounts and otherwise in accordance with the terms more particularly described in the Water Cost Reimbursement Agreement.

## ARTICLE V. BONDS

**Section 5.01.** Issuance of Bonds.

(a) Subject to the terms and conditions set forth in this Section V, the City intends to pay for the Public Improvements, by issuing Bonds in one or more series. The City will use reasonable and good faith efforts to sell Bonds after receiving a Bond Issuance Request from the Developer, provided that the Developer can reasonably demonstrate to the City and its financial advisors via a Feasibility and Market Study Analysis (or such other similar documentation) that there is sufficient security for the Bonds, based upon the bond market existing at the time of such proposed sale. Notwithstanding the foregoing, the City intends to issue the Master PID Bonds and in connection with such Bonds no Bond Issuance Request is required. The Public

Improvements to be constructed and funded in connection with the Master PID Bonds (as well as the projected costs and timing of their construction) are detailed on the chart attached hereto as Exhibit "D". The chart also shows projected dates for reimbursement by the City pursuant to the CRAs. The Phased PID Bonds will be issued in the future subject to the terms hereof and the Assessment Plan (as the same is amended and updated).

(b) In the event there are cost overruns and the proceeds of the Subordinate Master PID Bonds and the funds in the CRA Holdback (defined below) are not sufficient to fund the Public Improvements specified in the Assessment Plan, the Developer waives the right to protest the City's reasonable decision to issue an additional amount of debt sufficient to cover the overruns (not to exceed $4,250,000) of Bonds commencing in year 2012 with the first assessments to occur in 2014 to provide additional contingency funding. While the City cannot pre-approve the issuance of these Bonds and hence bind a future City Council, the City hereby notes its willingness to consider the issuance of additional Bonds, as needed in a manner consistent with City policy, to make certain that the CRA Improvements funded by the Subordinate Master PID Bonds can be managed and/or completed should the other contingencies be exhausted.

(c) The aggregate principal amount of Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Public Improvements (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 3 years from the date of the initial delivery of the Bonds and (iii) any costs of issuance. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future Bond issuances.

(d) To the extent permitted by law, the final maturity for each series of Bonds shall occur no later than 30 years from the issuance date of said Bonds.

(e) Bonds are not required to be issued under this Article V unless (1) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City shall receive at the time of issuance an opinion of counsel selected by the City stating in effect that the Bonds are legal and valid under Texas law and that all preconditions to their issuance under State law have been satisfied; and (iii) the approving opinion of the Attorney General of the State of Texas as required by the PID Act.

(f) If proceeds from Senior Master PID Bonds are still available after all the Master PID Bond Authorized Improvements are accepted by the City or County, as applicable, the proceeds may be utilized to finance other Public Improvements.

**Section 5.02.** Public Improvement Fund and CRA Holdback

(a) The City hereby covenants and agrees that if Bonds are issued, the applicable Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The City agrees that the portion of the proceeds of the Bonds not used to pay the costs of issuance associated with the Bonds (but used to provide capitalized interest or to fund a

reserve fund or to fund other lawful purposes related to the Project as detailed in the Indenture) shall be deposited upon issuance into the Project Fund as specified in the applicable Indenture, which amounts shall be used to pay for Project Costs. The Indenture may establish separate accounts within the Project Fund.

(b) The Developer hereby covenants and agrees to use commercially reasonable efforts to first expend proceeds from the Senior Master PID Bonds to construct Waterline 1 before expending proceeds from the Subordinate Master PID Bonds to construct Waterline 1.

(c) An additional contingency amount (maintained from the proceeds of the Senior Master PID Bonds) will be held back based on the aggregate estimated cost of unfunded work on the Public Improvements that also qualify as CRA Improvements to be completed with funds from the Subordinate Master PID Bonds (the "**CRA Holdback**"). This CRA Holdback will be held in a separate account by the Trustee. This amount will initially be $727,951.00 which is 3.36% (the "**Requisite Percentage**") of the estimated aggregate cost of the CRA Improvements to be completed with funds from the Subordinate Master PID Bonds. The amount held in the CRA Holdback will decrease on a prorata basis as Public Improvements that also qualify as CRA Improvements funded by the Subordinate Master PID Bonds are completed and funded (i.e., only the Requisite Percentage of the estimated aggregate cost necessary to complete the CRA Improvements to be funded by Subordinate Master PID Bonds shall remain in the CRA Holdback. Amounts no longer required to maintain the Requisite Percentage in the CRA Holdback can then be used to complete Master PID financed Public Improvements that are Non-CRA Improvements. Once the CRA Improvements to be funded by Subordinate Master PID Bonds are completed, any remaining funds in the CRA Holdback will be disbursed to complete Master PID financed Non-CRA Improvements and then to reimburse the Developer for qualifying Project Costs advanced by the Developer to complete Master PID financed Improvements.

**Section 5.03.** Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of Bonds shall be finally authorized by the City Council and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the Bond Security, all to be as described and provided in the Bond Ordinance or Indenture, as applicable.

(b) The final and adopted versions of the Bond Ordinance and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and the Developer.

**Section 5.04.** Sale of Bonds

The Bonds shall be issued by the City and shall be marketed and sold through negotiated sale to an approved third party with the cooperation and assistance of the Developer in all

respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the City and the Developer.

## ARTICLE VI. REPRESENTATIONS AND WARRANTIES

**Section 6.01.** Representations and Warranties of City

The City makes the following representation and warranty for the benefit of the Developer:(a) that the City is a municipal corporation and political subdivision of the State of Texas, duly incorporated, organized and existing under the Constitution and general laws of the State, and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to adopt the Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

**Section 6.02.** Representation and Warranties of Developer

The Developer makes the following representations, warranties and covenants for the benefit of the City:

(a) The Developer represents and warrants that the Developer is a limited partnership duly organized and validly existing under the laws of the State of Delaware, is qualified to do business in and is in good standing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Developer represents and warrants that the Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) The Developer represents and warrants that this Agreement is valid and enforceable obligation of the Developer and is enforceable against the Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Developer covenants that it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause the Public Improvements to be completed in accordance with this Agreement.

(e) The Developer covenants that it will not commit, suffer, or permit any act to be done in, upon or to the Property or the Project in violation of the any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Property or the Project.

(f) The Developer represents and warrants that (i) it will not request payment from the City for the acquisition of any Public Improvements that are not part of the Project, and (ii) it

will diligently follow all procedures set forth in this Agreement with respect to Payment Requests.

(g) Until the final Acceptance Date of all Segments, the Developer covenants to maintain proper books of record and account for the Project and all costs related thereto. The Developer covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 72 hours notice.

## ARTICLE VII. DEFAULT AND REMEDIES

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Project (or take any other action related to or in furtherance of same) while the City is in default under this Agreement).

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure

event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article.

(d) In addition to the foregoing remedies, the CRAs contain provisions dealing with the City's options to complete CRA Improvements if the Developer fails to timely do so. Furthermore, the CRAs contain additional consequences if the Developer is in default under the CRAs. This subparagraph (d) controls over any contrary provisions contained in this Agreement.

## ARTICLE VIII. GENERAL PROVISIONS

**Section 8.01.** Notices.

Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to City:
City of Austin
PO Box 1088
Austin, Texas 78767
Attn: City Treasurer
Facsimile: 512.370.3838

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

Director of Public Works
City of Austin
505 Barton Springs Road, Suite 1300
Austin, TX 78704
Facsimile: 512.974.7084_

Director of Austin Water Utility
PO Box 1088
Austin, Texas 78767
Facsimile: 512.972.0111

If to Developer:
Taurus of Texas

c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Facsimile: 817.788.1670

With a copy to: Metcalfe Williams, LLP
Attn: Steven C. Metcalfe
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Facsimile: 512.551-4943

**Section 8.02.** Fee Arrangement

The Developer agrees that it will pay all of the City's costs and expenses (including legal fees and financial advisory fees) related to the creation and administration of the District. The City's advisors shall submit to the City their fees relating to the establishment and administration of the District, including legal fees relating to the development and review of the Assessment Plan and the Developer will pay these fees on behalf of the City in accordance with the terms of that certain Amended and Restated City of Austin, Texas Deposit and Reimbursement Agreement Proposed Public Improvement District Agreement dated June 10, 2010, or such additional agreements subsequently entered into by the City and Developer. In addition to any fees paid by the Developer pursuant to the preceding sentence, all fees of legal counsel related to the issuance of the Bonds, including fees for the preparation of customary bond documents and the obtaining of Attorney General approval for the Bonds, will be paid at closing as mutually agreed to by the City and the Developer.

**Section 8.03.** Assignment

(a) Subject to subparagraph (b) below, Developer may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the City's satisfaction that the assignee has the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. Developer shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Developer shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Upon any assignment to its Designated Successors and Assigns, Developer may request the City to approve the release of Developer from the rights and obligations assigned to any Designated Successor and Assigns, such approval not be unreasonably withheld, conditioned or delayed. Upon such approval by the City, Developer shall no longer be liable for the assigned rights and obligations and the City shall look solely to the Designated Successors and Assigns for performance timing. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless

the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

**Section 8.04.** Term of Agreement

This Agreement shall terminate on the date on which the City and Developer discharge all of their obligations hereunder; provided, that this Agreement shall automatically terminate on January 1, 2015, if the first series of Bonds is not issued by such date. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid shall survive such termination and/or dissolution.

**Section 8.05.** Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) Words importing a gender include either gender.

(b) Words importing the singular include the plural and vice versa.

(c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.

(d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.

(e) A reference to any Party includes such Party's permitted successors and assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.

(f) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to "Exhibits" are to the designated Exhibits to this Agreement.

(g) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.

(h) The words "including" and "includes," and words of similar import, are deemed to be followed by the phrase "without limitation."

(i) Unless the context otherwise requires, a reference to the "Property," the "Public Improvements," or the "District" is deemed to be followed by the phrase "or a portion thereof."

(j) Every "request," "order," "demand," "direction," "application," "appointment," "notice," "statement," "certificate," "consent," "approval, " "waiver," "identification," or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

**Section 8.06.** Table of Contents; Titles and Headings

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

**Section 8.07.** Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties.

**Section 8.08.** Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

**Section 8.09.** Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

**Section 8.10.** Entire Agreement

This Agreement contains the entire agreement of the Parties.

**Section 8.11.** Severability; Waiver

*If any provision of this Agreement is illegal, invalid, or unenforceable, under present or* future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this

Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 8.12.** Intentionally Deleted

**Section 8.13.** Developer as Independent Contractor

In performing under this Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not an agent of the City.

**Section 8.14.** Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Assessment Plan, the Assessment Ordinances, Bond Ordinances and Indentures.

**Section 8.15.** Exhibits

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

| | | |
|---|---|---|
| Exhibit A | - | Definitions |
| Exhibit B | - | Property |
| Exhibit C | - | Assessment Plan |
| Exhibit D | - | Bond Chart |
| Exhibit E | - | Form of Certification for Payment |

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

By: _____
Name: _____
Title: _____

[Signatures Continue on Next Page]

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

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

By: _____
Douglas H. Gilliland, Manager

## Exhibit "A"

DEFINITIONS

**Section 8.15.** Defined Terms

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

"**Acceptance Date**" means, with respect to a Segment, the date that the Actual Cost thereof is paid to the Developer pursuant to the terms hereof.

"**Actual Cost(s)**" means, with respect to a Segment, the Developer's demonstrated, reasonable, allocable, and allowable costs of constructing such Segment, as specified in a Payment Request that has been reviewed and approved by the City and the Project Engineer and in an amount not to exceed the amount for each Segment as set forth in the Assessment Plan. Actual Cost may include (a) the costs incurred by or on behalf of the Developer (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Segment, (b) if the Developer has acted as general contractor with respect to such Segment, or a portion thereof, a contractor's fee of 5.5% of the costs incurred by or on behalf of the Developer for the construction of such Segment or portion thereof, (c) the costs incurred by or on behalf of the Developer in preparing the Plans for such Segment, (d) the fees paid for obtaining permits, licenses or other governmental approvals for such Segment, (e) a construction management fee of 4% of the costs incurred by or on behalf of the Developer for the construction of such Segment if the Developer is serving as the Construction Manager, (f) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, advertising, marketing and research studies, appraisals, legal, accounting and similar professional services, taxes (property and franchise) related to the Segment receiving the benefits of the assessments and the Public Improvements (g) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (h) all related permitting, zoning and public approval expenses, architectural, engineering, and consulting fees, financing charges, taxes, governmental fees and charges (including inspection fees, County permit fees, development fees and any costs associated with transitioning from the Manville Water Supply Corporation to the City of Austin), insurance premiums, interest cost charged by the City of Austin pursuant to the Water Cost Reimbursement Agreement, and miscellaneous expenses, and all payments for Administrative Expenses after the date of a resolution authorizing such reimbursement, plus interest, if any, at the lower of (x) Prime plus 5% or (y) the interest rate borne by the Bonds, in either case calculated from the respective dates of the expenditures until the date of reimbursement therefore.

Actual Costs shall not include general contractor's fees in an amount that exceeds a percentage equal to the percentage of work completed and accepted or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in equal monthly installments over the term of the appropriate construction management agreement. The amounts expended on legal costs, taxes, governmental fees, insurance premiums, permits,

financing costs, and appraisals shall be excluded from the base upon which the general contractor and construction management fees are calculated. Actual Costs also may be paid to the Developer only in the capacity of construction manager or only in the capacity of general contractor but not both.

"**Acquisition Agreement**" means (whether one or more) an agreement that provides for dedication of a Public Improvement (or Segment) to the City prior to the Developer being paid in full out of the applicable Phased PID Bond proceeds, whereby all or a portion of the Actual Costs will be paid to Developer from future Phased PID Bond issuances to reimburse the Developer for actual costs paid by the Developer that are eligible to be paid with Bond proceeds. The form of Acquisition Agreement shall be reasonably acceptable to both City and Developer.

"**Administrator**" means employee or designee of the City who shall have the responsibilities provided for herein and in the Assessment Plan.

"**Administrative Expenses**" means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the District, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the District and preparing the assessment roll, (iii) computing, levying, collecting and transmitting the Special Assessments or the installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Special Assessments, (v) issuing, paying and redeeming the Bonds, (vi) investing or depositing the Special Assessments, (vii) complying with the PID Act with respect to the Bonds, (viii) paying the paying agent/registrar's and trustee's fees and expenses (including the fees and expenses of its legal counsel), and (ix) administering the construction of the Public Improvements, in accordance with the terms of this Agreement.

"**Agreement**" has the meaning given in the recitals to this Agreement.

"**Assessment Ordinance**" means each ordinance adopted by the City Council approving the Assessment Plan (or such amendments to the Assessment Plan) and levying the Special Assessments, as required by Article II of this Agreement. The Parties hereby acknowledge that the Assessment Plan will be amended from time to time as additional Bonds are sold and as Improvement Areas are developed.

"**Assessment Plan**" means the Whisper Valley Public Improvement District Service and Assessment Plan (as such plan is amended from time to time), to be initially adopted by the City Council in the first Assessment Ordinance for the purpose of assessing allocated costs against property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Developer, as required by Article II of this Agreement. The Parties hereby acknowledge that the Assessment Plan will be amended from time to time as additional Bonds are sold and Improvement Areas are added to the Project.

"**Attorney General**" means the Texas Attorney General's Office.

"**Bond Issuance Request**" means written request made by Developer to the City Manager and City's Chief Financial Officer in good faith as evidenced by the Developer's expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request.

"**Bond Ordinance**" means and refers to the ordinance or ordinances of the City Council that will authorize and approve the issuance and sale of the Bonds and provide for their security and payment, either under the terms of the Bond Ordinance or a trust indenture related to the Bonds.

"**Bond Security**" means the funds that are to be pledged in or pursuant to the Bond Ordinance or the Indentures to the payment of the debt service requirements on the Bonds, consisting primarily of the Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established for the payment and security of the Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government. Notwithstanding the foregoing, with respect to the Subordinate Master PID Bonds, the "Bond Security" shall also include the reimbursements under the CRAs assigned pursuant to the CRA Pledge Agreement.

"**Bonds**" means the bonds to be issued by the City, in one or more series, plus any required reserves and amounts necessary to pay the costs of issuance, and to be secured by a pledge of the Bond Security pursuant to the authority granted in the PID Act, and as required by this Agreement for the purposes of (i) financing the costs of the Public Improvements and related costs, and (ii) reimbursing the Developer for Actual Costs paid prior to the issuance of and payment for the Bonds.

"**Braker Lane Agreement**" means that certain Braker Lane (FM 973 to Taylor Lane) Participation Agreement dated November 11, 2007 by and between Developer and the County, as amended from time to time.

"**Certification for Payment**" means the certificate so defined in the Initial Indentures.

"**City**" has the meaning given in the recitals to this Agreement.

"**City Council**" means the duly elected governing body and council of the City.

"**City Manager**" means the City Manager of the City or his designee(s).

"**Co-Developer**" has the meaning given in Section 4.02 of this Agreement.

"**Construction Manager**" means initially the Developer, and thereafter subject to change in accordance with Section 3.03 of this Agreement. The City acknowledges and agrees that (i) the Developer intends to subcontract out the duties of Construction Manager to a third party and (ii) Developer's hiring of the initial subcontractor to serve as the Construction Manager shall not be deemed a change in the Construction Manager pursuant to the terms and conditions of Section 3.03.

"**County**" means Travis County, Texas.

"**CRA(s)**" means collectively the Wastewater Cost Reimbursement Agreement and the Water Cost Reimbursement Agreement. It is hereby acknowledged that a portion of Water Line 1 intended to be constructed pursuant to the Waster Cost Reimbursement Agreement is being funded by the Indian Hills Public Improvement District.

"**CRA Improvements**" means those improvements intended to be constructed pursuant to that certain (i) Wastewater Cost Reimbursement Agreement and (ii) Water Cost Reimbursement Agreement.

"**CRA Pledge Agreement**" means that certain Security, Assignment and Pledge Agreement dated of even date herewith by and between the City, Developer, IH Developer and Deutsche Bank National Trust Company.

"**Debt**" means any bond, note, or other evidence of indebtedness incurred, entered into, or issued by the City related exclusively to the District.

"**Designated Successors and Assigns**" shall mean (i) an entity to which Developer assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Developer's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Developer.

"**Developer**" has the meaning given in the recitals to this Agreement.

"**Director**" means (i) the Director of Austin Water for water and wastewater related infrastructure and (ii) the Director of Public Works for all other infrastructure, or the designee of such applicable Director.

"**District**" has the meaning given in the recitals to this Agreement.

"**Effective Date**" has the meaning given in the recitals to this Agreement.

"**Feasibility and Market Study Analysis**" means a new study or update to a prior study that is prepared by a third party consultant acceptable to the City prior to each Bond issuance that analyzes the pricing and absorption assumptions included in the Assessment Plan for a particular Improvement Area in order to determine that such assumptions are consistent with the proposed assessments that will be levied against the property located within that particular Improvement Area. It is hereby agreed that the appraisal dated April 27, 2011 prepared by Paul Hornsby & Company shall serve as the "Feasibility and Market Study Analysis" for the Master PID Bonds.

"**Financial Advisor**" means PFM Group.

"**Indenture**" means any trust indenture by and between the City and the Trustee, as it may be amended from time to time.

**"Initial Indentures"** means those certain Indentures of Trust each dated as of August 1, 2011 between the City and Trustee covering the Master PID Bonds.

**"Issue Date"** means the date of the initial delivery of the Bonds.

**"Master PID Bonds"** means collectively the Senior Master PID Bonds and the Subordinate Master PID Bonds.

**"Maximum Annual Assessment"** means for the first year assessments are levied for any particular parcel of land within the Project, an amount that does not exceed 125% of such parcel's anticipated buildout value (as determined by the Feasibility and Market Study Analysis) times the City's tax rate in the fiscal year the assessment is determined. For each year after the first year assessments are levied for any particular parcel of land within the Project, the Maximum Annual Assessment for that particular parcel cannot increase by more than two percent (2%) annually.

**"Non-CRA Improvements"** means any improvements included in the Assessment Plan save and except the CRA Improvements.

**"Notice"** means any notice, writing, or other communication given under this Agreement.

**"Parkland Agreement"** means that certain Whisper Valley Master Parkland Agreement dated effective as of August 26, 2010, by and between Developer and the City, and otherwise as further amended from time to time.

**"Party"** means the Developer or the City, as parties to this Agreement, and **"Parties"** means collectively, the Developer and the City.

**"Payment Request"** means the document to be provided by the Developer to substantiate the Actual Cost of one or more Segments.

**"Phase"** means the portion of the Project to which assessments will be levied pursuant to that certain Bond issuance.

**"Phased PID Bonds"** shall have the meaning ascribed in Section 2.01(b).

**"PID Act"** means Chapter 372, Local Government Code, as amended.

**"PID Policy"** has the meaning given in the recitals to this Agreement.

**"Prime"** means the prime rate as reported by *The Wall Street Journal.*

**"Project"** has the meaning given in the recitals to this Agreement.

**"Project Costs"** means the total of all Actual Costs.

**"Project Engineer"** means the civil engineer or firm of civil engineers selected by the Developer to perform the duties set forth herein, which is currently Bury + Partners.

**"Project Fund"** means the separate and unique fund established by the City under such name pursuant to the Indenture as described in Section 5.02 hereof.

**"Property"** has the meaning given in the recitals to this Agreement.

**"Public Improvements"** means collectively the Non-CRA Improvements, the CRA Improvements and any other improvements which may be included in the Assessment Plan as such plan is amended and updated from time to time.

**"PUD"** has the meaning given in the recitals to this Agreement.

**"Regulatory Requirements"** means the requirements and provisions of any state or federal law, and any permits, rules, orders or regulations issued or adopted from time to time by any regulatory authority, state, federal or other, having jurisdiction over the Public Improvements, as adjusted by the Development Agreement and the PUD.

**"Segments"** means the discrete portions of the Public Improvements identified as such.

**"Senior Master PID Bonds"** shall mean those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District).

**"Special Assessment Revenues"** means the monies collected from Special Assessments, including supplemental assessments and reassessments, interest, expenses, or penalties on Special Assessments, prepayments, foreclosure proceeds, and proceeds from a guarantor, if any, of the Special Assessments.

**"Special Assessments"** means the assessments levied against properties in the District, as provided for in the applicable Assessment Ordinance and in the Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

**"State"** means the State of Texas.

**"Subordinate Master PID Bonds"** shall mean those certain City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District).

**"Trustee"** means as trustee under the Initial Indentures, and any successor thereto permitted under the Initial Indentures and any other Trustee under a future Indenture.

**"Underwriter"** means Piper Jaffray.

**"Water Cost Reimbursement Agreement"** means that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated November 1, 2010 by and between Developer, IH Developer and the City, as amended by that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to

the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated of even date herewith, and otherwise as further amended from time to time.

"**Wastewater Cost Reimbursement Agreement**" means that certain Cost Reimbursement Agreement dated June 21, 2007 by and between Developer and the City, as amended by that certain (i) First Amendment to the Cost Reimbursement Agreement dated October 9, 2009, (ii) Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated November 1, 2010 by and between Developer, IH Developer and the City, and (iii) Third Amendment to the Cost Reimbursement Agreement dated of even date herewith, and otherwise as further amended from time to time.

**Exhibit "B"**

PROPERTY DESCRIPTION

[See Attached]

174.040 ACRES
WHISPER VALLEY
TRACT 1

FN NO. 11-036(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 174.040 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 164.73 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 174.040 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), at the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson by Deed of Record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas, being the northwesterly corner of said 164.73 acre tract, for the northwesterly corner hereof;

**THENCE**, S62°29'59"E, leaving said easterly right-of-way line of F.M. Highway No. 973, being the southerly line of said 2.0 acre tract and that certain tract of land conveyed to Veterans Land Board of the Estate of Texas by Deed of Records in Volume 7085, Page 418 of the Deed Records of Travis County, Texas and the northerly line of said 164.73 acre tract and hereof, a distance of 1394.58 feet to the southeasterly corner of said tract of land conveyed to Veterans Land Board of the Estate of Texas, for an angle point hereof;

**THENCE**, N27°26'53"E, along the easterly line of said tract of land conveyed to Veterans Land Board of the Estate of Texas, being the northerly line of said 164.73 acre tract and hereof, a distance of 299.02 feet to the northeasterly corner of said tract of land conveyed to Veterans Land Board of the Estate of Texas, being the southerly line of that certain 100.050 acre tract of land conveyed to Hen-Bal Investments, L.P. by Deed of Record in Document No. 2004041963 of said Official Public Records, for an angle point in the northerly line of said 164.73 acre tract and hereof;

**THENCE**, S62°28'22"E, along the southerly line of said 100.050 acre tract, being the northerly line of said 164.73 acre tract and hereof, a distance of 3268.28 feet to the northeasterly corner hereof, from which a 1/2 inch iron rod found at the northeasterly corner of said 164.73 acre tract bears S62°28'22"E, a distance of 434.57 feet;

**THENCE**, leaving the southerly line of said 100.050 acre tract, over and across said 164.73 acre and said 548.08 acre tracts of land, with the easterly, southerly and westerly lines hereof, the following thirteen (13) courses and distances:

1) S27°31'38"W, a distance of 690.95 feet to an angle point;

2) S34°54'31"W, a distance of 455.08 feet to an angle point;

3) S50°13'01"W, a distance of 1630.28 feet to an angle point;

4) S32°15'07"W, a distance of 240.04 feet to the southeasterly corner hereof;

5) Along a non-tangent curve to the right, having a radius of 1000.00 feet, a central angle of 32°13'31", an arc length of 562.44 feet, and a chord of which bears N32°49'27"W, a distance of 555.05 feet to point of tangency of said curve;

6) N16°42'42"W, a distance of 943.21 feet to the beginning of a non-tangent curve to the left;

7) Along said curve, having a radius of 1000.00 feet, a central angle of 45°47'37", an arc length of 799.25 feet, and a chord of which bears N39°36'30"W, a distance of 778.15 feet to the point of tangency of said curve;

8) N62°30'19"W, a distance of 1260.58 feet to the southwesterly corner hereof

9) N10°35'12"E, a distance of 392.50 feet to an angle point;

10) N23°39'31"E, a distance of 473.39 feet to an angle point;

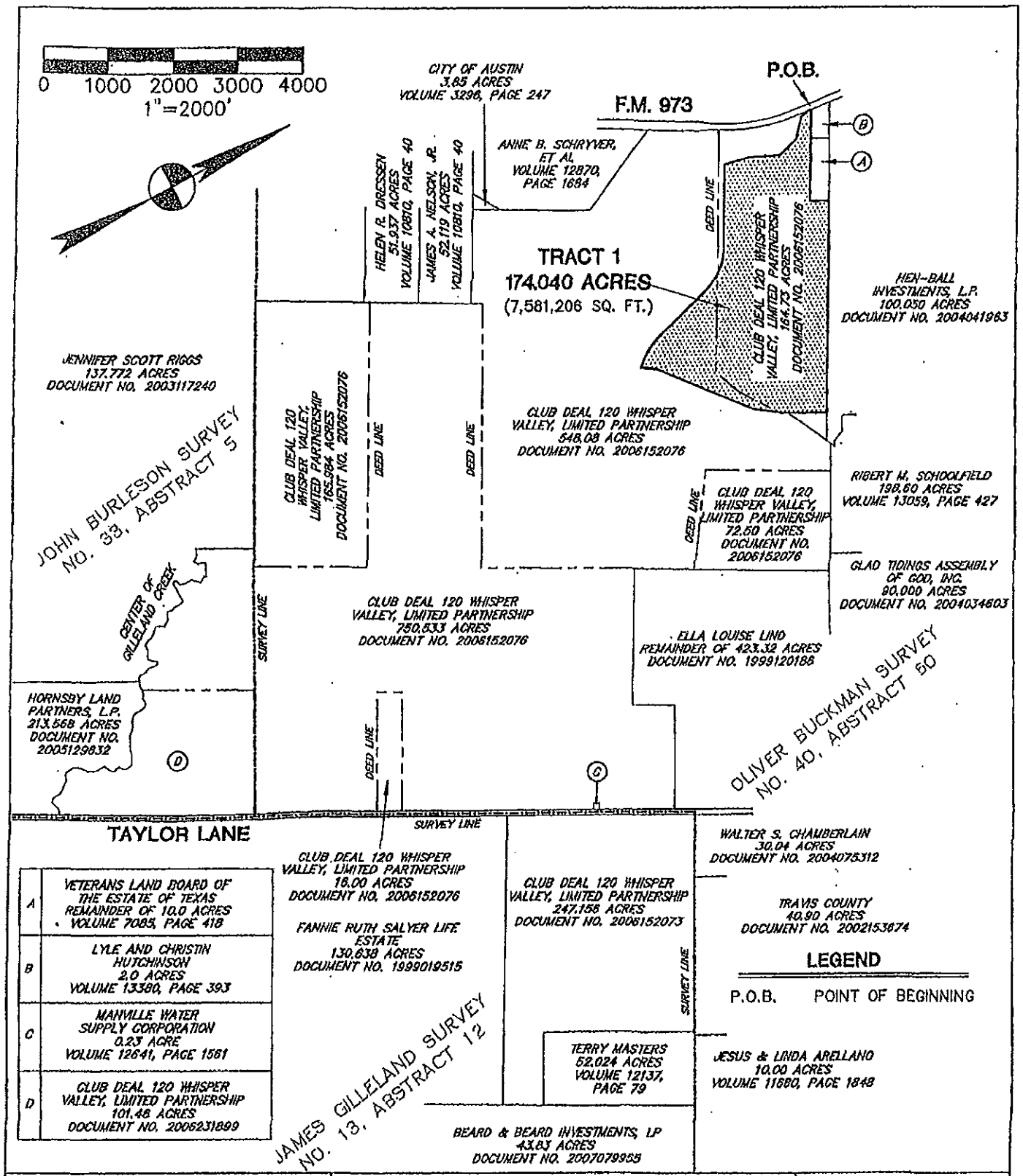
11) N15°53'25"W, a distance of 357.98 feet to an angle point;

12) N50°22'11"W, a distance of 344.49 feet to an angle point;

13) N11°22'18"W, a distance of 149.35 feet to a point in the easterly right-of-way line of said F.M. Highway No. 973, being the westerly line of said 164.73 acre tract, for an angle point hereof;

**THENCE**, N06°38'03"E, along said easterly right-of-way line of F.M. Highway No. 973, being the westerly line of said 164.73 acre tract and hereof, a distance of 40.37 feet to the **POINT OF BEGINNING** containing an area of 174.040 acres (7,581,206 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


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**SKETCH TO ACCOMPANY DESCRIPTION**
OF A 174.040 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 164.73 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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60.375 ACRES
WHISPER VALLEY
TRACT 2

FN NO. 11-037(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 60.375 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN 164.73 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 60.375 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, for reference, at a concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), being the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson, by Deed of Record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas and also being the northwesterly corner of said 164.73 acre tract;

**THENCE**, S04°35'23"E, leaving the easterly right-of-way line of F.M. Highway 973, over and across said 164.73 acre tract, a distance of 1575.01 feet to the **POINT OF BEGINNING** and northwesterly corner hereof;

**THENCE**, continuing over and across said 164.73 acre and said 548.08 acre tracts, for the outer lines hereof, the following ten (10) courses and distances:

1) S62°30'19"E, a distance of 1260.58 feet to the point of curvature of a curve to the right;

2) Along said curve to the right having a radius of 1000.00 feet, a central angle of 45°47'37", an arc length of 799.25 feet, and a chord which bears, S39°36'30"E, a distance of 778.15 feet to the point of tangency of said curve;

3) S16°42'42"E, a distance of 943.21 feet to the point of curvature of a non-tangent curve to the left;

4) Along said non-tangent curve to the left having a radius of 1000.00 feet, a central angle of 32°13'31", an arc length of 562.44 feet, and a chord which bears, S32°49'27"E, a distance of 555.05 feet to the end of said curve, for the northeasterly corner hereof, from which a 1/2-inch iron pipe found at the southeasterly corner of said 164.73 acre tract bears, N31°02'27"E, a distance of 1160.40 feet;

5) S32°15'07"W, a distance of 489.64 feet to an angle point;

6) S81°04'21"W, a distance of 439.64 feet to the southeasterly corner hereof;

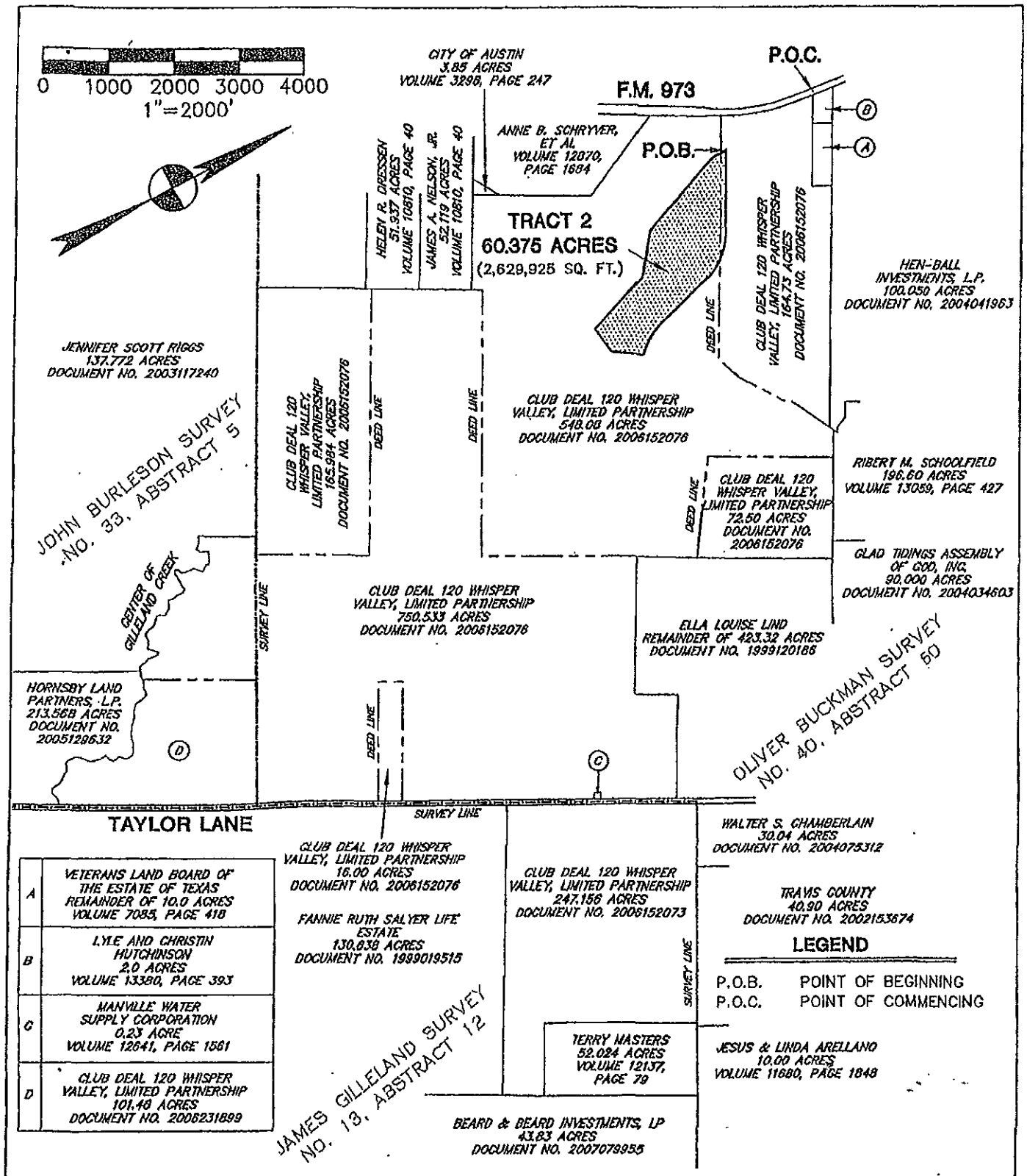
7) N19°53′38″W, a distance of 1052.43 feet to an angle point;

8) N52°57′50″W, a distance of 728.92 feet to the southwesterly corner hereof;

9) N22°09′21″W, a distance of 1477.93 feet to an angle point;

10) N01°35′37″E, a distance of 236.20 feet to the **POINT OF BEGINNING**, and containing 60.375 acres (2,629,925 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.





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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 60.375 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 164.73 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

| DATE: 02/09/11 | FILE: H:\1758\02\175802EX13.DWG | FN No.: 11-037(KWA) | DRAWN BY: KWA | PROJ. No: 1758-02.97 |
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188.437 ACRES
WHISPER VALLEY
TRACT 3

FN NO. 11-038(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 188.437 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 72.50 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 188.437 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod with cap found in the southerly line of that certain 90.000 acre tract of land conveyed to Glad Tidings Assembly of God, Inc. by Deed of Record in Document No. 2004034603 of said Official Public Records, being the northwesterly corner of that certain Remainder of 423.32 acre tract conveyed to Ella Louise Lind by Deed of Record in Document No. 1999120186 of said Official Public Records, for the northeasterly corner of said 72.50 acre tract and hereof;

**THENCE**, S28°11'49"W, leaving the southerly line of said 90.000 acre tract, being the westerly line of said Remainder of 423.32 acre tract and the easterly line of said 72.50 acre tract and hereof, a distance of 2098.37 feet to the southeasterly corner of said 72.50 acre tract, being the northeasterly corner of said 548.08 acre tract, for an angle point hereof;

**THENCE**, S28°51'16"W, continuing along the westerly line of said Remainder of 423.32 acre tract, being the easterly line of said 548.08 acre tract, a distance of 924.02 feet to a 1/2 inch iron rod found at the southwesterly corner of said Remainder of 423.32 acre tract, being a northerly corner of that certain 750.533 acre tract of land conveyed to Club Deal 120 Whisper Valley, Limited Partnership by Deed of Record in Document No. 2006152076 of said Official Public Records, for the southeasterly corner hereof;

**THENCE**, leaving southwesterly corner of said Remainder of 423.32 acre tract, same being a northerly corner of said 750.533 acre tract, over and across said 548.08 acre tract, for the southerly and westerly lines hereof, the following eight (8) courses and distances:

1) S68°40'16"W, a distance of 1856.76 feet to an angle point;

2) N06°32'58"W, a distance of 1171.54 feet to the point of curvature of a non-tangent curve to the left;

3) Along said curve to the left having a radius of 1000.00 feet, a central angle of 44°31'00", an arc length of 776.96 feet, and a chord of which bears, N28°48'28"W, a distance of 757.57 feet to the end of said curve, for the southwesterly corner hereof, from which a 1/2 inch iron rod found at the northwesterly corner of said 548.08 acre tract bears, N46°10'24"W, a distance of 4451.66 feet;

4) N47°32'54"E, a distance of 420.53 feet to an angle point;

5) N33°59'42"E, a distance of 524.55 feet to an angle point;

6) N41°28'47"E, a distance of 1186.68 feet to an angle point;

7) N21°18'53"E, a distance of 328.09 feet to an angle point;

8) N41°18'18"E, a distance of 658.29 feet to a point in the southerly line of that certain 196.60 acre tract of land conveyed to Robert M. Schoolfield by Deed of Record in Volume 13059, Page 427 of the Real Property Records of Travis County, Texas, being the northerly line of said 548.08 acre tract, for the northwesterly corner hereof;

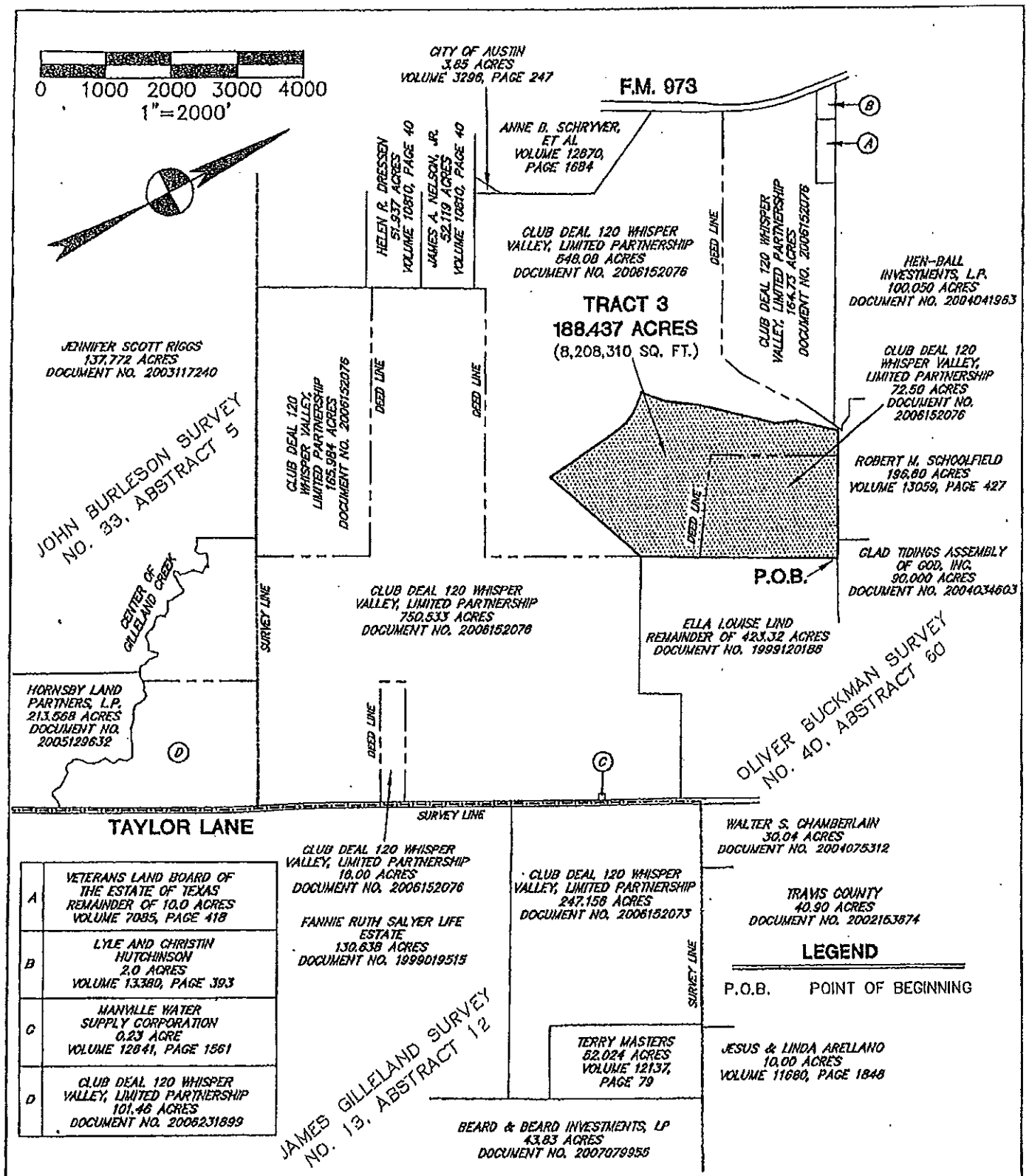
**THENCE**, along the southerly line of said 196.60 acre tract and said 90.00 acre tract, being the northerly line of said 548.08 acre tract and said 72.50 acre tract, for the northerly lines hereof, the following three (3) courses and distances:

1) S62°27'39"E, a distance of 380.49 feet to a 1/2 inch iron rod found for an angle point;

2) S62°18'06"E, a distance of 1509.13 feet to an angle point;

3) S63°32'25"E, a distance of 54.46 feet to the **POINT OF BEGINNING** containing an area of 188.437 acres (8,208,310 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


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**SKETCH TO ACCOMPANY DESCRIPTION**
OF A 188.437 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 72.50 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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106.722 ACRES
WHISPER VALLEY
TRACT 4

FN NO. 11-039(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 106.722 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN 750.533 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 106.722 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, for reference, at a concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), being the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson, by Deed of Record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas and also being the northwesterly corner of that certain 164.73 acre tract conveyed to Club Deal 120 Whisper Valley, Limited Partnership, by said Deed of record in Document No. 2006152076, of said Official Public Records;

**THENCE**, S32°11'01"E, leaving the easterly right-of-way line of F.M. Highway 973, over and across said 164.73 acre and said 548.08 acre tracts, a distance of 5298.87 feet to the **POINT OF BEGINNING**, and northerly corner hereof;

**THENCE**, continuing over and across said 548.08 acre and said 750.533 acre tracts, for the outer lines hereof, the following fourteen (14) courses and distances:

1) Along a curve to the right having a radius of 1000.00 feet, a central angle of 44°31'00", an arc length of 776.96 feet, and a chord which bears, S28°48'28"E, a distance of 757.57 feet to the end of said curve;

2) S06°32'58"E, a distance of 1171.54 feet to the point of curvature of a curve to the left;

3) Along said curve to the left having a radius of 1000.00 feet, a central angle of 15°20'51", an arc length of 267.86 feet, and a chord which bears, S14°13'23"E, a distance of 267.07 feet to the end of said curve;

4) S21°53'49"E, a distance of 639.08 feet to the point of curvature of a curve to the right;

5) Along said curve to the right having a radius of 1000.00 feet, a central angle of 26°43'53", an arc length of 466.55 feet, and a chord which bears, S08°31'53"E, a distance of 462.33 feet to the end of said curve;

6) S04°50'04"W, a distance of 240.16 feet to the easterly corner hereof, from which a fence post found at the southeasterly corner of said 548.08 acre tract bears, N71°25'44"E, a distance of 265.06 feet;

7) S59°26'55"W, a distance of 1058.81 feet to the southerly corner hereof;

8) N12°58'35"W, a distance of 502.58 feet to an angle point;

9) N52°51'17"W, a distance of 622.67 feet to an angle point;

10) N09°06'50"W, a distance of 637.59 feet to an angle point;

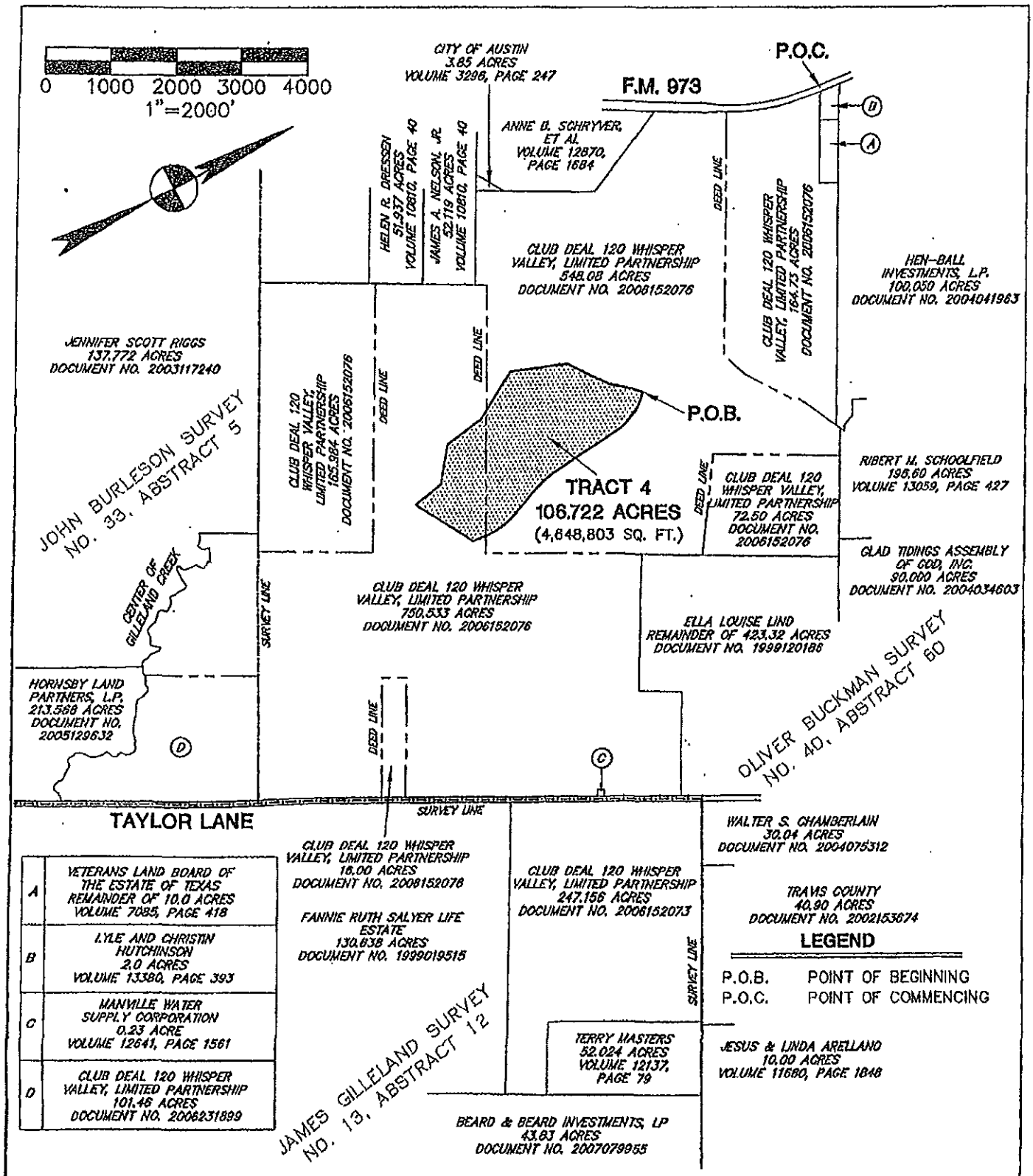
11) N30°33'52"W, a distance of 869.27 feet to the westerly corner hereof;

12) N20°11'13"E, a distance of 900.78 feet to an angle point;

13) N53°09'58"E, a distance of 710.36 feet to an angle point;

14) N39°53'15"E, a distance of 520.29 feet to the **POINT OF BEGINNING**, and containing 106.722 acres (4,648,803 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 106.722 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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66.708 ACRES
WHISPER VALLEY
TRACT 5

FN NO. 11-040(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 66.708 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.553 ACRE, 548.08 ACRE AND 165.984 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 66.708 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 5/8 inch iron rod found for an angle point in the northerly line of that certain 137.772 acre tract of land conveyed to Jennifer Scott Riggs by Deed of Record in Document No. 2003117240 of said Official Public Records, being the southwesterly corner of said 165.984 acre tract, for the southwesterly corner hereof;

**THENCE**, N28°01'45"E, leaving the northerly line of said 137.772 acre tract, being the westerly line of said 165.984 acre tract and also being a portion of the easterly line of that certain 51.937 acre tract of land conveyed to Helen R. Dressen by Deed of Record in Volume 10810, Page 40 of the Real Property Records of Travis County, Texas, for a portion of the westerly line hereof, a distance of 1765.59 feet to the northwesterly corner of said 165.984 acre tract and also being the southwesterly corner of said 750.533 acre tract, for an angle point hereof;

**THENCE**, N28°16'57"E, continuing along the easterly line of said 51.937 acre tract, being the westerly line of said 750.533 acre tract and also being the easterly line of that certain 52.119 acre tract conveyed to James A. Nelson, Jr. by Deed of Record in Volume 10810, Page 40 of said Real Property Records, for a portion of the westerly line hereof, a distance of 1561.57 feet to the northeasterly corner of said 52.119 acre tract, being an angle point in the southerly line of said 548.08 acre tract, for an angle point hereof;

**THENCE**, N62°20'40"W, along the northerly line of said 52.119 acre tract, being the southerly line of said 548.08 acre tract, for a portion of the westerly line hereof, a distance of 1454.92 feet to the southwesterly corner of said 548.08 acre tract, being the southeasterly corner of that certain 3.85 acre tract conveyed to City of Austin by Deed of Record in Volume 3296, Page 247 of the Deed Records of Travis County, Texas, for an angle point hereof;

**THENCE**, N28°21'05"E, along the easterly line of said 3.85 acre tract and along the easterly line of that certain tract of land conveyed to Anne B. Schryver, et al by Deed of Record in Volume 12870, Page 1684 of said Real Property Records, being the westerly line of said 548.08 acre tract, for a portion of the westerly line hereof, a distance of 1389.73 feet to the northwesterly corner hereof;

**THENCE**, leaving said Anne B. Schryver, et al tract, over and across said 548.08 acre, 750.533 acre and said 165.984 acre tracts, for the northerly and easterly lines hereof, the following eleven (11) courses and distances:

1) S01°31'29"E, a distance of 1574.44 feet to an angle point;

2) S62°20'40"E, a distance of 685.58 feet to an angle point;

3) S28°16'57"W, a distance of 902.91 feet to an angle point;

4) S37°41'39"E, a distance of 226.32 feet to an angle point;

5) S02°54'46"E, a distance of 554.43 feet to an angle point;

6) S12°12'37"E, a distance of 723.76 feet to an angle point;

7) S03°04'28"W, a distance of 445.74 feet to an angle point;

8) S15°09'00"W, a distance of 412.06 feet to an angle point;

9) S26°19'09"E, a distance of 398.88 feet to an angle point;

10) S50°11'55"E, a distance of 258.47 feet to an angle point hereof, from which a 1/2 inch iron rod found at the northeasterly corner of said 165.984 acre tract bears, N83°31'59"E, a distance of 2770.53 feet;

11) S27°24'23"W, a distance of 204.45 feet to a point in the northerly line of said 137.772 acre tract, being the southerly line of said 165.984 acre tract, for the southeasterly corner hereof;

**THENCE**, along the northerly line of said 137.772 acre tract, being the southerly line of said 165.984 acre tract, for the southerly line hereof, the following eight (8) courses and distances:

1) N64°21'34"W, a distance of 45.71 feet to an angle point;

2) N62°45'03"W, a distance of 162.16 feet to a 1/2 inch iron rod found for an angle point;

3) N62°27'50"W, a distance of 291.49 feet to a 1/2 inch iron rod found for an angle point;

4) N62°43'58"W, a distance of 298.62 feet to a 1/2 inch iron rod found for an angle point;

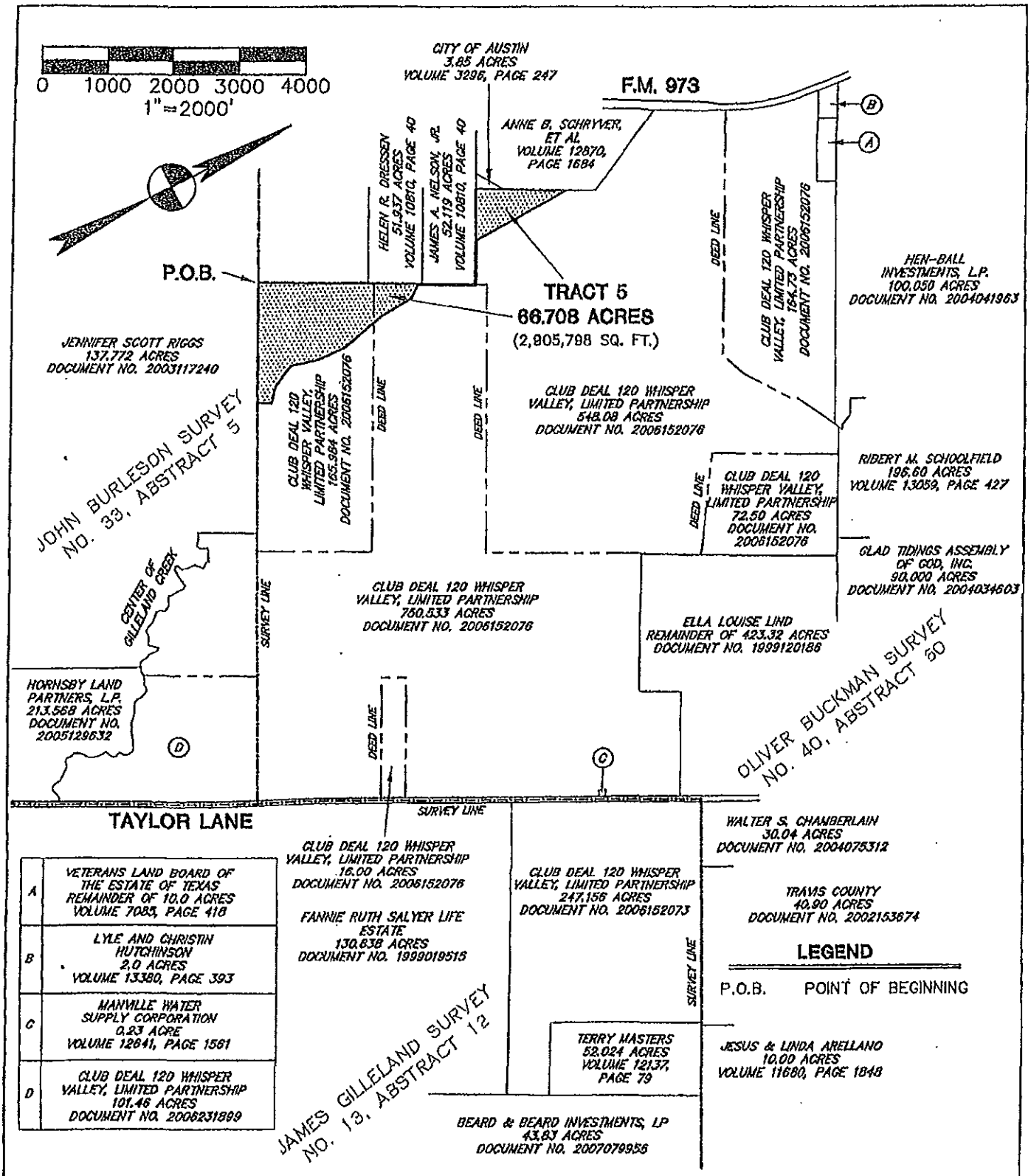
5) N62°39'09"W, a distance of 353.97 feet to a 1/2 inch iron rod found for an angle point;

6) N62°26'41"W, a distance of 124.59 feet to an angle point;

7) N62°37'20"W, a distance of 145.41 feet to a 1/2 inch iron rod found for an angle point;

8) N62°42'19"W, a distance of 414.40 feet to the **POINT OF BEGINNING** containing an area of 66.708 acres (2,905,798 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 66.708 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 165.984 ACRE, 750.533 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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197.413 ACRES
WHISPER VALLEY
TRACT 6

FN NO. 11-041(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 197.413 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN 750.533 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 197.413 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2-inch iron rod found at an angle point in the easterly line of said 548.08 acre tract, being an angle point in the northerly line of said 750.533 acre tract and also being the southwesterly corner of that certain remainder tract of 423.32 acre conveyed to Ella Louise Lind, by Deed of Record in Document No. 1999120186 of said Official Public Records, for the northerly corner hereof;

**THENCE**, S61°57'29"E, leaving the easterly line of said 548.08 acre tract, being the southerly line of said remainder tract of 423.32 acres, for a portion of the northerly line hereof, a distance of 2116.00 feet to a 1/2 inch iron rod found for an angle point in the southerly line of said remainder tract of 423.32 acres, for the northeasterly corner hereof;

**THENCE**, leaving said remainder tract of 423.32 acres, over and across said 750.533 acre and said 548.08 acre tracts, for the easterly, southerly and westerly lines hereof, the following eight (8) courses and distances:

1) S26°00'41"W, a distance of 3228.57 feet to the southerly corner hereof;

2) N63°28'23"W, a distance of 1434.65 feet to the beginning of a non-tangent curve to the right;

3) Along said curve to the right having a radius of 1000.00 feet, a central angle of 68°18'27", an arc length of 1192.19 feet, and a chord of which bears, N29°19'10"W, a distance of 1122.83 feet to the point of tangency of said curve;

4) N04°50'04"E, a distance of 293.19 feet to the beginning of a non-tangent curve to the left;

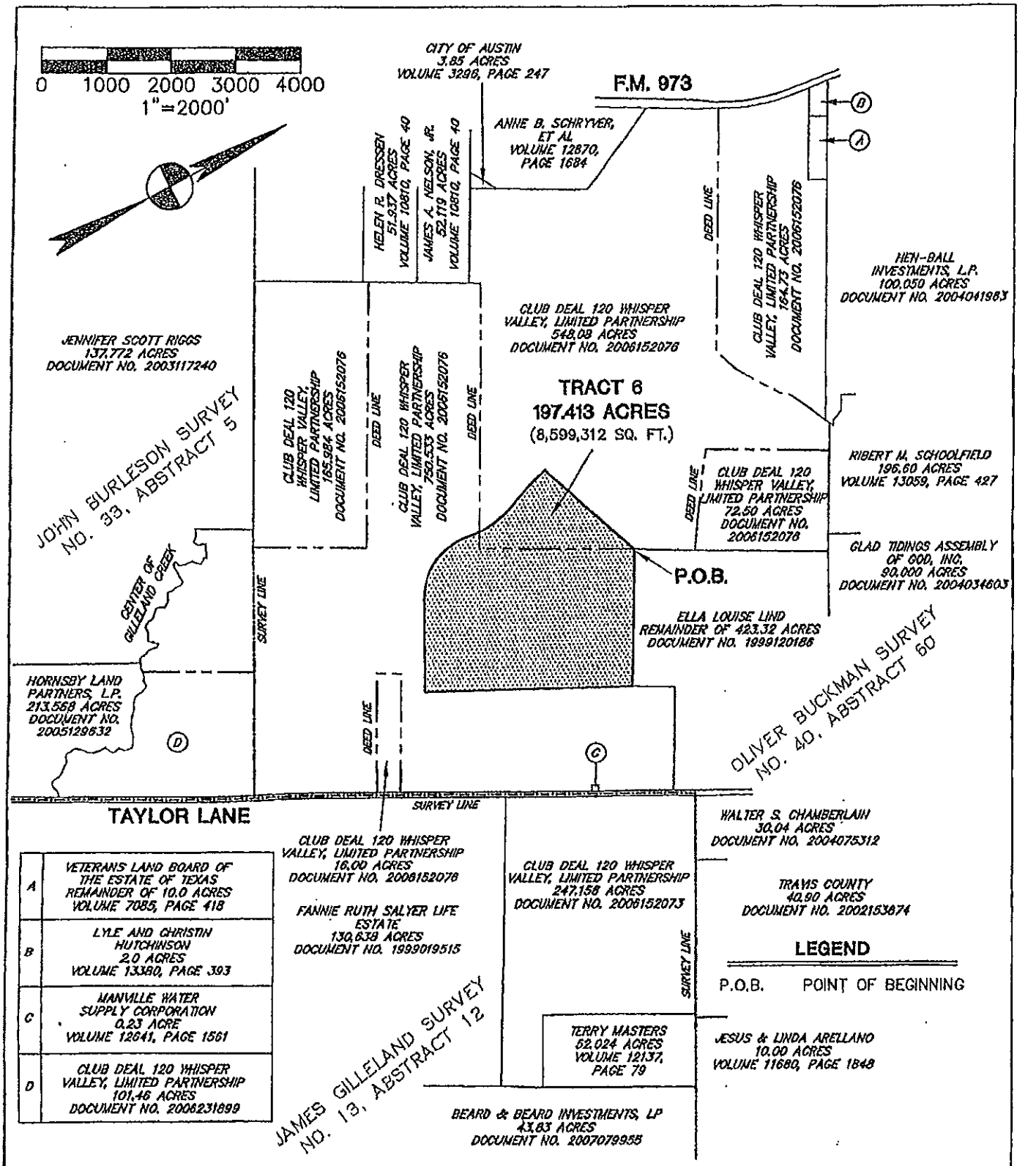
5) Along said curve to the left having a radius of 1000.00 feet, a central angle of 26°43'53", an arc length of 466.55 feet, and a chord of which bears, N08°31'53"W, a distance of 462.33 feet to the point of tangency of said curve;

6) N21°53'49"W, a distance of 639.08 feet to the beginning of a non-tangent curve to the right;

7) Along said curve to the right having a radius of 1000.00 feet, a central angle of 15°20'52", an arc length of 267.87 feet, and a chord of which bears, N14°13'23"W, a distance of 267.07 feet to the end of said curve;

8) N68°40'16"E, a distance of 1856.76 feet to the **POINT OF BEGINNING**, and containing 197.413 acres (8,599,312 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 197.413 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE AND 548.08 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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| DATE: 02/09/11 | FILE: H:\1758\02\175802EX13.DWG | FN No.: 11-041(KWA) | DRAWN BY: KWA | PROJ. No: 1758-02.97 |

166.246 ACRES
WHISPER VALLEY
TRACT 7

FN NO. 11-042(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 166.246 ACRE OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.553 ACRE, 165.984 ACRE, 16.00 ACRES AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NOS. 2006152076 AND 2006231899, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 166.246 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, for reference, at a 5/8 inch iron rod found for an angle point in the northerly line of that certain 137.772 acre tract of land conveyed to Jennifer Scott Riggs by Deed of Record in Document No. 2003117240 of said Official Public Records, being the southwesterly corner of said 165.984 acre tract;

**THENCE**, N82°00'45"E, leaving the northerly line of said 137.772 acre tract, over and across said 165.984 acre and said 750.533 acre tracts, a distance of 4177.44 feet to the **POINT OF BEGINNING** and northwesterly corner hereof;

**THENCE**, continuing over and across said 165.984 acre, said 750.533 acre, said 16.00 acre and said 101.46 acre tracts, for the exterior lines hereof, the following eleven (11) courses and distances:

1) N59°26'55"E, a distance of 1058.81 feet to an angle point;

2) S04°50'04"W, a distance of 53.03 feet to the beginning of a non-tangent curve to the left;

3) Along said curve to the left having a radius of 1000.00 feet, a central angle of 68°18'27", an arc length of 1192.19 feet, and a chord of which bears, S29°19'10"E, a distance of 1122.83 feet to the point of tangency of said curve;

4) S63°28'23" E, a distance of 1434.65 feet to the northeasterly corner hereof;

5) S33°00'49" W, a distance of 4069.00 feet to the southeasterly corner hereof;

6) N46°17'55" W, a distance of 689.21 feet to an angle point;

7) N16°11'16" W, a distance of 446.07 feet to the southwesterly corner hereof, from which a 1/2 inch iron rod found at the southeasterly corner of said 165.984 acre tract bears, N17°54'07"W, a distance of 1229.25 feet;

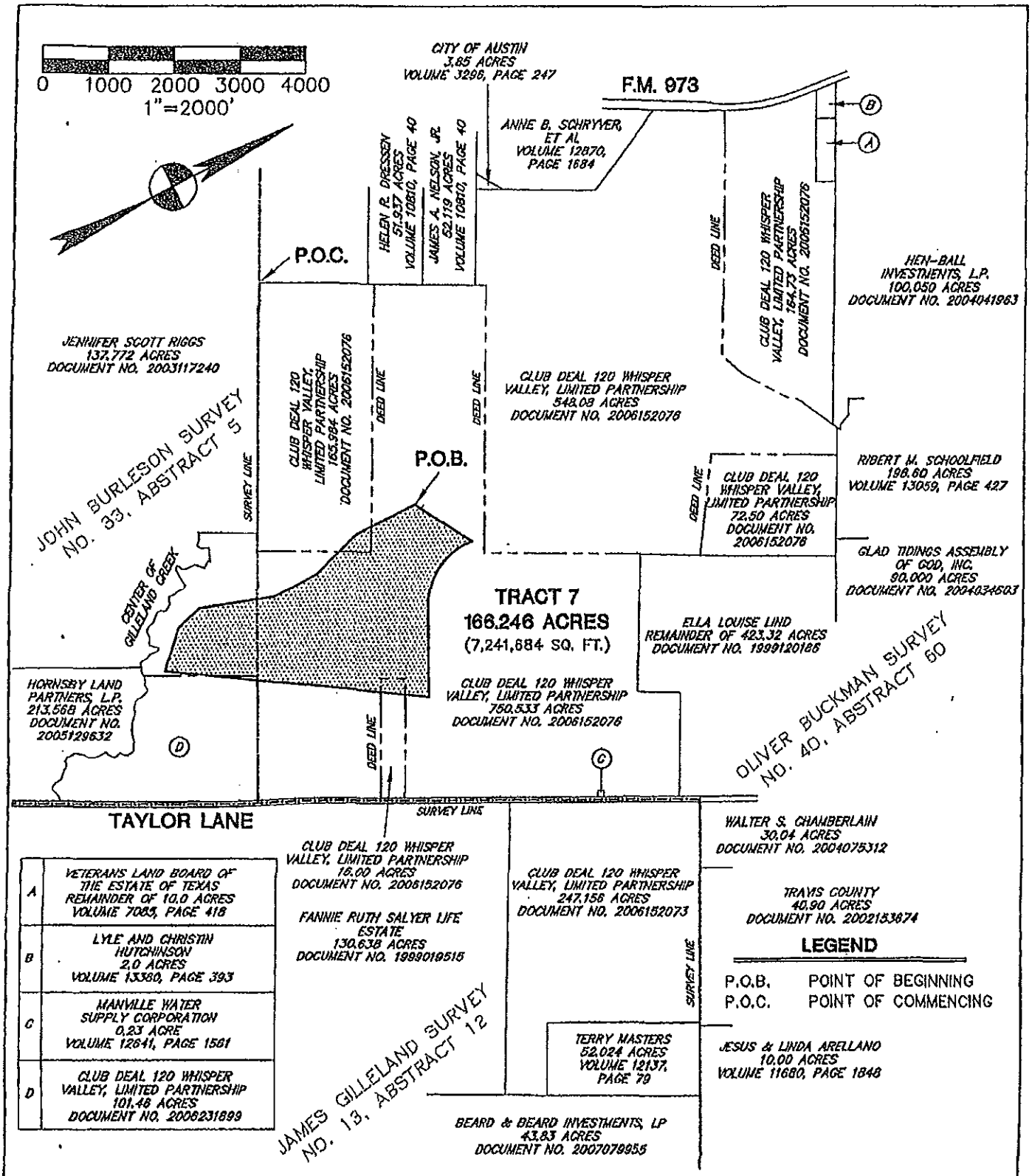
8) N18°31'59" E, a distance of 1157.83 feet to an angle point;

9) N00°25'04" W, a distance of 712.05 feet to an angle point;

10) N17°52'12" W, a distance of 894.72 feet to an angle point;

11) N00°36'51" E, a distance of 980.52 feet to the **POINT OF BEGINNING** containing an area of 166.246 acres (7,241,684 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.





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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 166.246 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE, 16.00 ACRE, 165.984 ACRE AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NOS. 2006152076 AND 2006231899, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

| DATE: 02/09/11 | FILE: H:\1758\02\175802EX13.DWG | FN No.: 11-042(KWA) | DRAWN BY: KWA | PROJ. No: 1758-02.97 |
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131.120 ACRES
WHISPER VALLEY
TRACT 8

FN NO. 11-043(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 131.120 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.553 ACRE TRACT OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 131.120 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod found in the westerly right-of-way line of Taylor Road (80' R.O.W.), at the southeasterly corner of that certain remainder of 423.32 acre tract of land conveyed to Ella Louise Lind by Deed of Record in Document No. 1999120186 of said Official Public Records, being the northeasterly corner of said 750.533 acre tract, for the northeasterly corner hereof;

**THENCE**, along said westerly right-of-way line of Taylor Road, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

1) Along a curve to the left, having a radius of 14701.15 feet, a central angle of 01°22'03", an arc length of 350.85 feet, and a chord of which bears, S27°23'38"W, a distance of 350.84 feet to a 1/2 inch iron rod found at the point of tangency of said curve;

2) S26°39'38"W, a distance of 454.04 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;

3) Along said curve to the right having a radius of 93712.13 feet, a central angle of 00°13'16", an arc length of 361.66 feet, and a chord of which bears, S26°51'11"W, a distance of 361.66 feet to a 1/2 inch iron rod found at the northeasterly corner of that certain 0.23 acre tract of land conveyed to Manville Water Supply Corporation by Deed of Record in Volume 12641, Page 1561 of the Real Property Records of Travis County, Texas, for the end of said curve;

**THENCE**, leaving said westerly right-of-way line of Taylor Road, being the northerly, westerly and southerly lines of said 0.23 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

1) N62°38'36"W, a distance of 100.15 feet to the northwesterly corner of said 0.23 acre tract, for an angle point hereof;

2) S26°51'53"W, a distance of 100.15 feet to a 1/2 inch iron rod found at the southwesterly corner of said 0.23 acre tract, for an angle point hereof;

3) S62°42'38"E, a distance of 100.29 feet to a 1/2 inch iron rod found in said westerly right-of-way line of Taylor Road, being the southeasterly corner of said 0.23 acre tract, for an angle point hereof;

**THENCE**, along said westerly right-of-way line of Taylor Road, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following two (2) courses and distances:

1) Along a curve to the right, having a radius of 93712.13 feet, a central angle of 00°16'05", an arc length of 438.39 feet, and a chord of which bears, S27°08'46"W, a distance of 438.39 feet to a 1/2 inch iron rod found at the point of tangency of said curve;

2) S27°15'08"W, a distance of 1567.29 feet to the southeasterly corner hereof;

**THENCE**, leaving said westerly right-of-way line of Taylor Road, over and across said 750.533 acre tract, for the southerly and westerly lines hereof, the following five (5) courses and distances:

1) N62°47'05"W, a distance of 90.88 feet to the beginning of a non-tangent curve to the left;

2) Along said curve to the left having a radius of 1000.00 feet, a central angle of 35°24'24", an arc length of 617.96 feet, and a chord of which bears, N80°29'17"W, a distance of 608.18 feet to the point of tangency of said curve;

3) S81°48'31"W, a distance of 402.17 feet to the beginning of a non-tangent curve to the right;

4) Along said curve to the right having a radius of 1000.00 feet, a central angle of 34°43'05", an arc length of 605.95 feet, and a chord of which bears N80°49'56"W, a distance of 596.72 feet to the point of tangency of said curve;

5) N26°00'41"E, a distance of 3228.57 feet to a 1/2 inch iron rod found in the southerly line of said remainder of 423.32 acre tract, being an angle point in the northerly line of said 750.533 acre tract, for an angle point hereof;

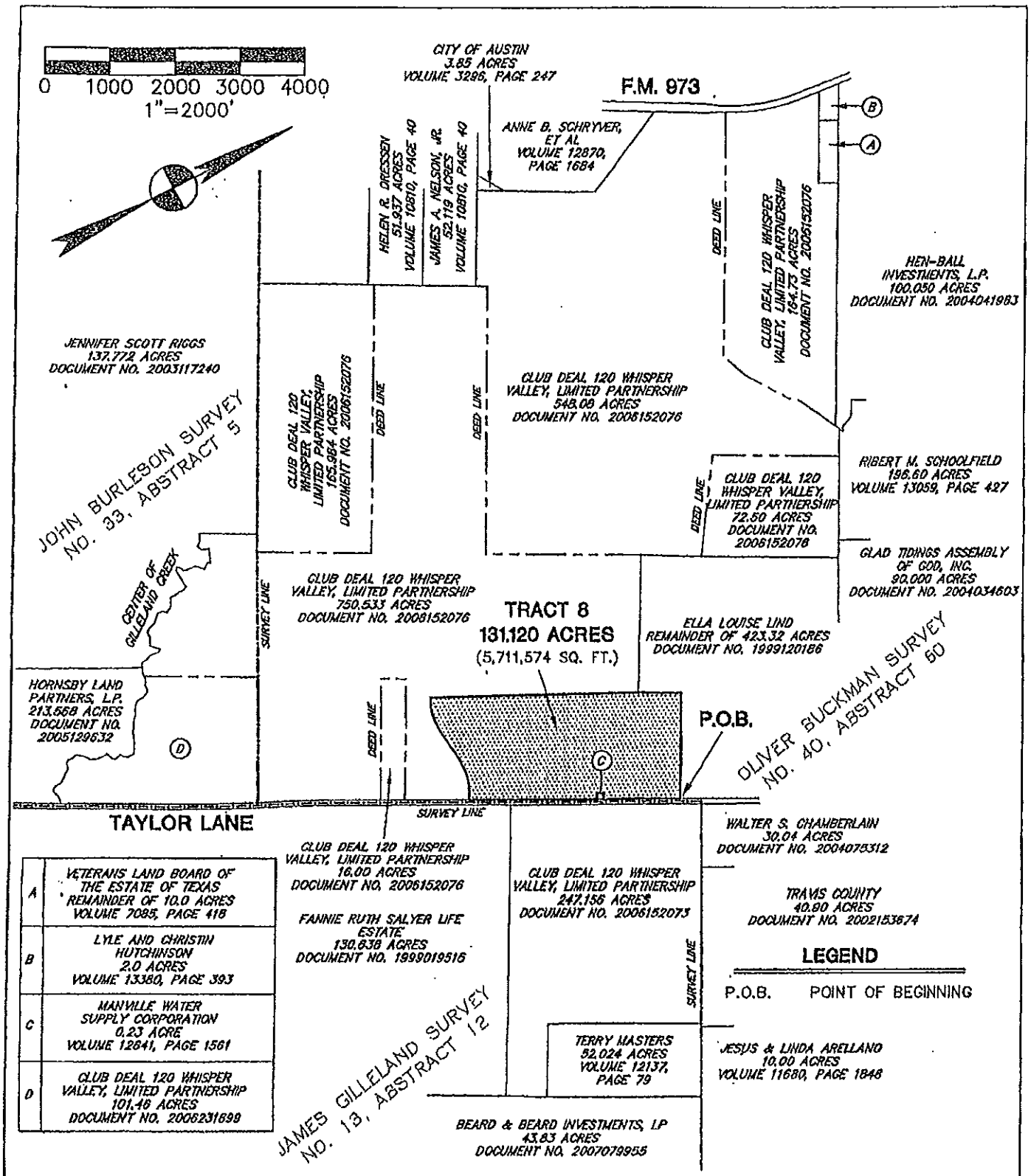
**THENCE**, along the southerly line of said remainder of 423.32 acre tract, being the northerly line of said 750.533 acre tract, for a portion of the westerly and the northerly line hereof, the following three (3) courses and distances:

1) N28°16'28"E, a distance of 664.18 feet to the northwesterly corner hereof

2) S61°55'40"E, a distance of 231.92 feet to an angle point;

3) S62°13'46"E, a distance of 1383.28 feet to the **POINT OF BEGINNING** containing an area of 131.120 acres (5,711,574 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 | |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 | |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 | |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231699 | |


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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 131.120 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE TRACT OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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153.602 ACRES
WHISPER VALLEY
TRACT 9

FN NO. 11-044(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 153.602 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.553 ACRE, 16.00 ACRE AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEEDS OF RECORD UNDER DOCUMENT NOS. 2006152076 AND 2006231899, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 153.602 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod found in the westerly right-of-way line of Taylor Road (80' R.O.W.), being the northeasterly corner of said 101.46 acre tract, being the southeasterly corner of said 750.533 acre tract, for an angle point hereof;

**THENCE**, along the westerly right-of-way line of Taylor Road, being the easterly line of said 101.46 acre tract, for a portion of the easterly line hereof, the following five (5) courses and distances:

1) S24°45'18"W, a distance of 89.99 feet to a 1/2 inch iron rod with cap found for the point of beginning of a curve to the right;

2) Along said curve to the right having a radius of 13545.14 feet, a central angle of 02°57'05", an arc length of 697.70 feet, and a chord of which bears, S26°13'52"W, a distance of 697.63 feet to a 1/2 inch iron rod found at the point of tangency of said curve;

3) S27°42'26"W, a distance of 240.29 feet to a 1/2 inch iron rod found for an angle point;

4) S25°04'23"W, a distance of 99.53 feet to a 1/2 inch iron rod found for an angle point;

5) S27°42'26"W, a distance of 201.45 feet to the southeasterly corner hereof;

**THENCE**, leaving said westerly right-of-way line of Taylor Road, over and across said 101.46 acre, 750.533 acre and said 16.00 acre tracts, for the southerly, westerly and northerly lines hereof, the following twenty-two (22) courses and distances:

1) N63°09'31"W, a distance of 306.15 feet to an angle point;

2) N74°51'20"W, a distance of 99.71 feet to an angle point;

3) N26°24'11"W, a distance of 136.47 feet to an angle point;

4) N01°00'28"E, a distance of 96.66 feet to an angle point;

5) N46°04'15"E, a distance of 137.16 feet to an angle point;

6) N37°25'36"E, a distance of 278.11 feet to an angle point;

7) N29°25'58"E, a distance of 114.16 feet to an angle point;

8) N15°12'28"E, a distance of 167.13 feet to an angle point;

9) N24°08'49"E, a distance of 323.58 feet to an angle point;

10) N43°18'42"E, a distance of 246.26 feet to an angle point;

11) N23°39'59"E, a distance of 478.77 feet to an angle point;

12) N74°15'17"W, a distance of 229.94 feet to an angle point;

13) S29°56'07"W, a distance of 337.59 feet to an angle point;

14) S40°49'33"W, a distance of 491.60 feet to an angle point;

15) S58°05'49"W, a distance of 687.66 feet to an angle point;

16) S77°39'24"W, a distance of 850.54 feet to an angle point;

17) N50°35'29"W, a distance of 193.44 feet to the southwesterly corner hereof;

18) N33°00'49"E, a distance of 4069.00 feet to the northwesterly corner hereof, from which a 1/2 inch iron rod found at the northwesterly corner of said 16.00 acre tract for the beginning of a non-tangent curve to the left bears, S64°44'12" W, a distance of 475.21 feet;

19) Along a non-tangent curve to the left, having a radius of 1000.00 feet, a central angle of 34°43'05", an arc length of 605.95 feet, and a chord of which bears S80°49'56"E, a distance of 596.72 feet to the point of tangency of said curve;

20) N81°48'31"E, a distance of 402.17 feet to the beginning of a non-tangent curve to the right;

21) Along said curve to the right having a radius of 1000.00 feet, a central angle of 35°24'24", an arc length of 617.96 feet, and a chord of which bears, S80°29'17"E, a distance of 608.18 feet to the point of tangency of said curve;

22) S62°47'05"E, a distance of 90.88 feet to a point in the westerly right-of-way line of Taylor Road, being the easterly line of said 750.533 acre tract, for the northeasterly corner hereof;

**THENCE**, along the westerly right-of-way line of Taylor Road, being the easterly line of said 750.533 acre and said 16.00 acre tracts, for a portion of the easterly line hereof, the following seven (7) courses and distances:

1) S27°15'08"W, a distance of 989.63 feet to a 1/2 inch iron rod found for an angle point;

2) S27°15'21"W, a distance of 10.55 feet to the beginning of a non-tangent curve to the left;

3) Along said curve to the left having a radius of 210712.15 feet, a central angle of 00°05'47", an arc length of 354.74 feet, and a chord of which bears, S27°12'27"W, a distance of 354.74 feet to a point of reverse curvature of a curve to the right;

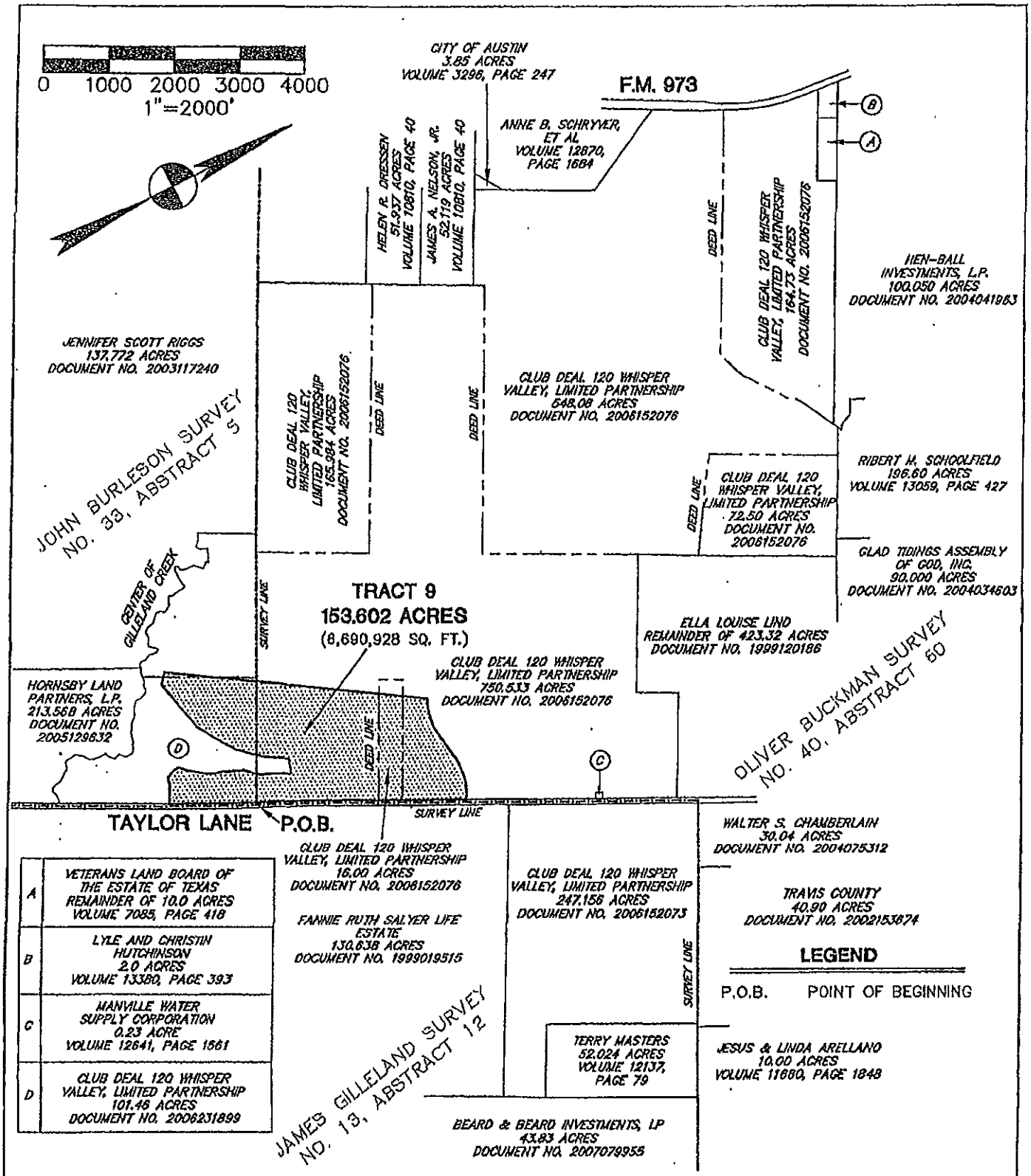
4) Along said reverse curve to the right having a radius of 210712.15 feet, a central angle of 00°05'48", an arc length of 354.48 feet, and a chord of which bears S27°06'46"W, a distance of 354.48 feet to the point of tangency of said curve;

5) S27°06'32"W, a distance of 384.22 feet to the beginning of a non-tangent curve to the left;

6) Along said curve to the left having a radius of 21059.69 feet, a central angle of 02°10'54", an arc length of 801.79 feet, and a chord of which bears, S25°53'03"W, a distance of 801.79 feet to the point of tangency of said curve;

7) S24°42'43"W, a distance of 338.31 feet to the **POINT OF BEGINNING** containing an area of 153.602 acres (6,690,928 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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|---|---|
| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1661 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


Bury+Partners
ENGINEERING SOLUTIONS
221 West Sixth Street, Suite 600
Austin, Texas 78701
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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 153.602 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 750.533 ACRE, 16.00 ACRE AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NOS. 2006152076 AND 2006231899, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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| DATE: 02/09/11 | FILE: H:\1758\02\175802EX13.DWG | FN No.: 11-044(KWA) | DRAWN BY: KWA | PROJ. No: 1758-02.97 |

214.600 ACRES
WHISPER VALLEY
TRACT 10

FN NO. 11-045(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 214.600 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60, SITUATED IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 247.156 ACRE TRACT OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152073 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAVE AND EXCEPT THEREFROM A 32.496 ACRE TRACT AS SHOWN ON THE ATTACHED SKETCH; SAID 214.600 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod with cap found in the easterly right-of-way line of Taylor Road (80' R.O.W.), at the northwesterly corner of said 247.156 acre tract, being the southwesterly corner of that certain 30.04 acre tract of land conveyed to Walter S. Chamberlin by Deed of Record in Document No. 2004075312 of said Official Public Records, for the northwesterly corner hereof;

**THENCE**, leaving the easterly right-of-way line of Taylor Road, along the southerly line of said 30.04 acre tract, being the northerly line of said 247.156 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

1) S62°19'58"E, a distance of 127.06 feet to a 1/2 inch iron rod found for an angle point;

2) S62°40'50"E, a distance of 875.80 feet to a 1/2 inch iron rod found at the southeasterly corner of said 30.04 acre tract, being the southwesterly corner of that certain 40.90 acre tract conveyed to Travis County by Deed of Record in Document No. 2002153674 of said Official Public Record, for an angle point hereof;

**THENCE**, S62°45'17"E, along the southerly line of said 40.90 acre tract, being a portion of the northerly line of said 247.156 acre tract, for a portion of the northerly line hereof, a distance of 2396.70 feet to the northwesterly corner of that certain 52.024 acre tract of land conveyed to Terry Masters by Deed of Record in Volume 12137, Page 79 of the Real Property Records of Travis County, Texas, for the northeasterly corner of said 247.156 acre tract and the northeasterly corner hereof;

**THENCE**, leaving the southerly line of said 40.09 acre tract, along the westerly and southerly lines of said 52.024 acre tract, being a portion of the easterly line of said 247.156 acre tract, for a portion of the easterly lines hereof, the following six (6) courses and distances:

1) S27°38'37"W, a distance of 1656.72 feet to an angle point;

2) S26°46'24"W, a distance of 278.40 feet to an angle point;

3) S26°25'17"W, a distance of 310.86 feet to an angle point;

4) S24°58'15"W, a distance of 99.44 feet to a 1/2 inch iron rod found at the southwesterly corner of said 52.024 acre tract, being an angle point in the easterly line of said 247.156 acre tract, for an angle point hereof;

5) S62°27'04"E, a distance of 782.06 feet to an angle point;

6) S62°54'09"E, a distance of 319.90 feet to a point in the westerly line of that certain 43.83 acre tract of land conveyed to Beard & Beard Investments, LP by Deed of Record in Document No. 2007079955 of said Official Public Records, being an angle point in the easterly line of said 247.156 acre tract, for an angle point hereof;

**THENCE**, along the westerly line of said 43.83 acre tract, being the easterly line of said 247.156 acre tract, for a portion of the easterly lines hereof, the following four (4) courses and distances:

1) S25°09'46"W, a distance of 82.68 feet to an angle point;

2) S29°40'59"W, a distance of 328.78 feet to an angle point;

3) S28°45'06"W, a distance of 150.93 feet to an angle point;

4) S26°44'38"W, a distance of 85.20 feet to a 1/2 inch iron rod found at the northeasterly corner of that certain 130.638 acre tract conveyed to Fannie Ruth Salyer Life Estate by Deed of Record in Document No. 1999019515 of said Official Public Records, being the southeasterly corner of said 247.156 acre tract, for the southeasterly corner hereof;

**THENCE**, N62°02'23"W, leaving the westerly line of said 43.83 acre tract, being the southerly line of said 247.156 acre tract, for the southerly line hereof, a distance of 4487.32 feet to a 1/2 inch iron rod found in the easterly right-of-way line of Taylor Road, being the northwesterly corner of said 130.638 acre tract and also being the southwesterly corner of said 247.156 acre tract, for the southwesterly corner hereof;

**THENCE**, along the easterly right-of-way line of Taylor Road, being the westerly line of said 247.156 acre tract, for the westerly line hereof, the following four (4) courses and distances:

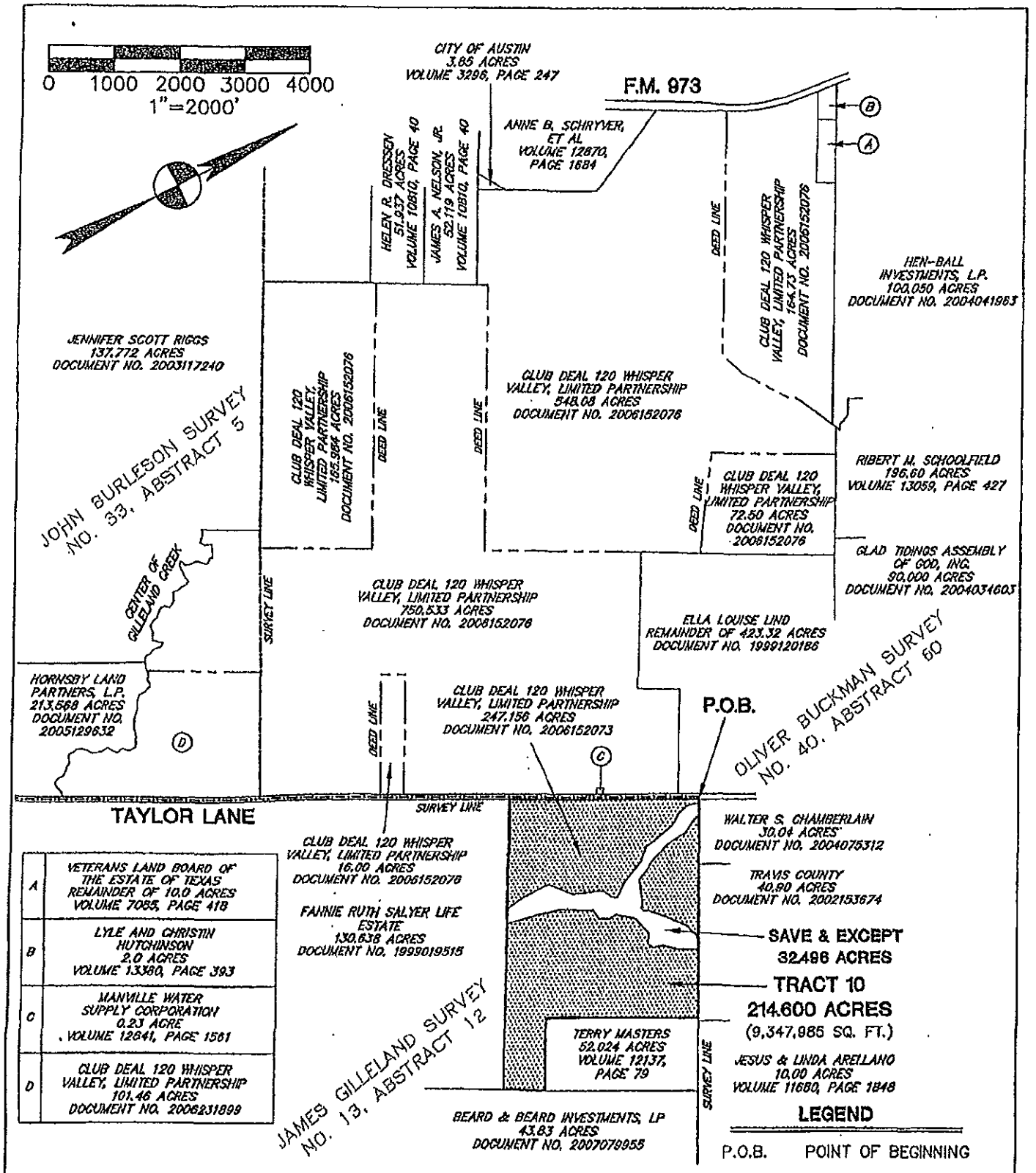
1) N27°14'01"E, a distance of 916.35 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;

2) Along said curve to the left having a radius of 93792.13 feet, a central angle of 00°33'01", an arc length of 900.79 feet, and a chord of which bears, N26°58'54"E, a distance of 900.79 feet to a 1/2 inch iron rod found at the point of tangency of said curve;

3) N26°46'57"E, a distance of 454.27 feet to a 1/2 inch iron rod with cap found at the beginning of a non-tangent curve to the right;

4) Along said curve to the right having a radius of 14621.15 feet, a central angle of 02°37'39", an arc length of 670.51 feet, and a chord of which bears, N27°58'11"E, a distance of 670.45 feet to the ***POINT OF BEGINNING*** containing an area of 247.096 acres (10,763,494 sq. ft.) of land, more or less, within these metes and bounds. **SAVE AND EXCEPT** THEREFROM THAT CERTAIN 32.496 ACRE TRACT AS SHOWN ON THE ATTACHED EXHIBIT FOR A TOTAL NET AREA OF 214.600 (9,347,985 SQUARE FEET).

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.

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| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |


Bury+Partners
ENGINEERING SOLUTIONS
221 West Sixth Street, Suite 600
Austin, Texas 78701
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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 214.600 ACRE OF LAND, OUT OF THE JAMES GILLELAND SURVEY NO. 13, ABSTRACT NO. 12, SITUATED IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 247.15 TRACT OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NO. 2006152073 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAVE AND EXCEPT 32.496 ACRES.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

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574.525 ACRES
WHISPER VALLEY
TRACT 11

FN NO. 11-046(KWA)
FEBRUARY 9, 2011
BPI JOB NO. 1758-02

**DESCRIPTION**

OF A 574.525 ACRE TRACT OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 164.73 ACRE, 548.08 ACRE, 750.533 ACRE, 165.984 ACRE AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEEDS OF RECORD UNDER DOCUMENT NO. 2006152076 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 574.525 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), at the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson by Deed of Record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas, being the northwesterly corner of said 164.73 acre tract, for the northwesterly corner hereof;

**THENCE**, leaving the easterly right-of-way line of F.M. Highway No. 973, over and across said 164.73 acre and said 548.08 acre tracts of land, for a portion of the northerly line hereof, the following fourteen (14) course and distances:

1) S11°22'18"E, a distance of 149.35 feet to an angle point;

2) S50°22'11"E, a distance of 344.49 feet to an angle point;

3) S15°53'25"E, a distance of 357.98 feet to an angle point;

4) S23°39'31"W, a distance of 473.39 feet to an angle point;

5) S10°35'12"W, a distance of 392.50 feet to an angle point;

6) S01°35'37"W, a distance of 236.20 feet to an angle point;

7) S22°09'21"E, a distance of 1477.93 feet to an angle point;

8) S52°57'50"E, a distance of 728.92 feet to an angle point;

9) S19°53'38"E, a distance of 1052.43 feet to an angle point;

10) N81°04'21"E, a distance of 439.64 feet to an angle point;

11) N32°15'07"E, a distance of 729.68 feet to an angle point;

12) N50°13'01"E, a distance of 1630.28 feet to an angle point;

13) N34°54'31"E, a distance of 455.08 feet to an angle point;

14) N27°31'38"E, a distance of 690.95 feet to a point in the southerly line of that certain 100.050 acre of land conveyed to Hen-Bal Investments, L.P. by Deed of Record in Document No. 2004041963 of said Official Public Records, being the northerly line of said 164.73 acre tract, for an angle point hereof;

**THENCE**, S62°28'22"E, along the southerly line of said 100.050 acre tract, being a portion of the northerly line of said 164.73 acre tract, for a portion of the northerly line hereof, a distance of 434.57 feet to an angle point; to a 1/2 inch iron rod found at the northeasterly corner of said 164.73 acre tract, being an angle point in the northerly line of said 548.08 acre tract and also being the southeasterly corner of said 100.050 acre tract, for an angle point hereof;

**THENCE**, N62°51'29"E, along the easterly line of said 100.050 acre tract, being the northerly line of said 548.08 acre tract, for a portion of the northerly line hereof, a distance of 75.12 feet to a 1/2 inch iron rod found at the southwesterly corner of that certain 196.60 acre tract of land conveyed to Robert M. Schoolfield by Deed of Record in Volume 13059, Page 427 of said Real Property Records, being an angle point in the northerly line of said 548.08 acre tract, for an angle point hereof;

**THENCE**, S62°27'39"E, along the southerly line of said 196.60 acre tract, being a portion of the northerly line of said 548.08 acre tract, for a portion of the northerly line hereof, a distance of 45.52 feet to the northeasterly corner hereof;

**THENCE**, leaving the southerly line of said 196.60 acre tract, over and across said 548.08 acre, said 750.533 acre, said 165.984 acre and said 101.46 acre tract, for a portion of the northerly line hereof, the following thirty-five (35) courses and distances:

1) S41°18'18"W, a distance of 658.29 feet to an angle point;

2) S21°18'53"W, a distance of 328.09 feet to an angle point;

3) S41°28'47"W, a distance of 1186.68 feet to an angle point;

4) S33°59'42"W, a distance of 524.55 feet to an angle point;

5) S47°32'54"W, a distance of 420.53 feet to an angle point;

6) S39°53'15"W, a distance of 520.29 feet to an angle point;

7) S53°09'58"W, a distance of 710.36 feet to an angle point;

8) S20°11'13"W, a distance of 900.78 feet to an angle point;

9) S30°33'52"E, a distance of 869.27 feet to an angle point;

10) S09°06'50"E, a distance of 637.59 feet to an angle point;

11) S52°51'17"E, a distance of 622.67 feet to an angle point;

12) S12°58'35"E, a distance of 502.58 feet to an angle point;

13) S00°36'51"W, a distance of 980.52 feet to an angle point;

14) S17°52'12"E, a distance of 894.72 feet to an angle point;

15) S00°25'04"E, a distance of 712.05 feet to an angle point;

16) S18°31'59"W, a distance of 1157.83 feet to an angle point;

17) S16°11'16"E, a distance of 446.07 feet to an angle point;

18) S46°17'55"E, a distance of 689.21 feet to an angle point;

19) S50°35'29"E, a distance of 193.44 feet to an angle point;

20) N77°39'24"E, a distance of 850.54 feet to an angle point;

21) N58°05'49"E, a distance of 687.66 feet to an angle point;

22) N40°49'33"E, a distance of 491.60 feet to an angle point;

23) N29°56'07"E, a distance of 337.59 feet to an angle point;

24) S74°15'17"E, a distance of 229.94 feet to an angle point;

25) S23°39'59"W, a distance of 478.77 feet to an angle point;

26) S43°18'42"W, a distance of 246.26 feet to an angle point;

27) S24°08'49"W, a distance of 323.58 feet to an angle point;

28) S15°12'28"W, a distance of 167.13 feet to an angle point;

29) S29°25'58"W, a distance of 114.16 feet to an angle point;

30) S37°25'36"W, a distance of 278.11 feet to an angle point;

31) S46°04'15"W, a distance of 137.16 feet to an angle point;

32) S01°00'28"W, a distance of 96.66 feet to an angle point;

33) S26°24'11"E, a distance of 136.47 feet to an angle point;

34) S 74°51'20" E, a distance of 99.71 feet to an angle point;

35) S63°09'31"E, a distance of 305.85 feet to a point in the westerly right-of-way line of Taylor Road (80' R.O.W.), being the easterly line of said 101.46 acre tract, for an angle point hereof;

**THENCE**, S27°41'49"W, along the westerly right-of-way line of Taylor Road, being the easterly line of said 101.46 acre tract, for a portion of the easterly line hereof, a distance of 1679.34 feet to a point in the centerline of Gilleland Creek, for the southeasterly corner hereof;

**THENCE**, leaving the westerly right-of-way line of Taylor Road, being the southerly line of said 101.46 acre and said 750.533 acre tracts and also being the northerly line of that certain 137.772 acre tract of land conveyed to Jennifer Scott Riggs by Deed of Record in Document No. 2003117240 of said Official Public Records, along the centerline of Gilleland Creek, for a portion of the southerly lines hereof, the following ninety-five (95) courses and distances:

1) N74°54'22"W, a distance of 72.42 feet to an angle point;

2) S87°27'20"W, a distance of 49.55 feet to an angle point;

3) S72°06'15"W, a distance of 97.73 feet to an angle point;

4) N60°03'23"W, a distance of 55.23 feet to an angle point;

5) N18°05'14"W, a distance of 69.40 feet to an angle point;

6) N01°52'31"W, a distance of 66.51 feet to an angle point;

7) N28°35'56"W, a distance of 40.67 feet to an angle point;

8) N42°15'00"W, a distance of 135.79 feet to an angle point;

9) N27°09'47"W, a distance of 47.76 feet to an angle point;

10) N54°26'56"W, a distance of 39.65 feet to an angle point;

11) N82°14'06"W, a distance of 65.65 feet to an angle point;

12) N46°06'32"W, a distance of 27.98 feet to an angle point;

13) N31°32'58"W, a distance of 27.94 feet to an angle point;

14) N05°19'44"E, a distance of 48.36 feet to an angle point;

15) N10°59'18"W, a distance of 42.27 feet to an angle point;

16) N24°46'37"W, a distance of 31.22 feet to an angle point;

17) N23°33'56"E, a distance of 48.12 feet to an angle point;

18) N33°25'00"E, a distance of 53.14 feet to an angle point;

19) N42°33'43"E, a distance of 50.30 feet to an angle point;

20) N54°07'33"E, a distance of 95.80 feet to an angle point;

21) N32°57'27"E, a distance of 36.48 feet to an angle point;

22) N26°02'14"E, a distance of 41.61 feet to an angle point;

23) N09°51'27"E, a distance of 76.18 feet to an angle point;

24) N01°43'45"E, a distance of 37.41 feet to an angle point;

25) N04°13'11"W, a distance of 45.91 feet to an angle point;

26) N01°52'49"E, a distance of 41.93 feet to an angle point;

27) N65°35'42"E, a distance of 94.19 feet to an angle point;

28) N49°41'41"E, a distance of 50.69 feet to an angle point;

29) N07°41'41"E, a distance of 36.84 feet to an angle point;

30) N27°33'01"W, a distance of 40.07 feet to an angle point;

31) N07°48'42"W, a distance of 36.36 feet to an angle point;

32) N45°41'21"E, a distance of 45.65 feet to an angle point;

33) N58°06'41"E, a distance of 36.66 feet to an angle point;

34) N24°11'14"E, a distance of 42.59 feet to an angle point;

35) N03°38'51"W, a distance of 90.98 feet to an angle point;

36) N47°42'29"W, a distance of 52.22 feet to an angle point;

37) N65°40'01"W, a distance of 94.58 feet to an angle point;

38) N57°18'12"W, a distance of 31.69 feet to an angle point;

39) N75°39'27"W, a distance of 93.87 feet to an angle point;

40) N70°13'14"W, a distance of 44.12 feet to an angle point;

41) N65°05'05"W, a distance of 58.53 feet to an angle point;

42) N59°44'55"W, a distance of 95.73 feet to an angle point;

43) N44°50'55"W, a distance of 106.52 feet to an angle point;

44) N52°53'43"W, a distance of 50.71 feet to an angle point;

45) N71°16'08"W, a distance of 52.52 feet to an angle point;

46) N59°49'47"W, a distance of 38.08 feet to an angle point;

47) N49°26'58"W, a distance of 86.16 feet to an angle point;

48) N19°27'23"W, a distance of 45.20 feet to an angle point;

49) N00°41'47"E, a distance of 41.66 feet to an angle point;

50) N11°10'31"W, a distance of 60.93 feet to an angle point;

51) N23°17'44"W, a distance of 71.86 feet to an angle point;

52) N51°19'43"W, a distance of 30.29 feet to an angle point;

53) N76°09'03"W, a distance of 31.66 feet to an angle point;

54) S80°08'05"W, a distance of 62.24 feet to an angle point;

55) N47°57'06"W, a distance of 55.71 feet to an angle point;

56) N73°49'25"W, a distance of 56.12 feet to an angle point;

57) N85°42'01"W, a distance of 31.03 feet to an angle point;

58) S89°22'20"W, a distance of 59.65 feet to an angle point;

59) N62°45'03"W, a distance of 70.09 feet to an angle point;

60) N73°41'43"W, a distance of 72.35 feet to an angle point;

61) N29°34'38"W, a distance of 49.46 feet to an angle point;

62) N00°31'40"E, a distance of 69.33 feet to an angle point;

63) N30°48'45"W, a distance of 70.19 feet to an angle point;

64) N05°32'47"E, a distance of 139.88 feet to an angle point;

65) N40°28'01"W, a distance of 59.67 feet to an angle point;

66) S40°32'37"W, a distance of 163.68 feet to an angle point;

67) N60°13'22"W, a distance of 132.37 feet to an angle point;

68) N89°15'01"W, a distance of 97.04 feet to an angle point;

69) N33°17'01"W, a distance of 87.74 feet to an angle point;

70) N12°20'56"W, a distance of 81.96 feet to an angle point;

71) N43°37'29"W, a distance of 167.95 feet to an angle point;

72) N09°29'37"E, a distance of 69.98 feet to an angle point;

73) N35°37'27"E, a distance of 70.59 feet to an angle point;

74) N34°52'43"W, a distance of 118.29 feet to an angle point;

75) N66°14'09"W, a distance of 126.25 feet to an angle point;

76) N13°02'32"E, a distance of 61.63 feet to an angle point;

77) N20°02'32"W, a distance of 71.86 feet to an angle point;

78) N03°06'54"E, a distance of 108.22 feet to an angle point;

79) N31°49'14"W, a distance of 61.52 feet to an angle point;

80) S81°43'25"W, a distance of 91.81 feet to an angle point;

81) S88°09'57"W, a distance of 198.97 feet to an angle point;

82) N54°58'54"W, a distance of 53.43 feet to an angle point;

83) N32°33'32"E, a distance of 43.54 feet to an angle point;

84) N73°46'59"E, a distance of 65.35 feet to an angle point;

85) N22°07'14"E, a distance of 67.11 feet to an angle point;

86) N01°47'28"E, a distance of 139.30 feet to an angle point;

87) N44°51'12"E, a distance of 147.56 feet to an angle point;

88) N36°10'24"W, a distance of 112.55 feet to an angle point;

89) N41°17'44"E, a distance of 42.83 feet to an angle point;

90) N66°44'37"W, a distance of 218.31 feet to an angle point;

91) S22°41'37"W, a distance of 120.76 feet to an angle point;

92) S59°17'15"W, a distance of 79.96 feet to an angle point;

93) N45°30'19"W, a distance of 109.77 feet to an angle point;

94) N61°10'57"W, a distance of 73.43 feet to an angle point;

95) S86°47'01"W, a distance of 25.00 feet to an angle point in the northerly line of said 137.772 acre tract, for an angle point hereof;

**THENCE**, N28°00'39"E, continuing along the northerly line of said 137.772 acre tract, being the southerly line of said 750.533 acre tract, for a portion of the southerly line hereof, a distance of 904.90 feet to an iron pipe found in the southerly line of said 165.984 acre tract, being an angle point in the northerly line of said 137.772 acre tract and also being an angle point in the southerly line of said 750.533 acre tract, for an angle point hereof;

**THENCE**, continuing along the northerly line of said 137.772 acre tract, being the southerly line of said 750.533 acre and said 165.984 acre tracts, for a portion of the southerly line hereof, the following three (3) courses and distances:

1) N62°42'45"W, a distance of 1574.58 feet to an angle point;

2) N62°30'14"W, a distance of 390.02 feet to an angle point;

3) N64°21'34"W, a distance of 41.70 feet to the southwesterly corner hereof;

**THENCE**, leaving the northerly line of said 137.772 acre tract, over and across said 165.984 acre, 750.533 acre and said 548.08 acre tract, for a portion of the westerly line hereof, the following eleven (11) courses and distances:

1) N27°24'23"E, a distance of 204.45 feet to an angle point;

2) N50°11'55"W, a distance of 258.47 feet to an angle point;

3) N26°19'09"W, a distance of 398.88 feet to an angle point;

4) N15°09'00"E, a distance of 412.06 feet to an angle point;

5) N03°04'28"E, a distance of 445.74 feet to an angle point;

6) N12°12'37"W, a distance of 723.76 feet to an angle point;

7) N02°54'46"W, a distance of 554.43 feet to an angle point;

8) N37°41'39"W, a distance of 226.32 feet to an angle point;

9) N28°16'57"E, a distance of 902.91 feet to an angle point;

10) N62°20'40"W, a distance of 685.58 feet to an angle point;

11) N01°31'29"W, a distance of 1574.44 feet to a point in the easterly line of that certain tract of land conveyed to Anne B. Schryver, et al by Deed of Record in Volume 12870, Page 1684 of said Real Property Records, being the westerly line of said 548.08 acre tract, for an angle point hereof;

**THENCE**, along the easterly line of said Anne B. Schryver, et al tract, being a portion of the westerly line of said 548.08 acre tract, for a portion of the westerly line hereof, the following three (3) courses and distances:

1) N28°21'05"E, a distance of 215.81 feet to an angle point;

2) N25°42'21"E, a distance of 245.50 feet to an angle point;

3) N26°24'30"W, a distance of 1521.86 feet to a point in the easterly right-of-way line of said F.M. Highway No. 973, being an angle point in the westerly line of said 548.08 acre tract, for an angle point hereof;

**THENCE**, along said easterly right-of-way line of F.M. Highway No. 973, being the westerly line of said 548.08 acre and said 164.73 acre tracts, for a portion of the westerly lines hereof, the following six (6) course and distances:

1) N28°51'02"E, a distance of 792.97 feet to an angle point;

2) N23°08'50"E, a distance of 200.99 feet to a concrete monument found for an angle point hereof;

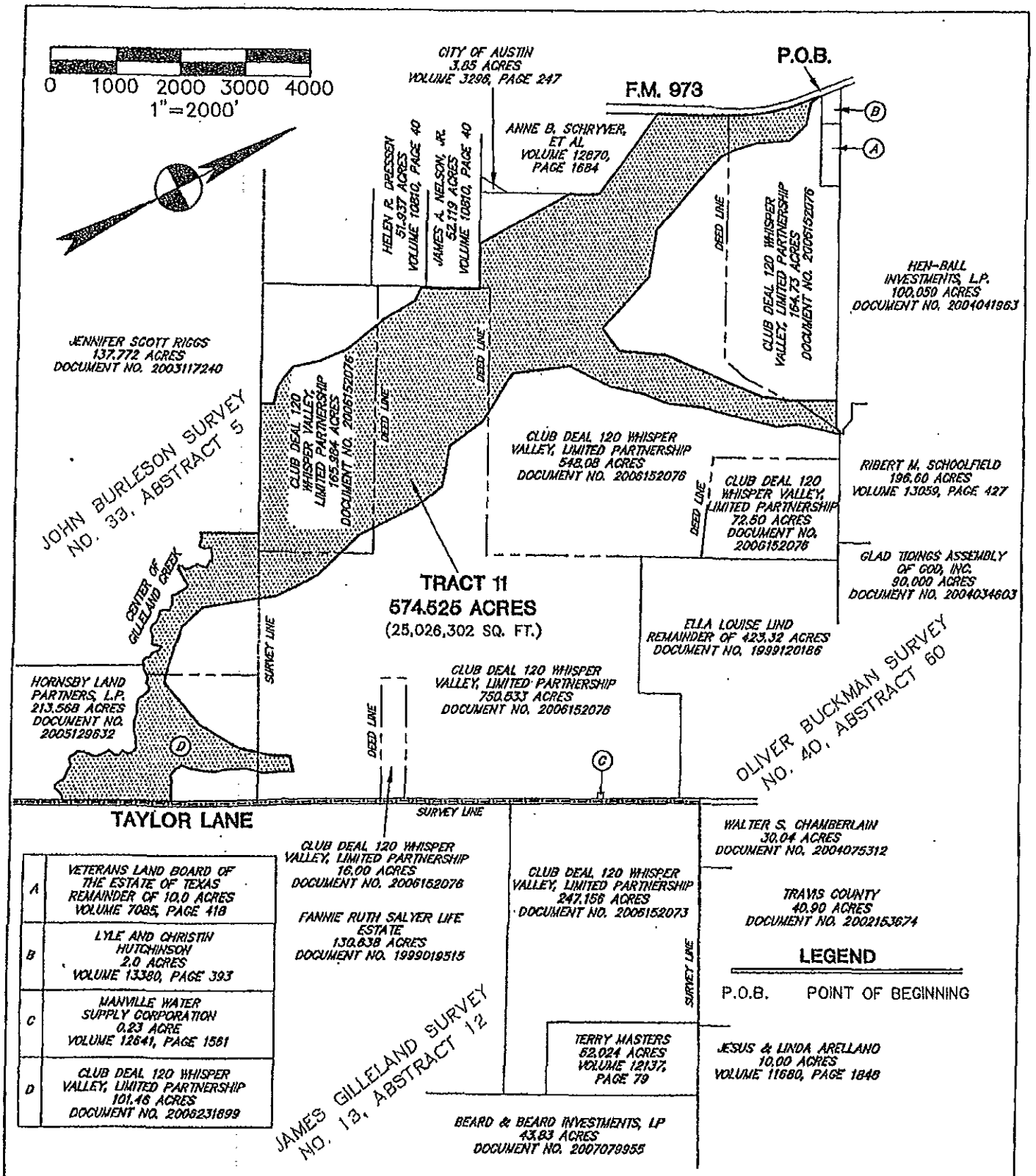
3) N29°17'58"E, a distance of 105.40 feet to a 1/2 inch iron rod found for an angle point hereof;

4) N27°10'09"E, a distance of 23.58 feet to a concrete monument found at the beginning of a non-tangent curve to the left;

5) Along said curve to the left having a radius of 2915.00 feet to an angle point, a central angle of 22°15'13", an arc length of 1132.18 feet, and a chord of which bears, N17°43'23"E, a distance of 1125.08 feet to the point of tangency of said curve;

6) N06°38'03"E, a distance of 271.05 feet to the **POINT OF BEGINNING** containing an area of 574.525 acres (25,026,302 sq. ft.) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(93), UTILZING LCRA SUB HARN MONUMENTS A578, A661, CS32, AND CS33. DISTANCES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY APPLYING A COMBINED SCALE FACTOR OF 0.999962.




| | |
|---|---|
| A | VETERANS LAND BOARD OF THE ESTATE OF TEXAS REMAINDER OF 10.0 ACRES VOLUME 7085, PAGE 418 |
| B | LYLE AND CHRISTIN HUTCHINSON 2.0 ACRES VOLUME 13380, PAGE 393 |
| C | MANVILLE WATER SUPPLY CORPORATION 0.23 ACRE VOLUME 12641, PAGE 1561 |
| D | CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP 101.46 ACRES DOCUMENT NO. 2006231899 |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221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel. (512)328-0011 Fax (512)328-0325

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**SKETCH TO ACCOMPANY DESCRIPTION**

OF A 574.525 ACRE OF LAND, OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60 AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 164.73 ACRE, 548.08 ACRE, 750.633 ACRE, 165.984 ACRE AND 101.46 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD UNDER DOCUMENT NOS. 2006152076 AND 2006231899, BOTH OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

**INSIGHT REAL ESTATE STRATEGIES**

**WHISPER VALLEY WEST**

| DATE: 02/09/11 | FILE: H:\1758\02\175802EX13.DWG | FN No.: 11-046(KWA) | DRAWN BY: KWA | PROJ. No: 1758-02.97 |
|---|---|---|---|---|

**Exhibit "C"**

ASSESSMENT PLAN

[See Attached]

# Whisper Valley Public Improvement District

Service and Assessment Plan

November 2011

## Section I

## PLAN DESCRIPTION AND DEFINED TERMS

### A. Introduction

On August 26, 2010, (the "Creation Date") the Austin City Council approved that certain "Petition for the Creation of a Public Improvement District to Finance Improvements to Whisper Valley Subdivision" which authorized the creation of Whisper Valley Public Improvement District (the "PID") to finance the Actual Costs for the benefit of certain property in the PID, all of which is located in limited purpose annexed jurisdiction of the City, but not within its corporate limits.

Upon application of the current property owners, the property within the PID was zoned by Ordinance No. 20100826-066 (the "Planned Unit Development Ordinance") adopted by the City of Austin on the Creation Date. The Planned Unit Development Ordinance designates the type of land uses that are permitted within the project and include development standards for each land use type.

Chapter 372 of the Texas Local Government Code, Improvement Districts in Municipalities and Counties (as amended, the "PID Act"), governs the creation of public improvement districts within the State of Texas. This Service and Assessment Plan has been prepared pursuant to Section 372.013, 372.014, 372.015 and 372.016 of the PID Act. According to Section 372.013 of the PID Act, a service plan "must cover a period of five years and must also define the annual indebtedness and the projected costs for improvements. The plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements." The service plan is described in Section V of this Service and Assessment Plan.

Section 372.014 of the PID Act states that "an assessment plan must be included in the annual service plan." The assessment plan is described in Section IV.

Section 372.015 of the PID Act states that "the governing body of the municipality or county shall apportion the cost of an improvement to be assessed against property in an improvement district." The method of assessing the Actual Costs to the property in the PID is included in Section VI of this Service and Assessment Plan.

Section 372.016 of the PID Act states that "after the total cost of an improvement is determined, the governing body of the municipality or county shall prepare a proposed assessment roll. The roll must state the assessment of each parcel of land in the district, as determined by the method chosen by the municipality or county under this subchapter." The Assessment Roll for the PID is attached hereto as Appendix A and addressed in Section VII of this Service and Assessment Plan. The Assessments as shown on the Assessment Roll are based on the method of assessment described in Sections IV and VI of this Service and Assessment Plan.

Contemporaneously herewith, the City and Developer have entered into that certain Whisper Valley Public Improvement District Financing Agreement (the "PID Finance

Agreement"). The PID Finance Agreement contains a more detailed description of many of the concepts addressed in this Service and Assessment Plan, therefore, the two documents should be read as a whole in order to have a more complete understanding of the terms addressed in each of the agreements.

## B. Definitions

Capitalized terms used herein shall have the meaning ascribed to them as follows; provided, however, many capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the PID Finance Agreement:

**"Administrator"** means an employee or designee of the City who shall have the responsibilities provided for herein, in the Indenture related to the Bonds, or in another agreement approved by the City Council.

**"Annual Installment"** means, with respect to each Parcel, each annual payment of the Assessment, as shown on the Assessment Roll attached hereto as Appendix A or an Annual Service Plan Update, and calculated as provided in Section VI of this Service and Assessment Plan.

**"Annual Service Plan Update"** has the meaning set forth in Section V of this Service and Assessment Plan.

**"Assessed Property"** means, for any year, Parcels within the PID other than Non-Benefited Property.

**"Assessment"** means the assessment levied against a Parcel imposed pursuant to the Assessment Ordinance and the provisions herein, as shown on the Assessment Roll, subject to reallocation upon the subdivision of such Parcel created by such subdivision or reduction according to the provision herein and the PID Act.

**"Assessment Ordinance"** means each ordinance adopted by the City Council approving the Assessment Plan (or such amendments to the Assessment Plan) and levying the Special Assessments, as required by Article II of the PID Finance Agreement. The Parties hereby acknowledge that the Assessment Plan will be amended from time to time as additional Bonds are sold and Improvement Areas are developed.

**"Assessment Revenues"** mean the revenues actually received by the City from Assessments.

**"Assessment Roll"** means the document included in this Service and Assessment Plan as Appendix A, as updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act.

**"Authorized Improvements"** mean those public improvements described in Appendix B of this Service and Assessment Plan and Section 372.003 of the PID Act which the Developer may design, construct, and install, and convey to the applicable governmental entity in accordance

with this Service and Assessment Plan, and any future amendments. The parties hereby acknowledge that only some of the Authorized Improvements will be paid for by Bonds. Any CRA Improvements shall be designed, constructed, installed and conveyed to the applicable governmental entity in accordance with the terms of the applicable CRA.

**"Bonds"** mean any bonds secured by Assessment Revenues issued by the City in one or more series.

**"City"** means the City of Austin, Texas.

**"City Council"** means the duly elected governing body of the City.

**"CRA(s)"** has the meaning set forth in the PID Finance Agreement.

**"Delinquent Collection Costs"** mean interest, penalties and expenses incurred or imposed with respect to any delinquent installment of an Assessment in accordance with Section 372.018 (b) of the PID Act and the costs related to pursuing collection of a delinquent Assessment and foreclosing the lien against the Assessed Property, including attorney's fees.

**"Developer"** means Club Deal 120 Whisper Valley, L.P., a Delaware limited partnership or its assignees or successors.

**"Future Improvement Area"** means Improvement Areas that are developed after Improvement Area #1, as such areas are generally shown on Table II-B. The Future Improvement Areas are subject to adjustment and are shown for example only.

**"Improvement Area"** means a set of Parcels within the PID that will be developed in the same general time period. The Parcels within an Improvement Area will be assessed in connection with the issuance of Phased PID Bonds for Authorized Improvements (or the portion thereof) designated in an update to this Service and Assessment Plan that specially benefit the parcels within the Improvement Area, but any parcels outside of the Improvement Area will not be assessed.

**"Improvement Area #1"** means the initial Improvement Area to be developed as generally shown on Table II-B.

**"Landowner's Agreement"** means that certain Landowner Agreement by and between the City and Developer whereby Developer grants its consent for assessments to be levied on the Property, in addition to other matters.

**"Lot Type"** means a classification of final building lots with similar characteristics (e.g. commercial, light industrial, multifamily residential, single family residential, etc.), as determined by the Administrator and confirmed by the City Council. In the case of single family residential, the Lot Type shall be further defined by classifying the residential lots by density or lot size, as determined by the Administrator and confirmed by the City Council.

**"Master PID Assessed Property"** means, for any year, all land within the Property other than Non-Benefited Property.

**"Master PID Bonds"** means collectively the Senior Master PID Bonds and the Subordinate Master PID Bonds.

**"Master PID Bond Authorized Improvements"** are the Authorized Improvements set forth in Table III-A and further described in Section III B of this Service and Assessment Plan.

**"Non-Benefited Property"** means Parcels within the boundaries of the PID that accrue no special benefit from the Authorized Improvements, including Owner Association Property, Public Property and easements that create an exclusive use for a public utility provider. Property identified as Non-Benefited Property at the time the Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed. Assessed Property converted to Non-Benefited Property, if the Assessments may not be reallocated pursuant to Section VI.E, remains subject to the Assessments and requires the Assessments to be prepaid as provided for in Section VI.E.

**"Owner Association Property"** means property within the boundaries of the PID that is owned by or irrevocably offered for dedication to, whether in fee simple or through an exclusive use easement, a property owners' association.

**"Parcel"** means a parcel identified by either a tax map identification number assigned by the Travis County Appraisal District for real property tax purpose or by lot and block number in a final subdivision plat recorded in the real property records of Travis County.

**"Phased PID Bonds"** shall have the meaning ascribed in the PID Finance Agreement

**"Phased PID Bond Authorized Improvements"** means those Authorized Improvements associated with any given Improvement Area and contained in any supplemental table referred to in Section III.C and IV.D hereof.

**"PID Act"** means Texas Local Government Code Chapter 372, Improvement Districts in Municipalities and Counties, Subchapter A, Public Improvement Districts, as amended.

**"PID"** has the meaning set forth in Section I.A of this Service and Assessment Plan.

**"PID Finance Agreement"** has the meaning set forth in Section 1.A of this Service and Assessment Plan.

**"Planned Unit Development Ordinance"** has the meaning set forth in Section I.A of this Service and Assessment Plan.

**"Prepayment Costs"** mean interest and expenses to the date of prepayment (or in the case of capital appreciation bonds, the accreted value on the date of prepayment), plus any additional amounts due pursuant to the Indenture related to the Bonds and allowed by law, if any,

reasonably expected to be incurred by or imposed upon the City as a result of any prepayment of an Assessment.

**"Public Property"** means property within the boundaries of the PID that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, Travis County, the City, a school district, a public utility provider or any other political subdivision or public agency, whether in fee simple or through an exclusive use easement.

**"Reimbursement Payment"** means a payment made under the terms of a CRA to the Initial Trustee pursuant to the Developer's pledge thereof.

**"Senior Master PID Bonds"** shall have the meaning ascribed in the PID Finance Agreement.

**"Service and Assessment Plan"** means this Service and Assessment Plan prepared for the PID pursuant to the PID Act, as the same may be amended from time to time.

**"Subordinate Master PID Bonds"** shall have the meanings ascribed in the PID Finance Agreement.

## Section II

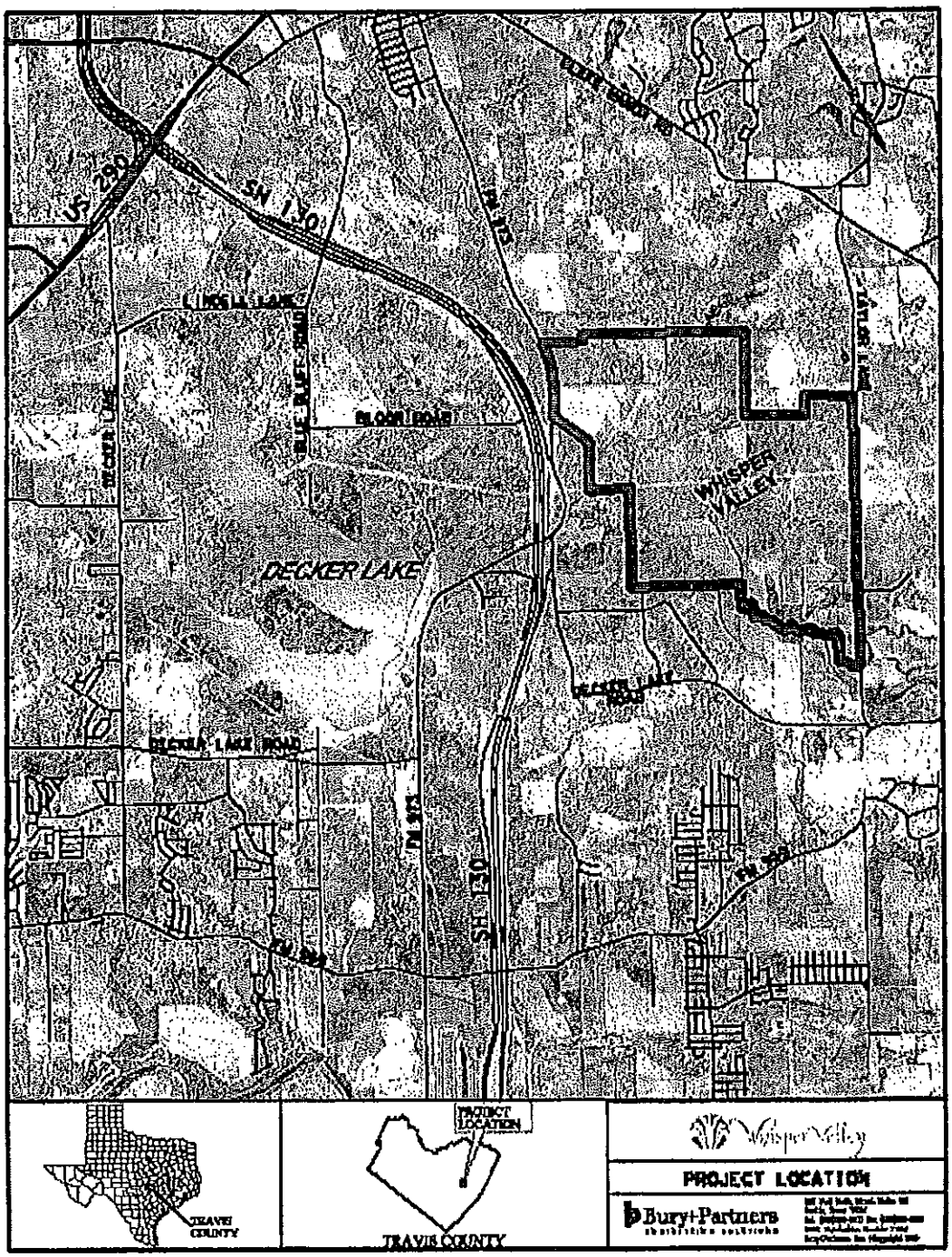
## PROPERTY INCLUDED IN THE PID

### A. *Property Included in the PID*

The PID is located in the limited purpose annexed jurisdiction of the City of Austin, Texas, within Travis County, Texas. This master planned development contains approximately 2,065 acres, of which approximately 1,429 is planned to be developed as Assessed Property. A map of the property within the PID is shown in Table II-A.

At completion, the PID is expected to consist of approximately 2,848 detached single family residential units, 1,990 attached single family residential units, 2,668 multifamily units, 217.3 acres of commercial, and 38 acres of mixed use development, as well as parks, entry monuments, and associated rights-or-way, landscaping, and infrastructure necessary to provide roadways, drainage, and utilities to the PID. The estimated number of lots and the classification of each lot are based upon the Planned Unit Development Ordinance.

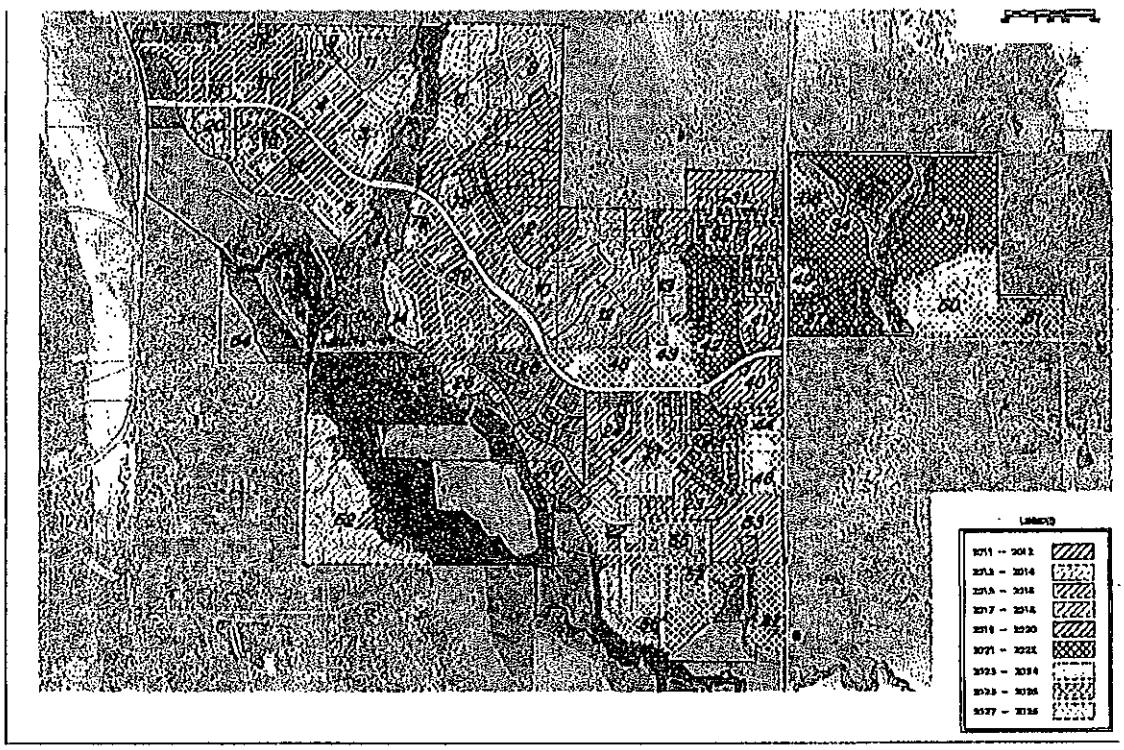
## TABLE II-A
## PID Boundary Map



## B. Property Included in Improvement Areas

As Improvement Areas are developed, then in connection with the issuance of Phased PID Bonds, this Service and Assessment Plan will be amended to add a new table to this Section II.B (e.g. Table II-B-1 will be added for Improvement Area #1, Table II-B-2 for Improvement Area #2, etc.). A map of the property within each Improvement Area is shown in Table II-B. The Future Improvement Areas are shown for illustrative purposes only and are subject to adjustment.

**TABLE II-B**
**Improvement Area Boundary Map**



## Section III

## DESCRIPTION OF THE AUTHORIZED IMPROVEMENTS

### A. Authorized Improvement Overview

Section 372.003 of the PID Act defines the Authorized Improvements that may be undertaken by a municipality or county through the establishment of a public improvement district, as follows:

372.003. Authorized Improvements

(a) If the governing body of a municipality or county finds that it promotes the interests of the municipality or county, the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction. A project may be undertaken in the municipality or county or the municipality's extraterritorial jurisdiction.

(b) A public improvement may include:

- (i) landscaping;
- (ii) erection of fountains, distinctive lighting, and signs;
- (iii) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of way;
- (iv) construction or improvement of pedestrian mall;
- (v) acquisition and installment of pieces of art;
- (vi) acquisition, construction or improvement of libraries;
- (vii) acquisition, construction or improvement of off-street parking facilities;
- (viii) acquisition, construction or improvement of rerouting of mass transportation facilities;
- (ix) acquisition, construction or improvement of water, wastewater, or drainage facilities or improvements;
- (x) the establishment or improvement of parks;
- (xi) projects similar to those listed in Subdivisions (i)-(x)
- (xii) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- (xiii) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development recreation and cultural enhancement; and
- (xiv) payment of expenses incurred in the establishment, administration and operation of the district.

After analyzing the public improvement projects authorized by the PID Act, the City has determined that the Authorized Improvements should be undertaken by the City. A list of potential Authorized Improvements is included on Appendix B attached hereto.

## B. Master PID Bond Authorized Improvements Overview

The Senior Master PID Bonds and Subordinate Master PID Bonds only fund Authorized Improvements that benefit the entire PID. The Senior Master PID Bonds will be secured by Assessments and the Subordinate Master PID Bonds will be secured by funds received pursuant to the CRAs and Assessments, subject to the use of the Assessments to pay the Senior Master PID Bonds. The Master PID Authorized Improvements are described below and the costs are shown in Table III-A. The estimated Actual Cost to construct the Master PID Bond Authorized Improvements is $43,236,175. The Actual Costs shown in Table III-A are estimates and may be revised in Annual Service Plan Updates.

*Braker Lane Phase 1 & 2*
Braker Lane is located east of SH 130 in Travis County, TX and will be constructed as a primary access to the Whisper Valley Development. It will consist of construction of a 2.45 mile 4-lane divided roadway with turn lanes, bike lanes, curb and gutter, storm sewer, water quality, and sidewalk facilities. Braker Lane will utilize innovative water quality, a structural crossing of a major floodplain, hike and bike facilities, and link existing FM 973 to Taylor Lane. Phase 1& 2 of the project will consist of constructing only half or two lanes of the ultimate section. Intersection Improvements will be funded under an agreement with TxDOT to construct left and right turn lanes on FM 973.

*30-inch Diameter Interceptor*
This project will consist of constructing in phases approximately 2.5 miles of 30-inch diameter wastewater interceptor along Gilleland Creek to serve the Property and ultimately other land outside the PID. The interceptor will be designed to minimize the depth while providing a gravity collection system throughout the service area; avoid critical environmental features, minimize creek crossings and vegetation impacts, and reduce construction costs.

*WWTP*
The Wastewater Treatment Plant (WWTP) will be designed for an ultimate capacity of 3.0 MGD with a first phase of 0.5 MGD. Under a cost reimbursement agreement with the City of Austin, this WWTP and interceptor will be constructed to City standards and specifications, and will be owned and operated by the City, serving as the main component of a regional wastewater collection and treatment system for area outside the PID. The WWTP will discharge to Gilleland Creek with effluent limitations of 5 mg/L BOD and TSS, 2 mg/L ammonia-nitrogen and 1 mg/L total phosphorus.

*Water Line 1*
This project consists of constructing approximately 19,684 linear feet of 48" diameter water transmission main from the City of Austin's Central Pressure zone. The project will be constructed within the existing right of way (ROW) of Decker Lake Road. The line will be

designed and constructed in accordance with City of Austin standards and specifications. The line will have all the necessary appurtenances to be fully operational transmission main. The line will provide service to those portions of Whisper Valley not served by Water Line 2 and will also serve the Indian Hills development as well as future projects outside the PID. Only the portion of this line that serves the PID will be funded with proceeds of the Bonds.

*Water Line 2*

This project consist of approximately 17,900 linear feet of 24" diameter water line that is needed to serve the higher pressure planes (elevations) within the PID in which are some of the first phases being developed. The line will serve the first 1,500 LUEs in the Project. The project will be constructed within existing ROW of Lindell Lane, Blue Bluff Road, Bloor Road and FM 973. The line will be designed and constructed in accordance with City of Austin standards and specifications. The line will have all the necessary appurtenances to be fully operational transmission main.

**TABLE III-A**
**Master PID Bonds Authorized Improvements and Costs**

| PROJECT NAME | HARD COST | CONSTRUCTION MANAGEMENT | SOFT COST | CONTINGENCY | TOTAL COST |
|---|---|---|---|---|---|
| **Senior Master PID Bonds** | | | | | |
| Braker Lane Extension Phase 1 & 2 | $ 7,152,057 | $ 286,082 | $ 1,150,861 | $ 786,776 | $ 9,375,721 |
| Water Line 1 - 10,684 LF of 48" Water Line (a) | $ 3,299,955 | $ 131,998 | $ 749,475 | $ 362,995 | $ 4,538,423 |
| Capitalized Interest | $ - | $ - | $ 3,503,454 | $ - | $ 3,503,454 |
| Reserve Fund | $ - | $ - | $ 1,465,098 | $ - | $ 1,465,098 |
| Original Issue Discount | $ - | $ - | $ 840,018 | $ - | $ 840,018 |
| Underwriter's Discount | $ - | $ - | $ 434,000 | $ - | $ 434,000 |
| Other Bond Issuance Costs | $ - | $ - | $ 582,229 | $ - | $ 582,229 |
| Subtotal | $ 10,452,007 | $ 418,080 | $ 8,720,035 | $ 1,149,771 | $ 20,739,843 |
| **Subordinate Master PID Bonds** | | | | | |
| Wastewater Treatment Plant | $ 6,000,000 | $ 240,000 | $ 1,510,990 | $ 660,000 | $ 8,410,990 |
| 30" Wastewater Interceptor | $ 1,964,753 | $ 78,590 | $ 676,732 | $ 216,123 | $ 2,936,198 |
| Water Line 2 - 17,900 LF of 24" Water Line | $ 3,080,000 | $ 123,200 | $ 720,339 | $ 338,800 | $ 4,262,339 |
| Water Line 1 - 10,684 LF of 48" Water Line (a) | $ 4,376,807 | $ 175,072 | $ 986,086 | $ 481,448 | $ 6,019,409 |
| Underwriter's Discount | $ - | $ - | $ 245,668 | $ - | $ 245,668 |
| Other Bond Issuance Costs | $ - | $ - | $ 621,729 | $ - | $ 621,729 |
| Subtotal | $ 15,421,555 | $ 616,862 | $ 4,761,544 | $ 1,696,371 | $ 22,496,332 |
| **Total Authorized Improvement Costs** | $ 25,873,562 | $ 1,034,942 | $13,481,579 | $ 2,846,092 | $ 43,236,175 |

Notes: The figures shown in Table III-A are estimates and may be revised in Annual Service Plan Updates.
(a) Water Line 1 is being funded by both Senior Master PID Bonds and Subordinate Master PID Bonds. The amounts indicated are the costs being funded by each bond series, and when added together equal the total cost.

## C. Improvement Area Authorized Improvement Overview

As Improvement Areas are developed, then in association with issuing Phased PID Bonds this Service and Assessment Plan will be amended to identify the Phased PID Bond Authorized Improvements that benefit each Improvement Area from the list of Authorized Improvements on Appendix B attached hereto (e.g. Table III-A-1 will be added to show Improvement Area #1 Authorized Improvements for Improvement Area #1, etc.).

## Section IV
## ASSESSMENT PLAN

### A. Introduction

The PID Act requires the City Council to apportion the Actual Costs on the basis of special benefits conferred upon the property because of the Authorized Improvements. The PID Act provides that the Actual Costs may be assessed: (i) equally per front foot or square foot; (ii) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or (iii) in any other manner that results in imposing equal shares of the cost on property similarly benefited. The PID Act further provides that the governing body may establish by ordinance or order reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed and the methods of assessing the special benefits for various classes or improvements.

Table IV-A provides the estimated allocation of Actual Costs between the PID and the area outside the PID for the Master PID Bond Authorized Improvements.

At this time it is impossible to determine with absolute certainty the amount of special benefit each Parcel within the PID will receive from the Authorized Improvements other than for Master PID Bond Authorized Improvements. As such, at this time Parcels will be only be assessed for the special benefits conferred upon the property because of the Master PID Bond Authorized Improvements.

As Improvement Areas are final platted, in connection with issuance of Phased PID Bonds, this Service and Assessment Plan will be updated to reflect the special benefit each Parcel within an Improvement Area receives from the Authorized Improvements funded with those Phased PID Bonds issued with respect to that Improvement Area. Prior to assessing Parcels located within Improvement Areas in connection with issuance of Phased PID bonds, the owners of the Parcels to be assessed must acknowledge that the Authorized Improvements confer a special benefit on their Parcel and must consent to the imposition of the Assessments to pay for the Actual Costs.

This section of this Service and Assessment Plan currently describes the special benefit received by each Parcel of the Property as a result of the Master PID Bond Authorized Improvements, provides the basis and justification for the determination that this special benefit exceeds the amount of the Assessments, and establishes the methodology by which the City Council allocates the special benefit of the Master PID Bond Authorized Improvements to Parcels in the manner that results in equal share of the Actual Cost being apportioned to Parcels similarly benefited. The determination by the City Council of the assessment methodology set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Developer and all future owners and developers of the Assessed Property.

As Improvement Areas are developed, then in connection with issuance of Phased PID Bonds this Service and Assessment Plan will be updated based on the City's determination of the assessment methodology for each Improvement Area.

## B. Special Benefit

The Assessed Property will receive a direct and special benefit from the Master PID Bond Authorized Improvements, and this benefit will be equal to or greater than the amount of the Assessments. The Master PID Bond Authorized Improvements are provided specifically for the benefit of the Assessed Property. The Master PID Bond Authorized Improvements (more particularly described in line-item format on Table III-A to this Service and Assessment Plan) and the costs of issuance and payment of costs incurred in the establishment, administration, and operation of the PID shown in Table V-A are authorized by the Act.

The owners of the Assessed Property have acknowledged that the Master PID Bond Authorized Improvements confer a special benefit on the Assessed Property and have consented to the imposition of the Assessments to pay for the Actual Costs associated therewith. The owners are acting in their interest in consenting to this imposition because the special benefit conferred upon the Assessed Property by the Master PID Bond Authorized Improvements exceeds the amount of the Assessments.

Pursuant to the Landowner's Agreement, the owners of the Assessed Property have ratified, confirmed, accepted, agreed to and approved; (i) the determinations and finding as to benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance; and (ii) the Service and Assessment Plan and the Assessment Ordinance. Use of the Assessed Property as described in this Service and Assessment Plan and as required by the Planned Unit Development Ordinance required that Authorized Improvements be acquired, constructed, installed, and/or improved. Funding the Actual Costs through the PID is determined to be the most beneficial means of doing so. As a result, the Assessments result in a special benefit to the Assessed Property, and this special benefit exceeds the amount of the Assessment. This conclusion is based on and supported by the evidence, information, and testimony provided to the City Council.

## C. Allocation of Actual Costs of Master PID Bond Authorized Improvements

The Master PID Bond Authorized Improvements will provide a special benefit to property inside and outside the PID. Accordingly, the Actual Costs of the Master PID Bond Authorized Improvements must be allocated between the property inside the PID and outside of the PID. Table IV-A summarizes the Actual Costs for each Master PID Bond Authorized Improvements. The costs shown in Table IV-A are estimates and may be revised in Annual Service Plan Updates, but may not result in increased assessments without the owners of the Parcels consent to the imposition of the increased Assessments to pay for the Actual Costs.

## D. Allocation of Actual Costs of Phased PID Bond Authorized Improvements

As Improvement Areas are developed, then in connection with issuance of Phased PID Bonds this Service and Assessment Plan will be amended to identify the special benefit to property inside and outside the PID resulting from the Phased PID Bond Authorized Improvements (e.g. Table IV-A-1 will be added to show the estimated allocation of Actual Costs between the PID and the area outside the PID for the Improvement Area #1 Authorized Improvements, etc.)

Further, to the extent a Phased PID Bond Authorization Improvement benefits portions of the Assessed Property both inside and outside of a given Improvement Area, then a new Table IV-B will be added showing the special benefit to the PID both inside and outside the Improvement Area in question and that Improvement Area will only be assessed based on the percentage of Actual Costs that benefit it, and the remainder will be assessed to Future Improvement Areas (e.g., a new Table IV-B-1 will be added for Improvement Area #1).

## TABLE IV-A
## Allocation of Master PID Authorized Improvement Costs to the PID

| PROJECT NAME | | TOTAL COST | % PID Eligible | | PID Eligible Cost |
|---|---|---|---|---|---|
| **Senior Master PID Bonds** | | | | | |
| Braker Lane Extension Phase 1 & 2 (a) | $ | 9,375,721 | 60.7% | $ | 5,690,463 |
| Water Line 1 - 19,684 LF of 48" Water Line (b) | $ | 4,538,423 | 75.0% | $ | 3,403,817 |
| Capitalized Interest | $ | 3,503,454 | 100.0% | $ | 3,503,454 |
| Reserve Fund | $ | 1,465,998 | 100.0% | $ | 1,465,998 |
| Original Issue Discount | $ | 840,018 | 100.0% | $ | 840,018 |
| Underwriter's Discount | $ | 434,000 | 100.0% | $ | 434,000 |
| Other Bond Issuance Costs | $ | 582,229 | 100.0% | $ | 582,229 |
| Subtotal | $ | 20,739,843 | | $ | 15,919,979 |
| **Subordinate Master PID Bonds** | | | | | |
| Wastewater Treatment Plant (c) | $ | 8,410,990 | 79.2% | $ | 6,660,000 |
| 30" Wastewater Interceptor (c) | $ | 2,936,198 | 74.3% | $ | 2,180,876 |
| Water Line 2 - 17,900 LF of 24" Water Line (d) | $ | 4,262,339 | 100.0% | $ | 4,262,339 |
| Water Line 1 - 19,684 LF of 48" Water Line (b) | $ | 6,019,409 | 75.0% | $ | 4,514,557 |
| Underwriter's Discount | $ | 245,668 | 100.0% | $ | 245,668 |
| Other Bond Issuance Costs | $ | 621,729 | 100.0% | $ | 621,729 |
| Additional Bond Proceeds | $ | - | 100.0% | $ | - |
| Subtotal | $ | 22,496,332 | | $ | 18,485,168 |
| TOTAL | $ | 43,236,175 | | $ | 34,405,147 |

Notes:

(a) The Developer and County entered into that certain Braker Lane (FM 973 to Taylor Lane) Road Participation Agreement (as amended) whereby the Developer is reimbursed 50% of the cost of Braker Lane Hard Costs, Construction Management Costs, and Engineering Costs. Landscape Costs, City and County Fees, and Inspection Fees are not subject to reimbursement. Only non reimbursed costs are determined to be PID eligible, and as such 60.7% of Braker Lane Costs are PID Eligible Costs.

(b) Water Line 1 is being funded by both Senior Master PID Bonds and Subordinate Master PID Bonds. The amounts indicated are the costs being funded by each bond series, and when added together equal the total cost. The Developer and City entered into the Water Cost Reimbursement Agreement whereby the Developer is reimbursed the hard and certain soft costs of Water Line 1. However, 25% of Water Line 1's capacity will be used by property outside of the PID, and as such only 75% of the Water Line 1 Costs are PID Eligible. The Developer will pledge the reimbursements of those certain hard and soft costs due under the Water Cost Reimbursement Agreement to the payment of the Subordinate Master PID Bonds. The City will be repaid for the non-oversized portion of Water Line 1 costs it reimburses to the Developer pursuant to the Water Cost Reimbursement Agreement.

(c) The Developer and City entered into the Water Cost Reimbursement Agreement (as defined in the PID Finance Agreement) whereby the Developer is reimbursed certain soft costs of the wastewater treatment plant and 30" interceptor. The City will be repaid for the wastewater soft costs it reimburses to the Developer pursuant to the Water Cost Reimbursement Agreement. The Developer is not pledging the reimbursements of the wastewater soft costs to the Subordinate Master PID Bonds and Subordinate Master PID Bonds are not funding such costs, so although technically PID eligible, they are not being funded by the PID, which is why the PID eligible percentage are shown at 79.2% and 74.3% respectively. The Developer and City have also entered into that certain Wastewater Cost Reimbursement Agreement (as defined in the PID Finance Agreement) whereby the Developer is reimbursed the hard costs of the wastewater treatment plant and 30" interceptor. The Developer will pledge the reimbursements of the hard costs due under the Wastewater Cost Reimbursement Agreement to the payment of the Subordinate Master PID Bonds. The Developer is not required to reimburse the City for such wastewater hard costs pursuant to the Wastewater Cost Reimbursement Agreement.

(d) The Developer and City entered into the Water Cost Reimbursement Agreement whereby the Developer is reimbursed the hard and certain soft costs of Water Line 2. The Developer will pledge the reimbursements of the hard and soft costs due under the Water Cost Reimbursement Agreement to the payment of the Subordinate Master PID Bonds. The City will be repaid the Water Line 2 costs it reimburses to the Developer pursuant to the Water Cost Reimbursement Agreement.

## E. Assessment Methodology

The Actual Costs may be assessed by the City Council against the Assessed Property so long as the special benefit conferred upon the Assessed Property by the Authorized Improvements equal or exceeds the Assessments. The Actual Costs may be assessed using any methodology that results in the imposition of equal shares of the Actual Costs on Assessed Property similarly benefited.

*Assessment Methodology for the Master PID*
For purpose of this Service and Assessment Plan, the City Council has determined that the Actual Costs associated with the Senior Master PID Bonds and Subordinate Master PID Bonds shall be allocated to the Assessed Property on the basis of the modified area method and such method of allocation will result in the imposition of equal shares of the Actual Costs on Parcels similarly benefited. The modified area method is applied by spreading the entire assessment across all Parcels within the PID based on their ratio of the total assessable area within the PID. Upon subsequent divisions of any Parcel, the assessment applicable to it is then apportioned based on the ratio of the areas of the newly created parcels. For residential parcels, when final residential building sites are platted, assessments are apportioned proportionately among each residential parcel based on its relative size. The result of this approach is that each final residential parcel with the same density has the same assessment, and residential parcels with similar densities will have similar assessments.

*Assessment Methodology for Improvement Areas*
As any given Improvement Area is developed, then in connection with issuance of any Phased PID Bonds for that Improvement Area, this Service and Assessment Plan will be amended to determine the assessment methodology that results in the imposition of equal shares of the Actual Costs on Assessed Property similarly benefited within that Improvement Area.

## F. Assessments

The Assessments for the Senior Master PID Bonds and the Subordinate Master PID Bonds will be levied on each Parcel according to the Assessment Roll attached hereto as Appendix A. The Annual Installments for the Senior Master PID Bonds will be collected on the dates and in the amounts shown on the Assessment Roll, subject to any revisions made during an Annual Service Plan Update. The Annual Installments for the Subordinate Master PID Bonds will be collected on the dates and in the amounts shown on the Assessment Roll to the extent sufficient funds are not received by the Trustee pursuant to the pledge of the reimbursements under the CRAs by the Developer. The use of the Annual Installments to pay debt service under the Subordinate Master PID Bonds shall be subordinate to the use of the Annual Installments to pay debt service under the Senior Master PID Bonds.

## G. Administrative Expenses

The cost of administering the PID and collecting the Annual Installments shall be paid for on a pro rata basis by each parcel based on the amount of Assessment levied against the Parcel. The administrative expenses shall be collected in the same manner as Annual Installments in the amounts shown on the Assessment Roll, which may be revised based on actual costs incurred in Annual Service Plan Updates.

## H. Prepayment Reserve

Pursuant to the PID Act, the interest rate for Assessments may exceed the actual interest rate paid on the bonds by no more than one half of one percent (0.50%). The interest rate used to determine the Senior Master PID Bonds Assessments is one-fifth percent (0.50%) higher than the actual rate paid on the Senior Master PID Bonds, with 0.20% allocated to fund any interest charged between the date of prepayment of an Assessment and the date in which bonds are prepaid and 0.30% allocated to fund a delinquency reserve account as described below.

## I. Delinquency Reserve

The City has allocated up to 0.30% of the interest rate component of the Annual Installments to offset any possible delinquent payments. The additional reserve shall be funded up to 0.1% of the next year's debt service for the Senior Master PID Bonds, but in no event will the annual collection be more than 0.30% higher than the actual interest rate paid on the debt.

## Section V

## SERVICE PLAN

The PID Act requires the service plan to cover a period of at least five years. The service plan is required to define the annual projected costs and indebtedness for the Authorized Improvements undertaken within the PID during the five year period. It is anticipated that it will take approximately two years for the Master PID Bond Authorized Improvements to be constructed. At some point after the Master PID Bond Authorized Improvements are constructed, Improvement Area #1 will begin development. After Improvement Area #1 is developed, it is anticipated that Improvement Area #2 will begin development, and so on, with each Improvement Area to be subsequently developed corresponding to the Service and Assessment Plan to be updated with that development

The estimated Actual Costs for Master PID Bond Authorized Improvements plus costs related to the issuance of the Bonds, and payment of expenses incurred in the establishment, administration and operation of the PID is $43,236,175, as shown in Table V-A. The service plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements. The annual update to this Service and Assessment Plan is herein referred as the "Annual Service Plan Update."

Table V-A summarizes the sources and uses of funds required to construct the Master PID Bond Authorized Improvements, establish the PID, and issue the Bonds. Table V-A may be revised based on final bond pricing and final costs of issuance. The sources and uses of funds shown in Table V-A shall be updated each year in the Annual Service Plan Update to reflect any budget revisions and actual costs.

As Improvement Areas are developed in connection with issuance of Phased PID Bonds, this Service and Assessment Plan will be amended to add a new table to this Section V (e.g. Table V-A-1 will be added for Improvement Area #1, etc.).

## TABLE V-A
## Sources and Uses of Funds for Master PID

| Sources of Funds | Senior Master PID Bonds | Subordinate Master PID Bonds | Reimbursement Agreements | Non Whisper Valley Water Line 1 Contribution | Developer Contributinn or Future IA Bonds | Total |
|---|---|---|---|---|---|---|
| Estimated Bond PAR Amount (a) | $ 15,500,000 | $ 18,485,168 | $ - | $ - | $ - | $ 33,985,168 |
| Reimbursement Agreement - Braker Lane (b) | $ - | $ - | $ 3,685,258 | $ - | $ - | $ 3,685,258 |
| Indian Hills Contribution to Waterline 1 - Non WV share (c) | $ - | $ - | $ - | $ 2,639,458 | $ - | $ 2,639,458 |
| Reimbursement Agreement - WW Soft Costs (d) | $ - | $ - | $ 2,506,312 | $ - | $ - | $ 2,506,312 |
| Developer Contribution or Future Improvement Area Bonds | $ - | $ - | $ - | $ - | $ 419,979 | $ 419,979 |
| Total | $ 15,500,000 | $ 18,485,168 | $ 6,191,570 | $ 2,639,458 | $ 419,979 | $ 43,236,175 |
| **Uses of Funds** | | | | | | |
| PID Authorized Improvements (e) | $ 8,674,301 | $ 17,617,771 | $ 6,191,570 | $ 2,639,458 | $ 419,979 | $ 35,543,079 |
| Debt Service Reserve Fund (f) | $ 1,465,998 | $ - | $ - | $ - | $ - | $ 1,465,998 |
| Capitalized Interest (g) | $ 3,503,454 | $ - | $ - | $ - | $ - | $ 3,503,454 |
| Original Issue Discount | $ 840,018 | $ - | $ - | $ - | $ - | $ 840,018 |
| Underwriter Discount (h) | $ 434,000 | $ 245,658 | $ - | $ - | $ - | $ 679,658 |
| Cost to Establish PID and Issue Bonds (i) | $ 582,229 | $ 621,739 | $ - | $ - | $ - | $ 1,205,968 |
| Total | $ 15,500,000 | $ 18,485,168 | $ 6,191,570 | $ 2,639,458 | $ 419,979 | $ 43,236,175 |

(a) Assumes Subordinate Master PID Bonds are able to be fully paid with revenue from CRAs.

(b) Pursuant to the Braker Lane (FM 973 to Taylor lane) Participation Agreement between Travis County and the Developer, the County will reimburse the Developer 50% of total costs for Braker lane improvements. The funding of the improvements is initially funded by the Developer.

(c) 75% of Water Line 1's capacity will be used by the Whisper Valley development, and as such only 75% of the Water Line 1 Costs will be funded by the Whisper Valley project.

(d) The Developer and City entered into the Water Cost Reimbursement Agreement (as defined in the PID Finance Agreement) whereby the Developer is reimbursed certain soft costs of the wastewater treatment plant and 30" interceptor. The City will be repaid for the wastewater soft costs it reimburses to the Developer pursuant to the Water Cost Reimbursement Agreement. The Developer is not pledging the reimbursements of the wastewater soft costs to the Subordinate Master PID Bonds and Subordinate Master PID Bonds are not funding such costs, so although technically PID eligible, they are not being funded by the PID.

(e) See Table III-A and Table IV-A for details. Excludes Bond Issuance Costs, which are identified separately.

(f) The Subordinate Master PID Bonds will include a debt service reserve fund equal to the lesser of maximum annual debt service or 10% of the bond amount.

(g) The Bonds will include capitalized interest.

(h) The Bonds will have a 2% underwriter's discount.

(i) Preliminary estimate.

The annual projected costs and annual projected indebtedness is shown by Table V-B. The annual projected costs and indebtedness is subject to revision and each shall be updated in the Annual Service Plan Update to reflect any changes in the costs or indebtedness expected for each year.

**TABLE V-B**
**Annual Projected Costs and Annual Projected Indebtedness**

| Year | Annual Projected Cost | Annual Projected Indebtedness | Sources Other Than Whisper Valley PID |
|---|---|---|---|
| 2011 | $ 10,490,459 | $ 33,985,168 | $ 1,818,285 |
| 2012 | $ 21,078,851 | $ - | $ 4,916,127 |
| 2013 | $ 10,193,796 | $ - | $ 2,050,723 |
| 2014 | $ 1,473,070 | $ - | $ 465,872 |
| 2015 | $ - | $ - | $ - |
| Total | $ 43,236,175 | $ 33,985,168 | $ 9,251,006 |

Note: The Annual Projected Costs shown are the annual expenditures relating to the PID Authorized Improvements shown in Table III-A. The Annual Projected Indebtedness shown is for the Senior Master PID Bonds and the Subordinate Master PID Bonds. The difference between the total projected cost and the total projected indebtedness is the amount contributed by sources other than the Whisper Valley PID, including Braker Lane reimbursements, non-Whisper Valley PID's share of the Water Line 1 costs, and Developer contributions. As Improvement Areas are developed, then in association with issuing Phased PID Bonds this Table V-B will be amended to identify the Phased PID Bond Authorized Improvements and the projected indebtedness resulting from the Phased PID Bond.

## Section VI

## TERMS OF THE ASSESSMENTS

### A. Amount of Assessments and Annual Installments for Parcels Located Within Master PID

The Assessment and Annual Installments for each Parcel located within the Master PID is shown on the Assessment Roll, attached as Appendix A, and no Assessment shall be changed except as authorized by this Service and Assessment Plan or the PID Act. The Annual Installments shall be collected in an amount sufficient to pay principal and interest on the Senior Master PID Bonds, or maturity value on the Subordinate Master PID Bonds, as applicable, and to cover Administrative Expenses of the PID.

### B. Amount of Assessments and Annual Installments for Parcels Located Within Future Improvement Areas

As Improvement Area #1 and Future Improvement Areas are developed, this Service and Assessment Plan will be amended to determine the Assessment and Annual Installments for each Parcel located within Future Improvement Areas (e.g. Appendix A-1 will be added as the Assessment Roll for Improvement Area #1, etc.). The Annual Installments for each Parcel located within a Future Improvement Area will escalate at 2% per year. The Assessments shall not exceed the benefit received by the Assessed Property.

### C. Reallocation of Assessments for Parcels Located Within the Master PID

1. Upon Subdivision Prior to Final Subdivision Map

Upon the subdivision of any Parcel (but prior to final lots being created), the Administrator shall reallocate the Assessment for the Parcel prior to the subdivision among the new subdivided Parcels according to the following formula:

$A = B \times (C \div D)$

Where the terms have the following meanings:

A = the Assessment for the new subdivided Parcel

B = the Assessment for the Parcel prior to subdivision

C = the acreage of the newly subdivided Parcel

D = the sum of the acreage for all of the new subdivided Parcels excluding Non-Benefitted Property

The calculation of the acreage of a Parcel shall be performed by the Administrator based on information available regarding the Parcel. The estimate as confirmed shall be conclusive.

The sum of the Assessments for all newly subdivided Parcels shall equal the Assessment for the Parcel prior to subdivision. The calculation shall be made separately for each newly subdivided Parcel. The reallocation of an Assessment for a Parcel that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

2. Upon Subdivision From Final Subdivision Map

Upon the subdivision of any Parcel based on a Final Subdivision Map, the Administrator shall reallocate the Assessment for the Parcel prior to the subdivision among the new subdivided Parcels according to the following formula:

$A = [B \times (C \div D)]/E$

Where the terms have the following meanings:

A = the Assessment for the new subdivided Parcel

B = the Assessment for the Parcel prior to subdivision

C = the sum of the acreage of all new subdivided Parcels with same Lot Type

D = the sum of the acreage for all of the new subdivided Parcels excluding Non-Benefitted Property

E= the number of Parcels with same Lot Type

The calculation of the acreage of a Parcel shall be performed by the Administrator and confirmed by the City Council based on information available regarding the Parcel. The estimate as confirmed shall be conclusive.

The sum of the Assessments for all newly subdivided Parcels shall equal the Assessment for the Parcel prior to subdivision. The calculation shall be made separately for each newly subdivided Parcel. The reallocation of an Assessment for a Parcel that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in an update to this Service and Assessment Plan approved by the City Council.

3. Upon Consolidation

Upon the consolidation of two or more Parcels, the Assessment for the consolidated Parcel shall be the sum of the Assessments for the Parcels prior to consolidation. The reallocation of an Assessment for a Parcel that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be calculated by the

Administrator and reflected in an update to this Service and Assessment Plan approved by the City Council.

## D. Reallocation of Assessments for Parcels Located Within Future Improvement Areas

As Future Improvement Areas are developed, this Service and Assessment Plan will be amended to determine the assessment reallocation methodology that results in the imposition of equal shares of the Actual Costs on Assessed Property similarly benefited within each Future Improvement Area.

## E. Mandatory Prepayment of Assessments

If a Parcel or portion thereof is transferred to a party that is exempt from the payment of the Assessment under applicable law, or if an owner causes a Parcel or portion thereof to become Non-Benefited Property, the owner of such Parcel or portion thereof shall pay to the Administrator the full amount of the Assessment, plus all Prepayment Costs, for such Parcel or portion thereof prior to any such transfer or act; provided, however that such mandatory prepayment of assessment shall not be required for portions of a Parcel that are dedicated for use as internal roads, parks and other similar, public improvements. At the time such public improvements are dedicated, the Assessment that was allocated to that certain Parcel in which the public improvement was located will be reallocated to similarly benefitted Parcels; provided, however, that reallocation of an Assessment for a Parcel that is a homestead under Texas Law may not exceed the Assessment prior to reallocation.

## F. Reduction of Assessments

1. If after all Authorized Improvements have been completed and Actual Costs are less than the Actual Costs used to calculate the Assessments, resulting in excess Bond proceeds being available to redeem Bonds, then the Assessment for each Parcel shall be reduced prorata such that the sum of the resulting reduced Assessments for all Parcels equals the actual reduced Actual Costs and such excess Bond proceeds shall applied to redeem Bonds. The Assessments shall not be reduced to an amount less than the outstanding Bonds.

2. If the Authorized Improvements are not undertaken by the City or County, resulting in excess Bond proceeds being available to redeem Bonds, the Assessment for each Parcel shall be approximately reduced by the City Council to reflect only the Actual Costs that were expended and such excess Bond proceeds shall be applied to redeem Bonds. The City Council may reduce the Assessments for each Parcel prorata such that the sum of the resulting reduced Assessments equals the Actual Costs with respect to the Authorized Improvements that were undertaken. The Assessments shall not be reduced to an amount less than the outstanding Bonds.

3. If a Reimbursement Payment is received by the Initial Trustee for an Authorized Improvement, resulting in proceeds being available to redeem the Subordinate Master

PID Bonds, then the Assessment for each Parcel shall be reduced prorata such that the sum of the resulting reduced Assessments for all Parcels equals the Actual Costs less the Reimbursement Payment and any excess proceeds shall applied to redeem Subordinate Master PID Bonds. The Assessments shall not be reduced to an amount less than the outstanding Subordinate Master PID Bonds.

## G. Payment of Assessments

1. Payment in Full

(a) The Assessment for any Parcel may be paid in full at any time in accordance with applicable laws. Payment shall include all Prepayment Costs. If prepayment in full will result in a redemption of Bonds, the payment amount shall receive credit from any proceeds from the reserve fund applied to the redemption under the Indenture, net of any other costs applicable to the redemption of Bonds.

(b) If an Annual Installment has been billed prior to payment in full of an Assessment, the Annual Installment shall be due and payable and shall be credited against the payment-in-full amount.

(c) Upon payment in full of an Assessment and all Prepayment Costs, the City shall deposit the payment in accordance with the Indenture; whereupon, the Assessment shall be reduced to zero, and the owner's obligation to pay the Assessment and Annual Installments thereof shall automatically terminate.

(d) At the option of the owner, the Assessment on any Parcel plus Prepayment Costs may be paid in part in an amount sufficient to allow for a convenient redemption of Bonds as determined by the Administrator. Upon the payment of such amount for a Parcel, the Assessment for the Parcel shall be reduced, the Assessment Roll shall be updated to reflect such partial payment, and the obligation to pay the Annual Installment for such Parcel shall be reduced to the extent the partial payment is made.

2. Payment in Annual Installments

The Act provides that an Assessment for a Parcel may be paid in full at any time. If not paid in full, the Act authorizes the City to collect interest and collection costs on the outstanding Assessment. An Assessment for a Parcel that is not paid in full will be collected in Annual Installments each year in the amounts shown in the Assessment Roll, which include interest on the outstanding Assessment and Administrative Expenses. The process and dates for payment of the Annual Installments shall be as determined by the Administrator.

Each Assessment for a Future Improvement Area shall bear interest at a rate of interest on the Bonds approved and issued by the City. The Annual Installments as listed on the Assessment Roll for Senior Master PID Bonds have been calculated based on the actual interest rates of the

Senior Master PID Bonds and the Subordinate Master PID Bonds. The Annual Installments may not exceed the amount amounts shown on the Assessment Roll except as pursuant to any amendment or update to this Service and Assessment Plan.

The Annual Installments shall be reduced to equal the actual costs of repaying the Bonds and actual Administrative Expenses (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as amounts received from the City pursuant to the CRAs and interest income on account balances.

The City reserves and shall have the right and option to refund the Bonds in accordance with Section 372.027 of the PID Act. In the event of such refunding, the Administrator shall recalculate the Annual Installments, and if necessary, may adjust, decrease, or extend the term of the Annual Installment so that total Annual Installments of Assessments will be produced in annual amounts that are required to pay the refunding bonds when due and payable as required by and established in the ordinance and/or the indenture authorizing and securing the refunding bonds.

**H. Collection of Annual Installments**

No less frequently than annually, the Administrator shall prepare, and the City Council shall approve, an Annual Service Plan Updates to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include an updated Assessment Roll and a calculation of the Annual Installment for each Parcel. Administrative Expenses shall be allocated among Parcels in proportion to the amount of the Annual Installments for the Parcels. Each Annual Installment shall be reduced by any credits applied under the applicable Indenture, such as capitalized interest, interest earnings on any account balances, and any other funds available to the Trustee for such purpose, including any amounts received from the City pursuant to the CRAs and existing deposits for a prepayment reserve. For Senior Master PID Bonds, Annual Installments shall be collected by the City (or such entity to whom the City directs) in the same manner and at the same time as ad valorem taxes. For Subordinate Master PID Bonds, Annual Installments shall be collected by the City (or such entity to whom the City directs) by hand billing on dates to be determined by the Administrator in accordance with the Indenture. Annual Installments shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City. The City Council may provide for other means of collecting the Annual Installments to the extent permitted under the PID Act. The assessments shall have lien priority as specified in the PID Act.

Any sale of property for nonpayment of the delinquent Annual Installments shall be subject to the lien established for the remaining unpaid Annual Installments against such property and such property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the non-delinquent Annual Installments against such property as they become due and payable.

## I. Surplus Funds Remaining in Senior Master PID Bond Account

If Senior Master PID Bond proceeds still remain after all of the Master PID Bond Authorized Improvements are constructed and accepted by the City, the proceeds may be utilized to finance other Authorized Improvements.

## Section VII

## THE ASSESMENT ROLL

### A. Master PID Assessment Roll

Each Parcel within the Master PID has been evaluated by the City Council (based on the PUD, developable area, proposed Owner Association Property and Public Property, the Authorized Improvements, best and highest use of land, and other development factors deemed relevant by the City Council) to determine the amount of Assessed property within the Parcel.

At this time it is impossible to determine with absolute certainty the amount of special benefit each Parcel within the PID will receive from the Authorized Improvements other than for Master PID Authorized Improvements. As such, at this time only Master PID Assessed Property will be assessed for the special benefits conferred upon the property because of the Master PID Authorized Improvements. Table IV-A summarizes the $34,405,147 in special benefit received by Master PID Assessed Property from the Master PID Authorized Improvements. The cumulative total for the Authorized Improvements to be funded by the Senior Master PID Bonds and Subordinate Master PID Bonds, is $33,985,168, which is less than the benefit received by Master PID Assessed Property, and as such the total assessment for all Parcels within the Master PID is $33,985,168. The Assessment for each Parcel within the Master PID is calculated based on the allocation methodologies described in Section IV.E. of this Service and Assessment Plan. The Assessment Roll for the Master PID is attached hereto as Appendix A.

### B. Future Improvement Area Assessment Roll

As Improvement Area #1 and Future Improvement Areas are developed, this Service and Assessment Plan will be amended to determine the Assessment for each Parcel located within Improvement Area # 1 and Future Improvement Areas (e.g. Appendix A-1 will be added as the Assessment Roll for Improvement Area #1, etc.).

### C. Annual Assessment Roll Updates

The Administrator shall prepare, and the City Council shall review and approve, annual updates to the Assessment Roll in conjunction with the Annual Service Plan Update to reflect the following matters, together with any other changes helpful to the Administrator or the City and permitted by the Act: (i) the identification of each Parcel (ii) the Assessment for each Parcel, including any adjustments authorized by this Service and Assessment Plan or in the PID Act; (iii) the Annual Installment for the Parcel for the year (if the Assessment is payable in installments); and (iv) payments of the Assessment, if any, as provided by Section VI.C of this Service and Assessment Plan.

Once Bonds are issued, the Assessment Roll shall be updated, which update may be done in the next Annual Service Plan Update, to reflect any changes resulting from the issuance of the Bonds. This update shall reflect the actual interest on the Bonds at which the Annual Installments

shall be paid, any reduction in the Assessments, and any revisions in the Actual Costs to be funded by the Bonds and Developer funds.

## Section VIII

## MISCELLANEOUS PROVISIONS

### A Administrative Review

The City shall serve as the Administrator until the Property is final platted at which time this practice will be re-examined and the City may elect to designate a third party to serve as Administrator. The City shall notify Developer in writing at least thirty (30) days in advance before appointing a third party Administrator.

To the extent consistent with the Act, an owner of an Assessed Parcel claiming that a calculation error has been made in the Assessment Roll, including the calculation of the Annual Installment, shall send a written notice describing the error to the City no later than thirty (30) days after the date any amount which is alleged to be incorrect is due prior to seeking any other remedy. The Administrator shall promptly review the notice, and if necessary, meet with the Assessed Parcel owner, consider written and oral evidence regarding the alleged error and decide whether, in fact, such a calculation error occurred.

If the Administrator determines that a calculation error has been made and the Assessment Roll should be modified or changed in favor of the Assessed Parcel owner, such change or modification shall be presented to the City Council for approval, to the extent permitted by the PID Act. A cash refund may not be made for any amount previously paid by the Assessed Parcel owner (except for the final year during which the Annual Installment shall be collected), but an adjustment may be made in the amount of the Annual Installment to be paid in the following year. The decision of the Administrator regarding a calculation error relating to the Assessment Roll may be appealed to the City Council for determination. Any amendments made to the Assessment Roll pursuant to calculation errors shall be made pursuant to the PID Act.

### B Termination of Assessments

Each Assessment shall terminate on the date the Assessment is paid in full, including unpaid Annual Installments and Delinquent Collection Costs, if any. After the termination of an Assessment, and the collection of any delinquent Annual Installments and Delinquent Collection Costs, the City shall provide the owner of the affected Parcel a recordable "Notice of the PID Assessment Termination."

### C Cost Savings/Cost Overruns

Savings from one line item may be applied to a cost increase in another line item. These transfers, however, are limited to the portion of the savings related to the PID's share of the costs, and these savings may be applied only to the PID's share of the increase in the costs of another line item. With respect to CRA Improvements, cost savings and cost overruns shall be handled in accordance with the terms and conditions set forth in the applicable CRA.

## D Cost Overruns

In the event there are cost overruns and the proceeds of the Subordinate Master PID Bonds and the funds in the Master PID Bond Holdback are not sufficient to fund the CRA Improvements specified in the Service and Assessment Plan, the Developer may request an additional amount of debt issuance of up to $4,250,000 of bonds commencing in year 2012 with the first assessments to occur in 2014 to provide additional contingency funding.

## E Amendments

Amendments to the Service and Assessment Plan can be made as permitted by the PID Act and under Texas law.

## F Administration and Interpretation of Provisions

The City Council shall administer (or cause the administration of) the PID, this Service and Assessment Plan, and all Annual Service Plan Updates consistent with the PID Act, and shall make all interpretations and determinations related to the application of this Service and Assessment Plan unless stated otherwise herein or in the Indenture, such determination shall be conclusive.

## G Severability

If any provision, section, subsection, sentence, clause or phrase of this Service and Assessment Plan, or the application of same to an Assessed Parcel or 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 Service and Assessment Plan or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Service and Assessment Plan that no part thereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other part hereof, and all provisions of this Service and Assessment Plan are declared to be severable for that purpose.

If any provision of this Service and Assessment Plan is determined by a court to be unenforceable, the unenforceable provision shall be deleted from this Service and Assessment Plan and the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the City.

If a conflict exists between the terms of this Service and Assessment Plan and a CRA, the terms and conditions of the applicable CRA shall control.

# Appendix A

Master PID Assessment Roll

## Appendix A
## Assessment by Parcel

| Tax Parcel # | Assessable Acres | Senior Master PID Bond Assessment | Subordinate Master PID Bond Assessment | Total Assessment |
|---|---|---|---|---|
| 806424 | 174.04 | $ 1,848,618.10 | $ 2,204,646.22 | $ 4,053,264.32 |
| 806425 | 60.38 | $ 641,291.19 | $ 764,798.41 | $ 1,406,089.60 |
| 806426 | 188.44 | $ 2,001,540.16 | $ 2,387,019.76 | $ 4,388,559.92 |
| 806427 | 106.72 | $ 1,133,579.76 | $ 1,351,897.57 | $ 2,485,477.33 |
| 806428 | 66.71 | $ 708,559.05 | $ 845,021.49 | $ 1,553,580.54 |
| 806429 | 197.41 | $ 2,096,881.44 | $ 2,500,722.96 | $ 4,597,604.40 |
| 806430 | 166.25 | $ 1,765,831.79 | $ 2,105,915.97 | $ 3,871,747.76 |
| 806431 | 131.12 | $ 1,392,730.44 | $ 1,660,958.47 | $ 3,053,688.91 |
| 806432 | 153.60 | $ 1,631,529.75 | $ 1,945,748.50 | $ 3,577,278.25 |
| 201773 | 214.60 | $ 2,279,438.32 | $ 2,718,438.74 | $ 4,997,877.06 |
| Total | 1,459.26 | $ 15,500,000.00 | $ 18,485,168.10 | $ 33,985,168.10 |

# Appendix A
## Annual Installments – ALL PARCELS

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve |
|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 25,000.00 | $ 31,000.00 | $ 46,500.00 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 25,500.00 | $ 31,000.00 | $ 46,500.00 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 26,010.00 | $ 31,000.00 | $ 46,500.00 |
| 01/31/15 | $ 255,000.00 | $ 1,254,968.76 | $ 1,509,968.76 | $ - | $ - | $ - | $ 26,530.20 | $ 31,000.00 | $ 25,500.00 |
| 11/01/15 | $ - | $ - | $ - | $ 5,338,798.50 | $ 751,201.50 | $ 6,090,000.00 | $ 27,060.80 | $ 7,400.00 | $ - |
| 01/31/16 | $ 370,000.00 | $ 1,233,293.76 | $ 1,603,293.76 | $ - | $ - | $ - | $ 27,602.02 | $ - | $ - |
| 11/01/16 | $ - | $ - | $ - | $ 12,515,819.00 | $ 2,414,181.00 | $ 14,930,000.00 | $ 28,154.06 | $ - | $ - |
| 01/31/17 | $ 510,000.00 | $ 1,201,843.76 | $ 1,711,843.76 | $ - | $ - | $ - | $ 28,717.14 | $ - | $ - |
| 01/31/18 | $ 660,000.00 | $ 1,158,493.76 | $ 1,818,493.76 | $ - | $ - | $ - | $ 29,291.48 | $ - | $ - |
| 01/31/19 | $ 835,000.00 | $ 1,102,393.76 | $ 1,937,393.76 | $ - | $ - | $ - | $ 29,877.31 | $ - | $ - |
| 01/31/20 | $ 1,035,000.00 | $ 1,032,462.50 | $ 2,067,462.50 | $ - | $ - | $ - | $ 30,474.86 | $ - | $ - |
| 01/31/21 | $ 1,255,000.00 | $ 945,781.26 | $ 2,200,781.26 | $ - | $ - | $ - | $ 31,084.36 | $ - | $ - |
| 01/31/22 | $ 1,500,000.00 | $ 840,675.00 | $ 2,340,675.00 | $ - | $ - | $ - | $ 31,706.04 | $ - | $ - |
| 01/31/23 | $ 1,780,000.00 | $ 715,050.00 | $ 2,495,050.00 | $ - | $ - | $ - | $ 32,340.17 | $ - | $ - |
| 01/31/24 | $ 2,085,000.00 | $ 574,875.00 | $ 2,659,875.00 | $ - | $ - | $ - | $ 32,986.97 | $ - | $ - |
| 01/31/25 | $ 2,420,000.00 | $ 410,681.26 | $ 2,830,681.26 | $ - | $ - | $ - | $ 33,646.71 | $ - | $ - |
| 01/31/26 | $ 2,795,000.00 | $ 220,106.26 | $ 3,015,106.26 | $ - | $ - | $ - | $ 34,319.64 | $ - | $ - |
| | $ 15,500,000.00 | $ 10,690,625.08 | $ 26,190,625.08 | $ 17,854,617.50 | $ 3,165,382.50 | $ 21,020,000.00 | $ 500,301.77 | $ 131,400.00 | $ 165,000.00 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806424

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,981.64 | $ 3,697.24 | $ 5,545.85 | $ 6,678.88 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,041.27 | $ 3,697.24 | $ 5,545.85 | $ 6,738.51 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,102.10 | $ 3,697.24 | $ 5,545.85 | $ 6,799.34 |
| 01/31/15 | $ 30,412.75 | $ 149,674.71 | $ 180,087.46 | $ - | $ - | $ - | $ 3,164.14 | $ 3,697.24 | $ 3,041.27 | $ 186,948.94 |
| 11/01/15 | $ - | $ - | $ - | $ 636,735.46 | $ 89,592.56 | $ 726,328.02 | $ 3,227.43 | $ 882.57 | $ - | $ 730,438.01 |
| 01/31/16 | $ 44,128.30 | $ 147,089.62 | $ 191,217.93 | $ - | $ - | $ - | $ 3,291.97 | $ - | $ - | $ 194,509.90 |
| 11/01/16 | $ - | $ - | $ - | $ 1,492,707.72 | $ 287,928.95 | $ 1,780,636.66 | $ 3,357.81 | $ - | $ - | $ 1,783,994.48 |
| 01/31/17 | $ 60,825.50 | $ 143,338.72 | $ 204,164.22 | $ - | $ - | $ - | $ 3,424.97 | $ - | $ - | $ 207,589.19 |
| 01/31/18 | $ 78,715.35 | $ 138,168.55 | $ 216,883.90 | $ - | $ - | $ - | $ 3,493.47 | $ - | $ - | $ 220,377.37 |
| 01/31/19 | $ 99,586.85 | $ 131,477.75 | $ 231,064.59 | $ - | $ - | $ - | $ 3,563.34 | $ - | $ - | $ 234,627.93 |
| 01/31/20 | $ 123,439.98 | $ 123,137.35 | $ 246,577.33 | $ - | $ - | $ - | $ 3,634.61 | $ - | $ - | $ 250,211.93 |
| 01/31/21 | $ 149,678.43 | $ 112,799.25 | $ 262,477.68 | $ - | $ - | $ - | $ 3,707.30 | $ - | $ - | $ 266,184.98 |
| 01/31/22 | $ 178,898.53 | $ 100,263.68 | $ 279,162.21 | $ - | $ - | $ - | $ 3,781.44 | $ - | $ - | $ 282,943.65 |
| 01/31/23 | $ 212,292.92 | $ 85,280.93 | $ 297,573.85 | $ - | $ - | $ - | $ 3,857.07 | $ - | $ - | $ 301,430.92 |
| 01/31/24 | $ 248,668.95 | $ 68,562.86 | $ 317,231.81 | $ - | $ - | $ - | $ 3,934.21 | $ - | $ - | $ 321,166.02 |
| 01/31/25 | $ 288,622.96 | $ 48,980.18 | $ 337,603.14 | $ - | $ - | $ - | $ 4,012.90 | $ - | $ - | $ 341,616.03 |
| 01/31/26 | $ 333,347.59 | $ 26,251.12 | $ 359,598.71 | $ - | $ - | $ - | $ 4,093.16 | $ - | $ - | $ 363,691.87 |
| | $ 1,848,618.10 | $ 1,275,024.71 | $ 3,123,642.82 | $ 2,129,443.17 | $ 377,521.51 | $ 2,506,964.68 | $ 59,668.83 | $ 15,671.52 | $ 19,678.84 | $ 5,705,947.84 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds; therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806425

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,034.34 | $ 1,282.58 | $ 1,923.87 | $ 2,316.92 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,055.03 | $ 1,282.58 | $ 1,923.87 | $ 2,337.61 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,076.13 | $ 1,282.58 | $ 1,923.87 | $ 2,358.71 |
| 01/31/15 | $ 10,550.27 | $ 51,922.61 | $ 62,472.88 | $ - | $ - | $ - | $ 1,097.65 | $ 1,282.58 | $ 1,055.03 | $ 64,853.11 |
| 11/01/15 | $ - | $ - | $ - | $ 220,885.45 | $ 31,079.93 | $ 251,965.38 | $ 1,119.60 | $ 306.16 | $ - | $ 253,391.14 |
| 01/31/16 | $ 15,308.24 | $ 51,025.83 | $ 66,334.07 | $ - | $ - | $ - | $ 1,142.00 | $ - | $ - | $ 67,476.07 |
| 11/01/16 | $ - | $ - | $ - | $ 517,824.80 | $ 99,883.42 | $ 617,708.22 | $ 1,164.84 | $ - | $ - | $ 618,873.06 |
| 01/31/17 | $ 21,100.55 | $ 49,724.63 | $ 70,825.18 | $ - | $ - | $ - | $ 1,188.13 | $ - | $ - | $ 72,013.31 |
| 01/31/18 | $ 27,306.59 | $ 47,931.09 | $ 75,237.68 | $ - | $ - | $ - | $ 1,211.89 | $ - | $ - | $ 76,449.57 |
| 01/31/19 | $ 34,546.98 | $ 45,610.03 | $ 80,157.00 | $ - | $ - | $ - | $ 1,236.13 | $ - | $ - | $ 81,393.14 |
| 01/31/20 | $ 42,821.70 | $ 42,716.72 | $ 85,538.42 | $ - | $ - | $ - | $ 1,260.86 | $ - | $ - | $ 86,799.27 |
| 01/31/21 | $ 51,923.90 | $ 39,130.40 | $ 91,054.30 | $ - | $ - | $ - | $ 1,285.07 | $ - | $ - | $ 92,340.37 |
| 01/31/22 | $ 62,060.44 | $ 34,781.77 | $ 96,842.21 | $ - | $ - | $ - | $ 1,311.79 | $ - | $ - | $ 98,154.00 |
| 01/31/23 | $ 73,645.05 | $ 29,584.21 | $ 103,229.26 | $ - | $ - | $ - | $ 1,338.03 | $ - | $ - | $ 104,567.29 |
| 01/31/24 | $ 86,264.01 | $ 23,784.66 | $ 110,048.67 | $ - | $ - | $ - | $ 1,364.79 | $ - | $ - | $ 111,413.46 |
| 01/31/25 | $ 100,124.17 | $ 16,991.37 | $ 117,115.54 | $ - | $ - | $ - | $ 1,392.09 | $ - | $ - | $ 118,507.63 |
| 01/31/26 | $ 115,639.78 | $ 9,106.59 | $ 124,745.88 | $ - | $ - | $ - | $ 1,419.93 | $ - | $ - | $ 126,165.80 |
| | $ 641,291.19 | $ 442,309.91 | $ 1,083,601.10 | $ 738,710.25 | $ 130,963.35 | $ 869,673.60 | $ 20,699.30 | $ 5,436.49 | $ 6,826.65 | $ 1,979,410.49 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806426

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,228.29 | $ 4,003.08 | $ 6,004.62 | $ 7,231.37 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,292.86 | $ 4,003.08 | $ 6,004.62 | $ 7,295.94 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,358.71 | $ 4,003.08 | $ 6,004.62 | $ 7,361.79 |
| 01/31/15 | $ 32,928.56 | $ 162,056.15 | $ 194,984.72 | $ - | $ - | $ - | $ 3,425.89 | $ 4,003.08 | $ 3,292.86 | $ 202,413.69 |
| 11/01/15 | $ - | $ - | $ - | $ 689,407.72 | $ 97,003.87 | $ 786,411.59 | $ 3,494.41 | $ 955.57 | $ - | $ 790,861.57 |
| 01/31/16 | $ 47,778.70 | $ 159,257.23 | $ 207,035.93 | $ - | $ - | $ - | $ 3,564.29 | $ - | $ - | $ 210,600.22 |
| 11/01/16 | $ - | $ - | $ - | $ 1,616,188.02 | $ 311,747.11 | $ 1,927,935.14 | $ 3,635.58 | $ - | $ - | $ 1,931,570.72 |
| 01/31/17 | $ 65,857.13 | $ 155,196.04 | $ 221,053.16 | $ - | $ - | $ - | $ 3,708.29 | $ - | $ - | $ 224,761.45 |
| 01/31/18 | $ 85,226.87 | $ 149,598.18 | $ 234,825.05 | $ - | $ - | $ - | $ 3,782.46 | $ - | $ - | $ 238,607.51 |
| 01/31/19 | $ 107,824.91 | $ 142,353.90 | $ 250,178.80 | $ - | $ - | $ - | $ 3,858.11 | $ - | $ - | $ 254,036.91 |
| 01/31/20 | $ 133,651.23 | $ 133,323.56 | $ 266,974.79 | $ - | $ - | $ - | $ 3,935.27 | $ - | $ - | $ 270,910.06 |
| 01/31/21 | $ 162,060.19 | $ 122,130.27 | $ 284,190.46 | $ - | $ - | $ - | $ 4,013.97 | $ - | $ - | $ 288,204.43 |
| 01/31/22 | $ 193,697.43 | $ 108,557.73 | $ 302,255.16 | $ - | $ - | $ - | $ 4,094.25 | $ - | $ - | $ 306,349.42 |
| 01/31/23 | $ 229,854.29 | $ 92,335.57 | $ 322,189.86 | $ - | $ - | $ - | $ 4,176.14 | $ - | $ - | $ 326,365.99 |
| 01/31/24 | $ 269,239.43 | $ 74,234.54 | $ 343,473.98 | $ - | $ - | $ - | $ 4,259.66 | $ - | $ - | $ 347,733.64 |
| 01/31/25 | $ 312,498.53 | $ 53,031.94 | $ 365,530.47 | $ - | $ - | $ - | $ 4,344.85 | $ - | $ - | $ 369,875.32 |
| 01/31/26 | $ 360,922.89 | $ 28,422.68 | $ 389,345.57 | $ - | $ - | $ - | $ 4,431.75 | $ - | $ - | $ 393,777.32 |
| | $ 2,001,540.16 | $ 1,380,497.77 | $ 3,382,037.93 | $ 2,305,595.74 | $ 408,750.98 | $ 2,714,346.72 | $ 64,604.78 | $ 16,967.90 | $ 21,306.72 | $ 6,177,957.33 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806427

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,828.35 | $ 2,267.16 | $ 3,400.74 | $ 4,095.51 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,864.92 | $ 2,267.16 | $ 3,400.74 | $ 4,132.08 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,902.22 | $ 2,267.16 | $ 3,400.74 | $ 4,169.38 |
| 01/31/15 | $ 18,649.22 | $ 91,781.12 | $ 110,430.32 | $ - | $ - | $ - | $ 2,940.26 | $ 2,267.16 | $ 1,864.92 | $ 114,637.75 |
| 11/01/15 | $ - | $ - | $ - | $ 390,448.64 | $ 54,938.50 | $ 445,387.14 | $ 1,979.07 | $ 541.19 | $ - | $ 447,907.41 |
| 01/31/16 | $ 27,059.65 | $ 90,195.93 | $ 117,255.57 | $ - | $ - | $ - | $ 2,018.63 | $ - | $ - | $ 119,274.22 |
| 11/01/16 | $ - | $ - | $ - | $ 915,334.13 | $ 176,559.14 | $ 1,091,893.28 | $ 2,059.02 | $ - | $ - | $ 1,093,952.30 |
| 01/31/17 | $ 37,298.43 | $ 87,895.86 | $ 125,194.29 | $ - | $ - | $ - | $ 2,100.20 | $ - | $ - | $ 127,294.49 |
| 01/31/18 | $ 48,268.56 | $ 84,725.49 | $ 132,994.05 | $ - | $ - | $ - | $ 2,142.21 | $ - | $ - | $ 135,135.25 |
| 01/31/19 | $ 61,067.04 | $ 80,622.66 | $ 141,689.70 | $ - | $ - | $ - | $ 2,185.05 | $ - | $ - | $ 143,874.75 |
| 01/31/20 | $ 75,693.87 | $ 75,508.30 | $ 151,202.17 | $ - | $ - | $ - | $ 2,228.75 | $ - | $ - | $ 153,430.92 |
| 01/31/21 | $ 91,783.39 | $ 69,168.94 | $ 160,952.33 | $ - | $ - | $ - | $ 2,273.33 | $ - | $ - | $ 163,225.66 |
| 01/31/22 | $ 109,701.27 | $ 61,482.08 | $ 171,183.34 | $ - | $ - | $ - | $ 2,318.80 | $ - | $ - | $ 173,502.14 |
| 01/31/23 | $ 130,178.84 | $ 52,294.59 | $ 182,473.43 | $ - | $ - | $ - | $ 2,365.17 | $ - | $ - | $ 184,838.60 |
| 01/31/24 | $ 152,484.76 | $ 42,043.01 | $ 194,527.77 | $ - | $ - | $ - | $ 2,412.47 | $ - | $ - | $ 196,940.25 |
| 01/31/25 | $ 176,984.71 | $ 30,034.84 | $ 207,019.55 | $ - | $ - | $ - | $ 2,460.72 | $ - | $ - | $ 209,480.27 |
| 01/31/26 | $ 204,410.03 | $ 16,097.29 | $ 220,507.32 | $ - | $ - | $ - | $ 2,509.94 | $ - | $ - | $ 223,017.26 |
| | $ 1,133,579.76 | $ 781,850.08 | $ 1,915,429.84 | $ 1,305,782.77 | $ 231,497.65 | $ 1,537,280.42 | $ 36,589.16 | $ 9,609.83 | $ 12,067.14 | $ 3,498,909.25 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806428

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,142.84 | $ 1,417.12 | $ 2,125.68 | $ 2,559.96 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,165.69 | $ 1,417.12 | $ 2,125.68 | $ 2,582.81 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 1,189.01 | $ 1,417.12 | $ 2,125.68 | $ 2,606.13 |
| 01/31/15 | $ 11,656.94 | $ 57,369.00 | $ 69,025.94 | $ - | $ - | $ - | $ 1,212.79 | $ 1,417.12 | $ 1,165.69 | $ 71,655.84 |
| 11/01/15 | $ - | $ - | $ - | $ 244,055.10 | $ 34,340.04 | $ 278,395.14 | $ 1,237.04 | $ 338.28 | $ - | $ 279,970.46 |
| 01/31/16 | $ 16,913.99 | $ 56,378.16 | $ 73,292.15 | $ - | $ - | $ - | $ 1,261.78 | $ - | $ - | $ 74,553.93 |
| 11/01/16 | $ - | $ - | $ - | $ 572,141.73 | $ 110,360.63 | $ 682,502.36 | $ 1,287.02 | $ - | $ - | $ 683,789.38 |
| 01/31/17 | $ 23,313.88 | $ 54,940.47 | $ 78,254.35 | $ - | $ - | $ - | $ 1,312.76 | $ - | $ - | $ 79,567.11 |
| 01/31/18 | $ 30,170.90 | $ 52,958.79 | $ 83,129.69 | $ - | $ - | $ - | $ 1,339.02 | $ - | $ - | $ 84,468.71 |
| 01/31/19 | $ 38,170.76 | $ 50,394.26 | $ 88,565.02 | $ - | $ - | $ - | $ 1,365.80 | $ - | $ - | $ 89,930.82 |
| 01/31/20 | $ 47,313.46 | $ 47,197.46 | $ 94,510.92 | $ - | $ - | $ - | $ 1,393.11 | $ - | $ - | $ 95,904.03 |
| 01/31/21 | $ 57,370.43 | $ 43,234.96 | $ 100,605.39 | $ - | $ - | $ - | $ 1,420.97 | $ - | $ - | $ 102,026.36 |
| 01/31/22 | $ 68,570.23 | $ 38,430.19 | $ 107,000.42 | $ - | $ - | $ - | $ 1,449.39 | $ - | $ - | $ 108,449.81 |
| 01/31/23 | $ 81,370.01 | $ 32,687.43 | $ 114,057.44 | $ - | $ - | $ - | $ 1,478.38 | $ - | $ - | $ 115,535.82 |
| 01/31/24 | $ 95,312.62 | $ 26,279.54 | $ 121,592.16 | $ - | $ - | $ - | $ 1,507.95 | $ - | $ - | $ 123,100.11 |
| 01/31/25 | $ 110,626.64 | $ 18,773.67 | $ 129,400.31 | $ - | $ - | $ - | $ 1,538.11 | $ - | $ - | $ 130,938.42 |
| 01/31/26 | $ 127,769.20 | $ 10,061.82 | $ 137,831.02 | $ - | $ - | $ - | $ 1,568.87 | $ - | $ - | $ 139,399.89 |
| | $ 708,559.05 | $ 483,705.75 | $ 1,197,264.80 | $ 816,196.82 | $ 144,700.67 | $ 960,897.49 | $ 22,870.54 | $ 6,006.75 | $ 7,542.73 | $ 2,187,039.58 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806429

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,382.07 | $ 4,193.76 | $ 6,290.64 | $ 7,575.83 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,448.71 | $ 4,193.76 | $ 6,290.64 | $ 7,643.47 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,528.70 | $ 4,193.76 | $ 6,290.64 | $ 7,712.47 |
| 01/31/15 | $ 34,497.08 | $ 169,775.53 | $ 204,272.61 | $ - | $ - | $ - | $ 3,589.08 | $ 4,193.76 | $ 3,449.71 | $ 212,055.45 |
| 11/01/15 | $ - | $ - | $ - | $ 722,246.93 | $ 101,624.55 | $ 823,871.48 | $ 3,660.86 | $ 2,001.09 | $ - | $ 828,533.43 |
| 01/31/16 | $ 50,054.59 | $ 166,843.28 | $ 216,897.87 | $ - | $ - | $ - | $ 3,734.08 | $ - | $ - | $ 220,631.94 |
| 11/01/16 | $ - | $ - | $ - | $ 1,693,173.46 | $ 326,596.86 | $ 2,019,770.32 | $ 3,808.76 | $ - | $ - | $ 2,023,579.07 |
| 01/31/17 | $ 68,994.16 | $ 162,588.64 | $ 231,582.80 | $ - | $ - | $ - | $ 3,884.93 | $ - | $ - | $ 235,467.73 |
| 01/31/18 | $ 89,285.56 | $ 156,724.13 | $ 246,010.70 | $ - | $ - | $ - | $ 3,962.63 | $ - | $ - | $ 249,973.33 |
| 01/31/19 | $ 112,961.03 | $ 149,134.78 | $ 262,095.81 | $ - | $ - | $ - | $ 4,041.88 | $ - | $ - | $ 266,137.69 |
| 01/31/20 | $ 140,017.57 | $ 139,674.29 | $ 279,691.85 | $ - | $ - | $ - | $ 4,122.72 | $ - | $ - | $ 283,814.57 |
| 01/31/21 | $ 169,779.76 | $ 127,947.82 | $ 297,727.57 | $ - | $ - | $ - | $ 4,205.18 | $ - | $ - | $ 301,932.75 |
| 01/31/22 | $ 202,924.01 | $ 113,728.76 | $ 316,652.77 | $ - | $ - | $ - | $ 4,289.28 | $ - | $ - | $ 320,942.05 |
| 01/31/23 | $ 240,803.16 | $ 96,733.88 | $ 337,537.03 | $ - | $ - | $ - | $ 4,375.06 | $ - | $ - | $ 341,912.10 |
| 01/31/24 | $ 282,064.37 | $ 77,770.63 | $ 359,835.00 | $ - | $ - | $ - | $ 4,462.57 | $ - | $ - | $ 364,297.57 |
| 01/31/25 | $ 327,384.07 | $ 55,558.06 | $ 382,942.13 | $ - | $ - | $ - | $ 4,551.82 | $ - | $ - | $ 387,493.95 |
| 01/31/26 | $ 378,115.07 | $ 29,776.56 | $ 407,891.64 | $ - | $ - | $ - | $ 4,642.85 | $ - | $ - | $ 412,534.49 |
| | $ 2,096,881.44 | $ 1,446,256.34 | $ 3,543,137.78 | $ 2,415,420.39 | $ 428,221.41 | $ 2,843,641.80 | $ 67,682.16 | $ 17,776.14 | $ 22,321.64 | $ 6,472,237.88 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806430

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,848.12 | $ 3,531.66 | $ 5,297.50 | $ 6,379.78 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,905.08 | $ 3,531.66 | $ 5,297.50 | $ 6,436.74 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,963.18 | $ 3,531.66 | $ 5,297.50 | $ 6,494.84 |
| 01/31/15 | $ 29,050.78 | $ 142,971.85 | $ 172,022.64 | $ - | $ - | $ - | $ 3,022.44 | $ 3,531.66 | $ 2,905.08 | $ 178,576.74 |
| 11/01/15 | $ - | $ - | $ - | $ 608,220.65 | $ 85,580.35 | $ 693,801.01 | $ 3,082.89 | $ 843.04 | $ - | $ 697,726.94 |
| 01/31/16 | $ 42,152.11 | $ 140,502.54 | $ 182,654.65 | $ - | $ - | $ - | $ 3,144.55 | $ - | $ - | $ 185,799.20 |
| 11/01/16 | $ - | $ - | $ - | $ 1,425,860.07 | $ 275,034.68 | $ 1,700,894.75 | $ 3,207.44 | $ - | $ - | $ 1,704,102.19 |
| 01/31/17 | $ 58,101.56 | $ 136,919.61 | $ 195,021.17 | $ - | $ - | $ - | $ 3,271.59 | $ - | $ - | $ 198,292.76 |
| 01/31/18 | $ 75,190.26 | $ 131,980.96 | $ 207,171.23 | $ - | $ - | $ - | $ 3,337.02 | $ - | $ - | $ 210,508.25 |
| 01/31/19 | $ 95,127.07 | $ 125,589.80 | $ 220,716.87 | $ - | $ - | $ - | $ 3,403.76 | $ - | $ - | $ 224,120.63 |
| 01/31/20 | $ 117,911.99 | $ 117,622.91 | $ 235,534.90 | $ - | $ - | $ - | $ 3,471.84 | $ - | $ - | $ 239,006.74 |
| 01/31/21 | $ 142,975.41 | $ 107,747.78 | $ 250,723.19 | $ - | $ - | $ - | $ 3,541.27 | $ - | $ - | $ 254,264.47 |
| 01/31/22 | $ 170,886.95 | $ 95,773.59 | $ 266,660.54 | $ - | $ - | $ - | $ 3,612.10 | $ - | $ - | $ 270,272.64 |
| 01/31/23 | $ 202,785.84 | $ 81,461.81 | $ 284,247.65 | $ - | $ - | $ - | $ 3,684.34 | $ - | $ - | $ 287,931.99 |
| 01/31/24 | $ 237,532.86 | $ 65,492.42 | $ 303,025.28 | $ - | $ - | $ - | $ 3,758.03 | $ - | $ - | $ 306,783.31 |
| 01/31/25 | $ 275,697.61 | $ 46,786.71 | $ 322,484.32 | $ - | $ - | $ - | $ 3,833.19 | $ - | $ - | $ 326,317.51 |
| 01/31/26 | $ 318,419.35 | $ 25,075.52 | $ 343,494.87 | $ - | $ - | $ - | $ 3,909.85 | $ - | $ - | $ 347,404.72 |
| | $ 2,765,832.79 | $ 1,217,925.53 | $ 2,983,757.32 | $ 2,034,080.72 | $ 360,615.04 | $ 2,394,695.76 | $ 56,996.70 | $ 14,969.70 | $ 18,797.56 | $ 5,450,419.47 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806431

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,246.34 | $ 2,785.46 | $ 4,178.19 | $ 5,031.80 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,291.27 | $ 2,785.46 | $ 4,178.19 | $ 5,076.73 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,337.09 | $ 2,785.46 | $ 4,178.19 | $ 5,122.55 |
| 01/31/15 | $ 22,912.66 | $ 112,763.43 | $ 135,676.09 | $ - | $ - | $ - | $ 2,383.83 | $ 2,785.46 | $ 2,291.27 | $ 140,845.39 |
| 11/01/15 | $ - | $ - | $ - | $ 479,710.14 | $ 67,498.14 | $ 547,208.28 | $ 2,431.51 | $ 664.92 | $ - | $ 550,304.71 |
| 01/31/16 | $ 33,245.82 | $ 110,815.86 | $ 144,061.68 | $ - | $ - | $ - | $ 2,480.14 | $ - | $ - | $ 146,541.82 |
| 11/01/16 | $ - | $ - | $ - | $ 1,124,591.10 | $ 216,922.80 | $ 1,341,513.90 | $ 2,529.74 | $ - | $ - | $ 1,344,043.64 |
| 01/31/17 | $ 45,825.32 | $ 107,989.96 | $ 153,815.28 | $ - | $ - | $ - | $ 2,580.34 | $ - | $ - | $ 156,395.62 |
| 01/31/18 | $ 59,303.36 | $ 104,094.81 | $ 163,398.17 | $ - | $ - | $ - | $ 2,631.94 | $ - | $ - | $ 166,030.11 |
| 01/31/19 | $ 75,027.74 | $ 99,054.02 | $ 174,081.76 | $ - | $ - | $ - | $ 2,684.58 | $ - | $ - | $ 176,766.34 |
| 01/31/20 | $ 92,998.45 | $ 92,770.45 | $ 185,768.90 | $ - | $ - | $ - | $ 2,738.28 | $ - | $ - | $ 188,507.18 |
| 01/31/21 | $ 112,766.24 | $ 84,981.83 | $ 197,748.07 | $ - | $ - | $ - | $ 2,793.04 | $ - | $ - | $ 200,541.11 |
| 01/31/22 | $ 134,780.37 | $ 75,537.66 | $ 210,318.02 | $ - | $ - | $ - | $ 2,848.90 | $ - | $ - | $ 213,166.92 |
| 01/31/23 | $ 159,939.37 | $ 64,249.80 | $ 224,189.17 | $ - | $ - | $ - | $ 2,905.88 | $ - | $ - | $ 227,095.05 |
| 01/31/24 | $ 187,344.71 | $ 51,654.57 | $ 238,999.28 | $ - | $ - | $ - | $ 2,964.00 | $ - | $ - | $ 241,963.28 |
| 01/31/25 | $ 217,445.66 | $ 36,901.18 | $ 254,346.84 | $ - | $ - | $ - | $ 3,023.28 | $ - | $ - | $ 257,370.11 |
| 01/31/26 | $ 251,140.75 | $ 19,777.33 | $ 270,918.08 | $ - | $ - | $ - | $ 3,083.74 | $ - | $ - | $ 274,001.82 |
| | $ 1,392,730.44 | $ 960,590.90 | $ 2,353,321.34 | $ 1,604,301.24 | $ 284,420.94 | $ 1,888,722.18 | $ 44,953.90 | $ 11,806.76 | $ 14,825.84 | $ 4,298,804.19 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) *Does not include reserve fund earnings or any other funds which could reduce net debt service.*
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #806432

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,631.50 | $ 3,263.06 | $ 4,894.59 | $ 5,894.56 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,684.13 | $ 3,263.06 | $ 4,894.59 | $ 5,947.19 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 2,737.81 | $ 3,263.06 | $ 4,894.59 | $ 6,000.87 |
| 01/31/15 | $ 26,841.30 | $ 132,097.99 | $ 158,939.29 | $ - | $ - | $ - | $ 2,792.57 | $ 3,263.06 | $ 2,684.13 | $ 164,994.92 |
| 11/01/15 | $ - | $ - | $ - | $ 561,961.84 | $ 79,071.46 | $ 641,033.30 | $ 2,848.42 | $ 778.92 | $ - | $ 644,660.65 |
| 01/31/16 | $ 38,946.19 | $ 129,816.48 | $ 168,762.68 | $ - | $ - | $ - | $ 2,905.39 | $ - | $ - | $ 171,668.06 |
| 11/01/16 | $ - | $ - | $ - | $ 1,317,414.91 | $ 254,116.65 | $ 1,571,531.56 | $ 2,963.50 | $ - | $ - | $ 1,574,495.06 |
| 01/31/17 | $ 53,682.59 | $ 126,506.05 | $ 180,188.65 | $ - | $ - | $ - | $ 3,022.77 | $ - | $ - | $ 183,211.41 |
| 01/31/18 | $ 59,471.59 | $ 121,943.03 | $ 181,414.62 | $ - | $ - | $ - | $ 3,083.22 | $ - | $ - | $ 184,497.85 |
| 01/31/19 | $ 87,892.09 | $ 116,037.95 | $ 203,930.04 | $ - | $ - | $ - | $ 3,144.89 | $ - | $ - | $ 207,074.92 |
| 01/31/20 | $ 108,944.08 | $ 108,676.99 | $ 217,621.07 | $ - | $ - | $ - | $ 3,207.78 | $ - | $ - | $ 220,828.85 |
| 01/31/21 | $ 132,101.28 | $ 99,552.92 | $ 231,654.20 | $ - | $ - | $ - | $ 3,271.94 | $ - | $ - | $ 234,926.14 |
| 01/31/22 | $ 157,889.98 | $ 88,489.44 | $ 246,379.41 | $ - | $ - | $ - | $ 3,337.38 | $ - | $ - | $ 249,716.79 |
| 01/31/23 | $ 187,362.77 | $ 75,266.15 | $ 262,628.92 | $ - | $ - | $ - | $ 3,404.13 | $ - | $ - | $ 266,033.05 |
| 01/31/24 | $ 219,467.07 | $ 60,511.33 | $ 279,978.40 | $ - | $ - | $ - | $ 3,472.21 | $ - | $ - | $ 283,450.61 |
| 01/31/25 | $ 254,729.16 | $ 43,228.30 | $ 297,957.46 | $ - | $ - | $ - | $ 3,541.65 | $ - | $ - | $ 301,499.12 |
| 01/31/26 | $ 294,201.66 | $ 23,168.38 | $ 317,370.04 | $ - | $ - | $ - | $ 3,612.49 | $ - | $ - | $ 320,982.52 |
| | $ 1,631,529.75 | $ 1,125,295.02 | $ 2,756,824.78 | $ 1,879,376.75 | $ 333,188.11 | $ 2,212,564.86 | $ 52,661.76 | $ 13,831.16 | $ 17,367.90 | $ 5,035,882.56 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix A
## Annual Installments – TAX PARCEL #201773

| Installment Due Date (a) | Senior Master PID Bonds | | | Subordinate Master PID Bonds | | | Administrative Expenses (f) | Prepayment Reserve | Delinquency Reserve | Annual Installment |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal | Interest (b) | Net Debt Service (c) | Principal | Interest (d) | Net Debt Service (e) | | | | |
| 01/31/11 | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - | $ - |
| 01/31/12 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,676.51 | $ 4,558.88 | $ 6,838.31 | $ 8,235.39 |
| 01/31/13 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,750.04 | $ 4,558.88 | $ 6,838.31 | $ 8,308.92 |
| 01/31/14 | $ - | $ - | $ - | $ - | $ - | $ - | $ 3,825.04 | $ 4,558.88 | $ 6,838.31 | $ 8,383.92 |
| 01/31/15 | $ 37,500.44 | $ 184,556.38 | $ 222,056.82 | $ - | $ - | $ - | $ 3,501.55 | $ 4,558.88 | $ 3,750.04 | $ 230,517.24 |
| 11/01/15 | $ - | $ - | $ - | $ 785,126.57 | $ 110,472.10 | $ 895,598.67 | $ 3,979.58 | $ 1,088.25 | $ - | $ 900,666.49 |
| 01/31/16 | $ 54,412.40 | $ 181,368.84 | $ 235,781.24 | $ - | $ - | $ - | $ 4,059.17 | $ - | $ - | $ 239,840.41 |
| 11/01/16 | $ - | $ - | $ - | $ 1,840,583.06 | $ 355,030.75 | $ 2,195,613.82 | $ 4,140.35 | $ - | $ - | $ 2,199,754.16 |
| 01/31/17 | $ 75,000.87 | $ 176,743.79 | $ 251,744.66 | $ - | $ - | $ - | $ 4,223.16 | $ - | $ - | $ 255,967.82 |
| 01/31/18 | $ 97,059.95 | $ 170,368.71 | $ 267,428.67 | $ - | $ - | $ - | $ 4,307.62 | $ - | $ - | $ 271,736.29 |
| 01/31/19 | $ 122,795.55 | $ 162,118.62 | $ 284,914.17 | $ - | $ - | $ - | $ 4,393.77 | $ - | $ - | $ 289,307.94 |
| 01/31/20 | $ 152,207.66 | $ 151,834.49 | $ 304,042.14 | $ - | $ - | $ - | $ 4,481.65 | $ - | $ - | $ 308,523.79 |
| 01/31/21 | $ 184,560.97 | $ 139,087.10 | $ 323,648.07 | $ - | $ - | $ - | $ 4,571.28 | $ - | $ - | $ 328,219.36 |
| 01/31/22 | $ 220,590.81 | $ 123,630.12 | $ 344,220.92 | $ - | $ - | $ - | $ 4,662.71 | $ - | $ - | $ 348,883.63 |
| 01/31/23 | $ 261,767.76 | $ 105,155.64 | $ 366,923.39 | $ - | $ - | $ - | $ 4,755.96 | $ - | $ - | $ 371,679.35 |
| 01/31/24 | $ 306,621.22 | $ 84,541.43 | $ 391,162.65 | $ - | $ - | $ - | $ 4,851.08 | $ - | $ - | $ 396,013.73 |
| 01/31/25 | $ 355,886.50 | $ 60,395.01 | $ 416,281.51 | $ - | $ - | $ - | $ 4,948.10 | $ - | $ - | $ 421,229.61 |
| 01/31/26 | $ 411,034.20 | $ 32,368.94 | $ 443,403.14 | $ - | $ - | $ - | $ 5,047.07 | $ - | $ - | $ 448,450.21 |
| | $ 2,279,438.32 | $ 1,572,169.06 | $ 3,851,607.38 | $ 2,625,709.63 | $ 465,502.85 | $ 5,091,212.48 | $ 73,574.65 | $ 19,323.75 | $ 24,264.99 | $ 7,035,718.27 |

(a) The 1/31/XX dates represent Installment due dates for the Senior Master PID Bond which are intended to cover the March 1 and September 1 payments.
(b) Net of Capitalized Interest.
(c) Does not include reserve fund earnings or any other funds which could reduce net debt service.
(d) Subordinate Master PID Bonds are capital appreciation bonds, therefore interest accrues until principal payment date.
(e) Reimbursement Payments equaling the net debt service, including accrued interest, for the Subordinate Master PID Bonds are pledged to the Trustee, which are intended to reduce the net debt service to $0. Until the Reimbursement Payments are received by the Trustee, the Assessment will remain on each parcel and the Installment will be due as scheduled.
(f) Preliminary Estimate. The administrative charges will be revised in Annual Service Plan Updates based on actual costs.

# Appendix B

Authorized Improvements

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Macro Roads | BRAKER LANE EXTENSION PHASE 1 & 2 | $ | 8,570,721 |
| | BRAKER LANE EXTENSION PHASE 3 | $ | 3,344,164 |
| | BRAKER LANE EXTENSION PHASE 4 | $ | 4,243,939 |
| | BRAKER LANE PHASE 1 & 2 PEDESTRIAN WALKWAY | $ | 599,850 |
| | BRAKER LANE PHASE 3 PEDESTRIAN WALKWAY | $ | 299,925 |
| | BRAKER LANE PHASE 4 PEDESTRIAN WALKWAY | $ | 299,925 |
| | **SUBTOTAL** | **$** | **17,358,523** |
| Macro Wastewater | WASTEWATER TREATMENT PLANT (b) | $ | 8,410,990 |
| | 30" INTERCEPTOR STONELAKE NORTHWEST LINE PARCEL 1 | $ | 2,936,198 |
| | 12" INTERCEPTOR NORTH LINE PARCEL 1 | $ | 687,735 |
| | 30" INTERCEPTOR STONELAKE NORTHWEST LINE PARCEL 4 | $ | 933,265 |
| | 12" INTERCEPTOR NORTH LINE PARCEL 6 | $ | 415,013 |
| | 30" INTERCEPTOR STONELAKE NORTHWEST LINE PARCEL 18 | $ | 684,876 |
| | **SUBTOTAL** | **$** | **14,068,076** |
| Macro Water | Line 2 - Approximately 17,900 LF of 24" water line commencing on Lindell Lane and commencing at Blue Bluff Road, continuing east on Bloor Road, crossing SH 130, continuing north on FM 973 and then continues to Whisper Valley boundary. | $ | 4,994,100 |
| | Line 1 - 19,684 LF of 48" commencing on Zachary Drive and Decker Lake Road, continuing east along Decker Lake Road to SH130 | $ | 10,709,080 |
| | Line 5 - Approximately 18,096 LF of 48" commencing at Decker Lake Road and SH130, then generally following SH130 north towards Whisper Valley | $ | 9,845,129 |
| | **SUBTOTAL** | **$** | **25,548,309** |
| Parks / Landscaping | NEIGHBORHOOD PARKS PARCEL 1 | $ | 659,617 |
| | COLLECTOR ROW PARCEL 1 | $ | 44,752 |
| | FM 973 | $ | 109,438 |
| | BRAKER LANE PARCEL 1 | $ | 1,036,302 |
| | COLLECTOR ROW PARCEL 2 | $ | 80,860 |
| | BRAKER LANE PARCEL 2 | $ | 657,564 |
| | POCKET PARKS PARCEL 3 | $ | 434,478 |
| | COLLECTOR ROW PARCEL 3 | $ | 43,703 |
| | POCKET PARKS PARCEL 4 | $ | 814,267 |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Parks / Landscaping | COLLECTOR ROW PARCEL 4 | $ | 148,595 |
| | BRAKER LANE PARCEL 4 | $ | 279,004 |
| | POCKET PARKS PARCEL 5 | $ | 121,532 |
| | BRAKER LANE PARCEL 5 | $ | 657,564 |
| | COLLECTOR ROW PARCEL 7 | $ | 87,182 |
| | POCKET PARKS PARCEL 8B | $ | 100,264 |
| | POCKET PARKS PARCEL 17 | $ | 717,041 |
| | COLLECTOR ROW PARCEL 17 | $ | 57,251 |
| | BRAKER LANE PARCEL 17 | $ | 279,004 |
| | MULTI-USE TRAIL PARCEL 52 | $ | 76,468 |
| | COLLECTOR ROW PARCEL 52 | $ | 91,462 |
| | BRAKER LANE PARCEL 20 | $ | 354,073 |
| | POCKET PARKS PARCEL 10 | $ | 349,406 |
| | MULTI-USE TRAIL PARCEL 10 | $ | 28,212 |
| | COLLECTOR ROW PARCEL 10 | $ | 41,515 |
| | BRAKER LANE PARCEL 10 | $ | 354,073 |
| | NEIGHBORHOOD PARKS PARCEL 11 | $ | 1,832,709 |
| | COLLECTOR ROW PARCEL 12 | $ | 110,372 |
| | POCKET PARKS PARCEL 16 | $ | 671,467 |
| | COLLECTOR ROW PARCEL 16 | $ | 33,871 |
| | MULTI-USE TRAIL PARCEL 39 | $ | 40,488 |
| | COLLECTOR ROW PARCEL 39 | $ | 213,100 |
| | NEIGHBORHOOD PARKS PARCEL 13 | $ | 1,366,632 |
| | MULTI-USE TRAIL PARCEL 13 | $ | 72,228 |
| | NEIGHBORHOOD PARKS PARCEL 14 | $ | 1,050,648 |
| | MULTI-USE TRAIL PARCEL 14 | $ | 54,282 |
| | COLLECTOR ROW PARCEL 14 | $ | 31,806 |
| | COLLECTOR ROW PARCEL 18 | $ | 76,223 |
| | SIGNATURE PARKS & TRAILS PARCEL 18 | $ | 2,184,245 |
| | COLLECTOR ROW PARCEL 19 | $ | 58,640 |
| | POCKET PARKS PARCEL 21 | $ | 455,747 |
| | NEIGHBORHOOD PARKS PARCEL 21 | $ | 584,571 |
| | POCKET PARKS PARCEL 22 | $ | 151,916 |
| | POCKET PARKS PARCEL 23 | $ | 188,375 |
| | POCKET PARKS PARCEL 24 | $ | 355,482 |
| | NEIGHBORHOOD PARKS PARCEL 24 | $ | 868,957 |
| | COLLECTOR ROW PARCEL 24 | $ | 52,703 |
| | COLLECTOR ROW PARCEL 25 | $ | 99,436 |
| | MULTI-USE TRAIL PARCEL 26 | $ | 19,731 |
| | COLLECTOR ROW PARCEL 26 | $ | 10,814 |
| | MULTI-USE TRAIL PARCEL 27 | $ | 72,719 |
| | COLLECTOR ROW PARCEL 27 | $ | 79,080 |
| | NEIGHBORHOOD PARKS PARCEL 28 | $ | 987,451 |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Parks / Landscaping | COLLECTOR ROW PARCEL 40 | $ | 54,171 |
| | POCKET PARKS PARCEL 29 | $ | 437,517 |
| | TAYLOR LANE PARCEL 29 | $ | 40,595 |
| | MULTI-USE TRAIL PARCEL 30 | $ | 34,105 |
| | COLLECTOR ROW PARCEL 30 | $ | 86,351 |
| | MULTI-USE TRAIL PARCEL 31 | $ | 83,700 |
| | COLLECTOR ROW PARCEL 31 | $ | 78,790 |
| | TAYLOR LANE PARCEL 31 | $ | 35,573 |
| | NEIGHBORHOOD PARKS PARCEL 32 | $ | 920,304 |
| | COLLECTOR ROW PARCEL 32 | $ | 50,616 |
| | TAYLOR LANE PARCEL 32 | $ | 23,436 |
| | Pocket PARKS PARCEL 36 | $ | 170,145 |
| | COLLECTOR ROW PARCEL 36 | $ | 37,258 |
| | TAYLOR LANE PARCEL 36 | $ | 31,597 |
| | COLLECTOR ROW PARCEL 41 | $ | 22,432 |
| | TAYLOR LANE PARCEL 53 | $ | 48,965 |
| | POCKET PARKS PARCEL 34 | $ | 167,107 |
| | NEIGHBORHOOD PARKS PARCEL 34 | $ | 1,342,933 |
| | TAYLOR LANE PARCEL 34 | $ | 55,451 |
| | SIGNATURE PARKS & TRAILS PARCEL 34 | $ | 2,184,245 |
| | COLLECTOR ROW PARCEL 42 | $ | 144,410 |
| | POCKET PARKS PARCEL 33 | $ | 407,134 |
| | POCKET PARKS PARCEL 38 | $ | 1,112,021 |
| | TAYLOR LANE PARCEL 49 | $ | 30,132 |
| | TAYLOR LANE PARCEL 43 | $ | 24,692 |
| | SIGNATURE PARKS & TRAILS PARCEL 43 | $ | 2,184,245 |
| | COLLECTOR ROW PARCEL 44 | $ | 20,255 |
| | COLLECTOR ROW PARCEL 46 | $ | 65,286 |
| | COLLECTOR ROW PARCEL 35 | $ | 72,914 |
| | TAYLOR LANE PARCEL 35 | $ | 102,114 |
| | MULTI-USE TRAIL PARCEL 48 | $ | 40,131 |
| | SIGNATURE PARKS & TRAILS PARCEL 55 | $ | 2,184,245 |
| | POCKET PARKS PARCEL 51 | $ | 546,896 |
| | NEIGHBORHOOD PARKS PARCEL 51 | $ | 1,848,508 |
| | POCKET PARKS PARCEL 56 | $ | 625,892 |
| | TAYLOR LANE PARCEL 47 | $ | 59,846 |
| | **SUBTOTAL** | **$** | **34,721,325** |
| Ponds | POND AREA PARCEL 1 | $ | 402,368 |
| | POND AREA PARCEL 2 | $ | 1,007,497 |
| | POND AREA PARCEL 3 | $ | 209,363 |
| | POND AREA PARCEL 4 | $ | 226,654 |
| | POND AREA PARCEL 6 | $ | 363,611 |
| | POND AREA PARCEL 7 | $ | 165,336 |
| | POND AREA PARCEL 8A | $ | 201,156 |
| | POND AREA PARCEL 17 | $ | 230,399 |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Ponds | POND AREA PARCEL 52 | $ | 211,348 |
| | POND AREA PARCEL 10 | $ | 425,066 |
| | POND AREA PARCEL 12 | $ | 238,301 |
| | POND AREA PARCEL 39 | $ | 176,081 |
| | POND AREA PARCEL 13 | $ | 290,192 |
| | POND AREA PARCEL 14 | $ | 308,404 |
| | POND AREA PARCEL 21 | $ | 1,058,940 |
| | POND AREA PARCEL 22 | $ | 66,034 |
| | POND AREA PARCEL 24 | $ | 150,291 |
| | POND AREA PARCEL 25 | $ | 209,064 |
| | POND AREA PARCEL 27 | $ | 238,065 |
| | POND AREA PARCEL 30 | $ | 37,830 |
| | POND AREA PARCEL 31 | $ | 213,307 |
| | POND AREA PARCEL 41 | $ | 165,579 |
| | POND AREA PARCEL 34 | $ | 389,314 |
| | POND AREA PARCEL 42 | $ | 311,758 |
| | POND AREA PARCEL 37 | $ | 138,880 |
| | POND AREA PARCEL 38 | $ | 329,826 |
| | POND AREA PARCEL 43 | $ | 113,457 |
| | POND AREA PARCEL 35 | $ | 59,886 |
| | POND AREA PARCEL 50 | $ | 154,205 |
| | POND AREA PARCEL 55 | $ | 212,001 |
| | POND AREA PARCEL 51 | $ | 92,010 |
| | POND AREA PARCEL 56 | $ | 205,766 |
| | POND AREA PARCEL 47 | $ | 102,631 |
| | **SUBTOTAL** | **$** | **8,704,621** |
| Collector Infrastructure | COLLECTOR PARCEL 1 | $ | 688,056 |
| | COLLECTOR PARCEL 2 | $ | 812,455 |
| | COLLECTOR PARCEL 3 | $ | 1,102,434 |
| | COLLECTOR PARCEL 7 | $ | 1,460,532 |
| | COLLECTOR PARCEL 17 | $ | 2,284,654 |
| | COLLECTOR PARCEL 52 | $ | 2,194,049 |
| | COLLECTOR PARCEL 9 | $ | 718,857 |
| | COLLECTOR PARCEL 10 | $ | 1,247,423 |
| | COLLECTOR PARCEL 12 | $ | 1,067,594 |
| | COLLECTOR PARCEL 13 | $ | 982,764 |
| | COLLECTOR PARCEL 14 | $ | 1,692,686 |
| | COLLECTOR PARCEL 15 | $ | 901,593 |
| | COLLECTOR PARCEL 21 | $ | 62,984 |
| | COLLECTOR PARCEL 22 | $ | 810,310 |
| | COLLECTOR PARCEL 23 | $ | 1,528,822 |
| | COLLECTOR PARCEL 24 | $ | 166,266 |
| | COLLECTOR PARCEL 25 | $ | 1,215,851 |
| | COLLECTOR PARCEL 28 | $ | 1,327,639 |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Collector Infrastructure | COLLECTOR PARCEL 40 | $ | 1,286,092 |
| | COLLECTOR PARCEL 29 | $ | 778,224 |
| | COLLECTOR PARCEL 31 | $ | 337,939 |
| | COLLECTOR PARCEL 32 | $ | 1,249,997 |
| | COLLECTOR PARCEL 36 | $ | 644,302 |
| | COLLECTOR PARCEL 34 | $ | 3,154,555 |
| | COLLECTOR PARCEL 42 | $ | 832,874 |
| | COLLECTOR PARCEL 45 | $ | 417,809 |
| | COLLECTOR PARCEL 33 | $ | 2,020,413 |
| | COLLECTOR PARCEL 38 | $ | 381,735 |
| | COLLECTOR PARCEL 49 | $ | 572,236 |
| | COLLECTOR PARCEL 43 | $ | 930,849 |
| | COLLECTOR PARCEL 51 | $ | 209,250 |
| | COLLECTOR PARCEL 47 | $ | 139,151 |
| | **SUBTOTAL** | **$** | **33,220,395** |
| Local Infrastructure | Local Street, Water and Wastewater - Parcel 1 | $ | 7,822,825 |
| | Local Street, Water and Wastewater - Parcel 2 | $ | 4,293,643 |
| | Local Street, Water and Wastewater - Parcel 3 | $ | 4,922,740 |
| | Local Street, Water and Wastewater - Parcel 4 | $ | 4,732,607 |
| | Local Street, Water and Wastewater - Parcel 5 | $ | 3,322,778 |
| | Local Street, Water and Wastewater - Parcel 6 | $ | 3,447,929 |
| | Local Street, Water and Wastewater - Parcel 7 | $ | 2,349,933 |
| | Local Street, Water and Wastewater - Parcel 8A | $ | 1,329,806 |
| | Local Street, Water and Wastewater - Parcel 8B | $ | 1,546,796 |
| | Local Street, Water and Wastewater - Parcel 17 | $ | 2,264,810 |
| | Local Street, Water and Wastewater - Parcel 52 | $ | 4,580,357 |
| | Local Street, Water and Wastewater - Parcel 9 | $ | 3,695,634 |
| | Local Street, Water and Wastewater - Parcel 20 | $ | 2,012,483 |
| | Local Street, Water and Wastewater - Parcel 10 | $ | 3,478,513 |
| | Local Street, Water and Wastewater - Parcel 11 | $ | - |
| | Local Street, Water and Wastewater - Parcel 12 | $ | 5,182,249 |
| | Local Street, Water and Wastewater - Parcel 16 | $ | 2,405,092 |
| | Local Street, Water and Wastewater - Parcel 39 | $ | 537,103 |
| | Local Street, Water and Wastewater - Parcel 13 | $ | 1,887,795 |
| | Local Street, Water and Wastewater - Parcel 14 | $ | 4,669,986 |
| | Local Street, Water and Wastewater - Parcel 15 | $ | 1,290,930 |
| | Local Street, Water and Wastewater - Parcel 18 | $ | 1,739,593 |
| | Local Street, Water and Wastewater - Parcel 19 | $ | - |
| | Local Street, Water and Wastewater - Parcel 21 | $ | 6,439,711 |
| | Local Street, Water and Wastewater - Parcel 22 | $ | 4,111,132 |
| | Local Street, Water and Wastewater - Parcel 23 | $ | 3,136,769 |
| | Local Street, Water and Wastewater - Parcel 24 | $ | 2,470,601 |
| | Local Street, Water and Wastewater - Parcel 25 | $ | 1,315,147 |
| | Local Street, Water and Wastewater - Parcel 26 | $ | 1,701,375 |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

## Appendix B
## Authorized Improvements

| | PROJECT NAME | | TOTAL COST |
|---|---|---|---|
| Local Infrastructure | Local Street, Water and Wastewater - Parcel 27 | $ | 1,482,690 |
| | Local Street, Water and Wastewater - Parcel 28 | $ | 1,249,499 |
| | Local Street, Water and Wastewater - Parcel 40 | $ | 54,684 |
| | Local Street, Water and Wastewater - Parcel 29 | $ | 3,206,742 |
| | Local Street, Water and Wastewater - Parcel 30 | $ | 2,538,956 |
| | Local Street, Water and Wastewater - Parcel 31 | $ | 4,517,387 |
| | Local Street, Water and Wastewater - Parcel 32 | $ | 1,572,723 |
| | Local Street, Water and Wastewater - Parcel 36 | $ | 936,207 |
| | Local Street, Water and Wastewater - Parcel 41 | $ | 644,825 |
| | Local Street, Water and Wastewater - Parcel 53 | $ | 928,819 |
| | Local Street, Water and Wastewater - Parcel 34 | $ | 6,226,264 |
| | Local Street, Water and Wastewater - Parcel 42 | $ | - |
| | Local Street, Water and Wastewater - Parcel 45 | $ | - |
| | Local Street, Water and Wastewater - Parcel 33 | $ | 2,279,784 |
| | Local Street, Water and Wastewater - Parcel 37 | $ | 1,441,426 |
| | Local Street, Water and Wastewater - Parcel 38 | $ | 6,711,451 |
| | Local Street, Water and Wastewater - Parcel 49 | $ | - |
| | Local Street, Water and Wastewater - Parcel 43 | $ | - |
| | Local Street, Water and Wastewater - Parcel 44 | $ | - |
| | Local Street, Water and Wastewater - Parcel 46 | $ | - |
| | Local Street, Water and Wastewater - Parcel 35 | $ | 798,046 |
| | Local Street, Water and Wastewater - Parcel 48 | $ | - |
| | Local Street, Water and Wastewater - Parcel 50 | $ | 5,022,826 |
| | Local Street, Water and Wastewater - Parcel 55 | $ | 3,374,310 |
| | Local Street, Water and Wastewater - Parcel 51 | $ | 989,234 |
| | Local Street, Water and Wastewater - Parcel 54 | $ | - |
| | Local Street, Water and Wastewater - Parcel 56 | $ | 3,882,815 |
| | Local Street, Water and Wastewater - Parcel 57 | $ | 1,120,213 |
| | Local Street, Water and Wastewater - Parcel 47 | $ | - |
| | SUBTOTAL | $ | 135,667,238 |
| | TOTAL | $ | **268,273,036** |

Note: Lines shaded grey indicate Master PID Bond Authorized Improvements.

**Exhibit "D"**

BOND CHART

| Improvement | $ (millions) | CRA | Bond/Invest or Capital | End Construction | Reimbursement Date from City |
|---|---|---|---|---|---|
| Water Line 1 | $7.8 | W | Subordinate Master PID Bonds | 5/31/13 | ½ Oct. 31, 2015<br>½ Oct. 31, 2016 |
| Water Line 2 | $4.8 | W | Subordinate Master PID Bonds | 6/28/12 | ½ Oct. 31, 2015<br>½ Oct. 31, 2016 |
| WWTP | $6.2 | W/W | Subordinate Master PID Bonds | 9/30/13 | 3/1/2015 |
| W/W Interceptor | $2.9 | W/W | Subordinate Master PID Bonds | Ph.1 – 4/30/13<br>Ph. 2 – 3/31/14<br>Ph. 3 – 9/30/14<br>Ph. 4 – 9/30/14 | 3/1/2015<br>3/1/2016<br>3/1/2016<br>3/1/2016 |
| W/W Soft Costs | $1.8 | W | Investor Capital | N/A | 8/1/2012 |
| Braker | $4.0 | County | Investor Capital/ Senior Master PID Bonds | Ph.1 – 6/28/13<br>Ph. 2 – 6/28/13<br>Ph. 3 – 9/30/14<br>Ph. 4 – 11/30/15 | Monthly Draws |
| Indirect Costs | | N/A | Investor Capital | N/A | N/A |
| Landscaping/ Entry Monumentation | PID Bond Overage, if any | N/A | Senior Master PID Bonds | N/A | N/A |

**Exhibit "E"**

FORM OF CERTIFICATION FOR PAYMENT

[See attached]

FORM OF CERTIFICATION FOR PAYMENT
**(Design – Whisper Valley)**

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP (**"Construction Manager"**) hereby requests payment for the percentage of design costs completed (the **"Design Costs"**) described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Whisper Valley Public Improvement District Financing Agreement between Construction Manager and the City of Austin, Texas (the **"City"**), dated as of _____ (the **"Finance Agreement"**). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

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

2. The design work described in Attachment A has been completed in the percentages stated therein.

3. The true and correct Design Costs for which payment is requested is set forth in Attachment A.

4. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed design work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.

5. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Design Costs for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO

FORM OF CERTIFICATION FOR PAYMENT

Date : _____

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

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

Its: General Partner

By: _____
Douglas H. Gilliland, Manager

APPROVAL BY THE CITY

The Design described in Attachment A has been reviewed, verified and approved by the [Director of Public Works of the City] or [Director of Austin Water Utility]. Payment of the Design Costs are hereby approved.

Date: _____

**CITY OF AUSTIN, TEXAS**

By: _____
[Director of _____]

ATTACHMENT A

| Description of Design Work | Percentage of Design Work Completed under this Certification for Payment | Design Costs | Total Percentage of Design Work Completed |
|---|---|---|---|

ATTACHMENT B

[attached – bills paid affidavit]

ATTACHMENT C

[attached – receipts]

FORM OF CERTIFICATION FOR PAYMENT
**(Construction – Whisper Valley)**

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP ("**Construction Manager**") hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the "**Draw Actual Costs**"). Capitalized undefined terms shall have the meanings ascribed thereto in the Whisper Valley Public Improvement District Financing Agreement between Construction Manager and the City of Austin, Texas (the "**City**"), dated as of _____ (the "**Finance Agreement**"). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

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

2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A.

3. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.

4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO

FORM OF CERTIFICATION FOR PAYMENT

Date :_____

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

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

Its: General Partner

By: _____
Douglas H. Gilliland, Manager

JOINDER OF PROJECT ENGINEER

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

_____

Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the [Director of Public Works of the City] or [Director of Austin Water Utility]. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

**CITY OF AUSTIN, TEXAS**

By: _____
[Director of _____]

ATTACHMENT A

| Segment | Description of Work Completed under this Certification for Payment | Draw Actual Costs |
|---|---|---|

ATTACHMENT B

[bills paid affidavit – attached]

ATTACHMENT C

[receipts – attached]

# 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. 20111103-12) (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: _____
Marc Ott, City Manager

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared, by Marc Ott, City Manager of the City of Austin, a Texas municipal corporation, 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 that municipal corporation.

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

(SEAL)

_____
Notary Public, State of Texas

**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 (Approx. 174.04 acres) | 806424 | $4,053,264.32 |
| Parcel 2 (Approx. 60.38 acres) | 806425 | $1,406,089.60 |
| Parcel 3 (Approx. 188.44 acres) | 806426 | $4,388,559.92 |
| Parcel 4 (Approx. 106.72 acres) | 806427 | $2,485,477.33 |
| Parcel 5 (Approx. 66.71 acres) | 806428 | $1,553,580.54 |
| Parcel 6 (Approx. 197.41 acres) | 806429 | $4,597,604.40 |
| Parcel 7 (Approx. 166.25 acres) | 806430 | $3,871,747.76 |
| Parcel 8 (Approx. 131.12 acres) | 806431 | $3,053,688.91 |
| Parcel 9 (Approx. 153.60 acres) | 806432 | $3,577,278.25 |
| Parcel 10 (Approx. 214.60 acres) | 201773 | $4,997,877.06 |

**EXHIBIT B to LANDOWNER AGREEMENT**
**Assessment Ordinance**

[See Attached]

# ORDINANCE NO. 20111103-012

**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:**

Shirley A. Gentry
City Clerk

Karen M. Kennard
City Attorney

# EXHIBIT A

# SERVICE AND ASSESSMENT PLAN

## 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. 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:

> Actual Costs (as defined in the Service and Assessment Plan) associated with the PID Bonds shall be allocated to the Assessed Parcels on the basis of the modified area method and such method of allocation will result in the imposition of equal shares of the Actual Costs on Assessed Parcels similarly benefited. The modified area method is applied by spreading the entire assessment across all Assessed Parcels within the District based on their ratio of the total assessable area within the District. Upon subsequent divisions of any Assessed Parcel, the assessment applicable to it is then apportioned based on the ratio of the areas of the newly created parcels. For residential parcels, when final residential building sites are platted, assessments are apportioned proportionately among each residential parcel based on its relative size. The result of this approach is that each final residential parcel with the same density has the same assessment, and residential parcels with similar densities will have similar 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.

_____ Date: _____
Purchaser

_____ Date: _____
Purchaser

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 (Approx. 174.04 acres) | 806424 | $4,053,264.32 |
| Parcel 2 (Approx. 60.38 acres) | 806425 | $1,406,089.60 |
| Parcel 3 (Approx. 188.44 acres) | 806426 | $4,388,559.92 |
| Parcel 4 (Approx. 106.72 acres) | 806427 | $2,485,477.33 |
| Parcel 5 (Approx. 66.71 acres) | 806428 | $1,553,580.54 |
| Parcel 6 (Approx. 197.41 acres) | 806429 | $4,597,604.40 |
| Parcel 7 (Approx. 166.25 acres) | 806430 | $3,871,747.76 |
| Parcel 8 (Approx. 131.12 acres) | 806431 | $3,053,688.91 |
| Parcel 9 (Approx. 153.60 acres) | 806432 | $3,577,278.25 |
| Parcel 10 (Approx. 214.60 acres) | 201773 | $4,997,877.06 |

**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

# SECURITY, ASSIGNMENT AND PLEDGE AGREEMENT

# SECURITY, ASSIGNMENT AND PLEDGE AGREEMENT

THIS SECURITY, ASSIGNMENT AND PLEDGE AGREEMENT, dated as of November 1, 2011, is entered into by and between the City of Austin, Texas (the "City"), a municipal corporation, acting by and through its duly authorized representative, Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees, the "Whisper Valley Developer"), Club Deal 116 Indian Hills TX, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees, the "Indian Hills Developer" and, together with the Whisper Valley Developer, the "Developers"), and Deutsche Bank National Trust Company, as trustee and secured party (together with its successors, the "Trustee" or "Secured Party"). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Exhibit A.

WHEREAS, in connection with the acquisition, construction and improvement of certain Public Improvements (as defined herein) for the benefit of Whisper Valley Public Improvement District and Indian Hills Public Improvement District (collectively, the "Districts"), the City and the Developers have entered into the Development, Financing and Reimbursement Agreements (as defined herein); and

WHEREAS, pursuant to the Development, Financing and Reimbursement Agreements the Developers have agreed to acquire, construct and improve certain Public Improvements to serve property located in the Districts and, pursuant to the Reimbursement Agreements (as defined herein), the City has agreed to pay and/or reimburse the Developers for certain costs ("Costs") incurred or to be incurred in connection with the acquisition, construction and improvement of certain Public Improvements to serve property located in the Districts; and

WHEREAS, to provide financing for such Costs through the levy of assessments against property within the Districts, as more specifically provided for in the Assessment Plans (as defined herein), the City has adopted the Assessment Ordinances (as defined herein) and the Assessment Plans, and the City has levied assessments ("Special Assessments") on property located within the Districts pursuant to the Assessment Ordinances; and

WHEREAS, to obtain the necessary funds to pay Costs, the City has agreed to issue (i) Senior Bonds (as defined herein), which will be secured by and payable from revenues derived from the Special Assessments, and (ii) Reimbursement Bonds (as defined herein), which will be secured by and payable from revenues derived from the Special Assessments, subject to the use of such revenues to pay the Senior Bonds, and the Pledged Collateral (as defined herein); and

WHEREAS, in consideration of the City's agreement to issue the Senior Bonds and the Reimbursement Bonds, the Developers will assign and pledge the Pledged Collateral to secure payment of the Reimbursement Bonds; and

WHEREAS, the City desires (i) to consent and agree to the assignment and pledge of the Developers' Reimbursement Rights, as herein provided, and (ii) to subordinate any rights or interests that the City may have in respect of the Developers' Reimbursement Rights to the rights and interests of the owners of Reimbursement Bonds, as herein provided; and

WHEREAS, the Trustee has agreed to accept the assignment and pledge of the Developers' Reimbursement Rights, as herein provided;

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

Section 1. Creation of Security Interest; Allocation of Revenues.

(a) In order to secure the prompt and unconditional payment of the Reimbursement Bonds and the performance of the obligations, covenants, agreements and undertakings of the Developers herein described, the Developers hereby grant to Secured Party a security interest in, and mortgage, assign, transfer, deliver, pledge, set over and confirm to Secured Party, the Collateral described in Section 3 of this Agreement.

(b) Amounts paid by the City to the Developers pursuant to the Reimbursement Agreements for Costs related to Covered Improvements shall be received and allocated by the Secured Party, as Trustee for each respective Trust Estate established to secure the Reimbursement Bonds, and deposited to the appropriate account(s) of each Trust Estate established to secure Reimbursement Bonds, in the following proportions:

(i) one hundred percent (100%) of each payment received from the City pursuant to the Wastewater Cost Reimbursement Agreement (as defined herein) shall be received by the Trustee for the Whisper Valley Reimbursement Bonds and deposited in such accounts as shall be established in accordance with the Whisper Valley Reimbursement Bond Indenture.

(ii) one hundred percent (100%) of each payment received from the City pursuant to the Water Cost Reimbursement Agreement (as defined herein) for Costs associated with Waterline 2 shall be received by the Trustee for the Whisper Valley Reimbursement Bonds and deposited in such accounts as shall be established in accordance with the Whisper Valley Reimbursement Bond Indenture.

(iii) seventy-five percent (75%) of each payment received from the City pursuant to the Water Cost Reimbursement Agreement for Costs associated with Waterline 1 shall be received by the Trustee for the Whisper Valley Reimbursement Bonds and deposited in such accounts as shall be established in accordance with the Whisper Valley Reimbursement Bond Indenture.

(iv) twenty-five percent (25%) of each payment received from the City pursuant to the Water Cost Reimbursement Agreement for Costs associated with Waterline 1 shall be received by the Trustee for the Indian Hills Reimbursement Bonds and deposited in such accounts as shall be established in accordance with the Indian Hills Reimbursement Bond Indenture.

(c) The parties acknowledge and agree that (i) only the portion of Reimbursement Revenues derived from Costs associated with the Covered Improvements are assigned

and pledged hereunder to secure the Reimbursement Bonds, (ii) a portion of the reimbursement payments (the "Unencumbered Portion") payable under the Water Cost Reimbursement Agreement for certain other Public Improvements will be paid to the Developers as reimbursement for Costs associated with such other Public Improvements contemplated by the Water Cost Reimbursement Agreement, (iii) the Unencumbered Portion is not subject to this Agreement and (iv) the Pledged Collateral consists of Reimbursement Revenues in the maximum amount of $11,500,000 pursuant to the Wastewater Cost Reimbursement Agreement, $10,577,832 pursuant to the Water Cost Reimbursement Agreement for Waterline 1 and $4,762,339 pursuant to the Water Cost Reimbursement Agreement for Waterline 2.

(d) With respect to Reimbursement Revenues payable and paid in respect of Costs associated with Waterline 1, the parties further acknowledge and agree that, based on the allocation of Reimbursement Revenues pursuant to clauses (iii) and (iv) of subsection (b), the portion of the Pledged Collateral securing the Whisper Valley Reimbursement Bonds for Costs associated with Waterline 1 shall consist of Reimbursement Revenues in the maximum amount of $7,918,374 (being 75% of the maximum amount of Reimbursement Revenues described in subsection (c) for Costs associated with Waterline 1) and the portion of the Pledged Collateral securing the Indian Hills Reimbursement Bonds for Costs associated with Waterline 1 shall consist of Reimbursement Revenues in the maximum amount of $2,639,458 (being 25% of the maximum amount of Reimbursement Revenues described in subsection (c) for Costs associated with Waterline 1).

(e) To facilitate the identification of the portions of Reimbursement Revenues that constitute Pledged Collateral hereunder, each Certificate for Payment shall contain (i) a notation identifying the amount of bond proceeds being requested to pay Costs of Covered Improvement(s), including the identity of each Covered Improvement and the amount requested therefor, and (ii) an acknowledgment of the City Representative to the effect that, upon the Trustee's disbursement of bond proceeds pursuant to such Certificate for Payment, Reimbursement Revenues in an amount equal to the amount described in clause (i) shall constitute Pledged Collateral (which shall be payable directly to the Trustee in accordance with Section 8 of this Agreement). In addition, the City shall maintain a record of all amounts paid and payable pursuant to the Reimbursement Agreements, including a record of amounts that constitute Pledged Collateral hereunder and the total amount of Costs paid in respect of each Covered Improvement.

Section 2. Secured Indebtedness. This Agreement is made to secure and enforce the payment and performance of all debts and all indebtedness now or hereafter existing and evidenced by the Reimbursement Bonds and all indebtedness and obligations of the City now or hereafter secured by or arising or existing pursuant to or under any Reimbursement Bond Indenture. All such indebtedness, together with any pecuniary obligations of the Developers hereunder, are hereinafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby.".

Section 3. Collateral; Financing Statements.

(a) The Collateral of this Security Agreement (the "Collateral") consists of all of the Developers' rights, title and interests, now owned or hereafter acquired, in and to:

(i) the Pledged Collateral;

(ii) all liens, security interests, guaranties and assignments accruing or to accrue to the benefit of Developers in respect of the Developers' Reimbursement Rights;

(iii) all additions and accessions to the foregoing and all proceeds thereof. The inclusion of proceeds in this Agreement does not authorize the Developers to sell, dispose of or otherwise use the Collateral in any manner not specifically authorized by this Agreement.

(b) Contemporaneously with the execution and delivery hereof, the Developers have filed Uniform Commercial Code financing statements evidencing the rights and interests of Secured Party in the Collateral, including the assignment and pledge of the Collateral to the Secured Party to secure the Reimbursement Bonds.

Section 4. Payment Obligations of City and Developers.

(a) The City and the Developers shall pay to Secured Party immediately on demand all expenses and expenditures, including attorneys' fees and other legal expenses, incurred or paid by Secured Party in exercising or protecting its interests, rights and remedies under this Agreement.

(b) The obligations of the City under this Agreement shall constitute a current expense of the City payable solely from and to the extent of revenues of the City's water and wastewater system appropriated for such payment. The City's obligations hereunder shall not constitute a debt or general obligation of the City, and no obligation hereunder shall be payable from or secured by the levy of an ad valorem tax.

Section 5. Warranties and Representations of Developers. Developers warrant and represent that:

(a) The location of Developers are the addresses set forth in Exhibit B hereto.

(b) Developers have not executed any prior assignment with respect to the Collateral, nor have Developers performed any act or executed any other instrument which might prevent Secured Party from enjoying the benefits of this Agreement or which would limit Secured Party in such enjoyment.

(c) Neither the execution, delivery and performance of this Agreement nor the assignment and pledge of the Pledged Collateral does or will contravene or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect and applicable to Developers or result in a

breach of or constitute a default (with or without the giving of notice or the lapse of time or both) under any indenture or any loan, credit or other agreement to which either Developer is a party or by which either Developer or any of Developers' property may be bound or affected.

Section 6. Covenants and Agreements of Developers. Developers covenant and agree that:

(a) Each Developer will notify Secured Party in writing thirty (30) days prior to any addition, change and/or discontinuance of (i) its address as shown in this Agreement; (ii) such Developer's location as set forth in this Agreement; (iii) Developers' name; or (iv) such Developer's corporate structure.

(b) The Collateral will not be sold, endorsed, transferred or disposed of by a Developer or be subject to any unpaid charge, including rent and taxes, or any subsequent interest of a third person, created or suffered by a Developer, voluntarily or involuntarily.

(c) Each Developer will:

(i) at such Developer's expense, give, execute, deliver, file and/or record and re-record (and pay the cost of filing, recording or re-recording in all public offices deemed necessary by Secured Party) any notice, statement, financing statement, continuation statement, instrument, document, agreement or other paper that may be necessary or desirable, or that Secured Party may reasonably request, in order to create, continue, preserve, perfect or validate the security interest created hereby (free and clear of all liens, claims and rights of third parties whatsoever) or to enable Secured Party to exercise and enforce its rights hereunder with respect to such security interest, or otherwise further to effect the purposes of this Agreement;

(ii) at such Developer's expense, do, make, procure, execute, endorse and deliver all acts, things, writings and assurances as Secured Party may at any time reasonably require to protect, assure or enforce its interests, rights and remedies created by, provided in or emanating from this Agreement;

(iii) keep and stamp or otherwise mark any and all instruments, documents and chattel paper and its individual books and records relating to any of the Collateral in such a manner as Secured Party may reasonably require;

(iv) keep, at its location set forth herein, all such Developer's books and records pertaining to the Collateral, which books and records will be of such character as will enable Secured Party or its representatives to determine at any time the status of the Collateral, and permit representatives of Secured Party at any time to inspect, audit and make abstracts from and copies of its books and records and all other papers in the possession of such Developer pertaining to any of the Collateral; and

(v) furnish to Secured Party such information concerning the Collateral as Secured Party may from time to time reasonably request.

(d) Each Developer will pay prior to delinquency all taxes, charges, liens and assessments against the Collateral, and upon such Developer's failure to do so, Secured Party at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Such payment shall become a part of the indebtedness secured hereby and shall be paid by such Developer to Secured Party immediately and without demand.

(e) Should a default or an event of default occur with respect to the Collateral (after expiration of any applicable notice and cure period), such Developer, at its sole expense, will promptly undertake to effect the collection thereof, either through legal proceedings or otherwise; but should such Developer fail, upon the occurrence of a default or an event of default with respect to such Collateral, to promptly undertake and effect collection thereof, as hereinabove provided, such failure shall, at the election of Secured Party, constitute an Event of Default hereunder, and Secured Party shall be authorized to proceed with enforcement hereof; or Secured Party may, at its election, bring and prosecute legal proceedings to enforce collection of such Collateral without first proceeding with the enforcement of this instrument, and any and all expenses incurred by Secured Party in connection with any of such legal proceedings shall become a part of the indebtedness secured hereby, and the affected Developer hereby agrees to repay same to Secured Party on demand.

(f) Each Developer will (except as Secured Party may otherwise consent in writing) forthwith upon receipt transmit and deliver to Secured Party, in the form received, all cash, checks, drafts, chattel paper and other instruments or writings for the payment of money (properly endorsed, where required, so that such items may be collected by Secured Party) which may be received by such Developer at any time as proceeds of the Pledged Collateral. Except as Secured Party may otherwise consent in writing, any such items which may be received by a Developer will not be commingled with any other of its funds or property, but will be held separate and apart from its own funds and property and upon express trust for Secured Party until delivery is made to Secured Party. Each Developer will comply with the terms and conditions of any consent given by Secured Party pursuant to the provisions of this paragraph.

(g) Each Developer will: (i) perform or cause to be performed all of the terms, covenants and conditions on its part to be performed under the Reimbursement Agreements and each Related Instrument; (ii) promptly notify Secured Party in writing of (x) the occurrence of any default or event of default (of which such Developer has knowledge) in the observance or performance of any of the terms, covenants and conditions to be performed under the Reimbursement Agreements, and (y) the giving of any notice of any such default or event of default; and (iii) whenever required by Secured Party, at the sole cost and expense of such Developer, take all such action as may be so requested to enforce or secure the performance of any term, covenant or condition of the Reimbursement Agreements and to exercise any right of such Developer under the Reimbursement Agreements.

(h) Without affirmation from the Rating Agency (taking into account the proposed modification or amendment of a Reimbursement Agreement or other change affecting the Pledged Collateral) that the then current rating assigned to the Bonds will not be lowered as a result of the proposed modification or amendment of a Reimbursement Agreement or other change affecting the Pledged Collateral, the Developers and the City will not:

(i) reduce any payment related to the Pledged Collateral required to be made to a Developer under a Reimbursement Agreement,

(ii) revise, alter, modify, amend or change a Reimbursement Agreement in any way, either orally or in writing, in a manner that affects the timing or amount of any payment of the Pledged Collateral, or

(iii) waive any condition in respect of, or release any person with respect to, a Reimbursement Agreement or the performance or observance of any obligation or condition thereunder related to the Pledged Collateral, or

(iv) except as provided by Section 13(a), release any of the Pledged Collateral.

(i) If Secured Party consents to any amendment, renewal or modification of a Reimbursement Agreement, each Developer that is a party to such Reimbursement Agreement shall immediately execute and deliver any instrument given in the amendment, renewal or modification of such Reimbursement Agreement and shall immediately provide such instrument to Secured Party.

Section 7. No Assumption by Secured Party. It is expressly agreed that, anything herein contained to the contrary notwithstanding, each Developer and the City shall remain liable under each Reimbursement Agreement to which it is a party to perform all of the obligations undertaken or assumed by it thereunder or in respect thereto, and Secured Party shall have no obligation or liability under a Reimbursement Agreement by reason of or arising out of this Agreement, nor shall Secured Party be required or obligated by reason of this Agreement in any manner to perform or fulfill any obligation of either Developer or the City under or pursuant to a Reimbursement Agreement or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it to which it may be entitled at any time or times.

Section 8. Assignment of Payments; Disposition of Payments.

(a) Each Developer hereby specifically authorizes and directs the City and any other person obligated on a Reimbursement Agreement to make payment of all amounts due and to become due to such Developer in respect of the Pledged Collateral directly to Secured Party; and, the City agrees to pay all amounts constituting Pledged Collateral to Secured Party (as such payments become due and payable pursuant to the Reimbursement Agreements).

(b) Each payment of Pledged Collateral received pursuant to a Reimbursement Agreement shall be (i) allocated by the Secured Party to the Trust Estate for the Reimbursement Bonds to which such payment relates, as provided by Section 1(b) of this

Agreement, and (ii) deposited in the appropriate account(s) of the Trust Estate established to secure the Reimbursement Bonds to which such payment (or portion thereof) relates.

Section 9. Events of Default. A Developer shall be in default under this Agreement upon the happening of any of the following events or conditions (hereinafter called "Event of Default"):

(a) such Developer shall (i) interfere with or obstruct the City's or the Trustee's payment of any indebtedness secured hereby as and when due or (ii) claim, withhold or divert Reimbursement Revenues in a manner that interferes with or obstructs the Trustee's receipt of Pledged Collateral, as contemplated by this Agreement, and such activity shall continue for five (5) days after written notice thereof; or

(b) any representation or warranty made in or in connection with the execution and delivery of this Agreement, a Reimbursement Agreement to which it is a party or any other instrument now or hereafter securing any of the indebtedness secured hereby or in any certificate furnished in connection with such indebtedness shall prove to have been incorrect, false or misleading in any material respect on the date as of which made; or

(c) default shall occur in the punctual and complete performance of any covenant of such Developer or any other person contained in a Reimbursement Agreement to which it is a party or this Agreement and such default shall continue beyond any applicable notice and cure period applicable thereto.

Except as otherwise provided herein, a default by one Developer shall not constitute or create a default by the other Developer.

Section 10. Remedies. Upon the occurrence of an Event of Default and at any time thereafter:

(a) Secured Party may, without notice except as hereinafter provided, sell the Pledged Collateral or any part thereof at public or private sale for cash, upon credit, or for future delivery, and at such price or prices as Secured Party may deem best, and Secured Party may be the purchaser of any and all of the Pledged Collateral so sold and may apply upon the purchase price therefor any indebtedness secured hereby or any part thereof in such manner and order as Secured Party may in its sole discretion elect and thereafter hold the same absolutely free from any right or claim of whatsoever kind. Secured Party is authorized at any such sale, if Secured Party deems it advisable so to do, to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Pledged Collateral for their own account for investment and not with a view to the distribution or resale of any of the Pledged Collateral. Upon any such sale Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which the defaulting Developer has or may have under any rule of law or statute now existing or hereafter adopted. Secured Party shall give the defaulting Developer ten (10) days written notice mailed to the defaulting

Developer at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice, in case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale the Pledged Collateral may be sold in one lot as an entirety or in separate parcels or participating interests as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Pledged Collateral on credit or for future delivery, the Pledged Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Pledged Collateral so sold, and in case of any such failure, such Pledged Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner.

(b) Secured Party shall have all rights of a secured party after default under the Texas Uniform Commercial Code, and in conjunction therewith, in addition to or in substitution for those rights and remedies and the rights and remedies provided for herein:

(i) written notice mailed to a Developer as provided herein ten (10) days prior to the date of public sale of the Pledged Collateral or prior to the date after which private sale of the Pledged Collateral will be made shall constitute reasonable notice; and

(ii) it shall not be necessary that the Pledged Collateral or any part thereof be present at the location of such sale; and

(iii) the proceeds of disposition of the Pledged Collateral shall be applied to the secured indebtedness (which shall include the reasonable expenses of retaking, holding, preparing for sale, selling, and the like and all attorneys' fees and legal expenses incurred by Secured Party), in whatever order of preference which Secured Party in its sole discretion may choose; and

(iv) the sale by Secured Party of less than the whole of the Pledged Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Pledged Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Pledged Collateral shall be less than the aggregate of the indebtedness secured hereby, this Agreement and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Pledged Collateral just as though no sale had been made; and

(v) in the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(vi) any all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness or as to the occurrence of any default, or as to Secured Party having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, as to any other act or thing having been duly done by Secured Party shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(vii) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party.

Section 11. City's Consent to Assignment. To secure payment of the Reimbursement Bonds, the City consents and agrees to the assignment of the Pledged Collateral and agrees that the Pledged Collateral shall be pledged to secured payment of the Reimbursement Bonds, as provided herein and in the Reimbursement Bond Indentures. The City agrees that any right or claim that City may have to the Pledged Collateral shall be subject to the prior right and claim of Secured Party. The City further agrees to follow any directions of Secured Party regarding payments as set forth in Section 8 of this Agreement.

Section 12. Secured Party's Acceptance of Assignment. Secured Party accepts Developers' assignment and pledge of the Pledged Collateral and Secured Party agrees to perform its duties, as herein provided.

Section 13. Additional Agreements. Developers and Secured Party further agree and covenant as follows:

(a) If all of the secured indebtedness shall be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Agreement are kept and performed, then all rights under this Agreement shall terminate and the Pledged Collateral shall become wholly clear of the security interest evidenced hereby, and such security interest shall be released by Secured Party in due form at Developers' cost.

(b) Secured Party may waive any default without waiving any other prior or subsequent default. Secured Party may remedy any default without waiving the default remedied. The failure by Secured Party to exercise any right, power or remedy upon any default shall not be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Secured Party of any right, power or remedy hereunder shall exhaust the same or shall

preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by a Developer therefrom shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on a Developer in any case shall of itself entitle a Developer to any other or further notice of demand in similar or other circumstances. Acceptance by Secured Party of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default or Event of Default hereunder.

(c) Secured Party may at any time and from time to time in writing (i) waive compliance by a Developer with any covenant herein made by Developer to the extent and in the manner specified in such writing; (ii) consent to a Developer doing any act which hereunder such Developer is prohibited from doing, or consent to a Developer failing to do any act which hereunder such Developer is required to do, to the extent and in the manner specified in such writing; (iii) release any part of the Pledged Collateral, or any interest therein from the security interest of this Agreement or (iv) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness. No such act shall in any way impair the rights of Secured Party hereunder or impair or release the liability of any party except to the extent specifically agreed to by Secured Party in such writing.

(d) All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Secured Party, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

(e) Secured Party may resort to any security given by this Agreement or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Secured Party in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits or security interests evidenced or created by this Agreement.

(f) A carbon, photographic or other reproduction of this Agreement or of any financing statement relating to this Agreement shall be sufficient as a financing statement.

(g) In the event the ownership of the Collateral or any part thereof becomes vested in a person other than a Developer, Secured Party may, without notice to such Developer, deal with such person with reference to this Agreement and to the indebtedness secured

hereby in the same manner as with such Developer, without in any way vitiating or discharging such Developers' liability hereunder or for the payment of the indebtedness secured hereby.

(h) If any part of the secured indebtedness cannot be lawfully secured by this Agreement or if any part of the Pledged Collateral cannot be lawfully subject to the security interest hereof to the full extent of such indebtedness, then all payments made on said indebtedness shall be applied first in discharge of that portion thereof which is not secured by this Agreement.

(i) All notices, requests, consents, demands and other communications required or permitted hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery or by deposit in the United States mail, registered or certified, postage prepaid, at the addresses shown in this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt.

(j) This Agreement shall be binding upon the Developers, and the successors, receivers, trustees and assigns of the Developers, including all successors in interest of the Developers in and to all or any part of the Pledged Collateral, and shall inure to the benefit of Secured Party and the successors and assigns of Secured Party.

(k) Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(l) Secured Party may, by any employee or employees it designates, execute, sign, endorse, transfer or deliver in the name of the Developers, notes, checks, drafts or other instruments for the payment of money and receipts or any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Agreement.

(m) Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Pledged Collateral in its possession if it takes such action for that purpose as Developer requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by a Developer shall be deemed a failure to exercise reasonable care in the custody or preservation of such Pledged Collateral.

(n) Secured Party shall not be responsible in any way for any depreciation in the value of the Pledged Collateral, nor shall any duty or responsibility whatsoever rest upon

Secured Party to take any steps to preserve rights against prior parties or to enforce collection of the Pledged Collateral by legal proceedings or otherwise, the sole duty of Secured Party, its successors and assigns, being to receive collections, remittances and payments on such Pledged Collateral as and when made and received by Secured Party, and, at Secured Party's option, to apply the amount or amounts so received, after deduction of any collection costs incurred, as payment upon any of the indebtedness secured hereby or to hold the same for the account and order of the Developers.

(o) The pronouns used in this Agreement are in the masculine and neuter genders, but shall be construed as feminine, masculine or neuter as occasion may require. "Secured Party" and "Developer" as used in this Agreement include the successors, receivers, trustees and assigns of those parties.

(p) The section headings appearing in this Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Agreement. Terms used in this Agreement which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined.

(q) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

[*The remainder of this page is intentionally left blank.*]

EXECUTED to be effective as of the date first above written.

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

By: _____
Name: _____
Title: _____

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

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

By: _____
Douglas H. Gilliland, Manager

CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas

By: CD116 Indian Hills TX, LLC, a Delaware limited liability company qualified to do business in Texas
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee and Secured Party

By: _____
Authorized Officer

Attest:

_____
Authorized Officer

EXHIBIT A

"Assessment Ordinances" mean the ordinances adopted by the City Council of the City approving each Assessment Plan and levying Special Assessments, as required by the Financing Agreements.

"Assessment Plans" mean the Whisper Valley Public Improvement District Service and Assessment Plan and the Indian Hills Public Improvement District Service and Assessment Plan (as such plans may be amended from time to time), adopted by the City Council of the City pursuant to separate Assessment Ordinances for the purpose of assessing costs against property located within the boundaries of the Districts, as required by the Financing Agreement.

"Bond Indentures" mean, collectively, the Reimbursement Bond Indentures and the Senior Bond Indentures.

"Certificate for Payment" shall have the meaning assigned in the Bond Indentures.

"City Representative" shall have the meaning assigned in the Bond Indentures.

"Covered Improvements" means the following Public Improvements: (i) all Public Improvements contemplated by the Wastewater Cost Reimbursement Agreement and (ii) Waterline 1 and Waterline 2.

"Development Agreement" means the Whisper Valley and Indian Hills Annexation and Development Agreement by and among the City, the Whisper Valley Developer and the Indian Hills Developer.

"Development, Financing and Reimbursement Agreements" means, collectively, the Development Agreement, the Financing Agreements and the Reimbursement Agreements.

"Districts" means, collectively, the Indian Hills Public Improvement District and the Whisper Valley Public Improvement District.

"Financing Agreements" means, collectively, the Indian Hills Financing Agreement and the Whisper Valley Financing Agreement.

"Indian Hills Developer" means Club Deal 116 Indian Hills TX, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees).

"Indian Hills Financing Agreement" means the Indian Hills Public Improvement District Financing Agreement between the City and the Indian Hills Developer dated as of November 1, 2011, which provides for the appointment, levying and collection of Assessments, the construction of the Improvement Projects, the maintenance of the Improvement Projects, the issuance of bonds and other matters related thereto.

"Indian Hills Reimbursement Bonds" means the City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Indian Hills Public Improvement District) and such other bonds as may issued from time to time pursuant to the Indian Hills Reimbursement Bond

Indenture and secured by a pledge of the Indian Hills Reimbursement Revenues (or any portion thereof) in accordance with the Indian Hills Reimbursement Bond Indenture.

"Indian Hills Reimbursement Bond Indenture" means the Indenture of Trust dated as of November 1, 2011 between the City and the Trustee providing for the issuance, security and other terms of the Indian Hills Reimbursement Bonds.

"Indian Hills Reimbursement Revenues" means payments received by the Trustee pursuant to Section 1(b) of this Agreement for deposit in account(s) of the Trust Estate established to secure the Indian Hills Reimbursement Bonds.

"Pledged Collateral" means the reimbursement payments from the City pursuant to the Reimbursement Agreements for Costs related to the Covered Improvements, together with the Developers' respective rights to receive such payments.

"Public Improvements" means the improvements described in the Assessment Plan as such plan is amended and updated from time to time.

"Rating Agency" means Standard & Poor's Ratings Service, a Standard & Poor's Financial Services LLC business, or such other nationally recognized statistical rating organization as may be designated by the City to provide a rating on the Bonds.

"Reimbursement Agreements" means, collectively, the Water Cost Reimbursement Agreement and the Wastewater Cost Reimbursement Agreement.

"Reimbursement Bonds" means, collectively, the City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District), City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Indian Hills Public Improvement District) and such other bonds as may issued from time to time pursuant to the Reimbursement Bond Indentures and secured by a pledge of the Reimbursement Revenues (or any portion thereof) in accordance with the Reimbursement Bond Indentures.

"Reimbursement Bond Indentures" means, collectively, the Indian Hills Reimbursement Bond Indenture and the Whisper Valley Reimbursement Bond Indenture.

"Reimbursement Revenues" means, collectively, the Indian Hills Reimbursement Revenues and the Whisper Valley Reimbursement Revenues.

"Senior Bonds" means, collectively, the City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Indian Hills Public Improvement District), and the City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District).

"Senior Bond Indentures" mean the Indentures of Trust dated as of November 1, 2011 between the City and the Trustee providing for the issuance, security and other terms of the Senior Bonds.

"Wastewater Cost Reimbursement Agreement" means that certain Cost Reimbursement Agreement dated June 21, 2007 by and between the Whisper Valley Developer and the City, as

amended by that certain (i) First Amendment to the Cost Reimbursement Agreement dated October 9, 2009, (ii) Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated November 1, 2010 by and between Developer, IH Developer and the City, and (iii) Third Amendment to the Cost Reimbursement Agreement dated of even date herewith, and otherwise as further amended from time to time.

"Water Cost Reimbursement Agreement" means that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated November 1, 2010 by and between the Whisper Valley Developer, the Indian Hills Developer and the City, as amended by that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated of even date herewith, and otherwise as further amended from time to time.

"Waterline 1" shall have the meaning ascribed thereto in the Water Cost Reimbursement Agreement.

"Waterline 2" shall have the meaning ascribed thereto in the Water Cost Reimbursement Agreement.

"Whisper Valley Developer" means Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (including its successors, assigns, or transferees).

"Whisper Valley Financing Agreement" means the Whisper Valley Public Improvement District Financing Agreement between the City and the Whisper Valley Developer dated as of November 1, 2011, which provides for the appointment, levying and collection of Assessments, the construction of the Improvement Projects, the maintenance of the Improvement Projects, the issuance of bonds and other matters related thereto.

"Whisper Valley Reimbursement Bonds" means the City of Austin, Texas Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) and such other bonds as may issued from time to time pursuant to the Whisper Valley Reimbursement Bond Indenture and secured by a pledge of the Whisper Valley Reimbursement Revenues (or any portion thereof) in accordance with the Whisper Valley Reimbursement Bond Indenture.

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"Whisper Valley Reimbursement Revenues" means payments received by the Trustee pursuant to Section 1(b) of this Agreement for deposit in account(s) of the Trust Estate established to secure the Whisper Valley Reimbursement Bonds.

EXHIBIT B

Location of Developers

1. Club Deal 120 Whisper Valley, Limited Partnership

2. Club Deal 116 Indian Hills TX, Limited Partnership

Secured Party to take any steps to preserve rights against prior parties or to enforce collection of the Pledged Collateral by legal proceedings or otherwise, the sole duty of Secured Party, its successors and assigns, being to receive collections, remittances and payments on such Pledged Collateral as and when made and received by Secured Party, and, at Secured Party's option, to apply the amount or amounts so received, after deduction of any collection costs incurred, as payment upon any of the indebtedness secured hereby or to hold the same for the account and order of the Developers.

(o) The pronouns used in this Agreement are in the masculine and neuter genders, but shall be construed as feminine, masculine or neuter as occasion may require. "Secured Party" and "Developer" as used in this Agreement include the successors, receivers, trustees and assigns of those parties.

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(q) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

[*The remainder of this page is intentionally left blank.*]

EXECUTED to be effective as of the date first above written.

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

By: _____
Name: _____
Title: _____

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

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

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

By: _____
Douglas H. Gilliland, Manager

CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas

By: CD116 Indian Hills TX, LLC, a Delaware limited liability company qualified to do business in Texas
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee and Secured Party

By: _____
Authorized Officer

Attest:

_____
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amended by that certain (i) First Amendment to the Cost Reimbursement Agreement dated October 9, 2009, (ii) Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated November 1, 2010 by and between Developer, IH Developer and the City, and (iii) Third Amendment to the Cost Reimbursement Agreement dated of even date herewith, and otherwise as further amended from time to time.

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"Waterline 1" shall have the meaning ascribed thereto in the Water Cost Reimbursement Agreement.

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"Whisper Valley Reimbursement Revenues" means payments received by the Trustee pursuant to Section 1(b) of this Agreement for deposit in account(s) of the Trust Estate established to secure the Whisper Valley Reimbursement Bonds.

EXHIBIT B

Location of Developers

1. Club Deal 120 Whisper Valley, Limited Partnership

2. Club Deal 116 Indian Hills TX, Limited Partnership

EXHIBIT F

FIRST AMENDMENT TO THE RESTATED COST REIMBURSEMENT AGREEMENT (WATER) AND SECOND AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT (WASTEWATER) – INDIAN HILLS AND WHISPER VALLEY SUBDIVISIONS

| | | |
|---|---|---|
| | § | |
| STATE OF TEXAS | § | FIRST AMENDMENT TO THE |
| | § | "RESTATED COST REIMBURSEMENT |
| | § | AGREEMENT (WATER) AND SECOND |
| COUNTY OF TRAVIS | § | AMENDMENT TO THE COST |
| | § | REIMBURSEMENT AGREEMENT |
| | § | (WASTEWATER)– INDIAN HILLS |
| | § | AND WHISPER VALLEY SUBDIVISIONS" |

**THIS FIRST AMENDMENT TO THE *"RESTATED COST REIMBURSEMENT AGREEMENT (WATER) AND SECOND AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT (WASTEWATER) – INDIAN HILLS AND WHISPER VALLEY SUBDIVISIONS"*** (**"Amendment"**) is made and entered into by and between the City of Austin, a Texas municipal corporation (**"City"**) and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (**"WV Developer"**) and Club Deal 116 Indian Hills Tx, Limited Partnership, a Delaware limited partnership (**"IH Developer"**) (collectively or individually as applicable, the WV Developer and IH Developer shall be referred to herein as the **"Developer"**). For purposes herein, **"Party"** means the City or the Developer, as the case may be.

## I.
## RECITALS:

A. On August 26, 2010, the City Council approved the creation of the Public Improvement Districts (**"PIDs"**) for the Whisper Valley project (**"WV Project"**) and the Indian Hills project (**"IH Project"**). Each PID was created to provide the Developer a means to fund infrastructure improvements to the respective property. The City and the Developer entered into that certain *Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivision* (**"Agreement"**) on November 1, 2010.

B. The Agreement contemplated that (i) certain PID bonds would be issued to fund, among other things, water infrastructure and other costs associated with the development of the Projects and (ii) a portion of the PID bond proceeds or PID assessments will be used to reimburse the City for funds paid to the Developer for (a) construction of certain water infrastructure more particularly described in the Agreement, (b) certain soft costs such as design engineering for the construction of certain water and wastewater infrastructure more particularly described in the Agreement, and (c) the CCN Release Fee.

C. The PID bond structure has changed since the execution of the Agreement and therefore, the Agreement, as currently written, does not accurately describe the types of PID bonds that are anticipated to be issued or how the City will be reimbursed by the Developer for funds paid to the Developer. The new bond structure includes (i) Senior Master PID Bonds and Subordinate Master PID Bonds, which are to be issued up front to fund Line 1 and Line 2 (as well as other improvements); and (ii) Phased PID Bonds, which will be issued as phases of the WV Project and the IH Project are developed in the future, and which will fund internal improvements in the given phases and may refund all or a portion of the Master PID Bonds. A more definite description of the bond structure is contained in the PID Finance Agreements (as defined below).

D. On even date herewith, the City and WV Developer have executed that certain Whisper Valley Public Improvement District Finance Agreement which, among other things, describes the types of bonds that the City intends to issue for the WV Project. On even date herewith, the City and IH Developer have executed that certain Indian Hills Public Improvement District Finance Agreement which, among other things, describes the types of bonds that the City intends to issue for the IH Project. The Whisper Valley Public Improvement District Finance Agreement and the Indian Hills Public Improvement Finance Agreement shall collectively be referred to herein as the "**PID Finance Agreements**".

E. The Parties desire to amend the Agreement to, among other things, reflect changes necessitated by the updated PID bond structure.

**NOW THEREFORE**, in consideration of the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

## II.
## AGREEMENT

A. Section 2.03(a) of the Agreement is hereby deleted in its entirety and replaced with the following, to add a specific date for initiating the design of certain infrastructure:

"(a) The Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 1 and Line 2 no later than July 1, 2012 (the "**Approval Date**"). The Developer will complete the design of Line 1 and Line 2, in accordance with City policies and procedures, within 12 months of the Approval Date."

B. Section 2.03(c) of the Agreement is hereby deleted in its entirety and replaced with the following, to add 100 LUEs to the original 1,000 and 1,500 LUE amounts:

"(c) The WV Developer and the City shall mutually agree on whether to construct Line 5 or Line 6. Such decision shall be made prior to the first 1,100 LUEs being provided retail water service in the WV Property by the City from Line 2 ("**Decision Date**"). If Line 5 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for the Alternative Line within 30 days after the Decision Date. The WV Developer will complete the design of the Alternative Line in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for the Alternative Line. If Line 6 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6A within 30 days after the Decision Date. The WV Developer will complete the design of Line 6A in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6A. Once 1,600 LUEs are being provided retail water service by the City to the WV Property ("**Line 6B Trigger**"), the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6B within 30 days after the Line 6B Trigger. The WV Developer will complete the design of Line 6B in

accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6B. Otherwise, if a joint decision by the City and the WV Developer has not been made by the Decision Date, then the WV Developer shall proceed with the design and construction of Line 5 unless a Party has issued a Default Notice related to the Decision Date."

C. The following is hereby added as a new Section 2.13(d) to the Agreement, to address changes to posting Fiscal Security:

"(d) Notwithstanding anything to the contrary contained herein, with respect to components of the Water Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds, if there are funds in a segregated account within the Project Fund sufficient to pay for the completion of a given component, as reasonably determined by the City, it is intended that Developer not be required to post Fiscal Security for the applicable component of the Water Project. For example, if a separate account is formed within the Subordinate Master PID Bond Project Fund for Line 2 (which fully funds the reimbursement eligible cost of Line 2), then Fiscal Security will not be required for Line 2.

The estimated costs for the components of the Water Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds shall be determined prior to placement of funds in a segregated account within the Project Fund for the applicable component. If at any time (including if any shortfall becomes evident after construction bids are received) it is reasonably determined by the City that (i) there are insufficient funds contained in a segregated account within the Project Fund to complete the construction of the given component for which the segregated account was established, and (ii) there are no additional bond proceeds designated for the Project Fund available to cover the shortfall between the funds contained in the segregated account for applicable component and the bidded cost to complete the construction of the applicable component, then the Developer agrees to post Fiscal Security, in accordance with the Agreement and City policies, for such shortfall amount prior to the City's deadline. Until such time that adequate Fiscal Security is posted, the City may withhold, at its discretion, any advances of any bond proceeds to the Developer by the Trustee (as defined in the PID Finance Agreements)."

D. Section 2.15 of the Agreement is hereby deleted in its entirety and replaced with the following, to provide consistency between default provisions, and to revise the City's construction options:

"If the Developer fails or refuses to timely complete the construction of a given component of the Water Project by the required completion date (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), as provided in Section 7.02, the City shall provide the Developer with written notice of said default and provide thirty (30) days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, the Developer shall have such additional time as is reasonably necessary to cure as long as the Developer commences the cure within 30 days and diligently pursues the same to completion. If the Developer has still not completed the

applicable component of the Water Project after the notice and cure periods provided for above, the City shall either:

i. Assume the construction management role and direct the completion of the applicable component of the Water Project so that it qualifies for the agreed upon Reimbursement Amount specified herein, in which event the Reimbursement Amount will be paid by the City to the Trustee (as defined in the PID Finance Agreements) and will be used by the Trustee to repay the applicable PID Bonds; or

ii. Assume the construction management role and direct the closeout of the applicable component of the Water Project so that such component qualifies for a partial reimbursement payment pursuant to Section 4.04(b) (for the work completed) in which event the partial reimbursement amount payment will be funded to the Trustee and together with unspent applicable PID Bond proceeds in the Project Fund (as defined in the PID Finance Agreements), will be used to fund the repayment of the applicable PID Bonds.

In the event the City assumes the construction management role for a given component of the Water Project (as provided above) then the Developer agrees as follows:

i. the City may draw down funds from the Project Fund to complete the component of the Water Project in question,

ii. all construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such given component of the Water Project by the Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Water Project, will automatically without further action by the Developer become the property of the City,

iii. the Developer will automatically forgo and release any claims or rights to those items listed in (ii) above, and

iv. the City may draw down on any Fiscal Security posted to complete such component of the Water Project."

E. The second paragraph of Section 4.01(a) of the Agreement is hereby deleted in its entirety to remove a requirement related to the platting of LUEs and the remainder of Section 4.01(a) remains in place, so that Section 4.01(a) is as follows:

"(a) If the City's final acceptance of Line 1 or Line 2 occurs prior to October 1, 2015, then the City and the Developer agree that the Reimbursement Amount for that particular line shall be paid in the following manner: 50% of the Reimbursement Amount for that particular line shall be paid no later than October 31, 2015, and the remaining amount no later than October 31, 2016. If the City's final acceptance of Line 1, Line 2, or the Alternative Line occurs after October 1, 2015, then the City and the Developer agree that 50% of the Reimbursement Amount for that particular line shall be paid within 90 days after the City's final acceptance of such infrastructure and the remainder of

the Reimbursement Amount for that line shall be paid one year after the date of the City's final acceptance of that line. The City agrees that such acceptance shall not be unreasonably withheld, conditioned, or delayed."

F. Sections 4.02 (a)-(f) of the Agreement are hereby deleted in their entirety and replaced with the following, to replace one of the mechanisms to repay the City:

"4.02 City Repaid by Developer.

(a) The WV Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the WW Supplemental Costs, CCN Release Fee, the WV Developer's share (i.e. 75%) of the non-oversizing portion of Line 1, and the non-oversizing portion of Line 2 (the "**WV First Repayment Amount**" ). The WV Developer shall also repay the City that portion of the Maximum Reimbursement Amount that is associated with the non-oversizing portion of the Alternative Line ("**Alternative Line Repayment Amount**"). The IH Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the IH Developer's share (i.e. 25%) of the non-oversizing portion of Line 1 (the "**IH Repayment Amount**"). In other words, the terms "**WV First Repayment Amount**", "**Alternative Line Repayment Amount**", and "**IH Repayment Amount**", as applicable, shall mean the maximum amount that would be repaid to the City by the applicable Developer assuming the Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount.

The Developer agrees that once the exact dollar amounts (the "**Agreed Upon Amounts**") for the IH Repayment Amount, Alternative Line Repayment Amount, and each component of the WV First Repayment Amount, are finalized by the Developer and approved by the City, such Agreed Upon Amounts shall be repaid to the City in accordance with the terms of this Agreement. The Developer shall have no further right to modify the Agreed Upon Amounts and shall not obtain or use bond proceeds to fund any costs exceeding the Agreed Upon Amounts. The Developer (as provided for in this paragraph) shall use its own funding source to pay for any costs exceeding the Agreed Upon Amounts.

The City will not be repaid for any portion of the Water Project that the City elected to oversize. The Developer shall repay the City through funds available to the Developer in addition to those obtained through the sale of property as discussed in Section 4.02.

(b) Definitions.

i. The "**SSA**" (sales set aside) shall be an amount equal to:

1. the net proceeds received by the Developer on a Third Party Sale multiplied by fifteen percent (15%) ("**WV Bond Share**" for those Senior Master PID Bonds related to the WV Project, "**IH Bond Share**" for those Senior Master PID Bonds related to the IH Project, and collectively as the "**Bond Share**") until the Senior Master PID Bonds for the applicable Project are no longer outstanding. When those Senior Master PID Bonds are

no longer outstanding, any remaining amount of funds in the Bond Share shall be transferred to the City Share funds for repayments to the City; plus

2. the net proceeds received by the Developer on a Third Party Sale multiplied by twenty percent (20%) ("**WV City Share**" for those Third Party Sales related to the WV Project (which includes the CCN Release Fee), and "**IH City Share**" for those Third Party Sales related to the IH Project, and collectively as the "**City Share**") until the WV First Repayment Amount and IH Repayment Amount for the Developer has been paid in full to the City or the Maximum Outstanding Balance, as defined herein (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) for the Developer is held in escrow by the Escrow Agent (as hereinafter defined) for the benefit of the City. Thereafter, the City Share shall be reduced to fifteen percent (15%) of the net proceeds received by the Developer on a Third Party Sale until the Alternative Line Repayment Amount is paid in full to the City or the WV Maximum Outstanding Balance related to the Alternative Line is held in escrow.

For example, initially, the SSA shall be equal to thirty five percent (35%). Once the Senior Master PID Bonds are no longer outstanding, then the SSA shall be reduced to 20%. At such time as the WV First Repayment Amount and the IH Repayment Amount are fully paid to the City or the Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) is held in escrow, then the SSA shall equal 15%.

ii. "**Third Party Sale**" shall mean the initial sale, conveyance, or transfer of any portion of the Property by the Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of Developer which does not involve the use of any amount of cash ("**Affiliate**"), or (B) a joint venture arrangement of which the Developer (or an Affiliate of Developer) is a part and which does not involve the use of any amount of cash ("**Joint Venture**"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the Property to (C) a Designated Successor or Assign (as defined in Section 7.16(c) below) shall not be considered a Third Party Sale. If the Developer has transferred or conveyed all of the remaining portion of the Property to an Affiliate or Joint Venture, then the term "Developer" in this Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the Developer shall not be required to place the SSA into escrow for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed into escrow on any subsequent Third Party Sale of the Property that was subject to such transfer or conveyance.

iii. The "**Current Outstanding Balance**" shall mean an amount equal to the then-current IH Repayment Amount, WV First Repayment Amount,

and Alternative Line Repayment Amount due by the Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount repaid to the City by the Developer as of such date. The "**IH Current Outstanding Balance**" shall mean an amount equal to the then-current IH Repayment Amount due by the IH Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the IH Developer's share of Line 1 delivered by the City to the Trustee as of the then-current date) less the portion of the IH Repayment Amount repaid to the City by the IH Developer as of such date. The "**WV Current Outstanding Balance**" shall mean an amount equal to the then-current WV First Repayment Amount and Alternative Line Repayment Amount due by the WV Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the WW Supplemental Costs, CCN Release Fee, the WV Developer's share of Line 1, Line 2, and Alternative Line delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the WV First Repayment Amount and Alternative Line Repayment Amount previously repaid to the City by the WV Developer as of such date.

iv. The "**Maximum Outstanding Balance**" shall mean an amount equal to the difference between (1) the IH Repayment Amount, WV First Repayment Amount, and the Alternative Line Repayment Amount, and (2) the portion of the IH Repayment Amount, WV Repayment Amount, and Alternative Line Repayment Amount that has been repaid to the City by the Developer as of the then-current date. The "**IH Maximum Outstanding Balance**" shall mean an amount equal to the difference between the IH Repayment Amount and the portion of the IH Repayment Amount that has been repaid to the City by the IH Developer as of the then-current date. The "**WV Maximum Outstanding Balance**" shall mean an amount equal to the difference between the WV First Repayment Amount and Alternative Line Repayment Amount, and the portion of the WV First Repayment Amount and Alternative Line Repayment Amount that has been repaid to the City by the WV Developer as of the then-current date.

v. "**Property Owner Delinquency**" shall mean the occurrence of the following events: (1) an owner of any portion of the Property fails to timely pay an assessment payment; and (2) the funds then held in the Cashflow Delinquency Reserve Account (defined in the Indenture) are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term "**Indenture**" shall mean any trust indenture by and between the City and the Trustee (as defined in the PID Finance Agreement) relating to the Senior Master PID Bonds, as it may be amended from time to time.

(c) Upon a Third Party Sale of any portion of the IH Property, the IH Developer shall place the SSA related to the IH Project into escrow accounts with Heritage Title Company of Austin, Inc. ("**Escrow Agent**"). All or a portion

of the SSA placed into escrow by the IH Developer shall be used to fund the IH Repayment Amount, or otherwise be disbursed as set forth in Exhibit F, attached hereto. Timing and the amount of payments to the City will be such that repayment to the City of the IH Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement (a copy of which is attached hereto as Exhibit F).

(d) Upon a Third Party Sale of any portion of the WV Property, the WV Developer shall place the SSA related to the WV Project into escrow accounts with the Escrow Agent. All or a portion of the SSA placed into escrow by the WV Developer shall be used to fund the WV First Repayment Amount and Alternative Line Repayment Amount, or otherwise be disbursed as set forth in Exhibit F, attached hereto. Timing and the amount of payments to the City will be such that repayment to the City of the WV First Repayment Amount and Alternative Line Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement (a copy of which is attached hereto as Exhibit F).

(e) The City Share shall be disbursed to the City to pay the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. If the IH City Share is greater than the IH Current Outstanding Balance, then the IH City Share shall be held in escrow and shall be disbursed to the City as set forth in Exhibit F. If the WV City Share is greater than the WV Current Outstanding Balance, then the WV City Share shall be held in escrow and shall be disbursed to the City as set forth in Exhibit F.

The IH Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the IH Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period (as defined in the Escrow Agreement) then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the IH City Share and the IH Bond Share in total are sufficient to fully repay the IH Maximum Outstanding Balance to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a Holding Period is then in effect, the IH Bond Share shall be disbursed as set forth in the Escrow Agreement attached hereto as Exhibit F.

The WV Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the WV Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the WV Maximum

Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect, or (iv) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the portion of the WV Maximum Outstanding Balance related to the Alternative Line to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a Holding Period is then in effect, the WV Bond Share shall be disbursed as set forth in the Escrow Agreement attached hereto as Exhibit F."

G. Section 4.03 of the Agreement shall be deleted in its entirety and replaced with the following, to redefine the schedule for the guaranty of repayment to the City:

"4.03 Guaranty of Repayment. The WV Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the WV First Repayment Amount and the Alternative Line Repayment Amount.

The IH Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the IH Repayment Amount.

For each reimbursement amount paid by the City to the Trustee for WW Supplemental Costs, CCN Release Fee, Line 1, Line 2, and the Alternative Line, the applicable Developer will ensure the repayment to the City of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount (up to the Reimbursement Amount paid by City) as follows (**"Repayment Deadline"**):

| | | |
|---|---|---|
| **October 31, 2020** | WW Supplemental Costs and CCN Release Fee | WV Developer |
| **October 31, 2025** | IH Developer's share of Line 1<br>WV Developer's share of Line 1 | IH Developer<br>WV Developer |
| **October 31, 2030** | Line 2 | WV Developer |
| **5 years after City's acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B)** | Alternative Line | WV Developer |

If a Developer does not timely repay the City in accordance with the schedule set forth above, then the City may at its sole discretion, until such default is cured:

i. (x) refuse to issue any more PID Bonds for the applicable Developer's Property, and/or (y) cause the Trustee to hold the proceeds of any bonds for that Developer until such time as the applicable Developer pays such past due amounts to the City; provided, however, if the City elects, at its option, to issue more PID

Bonds, the City agrees to release the portion of the proceeds of such PID Bonds necessary to pay off the Senior Master PID Bonds encumbering the portion of the Developer's Property for which the PID Bonds are issued; and

ii. charge interest at a rate of 4% per annum on such past due amount, beginning on the date such amount was due and ending on the date the past-due amount is paid. Such remedy is in addition to any other remedies allowed in this Agreement.

The City shall be held harmless by the Developer, and its Designated Successor or Assign, from any penalties or fees associated with the City's actions stated in this Section.

If the Developer submits a Request (defined below) for the issuance of PID Bonds for an applicable line or component of the Water Project, CCN Release Fee, or the WW Supplemental Costs, and the City does not subsequently issue the PID Bonds, then the requesting Developer's Repayment Deadline for that portion of the Water Project, CCN Release Fee, or WW Supplemental Costs shall be extended for the same period of time until the date that City approves such Request. However, the Developer shall not be released of the obligation to guarantee to repay the City for the other portions of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. For purposes herein, a "**Request**" shall mean a written request made by the Developer to the City Manager and City's Chief Financial Officer, accompanied by reasonable documentation required by the City. The City will use reasonable and good faith efforts to sell bonds after receiving a valid Request from the Developer, provided that the Developer can reasonably demonstrate to the City and its financial advisors via a Feasibility and Market Study Analysis (or such other similar documentation) that there is sufficient security for the PID Bonds, based upon the bond market existing at the time of such proposed sale. PID Bonds are not required to be issued under this Section unless

i. the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied;

ii. the City receives at the time of issuance an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State and Federal law have been satisfied; and

iii. the Attorney General of the State of Texas has approved the issuance of the PID Bonds as required by the PID Act.

Any Request not meeting the above requirements shall not be considered valid and will not affect the Developer's Repayment Deadline, or IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount."

H. Section 4.04 of the Agreement is renumbered Section 4.04(a) and a new 4.04(b) is added as follows, to further define the City's obligations if the Developer defaults on the project:

"(a) Within 30 days of final acceptance of the applicable line of the Water Project or component of the WW Project by the City, the Developer will submit a written report to the Director of the total costs incurred by the Developer for such applicable line of the Water Project or the WW Supplemental Costs that includes supporting information documenting all amounts paid for which reimbursement is claimed and verifying that the Developer has complied with all other requirements of this Agreement in the construction of the applicable line of the Water Project or the WW Supplemental Costs related to the WW Project. The City will use the report to determine and verify the amount of actual costs eligible to be reimbursed to the Trustee under this Agreement. If the Director determines the Developer's report to be incomplete or otherwise insufficient to determine the actual costs eligible for reimbursement, the Director will notify the Developer of the particulars in which its documentation is deficient within 30 days of the date the Developer submits its report of project costs and the Developer will timely provide all additional information reasonably required by the Director to determine the actual costs eligible for reimbursement. If the Director does not notify the Developer in writing of any deficiencies within such 30-day period, the Developer's report shall be deemed approved by the Director.

(b) Notwithstanding anything to the contrary, the Parties hereby acknowledge that if *the City elects to assume the construction management role and elects to direct* the close out of the unpaid expenses for the uncompleted components of the Water Project secured by the applicable PID Bonds as provided in Section 2.15 above, then the City will pay the Reimbursement Amount to the Trustee as contemplated in Section 2.15 above, despite the fact that the given component of the Water Project has not been completed and finally accepted by the City. The Reimbursement Amount so paid will be calculated on the total PID-eligible costs incurred by the Developer to date for the applicable component of the Water Project as determined by the Director based on contracts, invoices, bills paid affidavit, City reimbursement eligible costs, and related materials submitted to the City by the Developer (and accepted by the City) throughout the construction process. It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Water Project that were eligible to be reimbursed by the City shall be deemed paid for purposes of this Agreement and shall reduce the Maximum Reimbursement Amount on a dollar per dollar basis."

I. The following is hereby added as a new Section 4.06 to the Agreement, to replace one of the mechanisms to assist in the repayment of the City:

"4.06 Restriction on Property.

(a) Transfer Restriction Document. Promptly after final approval of this Agreement by the City Council and prior to any sale or transfer of property, the WV Developer and the IH Developer (or their Designated Successors or Assigns) will each record, in the Official Public Records of Travis County, Texas, a document in the form attached hereto as Exhibit E (the "**Transfer Restriction Document**") on their respective properties. The Transfer Restriction Document shall serve to provide notice to the future landowners and the Escrow Agent that upon a Third Party Sale of all or any portion of the Property, the WV Developer is required to place in escrow the WV City Share and WV Bond Share and the IH Developer is required to place in

escrow the IH City Share and IH Bond Share from any such Third Party Sale or such sale transaction or transfer of land cannot be completed.

(b) Release of Transfer Restriction Document. Upon the request of the applicable Developer, the City shall record a release or partial release, as applicable, of the Transfer Restriction Document upon the occurrence of any of the following:

i. upon completion of a Third Party Sale, the City shall release the portion of the Property which was the subject of such sale;

ii. after the Senior Master PID Bonds related to the IH Project are no longer outstanding, upon IH Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the IH Maximum Outstanding Balance, the IH Developer may release all remaining IH Property (as further described in Exhibit F);

iii. after the Senior Master PID Bonds related to the WV Project are no longer outstanding, upon WV Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the WV Maximum Outstanding Balance, the WV Developer may release all remaining WV Property (as further described in Exhibit F);

iv. upon IH Developer (or its Designated Successor or Assign) fully repaying the City the IH Repayment Amount, and the City concurring that the City has been fully repaid, the IH Developer may release all remaining IH Property (as further described in Exhibit F); and

v. upon WV Developer (or its Designated Successor or Assign) fully repaying the City the WV Repayment Amount and the Alternative Line Repayment Amount, and the City concurring that the City has been fully repaid, the WV Developer may release all remaining WV Property (as further described in Exhibit F).

(c) Escrow Agent; Escrow of SSA. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the SSA. The instructions to the Escrow Agent are attached as Exhibit F. Escrow Agent shall promptly disburse the SSA as described in Exhibit F; provided however, that the amount released to the City for the IH Repayment Amount shall not exceed the IH Current Outstanding Balance and the amount released to the City for the WV First Repayment Amount and Alternative Line Repayment Amount shall not exceed the WV Current Outstanding Balance.

Any fees charged by the Escrow Agent shall be paid by the Developer or its Designated Successor or Assign, or out of the WV Developer's gross proceeds from a Third Party Sale (excluding the SSA).

The amount of IH City Share that exceeds the IH Current Outstanding Balance shall be held in an interest bearing escrow account by the Escrow Agent until such time as additional reimbursement funds related to the IH Project are delivered by the City to the Trustee, at which time the funds held in escrow shall be released as set forth in Exhibit F (but in no event shall any amounts be released to the City in excess of the IH Current Outstanding Balance). The amount of WV City Share that exceeds the WV Current Outstanding Balance shall be held in an interest bearing escrow account by the Escrow Agent until such time as additional reimbursement funds related to the WV Project are delivered by the City to the Trustee, at which time the funds held in escrow shall be released as set forth in Exhibit F (but in no event shall any amounts be released to the City in excess of the WV Current Outstanding Balance). For example, if the WV Developer has delivered $10 million dollars toward the WV City Share to the Escrow Agent and the City has only delivered to the Trustee $2 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would only release $2 million dollars to the City and $8 million dollars would remain in that escrow. If later the City delivers to the Trustee $5 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would release $5 million dollars to the City and retain the remaining $3 million dollars in that escrow account until the City delivers additional monies to the Trustee.

During any such time as the Escrow Agent is holding funds related to the IH Project in an amount equal to the IH Maximum Outstanding Balance, then the IH Developer (or its Designated Successor or Assign) shall have no obligation to escrow any further portion of any net sales proceeds from a Third Party Sale that would result in the escrowed funds related to the IH Project exceeding the IH Maximum Outstanding Balance. If at any time such escrowed funds are less than the IH Maximum Outstanding Balance (due to disbursement of the IH Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the IH Developer (or its Designated Successor or Assign) shall resume escrowing the IH City Share and IH Bond Share until the funds held in escrow equal the IH Maximum Outstanding Balance.

During any such time as the Escrow Agent is holding funds related to the WV Project in an amount equal to the WV Maximum Outstanding Balance, then the WV Developer (or its Designated Successor or Assign) shall have no obligation to escrow any further portion of any net sales proceeds from a Third Party Sale that would result in the escrowed funds related to the WV Project exceeding the WV Maximum Outstanding Balance. If at any time such escrowed funds are less than the WV Maximum Outstanding Balance (due to disbursement of the WV Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the WV Developer (or its Designated Successor or Assign) shall resume escrowing the WV City Share and WV Bond Share until the funds held in escrow equal the WV Maximum Outstanding Balance.

Notwithstanding anything to the contrary, the Bond Share shall only be released to the Trustee to offset a Property Owner Delinquency if the Delinquency Reserve Account is insufficient to cure such Property Owner

Delinquency. Under no circumstances shall the City Share be used for any other purpose than to repay the City pursuant to this Agreement.

The Escrow Agent will provide annual reports to the Director that identify, for each Developer, the total costs reimbursed by the City to the Trustee and the amount repaid to date to the City by the Developer. Such annual reports shall be submitted by September 30th of each year to the Director."

J. The first paragraph of Section 7.02 is hereby deleted from Section 7.02 and replaced with the following, to eliminate one remedy for a default by the Developer:

"If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the nondefaulting Party will give written notice to the other Party (**"Default Notice"**), specifying the event of Default and extending the defaulting Party 30 days to cure the Default (unless a longer period is provided elsewhere in this Agreement) or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the nondefaulting Party may initiate any remedies available to the nondefaulting Party due to an alleged Default. The nondefaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in nonbinding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the nondefaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default."

K. The following is hereby added as a new paragraph to the end of Section 7.02, to add a remedy for a default by the Developer:

"In addition to the other remedies of the City, the Developer's obligation to repay the City on the schedule set forth in Section 4.03 above shall be secured by a lien on the applicable Developer's Property that has not been sold to a third-party for the unpaid amount due on a pro-rata basis per acre; provided, however, such lien shall attach only upon recordation of a notice thereof in the real property records of Travis County, Texas, which notice shall include the following information: the name of the lien claimant (the City); a description of the Developer's Property; a description of the amount of the lien claim at that time (i.e., applicable Current Outstanding Balance then due and payable); and a statement that the lien is claimed pursuant to the provisions of this Agreement (**"Lien Claim"**). The City acknowledges that any such Lien Claim shall be subordinate to the Senior Master PID Bonds. Notwithstanding the foregoing or anything to the contrary contained herein, if the Developer does not cure such default after the applicable notice and cure period set forth above, then the City shall give the Developer and holder of the Senior Master PID Bonds not less than fourteen (14) days written notice prior to filing any Lien Claim. The holder of the Senior Master PID Bonds may, but shall have no obligation to, cure such delinquency on or before the expiration of such 14-day period. Upon payment of the applicable Current Outstanding Balance or any portion thereof, the Lien Claim shall be released as to the applicable portion of the Property for which the Current

Outstanding Balance was paid. For example, if the WV Current Outstanding Balance equals $3,000,000, and there are 1,000 acres owned by the WV Developer at the time of such Lien Claim, then the lien amount would be applied to each acre in the amount of $3,000 per acre. If the WV Developer sells 150 acres and pays a total of $450,000 to the City ($3,000 per acre multiplied by 150 acres), then the City will release such Lien Claim from the 150 acre parcel and the Lien Claim of $2,550,000 would remain on the remainder of the Property then owned by the WV Developer. At such time as the WV Current Outstanding Balance is paid in full, then the Lien Claim is released on the remainder of the WV Property."

L. Section 7.16 (c) of the Agreement shall be deleted in its entirety and replaced with the following, to modify the assignment provisions of the Agreement:

"(c) The provisions of this Agreement concerning the water service commitment to be provided to the Property shall run with the land; provided however, the remaining provisions of this Agreement shall be the individual requirement of or benefit to (as the case may be) of the Developer and its Designated Successors and Assigns. For purposes herein "**Designated Successors and Assigns**" and "**Designated Successor or Assign**" shall mean an entity to which the Developer expressly assigns (in writing) all of its remaining rights and obligations contained in this Agreement pursuant to this Section 7.16. Upon any assignment to its Designated Successors and Assigns, the Developer may request the City to approve the release of the Developer from all of the rights and obligations set forth in this Agreement, such approval not to be unreasonably withheld, conditioned or delayed. Upon such approval by the City, the Developer shall no longer be liable for the remaining rights and obligations herein and the City shall look solely to the Designated Successors and Assigns for performance. Any sale of a portion of the Property and assignment of any right hereunder shall not be deemed a sale and assignment to a Designated Successor or Assign unless:

(i) the conveyance or transfer instrument effecting such sale and assignment is not a Third Party Sale and expressly states that the City has approved the Designated Successor or Assign in accordance with the parameters set forth in Section 7.16(b) for such sale and assignment;

(ii) the conveyance or transfer is for all WV Property then owned by WV Developer, if related to the WV Property; or all IH Property then owned by the IH Developer , if related to the IH Property; and

(iii) the Designated Successor or Assign assumes, in writing and without modification or hypothecation to the Agreement, all remaining rights and obligations of the Developer including, but not limited to, the repayment to the City of the applicable IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount within the Repayment Deadline."

## III.
## MISCELLEANOUS

A. **Agreement Provisions.** All other provisions of the Agreement are in full force and effect. In the event of conflict between this Amendment and any provision of the Agreement, this Amendment shall control.

B. **Effective Date.** This Amendment will be effective upon execution by all parties.

C. **Context and Defined Terms.** It is hereby acknowledged that the Agreement addresses funds that will be paid for both the WV Project and the IH Project. Each Project, however, will have its own PID Finance Agreement, its own set of Senior Master PID Bonds, its own set of Subordinate Master PID Bonds and its own set of Phased PID Bonds, etc. Therefore, anywhere in this Amendment where "PID Finance Agreements", "Subordinate Master PID Bonds", "Senior Master PID Bonds", "Master PID Bonds", "Phased PID Bonds", "Project Funds" or "Trustee" are referred to, it means the agreement, bonds, funds, trustee, etc., related to the IH Project or WV Project, as applicable. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

D. **Section 7.19.** Section 7.19 of the Agreement is hereby deleted in its entirety.

E. **Section 8.03.** Section 8.03 of the Agreement is hereby deleted in its entirety.

F. **Exhibit D.** Exhibit D of the Agreement is hereby deleted in its entirety.

G. **Exhibit E.** Exhibit E attached hereto is hereby made a part of the Agreement.

H. **Exhibit F.** Exhibit F attached hereto is hereby made a part of the Agreement.

**[Signature Pages to Follow]**

CITY OF AUSTIN:

By: _____
Rudy Garza
Assistant City Manager

Date: _____

**STATE OF TEXAS** )
)
**COUNTY OF TRAVIS** )

**THIS INSTRUMENT** was acknowledged before me on this ___ day of _____, 2011, by Rudy Garza, Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of that municipal corporation.

(SEAL)

_____
Notary Public, State of Texas

**[Signatures Continue on Next Page]**

CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas

By: CD116 Indian Hills Tx, LLC, a Delaware limited liability company
Its: General Partner

By:_____
Douglas H. Gilliland, Manager

**STATE OF TEXAS** )
)
**COUNTY OF TRAVIS** )

**THIS INSTRUMENT** was acknowledged before me on this ___ day of _____, 2011, by Douglas H. Gilliland, Manager of CD116 Indian Hills Tx, LLC, a Delaware limited liability company, general partner of Club Deal 116 Indian Hills TX, Limited Partnership, a Delaware limited partnership on behalf of that limited liability company and limited partnership.

(SEAL)

_____
Notary Public, State of Texas

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 TRAVIS** )

**THIS INSTRUMENT** was acknowledged before me on this ___ day of _____, 2011, by 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 on behalf of that limited liability company and limited partnership.

(SEAL)

_____
Notary Public, State of Texas

EXHIBIT E

Form of Transfer Restriction Document

[See attached]

**After recording, return to:**
Heritage Title Company of Austin
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff

# NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

| | | |
|---|---|---|
| STATE OF TEXAS | § | |
| | § | KNOW ALL MEN BY THESE PRESENTS: |
| COUNTY OF TRAVIS | § | |

THIS NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS (the "**Notice Requirement**") is entered into as of the ___ day of _____, 20__ (the "**Effective Date**") by **CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP**, a Delaware limited partnership (the "**WV Developer**"), for the consideration and purposes set forth herein.

W I T N E S S E T H:

WHEREAS, as of the Effective Date hereof, the WV Developer owns all of the real property described and/or depicted in Exhibit "1" attached hereto (the "**WV Property**");

WHEREAS, on or before the Effective Date, the WV Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, including that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended from time to time, the "**Restated Cost Reimbursement Agreement**"), by and among the City of Austin ("**City**"), the WV Developer, and Club Deal 116 Indian Hills Tx, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the WV Developer agreed to place certain restrictions on the WV Property to ensure that, upon certain sales of all or any portion of the WV Property, a certain percentage of the net proceeds of such sale would be placed into escrow and disbursed as set forth in the Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto; and

WHEREAS, the WV Developer desires to set forth certain notice requirements regarding the transfer of all or any portion of the WV Property to ensure compliance with the terms of the Restated Cost Reimbursement Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the WV Developer hereby agrees as follows:

1. Transfer of WV Property. In accordance with the terms of the Restated Cost Reimbursement Agreement, upon a Third Party Sale (as defined in the Restated Cost Reimbursement Agreement) of all or any portion of the WV Property, the WV Developer shall place a certain percentage of the net proceeds (the "**Escrowed Funds**") of such Third Party Sale into escrow with Heritage Title Company of Austin, Inc. (the "**Escrow Agent**"), and such sum shall be held or disbursed by Escrow Agent as set forth in such Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the Escrowed Funds.

2. Release of WV Property from Notice Requirement. The WV Developer (or its Designated Successor or Assign), upon approval by the City (as provided in the Restated Cost Reimbursement Agreement and Escrow Agreement attached thereto), shall have the right to release portions of the WV Property from this Notice Requirement and from the foregoing obligation to place the Escrowed Funds into escrow, in accordance with the terms set forth in the Restated Cost Reimbursement Agreement, by recording a written document describing the portion of the WV Property to be released herefrom.

3. Miscellaneous.

(a) Notice Requirement Runs With the Land; Binding Effect. This Notice Requirement shall run with the WV Property to the extent not released as set forth herein, and shall be binding on WV Developer and its Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement), and their respective successors and assigns.

(b) Amendment or Termination. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed and acknowledged by the WV Developer and the City and recorded in the Official Public Records of Travis County, Texas.

(c) Mortgages Subordinate to Notice Requirement. Any mortgage or deed of trust lien entered into on or after the date of this Notice Requirement which affects any portion of the WV Property shall at all times be subject and subordinate to the terms of this Notice Requirement and any person acquiring title by reason of foreclosure under any such mortgage or a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Notice Requirement.

(d) Notices.

(i) All notices given pursuant to this Notice Requirement shall be in writing and shall be given by personal service or United States mail (or United States express mail or other established express delivery service such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the applicable county in which the applicable portion of the WV Property is located. All notices to the WV Developer or Escrow Agent shall be sent to the appropriate party at the address set forth below:

| | |
|---|---|
| WV Developer: | Club Deal 120 Whisper Valley, Limited Partnership<br>c/o Douglas H. Gilliland<br>9285 Huntington Square<br>North Richland Hills, Texas 76182<br>Fax: 817-788-1670 |
| With a copy to: | Metcalfe Williams, LLP<br>301 Congress Avenue, Suite 1075<br>Austin, Texas 78701<br>Attn: Steven C. Metcalfe<br>Fax: 512-551-4943 |
| Escrow Agent: | Heritage Title Company of Austin, Inc.<br>401 Congress Avenue, Suite 1500<br>Austin, TX 78701<br>Attn: Nancy Grasshoff<br>Fax: 512-505-5024 |
| City: | City of Austin<br>PO Box 1088<br>Austin, Texas 78767<br>Attn: Director, Austin Water<br>Fax: (512) 370-3838 |
| With a copy to: | City of Austin<br>PO Box 1088<br>Austin, Texas 78767<br>Attn: Law Department<br>Fax: (512) 974-6490 |

(ii) All notices given pursuant to this Notice Requirement shall be deemed given upon receipt. For the purpose of this Notice Requirement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified in subparagraph (d)(i) above (as shown

on the return receipt), (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (d)(i) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

(e) Attorney's Fees. In the event the WV Developer initiates or defends any legal action or proceeding in any way connected with this Notice Requirement, the WV Developer (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the adverse party or parties (other than the City) in any such action or proceeding the WV Developer's reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal).

(f) Severability. If any portion of this Notice Requirement or the application of them to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Notice Requirement or the application of such portion to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each portion of this Notice Requirement shall be valid and shall be enforced to the extent permitted by law.

(g) Construction. In construing the provisions of this Notice Requirement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Notice Requirement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, conditions or agreements contained herein. Any capitalized term not defined herein shall have the meaning set forth in the Restated Cost Reimbursement Agreement.

(h) Recordation. This Notice Requirement shall be recorded in the Official Public Records of Travis County, Texas.

(i) Interpretation. The provisions of this instrument shall be governed by, and construed in accordance with, the laws of the State of Texas. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Notice Requirement, nor any portion hereof, shall be construed more strongly against the party who prepared it.

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

**THE WV DEVELOPER:**

**CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, a Delaware limited partnership**

**By: CD120 GP, LLC, a Delaware limited liability company, its general partner**

**By: _____**
**Douglas H. Gilliland, Manager**

STATE OF TEXAS

COUNTY OF _____

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared Douglas H. Gilliland, the Manager of CD120 GP, LLC, a Delaware limited liability company, the general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said company and partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

_____ _____
Notary Public in and for the State of Texas

**Approval as to form:**

_____
Sharon Smith, Assistant City Attorney

Date:_____

# EXHIBIT 1 TO NOTICE
# REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS

## WV PROPERTY

**After recording, return to:**
Heritage Title Company of Austin
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff

# NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

| | | |
|---|---|---|
| STATE OF TEXAS | § | |
| | § | KNOW ALL MEN BY THESE PRESENTS: |
| COUNTY OF TRAVIS | § | |

THIS NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS (the "**Notice Requirement**") is entered into as of the ___ day of _____, 20__ (the "**Effective Date**") by **CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP**, a Delaware limited partnership (the "**IH Developer**"), for the consideration and purposes set forth herein.

W I T N E S S E T H:

WHEREAS, as of the Effective Date hereof, the IH Developer owns all of the real property described and/or depicted in Exhibit "1" attached hereto (the "**IH Property**");

WHEREAS, on or before the Effective Date, the IH Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, including that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended from time to time, the "**Restated Cost Reimbursement Agreement**"), by and among the City of Austin ("**City**"), the IH Developer, and Club Deal 120 Whisper Valley, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the IH Developer agreed to place certain restrictions on the IH Property to ensure that, upon certain sales of all or any portion of the IH Property, a certain percentage of the net proceeds of such sale would be placed into escrow and disbursed as set forth in the Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto; and

WHEREAS, the IH Developer desires to set forth certain notice requirements regarding the transfer of all or any portion of the IH Property to ensure compliance with the terms of the Restated Cost Reimbursement Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the IH Developer hereby agrees as follows:

1. Transfer of IH Property. In accordance with the terms of the Restated Cost Reimbursement Agreement, upon a Third Party Sale (as defined in the Restated Cost Reimbursement Agreement) of all or any portion of the IH Property, the IH Developer shall place a certain percentage of the net proceeds (the "**Escrowed Funds**") of such Third Party Sale into escrow with Heritage Title Company of Austin, Inc. (the "**Escrow Agent**"), and such sum shall be held or disbursed by Escrow Agent as set forth in such Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the Escrowed Funds.

2. Release of IH Property from Notice Requirement. The IH Developer (or its Designated Successor or Assign), upon approval by the City (as provided in the Restated Cost Reimbursement Agreement and Escrow Agreement attached thereto), shall have the right to release portions of the IH Property from this Notice Requirement and from the foregoing obligation to place the Escrowed Funds into escrow, in accordance with the terms set forth in the Restated Cost Reimbursement Agreement, by recording a written document describing the portion of the IH Property to be released herefrom.

3. Miscellaneous.

(a) Notice Requirement Runs With the Land; Binding Effect. This Notice Requirement shall run with the IH Property to the extent not released as set forth herein, and shall be binding on IH Developer and its Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement), and their respective successors and assigns.

(b) Amendment or Termination. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed and acknowledged by the IH Developer and the City and recorded in the Official Public Records of Travis County, Texas.

(c) Mortgages Subordinate to Notice Requirement. Any mortgage or deed of trust lien entered into on or after the date of this Notice Requirement which affects any portion of the IH Property shall at all times be subject and subordinate to the terms of this Notice Requirement and any person acquiring title by reason of foreclosure under any such mortgage or a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Notice Requirement.

(d) Notices.

(i) All notices given pursuant to this Notice Requirement shall be in writing and shall be given by personal service or United States mail (or United States express mail or other established express delivery service such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the applicable county in which the applicable portion of the IH Property is located. All notices to the IH Developer or Escrow Agent shall be sent to the appropriate party at the address set forth below:

| | |
|---|---|
| IH Developer: | Club Deal 116 Indian Hills Tx, Limited Partnership<br>c/o Douglas H. Gilliland<br>9285 Huntington Square<br>North Richland Hills, Texas 76182<br>Fax: 817-788-1670 |
| With a copy to: | Metcalfe Williams, LLP<br>301 Congress Avenue, Suite 1075<br>Austin, Texas 78701<br>Attn: Steven C. Metcalfe<br>Fax: 512-551-4943 |
| Escrow Agent: | Heritage Title Company of Austin, Inc.<br>401 Congress Avenue, Suite 1500<br>Austin, TX 78701<br>Attn: Nancy Grasshoff<br>Fax: 512-505-5024 |
| City: | City of Austin<br>PO Box 1088<br>Austin, Texas 78767<br>Attn: Director, Austin Water<br>Fax: (512) 370-3838 |
| With a copy to: | City of Austin<br>PO Box 1088<br>Austin, Texas 78767<br>Attn: Law Department<br>Fax: (512) 974-6490 |

(ii) All notices given pursuant to this Notice Requirement shall be deemed given upon receipt. For the purpose of this Notice Requirement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified in subparagraph (d)(i) above (as shown

on the return receipt), (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (d)(i) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

(e) Attorney's Fees. In the event the IH Developer initiates or defends any legal action or proceeding in any way connected with this Notice Requirement, the IH Developer (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the adverse party or parties (other than the City) in any such action or proceeding the IH Developer's reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal).

(f) Severability. If any portion of this Notice Requirement or the application of them to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Notice Requirement or the application of such portion to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each portion of this Notice Requirement shall be valid and shall be enforced to the extent permitted by law.

(g) Construction. In construing the provisions of this Notice Requirement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Notice Requirement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, conditions or agreements contained herein. Any capitalized term not defined herein shall have the meaning set forth in the Restated Cost Reimbursement Agreement.

(h) Recordation. This Notice Requirement shall be recorded in the Official Public Records of Travis County, Texas.

(i) Interpretation. The provisions of this instrument shall be governed by, and construed in accordance with, the laws of the State of Texas. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Notice Requirement, nor any portion hereof, shall be construed more strongly against the party who prepared it.

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

**THE IH DEVELOPER:**

**CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership**

**By: CD116 Indian Hills Tx, LLC, a Delaware limited liability company, its general partner**

**By: _____**
**Douglas H. Gilliland, Manager**

STATE OF TEXAS

COUNTY OF _____

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared Douglas H. Gilliland, the Manager of CD116 Indian Hills Tx, LLC, a Delaware limited liability company, the general partner of Club Deal 116 Indian Hills Tx, Limited Partnership, a Delaware limited partnership, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said company and partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

_____

_____
Notary Public in and for the State of Texas

**Approval as to form:**

_____
Sharon Smith, Assistant City Attorney

Date:_____

**EXHIBIT 1 TO NOTICE**
**REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS**

**IH PROPERTY**

EXHIBIT F

Form of Escrow Agreement

[See attached]

ESCROW AGREEMENT
(Indian Hills)

This Escrow Agreement (the "***Escrow Agreement***") is made and entered into as of this _____ day of _____, 2011 ("***Effective Date***"), by and between ORIX PUBLIC FINANCE LLC, a Delaware limited liability company ("***Senior Bond Holder***"), the CITY OF AUSTIN, a Texas municipal corporation ("***City***"), CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP ("***IH Developer***") and HERITAGE TITLE COMPANY OF AUSTIN, INC. ("***Escrow Agent***"). IH Developer, Senior Bond Holder and City are sometimes referred to herein singularly as a "***Party***" and collectively referred to herein as the "***Parties***".

RECITALS

WHEREAS, as of the Effective Date hereof, the IH Developer owns all of the real property described and/or depicted in Exhibit "A" attached hereto (the "***IH Property***" or "***Project***");

WHEREAS, on or before the Effective Date, the IH Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended, the "***Restated Cost Reimbursement Agreement***"), by and among the City, the IH Developer, and Club Deal 120 Whisper Valley, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the IH Developer agreed to escrow net proceeds from certain sales of all or any portion of the IH Property with Escrow Agent;

WHEREAS, those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) ("***Senior Bonds***") have been issued by the City to fund, among other things, the construction of certain infrastructure more particularly described in the Restated Cost Reimbursement Agreement;

WHEREAS, Senior Bond Holder is the current holder of the Senior Bonds and therefore, so long as the Senior Bonds are outstanding, Senior Bond Holder has an interest in seeing that the IH Repayment Amount is paid by IH Developer so that this obligation encumbering the IH Property will be released upon full payment thereof; and

WHEREAS, the Parties hereby agree that such funds shall be held in escrow and disbursed as set forth in this Escrow Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, IH Developer, City, Senior Bond Holder and Escrow Agent agree as follows:

1. **Deposit of IH Escrowed Funds**. Upon a Third Party Sale (defined below) of any portion of the IH Property, the IH Developer shall place the SSA (defined below) into escrow accounts with the Escrow Agent ("***IH Escrowed Funds***"). Except as set forth herein, all or a portion of the IH Escrowed Funds placed into escrow by the IH Developer shall be used to fund the IH Repayment Amount.

2. **IH Escrow Account**. Escrow Agent will open two (2) interest-bearing accounts into which the IH Escrowed Funds will be deposited, with the IH City Share being placed into one account (the "***IH City Escrow Account***") and the IH Bond Share being placed into the other account (the "***IH Bond Escrow Account***"). The IH City Escrow Account and IH Bond Escrow Account are collectively referred to herein as the "***IH Escrow Account***"). All interest or other income earned or accrued on the IH Escrowed Funds shall be held for the benefit of the City and distributed pursuant to this Escrow Agreement. Withdrawals from the IH Escrow Account shall be made only pursuant to the terms and provisions of this Escrow Agreement. Any fees charged by the Escrow Agent shall be paid by the IH Developer or out of the IH Developer's gross proceeds from a Third Party Sale (excluding the SSA).

3. **Definitions**.

(a) The "***SSA***" (sales set aside) shall be an amount equal to:

i. the net proceeds received by the IH Developer on a Third Party Sale, multiplied by fifteen percent (15%) ("***IH Bond Share***") until the Senior Bonds for the IH Project are no longer outstanding; plus

ii. the net proceeds received by the IH Developer on a Third Party Sale, multiplied by twenty percent (20%) ("***IH City Share***") until the IH Repayment Amount has been paid in full to the City or the IH Maximum Outstanding Balance is held in the IH City Escrow Account for the benefit of the City.

(b) The term "***Third Party Sale***" shall mean the initial sale, conveyance, or transfer of any portion of the IH Property by the IH Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of the IH Developer which does not involve the use of any amount of cash ("***Affiliate***"), or (B) a joint venture arrangement of which the IH Developer (or an Affiliate of the IH Developer) is a part, and which does not involve the use of any amount of cash ("***Joint Venture***"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the IH Property to (C) a Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement) shall not be considered a Third Party Sale. If the IH Developer has transferred or conveyed all of the remaining portion of the IH Property to an Affiliate or Joint Venture, then the term "IH Developer" in this Escrow Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the IH Developer shall not be required to place the SSA into the IH Escrow Account for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed

into the IH Escrow Account on any subsequent Third Party Sale of the IH Property that was subject to such transfer or conveyance.

(c) The term "***IH Current Outstanding Balance***" shall mean an amount equal to the then-current IH Repayment Amount due by the IH Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered as of the then-current date) less the portion of the IH Repayment Amount previously repaid to the City by the IH Developer as of such date.

(d) The term "***IH Maximum Outstanding Balance***" shall mean an amount equal to the difference between the IH Repayment Amount, and the portion of the IH Repayment Amount that has been repaid to the City by the IH Developer as of the then-current date.

(e) The term "***IH Repayment Amount***" shall mean the amount that the IH Developer shall repay the City, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the IH Developer's share (i.e. 25%) of the non-oversizing portion of Line 1. The term "**IH Repayment Amount**" shall mean the maximum amount that would be repaid to the City by the IH Developer assuming the IH Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount associated with the IH Project.

(f) The term "***Property Owner Delinquency***" shall mean the occurrence of the following events: (1) an owner of any portion of the IH Property fails to timely pay an assessment payment; and (2) the funds then held in the Delinquency Reserve Account (defined in the Indenture) for the IH Project are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term "***Senior Bond Replenishment***" shall mean the Property Owner Delinquency has been fully cured as follows: the property owner delinquency has been funded, the Delinquency Reserve Account has been replenished to its balance prior to the Property Owner Delinquency occurring, and the Bond Reserve Fund has been replenished to its balance prior to the Property Owner Delinquency occurring. The term "***Senior Bond Replenishment Date***" shall mean the date that the Senior Bond Replenishment occurs. The term "***Holding Period***" shall mean that period of time commencing on the Senior Bond Replenishment Date and ending on the later to occur of (x) October 31, 2020 or (y) one (1) year after the Senior Bond Replenishment Date with no further Property Owner Delinquencies occurring during such time.

(g) The term "***Repayment Deadline***" shall mean October 31, 2025 for the IH Project and the IH Repayment Amount shall be fully due and payable by that deadline.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Restated Cost Reimbursement Agreement.

4. **Disbursement of the IH Escrowed Funds.** Escrow Agent, subject to the provisions hereinafter set forth, shall disburse funds from the IH Escrow Account as follows:

(a) IH City Share. The IH City Share shall be disbursed to the City to repay the IH Repayment Amount upon the earlier of (i) the applicable Repayment Deadline or (ii) upon the City reimbursing the Trustee for applicable amounts, as further described in Exhibit B (City Share). Notwithstanding the foregoing, if the IH City Share is greater than the IH Current Outstanding Balance, then the IH City Share shall be held in the IH City Escrow Account and shall not be disbursed until such time as additional reimbursement funds related to the IH Project are delivered by the City to the Trustee, at which time the IH City Share shall be released to the City in an amount not to exceed the then-current IH Current Outstanding Balance. Any portion of the IH Escrow Account (whether the IH City Share or IH Bond Share) to be disbursed to the City as set forth in this Paragraph 4 shall be made or transferred to the Austin Water Utility.

(b) IH Bond Share.

i. *No Property Owner Delinquency.* The IH Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the IH City Share) following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraph 5 and 6 below, on (1) the date the Senior Bonds related to the IH Project are no longer outstanding, or (2) on the date of the Repayment Deadline provided there is no Property Owner Delinquency or a Holding Period then in effect and the IH Developer has not paid the City in full by the Repayment Deadline, or (3) after October 31, 2020 when the IH City Share and IH Bond Share in total are sufficient to fully repay the IH Maximum Outstanding Balance to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect.

ii. *Occurrence of Property Owner Delinquency.* Upon the occurrence of a Property Owner Delinquency, the entire IH Bond Share then held in the IH Escrow Account shall be disbursed to the Trustee following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraph 5 and 6 below, and the City shall direct the Trustee to apply such IH Bond Share funds in the following order: (1) first, to fund the assessment delinquency after the funds within the Delinquency Reserve Account (the "***DRA***", as defined in the Indenture) have been exhausted, (2) next to replenish the Bond Reserve Fund, (3) third, to replenish the DRA, and (4) last, any remaining funds shall be held by the Trustee in the DRA as additional funding for repayment of the Senior Bonds or for repayment to the City as set forth herein (said excess funds shall be referred to herein as the

"*IH Excess Cure Funds*"). Further, after a Property Owner Delinquency has occurred and until the Holding Period has expired without any further Property Owner Delinquencies occurring during such Holding Period, any future IH Bond Share amounts placed into the IH Bond Escrow Account upon a Third Party Sale shall be promptly released to the Trustee to be applied in the order as set forth in items (1) through (4) above. Any amounts placed in the DRA during such Property Owner Delinquency or Holding Period pursuant to item (4) above shall be part of the IH Excess Cure Funds. The Escrow Agent shall notify all Parties promptly upon the expiration of any Holding Period. Upon the expiration of the Holding Period, the City shall direct the Trustee to release 1/3 of the IH Excess Cure Funds to the Escrow Agent to be held in the IH Bond Escrow Account and to be disbursed in accordance with Section 4(b)(i) above. Furthermore, on any Third Party Sale occurring upon or after the expiration of the Holding Period (y) an amount equal to 2/3rd of the IH Bond Share shall be promptly released to the Trustee to be held in the DRA, but such portion of the IH Bond Share delivered to the Trustee after the expiration of the Holding Period shall not be part of the IH Excess Cure Funds; and (z) an amount equal to 1/3rd of the IH Bond Share shall be held in the IH Bond Escrow Account and shall be disbursed in accordance with Section 4(b)(i) above.

5. **Request Form; Notice.**

(a) By Escrow Agent. Simultaneously with any Third Party Sale of all or any portion of the IH Property, Escrow Agent will submit the form set forth on Exhibit C attached hereto to the Parties ("***Request Form***"). Also, at least thirty (30) days prior to each of the Repayment Deadlines, to the extent the amount due on such Repayment Deadline has not been fully paid, the Escrow Agent shall submit the Request Form to the Parties hereto.

(b) By City. Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the IH Property, the City shall promptly submit the Request Form to the IH Developer and Escrow Agent.

(c) By Senior Bond Holder or Trustee. If a default occurs under the Senior Bonds, Senior Bond Holder or City shall cause the Trustee to submit the Request Form to the Escrow Agent and the other Parties within ten (10) days after said default to notify the Escrow Agent and the other Parties of such default and to request a release of the IH Bond Share held in the IH Bond Escrow Account.

6. **Approval or Dispute of Request Form**. Upon receipt of a Request Form, if additional information is required to be provided by the Escrow Agent, the Escrow Agent will have a period of ten (10) days after the date of submission of the Request Form to provide any

such information requested by the requesting Party, by completing or updating such Request Form with the additional information and sending such updated Request Form to all other Parties. Upon receipt of a fully complete Request Form, the Parties shall have ten (10) business days to approve or dispute the information contained in the Request Form. If a Party disputes any of the information contained in the Request Form, such Party shall provide written notice ("***Dispute Notice***") to Escrow Agent and the other Parties containing information specifying the nature or reasoning of why the information contained in the Request Form is being disputed and shall also provide how, in the disputing Party's opinion, the information could be modified in order to make it accurate (if applicable). If a Party does not approve the Request Form or submit a Dispute Notice in accordance with the foregoing sentence prior to the expiration of the 10 business day period noted above, then the Escrow Agent shall send a second notice, giving the non-responding Party five (5) additional business days from the date of the second notice to respond. If any Party fails to respond within the foregoing 5 business day period, then the non-responding Party shall be deemed to have approved the information contained in the Request Form. If the Parties approve (or are deemed to have approved) the Request Form in accordance with the foregoing procedure, then Escrow Agent will disburse the IH Escrowed Funds in accordance with the Request Form, Section 4 above and Exhibit B attached hereto within five (5) days after the date on which the applicable notice period ends. If, however, a Party timely disputes the Request Form in accordance with the foregoing, then the Parties agree to make a good faith effort to resolve the dispute within 15 days after delivery of the Dispute Notice. The Escrow Agent will disburse the IH Escrowed Funds five (5) days after receipt of written notice that the dispute has been resolved and a description of such resolution, in accordance with the resolved dispute, Section 4 above and Exhibit B. Notwithstanding the foregoing, the Escrow Agent shall release to the IH Developer that portion of any net proceeds on a Third Party Sale which is not part of the SSA without the consent of any other Party.

7. **Termination of Requirement to Place Funds in Escrow.**

(a) Termination of IH Bond Share. Upon the date the Senior Bonds for the IH Project are no longer outstanding, the IH Developer's obligation to escrow the IH Bond Share shall automatically terminate and the SSA shall thereafter consist of the IH City Share; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. At such time, the Senior Bond Holder shall no longer be a party to this Escrow Agreement and the remaining Parties shall have no further obligations hereunder to provide notices (including the Request Form and Dispute Notice) to Senior Bond Holder.

(b) Termination of IH City Share and IH Bond Share. Once the IH Escrow Account includes an amount equal to the IH Maximum Outstanding Balance or once the IH Repayment Amount has been paid in full to the City, the IH Developer's obligation to escrow the IH City Share and IH Bond Share shall automatically terminate; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. If at any time thereafter, the IH Escrowed Funds are less than the IH Maximum Outstanding Balance (due to disbursement of the IH Bond Share as provided for in this Escrow Agreement to cure a Property Owner Delinquency), then the IH Developer shall resume

escrowing the IH City Share and IH Bond Share (if applicable) until the funds held in the IH Escrow Account again equal the IH Maximum Outstanding Balance.

8. **Termination of Escrow Agreement.** This Escrow Agreement will terminate one (1) business day after the earlier to occur of (i) the IH Repayment Amount has been fully paid to the City or (ii) all IH Property has been released from the Transfer Restriction Document and all IH Escrowed Funds have been disbursed as set forth herein (including any IH Excess Cure Funds held by the Trustee). Upon the termination of this Escrow Agreement, any remaining funds from the IH Escrowed Funds shall be disbursed as set forth herein; provided that in the event the City does not reimburse the Trustee for the Maximum Reimbursement Amount, which then results in excess funds being held in the IH Escrow Account above and beyond the IH Repayment Amount due to the City, then such excess funds from the IH Developer held in escrow shall be promptly released to the IH Developer.

9. **Concerning the Escrow Agent**. The Parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any Escrow Agreement out of which this escrow may arise, other than this Escrow Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow or any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same.

(c) In the event Escrow Agent becomes involved in litigation in connection with this escrow, the IH Developer and Senior Bond Holder agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses and attorney's fees suffered or incurred by Escrow Agent as a result thereof. The obligations of the Parties under this paragraph shall be performable at the principal office of Escrow Agent in Austin, Texas.

(d) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(e) Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Escrow Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such this Escrow Agreement continues or such doubt exists, and in such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by Escrow Agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this Escrow Agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Travis County, Texas, and interplead all documents and instruments held by it into the registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties or from the funds so interplead. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

10. **Notices**. Any notice, instrument or other communication required or permitted to be given by one of the parties hereto to the other under this Escrow Agreement shall be considered as properly given if in writing and (a) hand delivered, or (b) mailed by registered or certified mail, return receipt requested and postage prepaid, or (c) sent by telecopy or electronic mail, in each case at the address below.

If to Senior Bond Holder: ORIX Public Finance LLC
1717 Main Street, 9th Floor
Dallas, Texas 75201
Attn: Kandice Stephens
Telephone: (214) 237-2135
Facsimile: (214) 237-2018
Email: kstephens@orix.com

If to City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Director, Austin Water
Telephone: (512) 974-7890
Facsimile: (512) 370-3838
Email: bart.jennings@austintexas.gov

With a copy to: City of Austin
PO Box 1088

Austin, Texas 78767
Attn: Law Department
Telephone: (512) 974-2268
Facsimile: (512) 974-6490
Email: sharon.smith@austintexas.gov

If to IH Developer: Taurus of Texas
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Telephone: (817) 788-1000
Facsimile: (817) 788-1670
Email: DouglasG33@aol.com

With a copy to: Talley J. Williams
Metcalfe Williams, LLP
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Telephone: (512) 961-8844
Facsimile: (512) 551-4943
Email: twilliams@metcalfewilliams.com

If to Escrow Agent: Nancy Grasshoff
Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, Texas 78701
Telephone: (512) 505-5000
Facsimile: (512) 505-5024
Email: ngrasshoff@heritage-title.com

11. **Consultation with Legal Counsel**. Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities under this Escrow Agreement or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by Escrow Agent in good faith upon the advice of such counsel. Escrow Agent may act through its officers, employees, agents and attorneys.

12. **Compensation and Reimbursement of Expenses**. For its ordinary services hereunder, Escrow Agent shall be entitled to an initial fee of $0.00, payable, by the Developer, concurrently with its acceptance hereof by the IH Developer, and to additional compensation as follows:

In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, Escrow Agent shall be reasonably compensated therefor and

reimbursed for all costs and expenses occasioned thereby, and the Senior Bond Holder and IH Developer agree jointly and severally to pay the same, and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, as permitted by law. It is understood and agreed that in the case of any controversy, Escrow Agent may refrain from acting in any manner until it receives written Escrow Agreement from all parties hereto, or Escrow Agent may interplead the subject matter of this escrow into any court of competent jurisdiction, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder.

13. **Resignation**. Escrow Agent may resign upon ten (10) days' prior written notice to the Parties, and upon joint instructions of the Parties, shall deliver the IH Escrowed Funds to any designated substitute Escrow Agent mutually selected by the Parties. If the Parties fail to mutually designate a substitute Escrow Agent within ten (10) days after the giving of such notice, Escrow Agent may, in its sole discretion and its sole option, institute a bill of interpleader as contemplated herein.

14. **Severability**. If one or more of the provisions shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Escrow Agreement.

15. **Assignment**. The IH Developer may not assign its rights and obligations under this Escrow Agreement (except to a Designated Successor or Assign), without the approval of the City. In the event the Senior Bond Holder sells Senior Bonds to multiple holders, then Senior Bond Holder shall notify all Parties of such sale within three (3) business days of such sale and shall designate one bond holder, in writing, to act on behalf of all bond holders and such designee shall be considered the "Senior Bond Holder" hereunder; and at any time after such designation, the Parties hereto shall provide notice (including Request Forms) to the designated Senior Bond Holder and the designee shall be entitled to act on behalf of all the bond holders, including giving notices required hereunder and submitting a Request Form where applicable.

16. **General**. The section headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The terms and provisions of this Escrow Agreement constitute the entire Escrow Agreement between the parties hereto. This Escrow Agreement or any provision of the Escrow Agreement may be amended, modified, waived or terminated only by written instrument duly signed by the parties or their successors and assigns. This Escrow Agreement shall inure to the benefit of and be binding upon the parties, and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and assigns. Nothing in this Escrow Agreement, express or implied, is intended to confer upon any other person rights or remedies under or by reason of this Escrow Agreement. To the extent there is any conflict between this Escrow Agreement and the Restated Cost Reimbursement Agreement,

the terms of the Restated Cost Reimbursement Agreement shall control as between the Parties and not Escrow Agent.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first above written.

**City**:

CITY OF AUSTIN

By:_____
Name: Rudy Garza
Title: Assistant City Manager

**IH Developer**:

CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership qualified to do business in Texas

By: CD116 Indian Hills Tx, LLC, a Delaware limited liability company

Its: General Partner

By: _____
Douglas H. Gilliland, Manager

**Senior Bond Holder**:

ORIX PUBLIC FINANCE LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

**Escrow Agent**:

HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

(IH Property)

EXHIBIT B
(IH Bond Share)

| **Trigger for release of IH Bond Share:** | **Amount of IH Bond Share To Be Released:** | **Beneficiary of Funds:** |
|---|---|---|
| 1. Senior Bonds are retired/paid off | Entire IH Bond Share | City |
| 2. Occurrence of a Property Owner Delinquency | Entire IH Bond Share [to be applied as set forth in Paragraph 4(b)(ii)] | Trustee |
| 3. During any Holding Period | Entire IH Bond Share [to be applied as set forth in Paragraph 4(b)(ii)] | Trustee |
| 4. After the expiration of a Holding Period | 2/3 of IH Bond Share | Trustee |
| 5. Funds are needed to satisfy the amount due on a Repayment Deadline (above and beyond the IH City Share) | Amount of IH Bond Share necessary to satisfy the portion of the IH Repayment Amount due on such Repayment Deadline | City |
| 6. After October 31, 2020, funds are needed to pay the IH Maximum Outstanding Balance in full | Amount of IH Bond Share necessary to satisfy the IH Maximum Outstanding Balance | City |

The triggers are listed in order of priority. If more than one trigger exists at any given time, the higher rule in the matrix controls.

EXHIBIT B
(IH City Share)

| **Trigger for release of IH City Share:** | **Amount of IH City Share To Be Released:** | **Beneficiary of Funds:** |
|---|---|---|
| Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the IH Property | IH City Share in an amount not to exceed the IH Current Outstanding Balance | City |
| Third Party Sale | IH City Share in an amount not to exceed the IH Current Outstanding Balance | City |
| Occurrence of a Repayment Deadline | IH City Share in an amount equal to the balance due on such Repayment Deadline that remains due as of such date | City |

EXHIBIT C
(Request Form)

**INDIAN HILLS PROJECT REQUEST FORM RELATING TO**
**NOTICE OF THIRD PARTY SALE, REIMBURSEMENTS, AND PAYMENTS**

**Date:** _____, 20__

**To:** [City of Austin (the "City")
Heritage Title Company of Austin, Inc. (the "Escrow Agent")
ORIX Public Finance LLC ("Senior Bond Holder")
Club Deal 116 Indian Hills Tx, Limited Partnership (the "IH Developer")]

**From:** _____

**Re:** First Amendment to the "Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions" ("Restated Cost Reimbursement Agreement"); and Escrow Agreement by and among the City, Escrow Agent, Senior Bond Holder, and IH Developer dated _____, 2011 ("IH Escrow Agreement")

**PURPOSE OF NOTICE (check one)**

____ 1. **Notice of Third Party Sale (Escrow Agent to complete):**

Closing Date for Third Party Sale: _____, 20__

Subject Property: See Exhibit "A" attached

A. IH Bond Share of SSA: $_____

B. IH City Share of SSA: $_____

C. **Total SSA for Third Party Sale:** $_____ (A + B)

____ 2. **Notice of Additional Reimbursement Amount for IH Project Paid to Trustee (City to complete):**

Date of Additional Reimbursement to Trustee: _____, 20__

D. Additional Reimbursement Amount: $_____

____ 3. **Notice of Repayment Deadline (Escrow Agent to complete):**

Date of Repayment Deadline: _____, 20__

E. Amount Due on Repayment Deadline: $_____

____ 4. **Notice of Property Owner Delinquency Under Senior Bonds (Senior Bond Holder to complete):**

Date of Property Owner Delinquency: _____, 20__

F. Delinquency Amount under Senior Bonds: $_____

____ 5. **Notice that SSA No Longer Required (IH Developer or Escrow Agent to complete)**

Balance in IH Escrow Account equals IH Maximum Outstanding Balance. (I = Q)

____ 6. **Notice that Senior Bonds Are No Longer Outstanding (Senior Bond Holder to complete)**

Date Senior Bonds retired or paid in full: _____, 20__

**BALANCE IN ESCROW ACCOUNT (Escrow Agent to complete)**
**(amounts after Third Party Sale, if applicable, and prior to disbursement)**

G. IH Bond Share in IH Escrow Account: $_____ (prior balance + A)

H. IH City Share in IH Escrow Account: $_____ (prior balance + B)

I. **Total Amount in IH Escrow Account:** $_____ (G + H)

**DISBURSEMENT OF ESCROWED FUNDS (Requesting Party to complete; Escrow Agent to verify)**

J. Portion of IH Bond Share to release to City: $_____

K. Portion of IH Bond Share to release to Trustee: $_____
(only if Property Owner Delinquency has occurred and Holding Period in effect)

L. Portion of IH City Share to release to City: $_____

**BALANCES AFTER TRANSACTION AND DISBURSEMENT (Escrow Agent to complete):**

M. Maximum Reimbursement Amount (attributable to IH Project): $_____

N. Portion of Maximum Reimbursement Amount paid to Trustee to date (attributable to IH Project): $_____

O. IH Repayment Amount repaid to date: $_____

P. **IH Current Outstanding Balance:** $_____ (N – O)

Q. **IH Maximum Outstanding Balance:** $_____ (M – O)

R. Remaining IH Bond Share in IH Escrow Account: $_____ (G – J – K)

S. Remaining IH City Share in IH Escrow Account: $_____ (H – L)

**Total Amount in IH Escrow Account:** $_____ (R + S)
(not to exceed IH Maximum Outstanding Balance)

**RELEASE OF PROPERTY (if applicable):**

Property to be released from Transfer Restriction Notice: See Exhibit "B" attached

By their signature below, the parties hereto acknowledge that (i) to the parties' knowledge, the amounts set forth above are accurate as of the date of this Notice, (ii) payments disbursed to the City shall be made or transferred to the Austin Water Utility, and (iii) the Escrow Agent shall have the right to release the IH Escrowed Funds in the amount and to the parties as set forth in the IH Escrow Agreement.

*If Exhibit "B" is attached hereto, then by their signature below, the parties hereto acknowledge that execution of* this Request Form, in accordance with the Restated Cost Reimbursement Agreement, shall be considered approval for the IH Developer to execute and record a Release in the Official Public Records of Travis County, Texas releasing the property described in Exhibit "B" from the Notice Regarding Transfer Restrictions and Requirements recorded as Document No. _____ in the Official Public Records of Travis County, Texas.

[SIGNATURE PAGE FOR INDIAN HILLS PROJECT REQUEST FORM]

**IH Developer:**
CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP,
a Delaware limited partnership qualified to do business in Texas

By: CD 116 Indian Hills Tx, LLC, a Delaware limited liability company, its General Partner

By: _____
Douglas H. Gilliland, Manager

Date: _____, 20__

**City:**
CITY OF AUSTIN

By: _____
Name: _____
Title: _____

Date: _____, 20__

**Senior Bond Holder:**
ORIX Public Finance LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

Date: _____, 20__

**Escrow Agent:**
HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____
Name: _____
Title: _____

Date: _____, 20__

ESCROW AGREEMENT
(Whisper Valley)

This Escrow Agreement (the "***Escrow Agreement***") is made and entered into as of this _____ day of _____, 2011 ("***Effective Date***"), by and between ORIX PUBLIC FINANCE LLC, a Delaware limited liability company ("***Senior Bond Holder***"), the CITY OF AUSTIN, a Texas municipal corporation ("***City***"), CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP *("WV Developer")* and HERITAGE TITLE COMPANY OF AUSTIN, INC. ("***Escrow Agent***"). WV Developer, Senior Bond Holder and City are sometimes referred to herein singularly as a "***Party***" and collectively referred to herein as the "***Parties***".

RECITALS

WHEREAS, as of the Effective Date hereof, the WV Developer owns all of the real property described and/or depicted in Exhibit "A" attached hereto (the "***WV Property***" or "***Project***");

WHEREAS, on or before the Effective Date, the WV Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended, the "***Restated Cost Reimbursement Agreement***"), by and among the City, the WV Developer, and Club Deal 116 Indian Hills Tx, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the WV Developer agreed to escrow net proceeds from certain sales of all or any portion of the WV Property with Escrow Agent;

WHEREAS, those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) ("***Senior Bonds***") have been issued by the City to fund, among other things, the construction of certain infrastructure more particularly described in the Restated Cost Reimbursement Agreement;

WHEREAS, Senior Bond Holder is the current holder of the Senior Bonds and therefore, so long as the Senior Bonds are outstanding, Senior Bond Holder has an interest in seeing that the WV First Repayment Amount is paid by WV Developer so that this obligation encumbering the WV Property will be released upon full payment thereof; and

WHEREAS, the Parties hereby agree that such funds shall be held in escrow and disbursed as set forth in this Escrow Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, WV Developer, City, Senior Bond Holder and Escrow Agent agree as follows:

1. **Deposit of WV Escrowed Funds**. Upon a Third Party Sale (defined below) of any portion of the WV Property, the WV Developer shall place the SSA (defined below) into escrow accounts with the Escrow Agent ("***WV Escrowed Funds***"). Except as set forth herein, all or a portion of the WV Escrowed Funds placed into escrow by the WV Developer shall be used to fund the WV First Repayment Amount and Alternative Line Repayment Amount.

2. **WV Escrow Account**. Escrow Agent will open two (2) interest-bearing accounts into which the WV Escrowed Funds will be deposited, with the WV City Share being placed into one account (the "***WV City Escrow Account***") and the WV Bond Share being placed into the other account (the "***WV Bond Escrow Account***"). The WV City Escrow Account and WV Bond Escrow Account are collectively referred to herein as the "***WV Escrow Account***"). All interest or other income earned or accrued on the WV Escrowed Funds shall be held for the benefit of the City and distributed pursuant to this Escrow Agreement. Withdrawals from the WV Escrow Account shall be made only pursuant to the terms and provisions of this Escrow Agreement. Any fees charged by the Escrow Agent shall be paid by the WV Developer or out of the WV Developer's gross proceeds from a Third Party Sale (excluding the SSA).

3. **Definitions**.

(a) The "***SSA***" (sales set aside) shall be an amount equal to:

i. the net proceeds received by the WV Developer on a Third Party Sale, multiplied by fifteen percent (15%) ("***WV Bond Share***") until the Senior Bonds for the WV Project are no longer outstanding; plus

ii. the net proceeds received by the WV Developer on a Third Party Sale, multiplied by twenty percent (20%) ("***WV City Share***") until the WV First Repayment Amount has been paid in full to the City or the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) is held in the WV City Escrow Account for the benefit of the City. Thereafter, the WV City Share shall be reduced to fifteen percent (15%) of the net proceeds received by the WV Developer on a Third Party Sale until the Alternative Line Repayment Amount is paid in full to the City or the WV Maximum Outstanding Balance related to the Alternative Line is held in escrow.

(b) The term "***Third Party Sale***" shall mean the initial sale, conveyance, or transfer of any portion of the WV Property by the WV Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of the WV Developer which does not involve the use of any amount of cash ("***Affiliate***"), or (B) a joint venture arrangement of which the WV Developer (or an Affiliate of the WV Developer) is a part, and which does not involve the use of any amount of cash ("***Joint Venture***"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the WV Property to (C) a Designated Successor or Assign (as

defined in the Restated Cost Reimbursement Agreement) shall not be considered a Third Party Sale. If the WV Developer has transferred or conveyed all of the remaining portion of the WV Property to an Affiliate or Joint Venture, then the term "WV Developer" in this Escrow Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the WV Developer shall not be required to place the SSA into the WV Escrow Account for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed into the WV Escrow Account on any subsequent Third Party Sale of the WV Property that was subject to such transfer or conveyance.

(c) The term "***WV Current Outstanding Balance***" shall mean an amount equal to the then-current WV First Repayment Amount and Alternative Line Repayment Amount due by the WV Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered as of the then-current date) less the portion of the WV First Repayment Amount and Alternative Line Repayment Amount previously repaid to the City by the WV Developer as of such date.

(d) The term "***WV Maximum Outstanding Balance***" shall mean an amount equal to the difference between the WV First Repayment Amount and Alternative Line Repayment Amount, and the portion of the WV First Repayment Amount and Alternative Line Repayment Amount that has been repaid to the City by the WV Developer as of the then-current date.

(e) The term "***WV First Repayment Amount***" shall mean the amount that the WV Developer shall repay the City, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the WW Supplemental Costs, CCN Release Fee, the WV Developer's share (i.e. 75%) of the non-oversizing portion of Line 1, and the non-oversizing portion of Line 2. The term "***Alternative Line Repayment Amount***" shall mean the amount that the WV Developer shall repay the City for the Alternative Line, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the non-oversizing portion of the Alternative Line. The term "**WV First Repayment Amount**" and "**Alternative Line Repayment Amount**" shall mean collectively the maximum amount that would be repaid to the City by the WV Developer assuming the WV Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount associated with the WV Project.

(f) The term "***Property Owner Delinquency***" shall mean the occurrence of the following events: (1) an owner of any portion of the WV Property fails to timely pay an assessment payment; and (2) the funds then held in the Delinquency Reserve Account (defined in the Indenture) for the WV Project are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term "***Senior Bond Replenishment***" shall mean the Property Owner Delinquency has been fully cured as follows: the property owner delinquency has been funded, the Delinquency Reserve Account has been replenished to its balance prior to the Property Owner Delinquency occurring, and the Bond Reserve Fund has been replenished

to its balance prior to the Property Owner Delinquency occurring. The term "***Senior Bond Replenishment Date***" shall mean the date that the Senior Bond Replenishment occurs. The term "***Holding Period***" shall mean that period of time commencing on the Senior Bond Replenishment Date and ending on the later to occur of (x) the first Repayment Deadline (i.e., October 31, 2020) or (y) one (1) year after the Senior Bond Replenishment Date with no further Property Owner Delinquencies occurring during such time.

(g) The term "***Repayment Deadline***" shall mean October 31, 2020; October 31, 2025; October 31, 2030; and the date which is the fifth (5th) anniversary of the City's acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B). The WV First Repayment Amount (or applicable portions thereof) and the Alternative Line Repayment Amount shall be fully due and payable to the City on the applicable Repayment Deadlines, as follows:

| | | |
|---|---|---|
| **October 31, 2020** | WW Supplemental Costs and CCN Release Fee | WV Developer |
| **October 31, 2025** | WV Developer's share of Line 1 | WV Developer |
| **October 31, 2030** | Line 2 | WV Developer |
| **5 years after City's acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B)** | Alternative Line | WV Developer |

Capitalized terms not defined herein shall have the meanings ascribed to them in the Restated Cost Reimbursement Agreement.

4. **Disbursement of the WV Escrowed Funds.** Escrow Agent, subject to the provisions hereinafter set forth, shall disburse funds from the WV Escrow Account as follows:

(a) WV City Share. The WV City Share shall be disbursed to the City to repay the WV First Repayment Amount and Alternative Line Repayment Amount upon the earlier of (i) the applicable Repayment Deadline or (ii) upon the City reimbursing the Trustee for applicable amounts, as further described in Exhibit B (City Share). Notwithstanding the foregoing, if the WV City Share is greater than the WV Current Outstanding Balance, then the WV City Share shall be held in the WV City Escrow Account and shall not be disbursed until such time as additional reimbursement funds related to the WV Project are delivered by the City to the Trustee, at which time the WV City Share shall be released to the City in an amount not to exceed the then-current WV Current Outstanding Balance. Any portion of the WV Escrow Account (whether the WV

City Share or WV Bond Share) to be disbursed to the City as set forth in this Paragraph 4 shall be made or transferred to the Austin Water Utility.

(b) WV Bond Share.

i. *No Property Owner Delinquency.* The WV Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the WV City Share) following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraphs 5 and 6 below, on (1) the date the Senior Bonds related to the WV Project are no longer outstanding, or (2) on the date of the Repayment Deadline provided there is no Property Owner Delinquency or a Holding Period then in effect and the WV Developer has not paid the City in full by the Repayment Deadline, or (3) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect, or (4) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the portion of the WV Maximum Outstanding Balance related to the Alternative Line to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect.

ii. *Occurrence of Property Owner Delinquency.* Upon the occurrence of a Property Owner Delinquency, the entire WV Bond Share then held in the WV Escrow Account shall be disbursed to the Trustee following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraphs 5 and 6 below, and the City shall direct the Trustee to apply such WV Bond Share funds in the following order: (1) first, to fund the assessment delinquency after the funds within the Delinquency Reserve Account (the "***DRA***", as defined in the Indenture) have been exhausted, (2) next to replenish the Bond Reserve Fund, (3) third, to replenish the DRA, and (4) last, any remaining funds shall be held by the Trustee in the DRA as additional funding for repayment of the Senior Bonds or for repayment to the City as set forth herein (said excess funds shall be referred to herein as the "***WV Excess Cure Funds***"). Further, after a Property Owner Delinquency has occurred and until the Holding Period has expired without any further Property Owner Delinquencies occurring during such Holding Period, any future WV Bond Share amounts placed into the WV Bond Escrow Account upon a Third Party Sale

shall be promptly released to the Trustee to be applied in the order as set forth in items (1) through (4) above. Any amounts placed in the DRA during such Property Owner Delinquency or Holding Period pursuant to item (4) above shall be part of the WV Excess Cure Funds. The Escrow Agent shall notify all Parties promptly upon the expiration of any Holding Period. Upon the expiration of the Holding Period, the City shall direct the Trustee to release 1/3 of the WV Excess Cure Funds to the Escrow Agent to be held in the WV Bond Escrow Account and to be disbursed in accordance with Section 4(b)(i) above. Furthermore, on any Third Party Sale occurring upon or after the expiration of the Holding Period (y) an amount equal to 2/3rd of the WV Bond Share shall be promptly released to the Trustee to be held in the DRA, but such portion of the WV Bond Share delivered to the Trustee after the expiration of the Holding Period shall not be part of the WV Excess Cure Funds; and (z) an amount equal to 1/3rd of the WV Bond Share shall be held in the WV Bond Escrow Account and shall be disbursed in accordance with Section 4(b)(i) above.

5. **Request Form; Notice.**

(a) By Escrow Agent. Simultaneously with any Third Party Sale of all or any portion of the WV Property, Escrow Agent will submit the form set forth on Exhibit C attached hereto to the Parties ("***Request Form***"). Also, at least thirty (30) days prior to each of the Repayment Deadlines, to the extent the amount due on such Repayment Deadline has not been fully paid, the Escrow Agent shall submit the Request Form to the Parties hereto.

(b) By City. Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the WV Property, the City shall promptly submit the Request Form to the WV Developer and Escrow Agent. The WV Developer acknowledges that as of the Effective Date of this Escrow Agreement, the City has already reimbursed the WV Developer the amount of $800,000 for the CCN Release Fee, and such the CCN Release Fee (which is part of the WV First Repayment Amount) is eligible for repayment by the WV Developer and disbursement of WV Escrowed Funds by the Escrow Agent to the City as set forth herein.

(c) By Senior Bond Holder or Trustee. If a default occurs under the Senior Bonds, Senior Bond Holder or City shall cause the Trustee to submit the Request Form to the Escrow Agent and the other Parties within ten (10) days after said default to notify the Escrow Agent and the other Parties of such default and to request a release of the WV Bond Share held in the WV Bond Escrow Account.

6. **Approval or Dispute of Request Form.** Upon receipt of a Request Form, if additional information is required to be provided by the Escrow Agent, the Escrow Agent will have a period of ten (10) days after the date of submission of the Request Form to provide any

such information requested by the requesting Party, by completing or updating such Request Form with the additional information and sending such updated Request Form to all other Parties. Upon receipt of a fully complete Request Form, the Parties shall have ten (10) business days to approve or dispute the information contained in the Request Form. If a Party disputes any of the information contained in the Request Form, such Party shall provide written notice ("***Dispute Notice***") to Escrow Agent and the other Parties containing information specifying the nature or reasoning of why the information contained in the Request Form is being disputed and shall also provide how, in the disputing Party's opinion, the information could be modified in order to make it accurate (if applicable). If a Party does not approve the Request Form or submit a Dispute Notice in accordance with the foregoing sentence prior to the expiration of the 10 business day period noted above, then the Escrow Agent shall send a second notice, giving the non-responding Party five (5) additional business days from the date of the second notice to respond. If any Party fails to respond within the foregoing 5 business day period, then the non-responding Party shall be deemed to have approved the information contained in the Request Form. If the Parties approve (or are deemed to have approved) the Request Form in accordance with the foregoing procedure, then Escrow Agent will disburse the WV Escrowed Funds in accordance with the Request Form, Section 4 above and Exhibit B attached hereto within five (5) days after the date on which the applicable notice period ends. If, however, a Party timely disputes the Request Form in accordance with the foregoing, then the Parties agree to make a good faith effort to resolve the dispute within 15 days after delivery of the Dispute Notice. The Escrow Agent will disburse the WV Escrowed Funds five (5) days after receipt of written notice that the dispute has been resolved and a description of such resolution, in accordance with the resolved dispute, Section 4 above and Exhibit B. Notwithstanding the foregoing, the Escrow Agent shall release to the WV Developer that portion of any net proceeds on a Third Party Sale which is not part of the SSA without the consent of any other Party.

7. **Termination of Requirement to Place Funds in Escrow**.

(a) Termination of WV Bond Share. Upon the date the Senior Bonds for the WV Project are no longer outstanding, the WV Developer's obligation to escrow the WV Bond Share shall automatically terminate and the SSA shall thereafter consist of the WV City Share; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. At such time, the Senior Bond Holder shall no longer be a party to this Escrow Agreement and the remaining Parties shall have no further obligations hereunder to provide notices (including the Request Form and Dispute Notice) to Senior Bond Holder.

(b) Termination of WV City Share and WV Bond Share. Once the WV Escrow Account includes an amount equal to the WV Maximum Outstanding Balance or once the WV First Repayment Amount and the Alternative Line Repayment Amount have been paid in full to the City, the WV Developer's obligation to escrow the WV City Share and WV Bond Share shall automatically terminate; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. If at any time thereafter, the WV Escrowed Funds are less than the WV Maximum Outstanding Balance (due to disbursement of the WV Bond Share as provided for in this Escrow Agreement to cure a Property Owner

Delinquency), then the WV Developer shall resume escrowing the WV City Share and WV Bond Share (if applicable) until the funds held in the WV Escrow Account again equal the WV Maximum Outstanding Balance.

8. **Termination of Escrow Agreement.** This Escrow Agreement will terminate one (1) business day after the earlier to occur of (i) the WV First Repayment Amount and Alternative Line Repayment Amount have been fully paid to the City or (ii) all WV Property has been released from the Transfer Restriction Document and all WV Escrowed Funds have been disbursed as set forth herein (including any WV Excess Cure Funds held by the Trustee). Upon the termination of this Escrow Agreement, any remaining funds from the WV Escrowed Funds shall be disbursed as set forth herein; provided that in the event the City does not reimburse the Trustee for the Maximum Reimbursement Amount, which then results in excess funds being held in the WV Escrow Account above and beyond the WV First Repayment Amount and Alternative Line Repayment Amount due to the City, then such excess funds from the WV Developer held in escrow shall be promptly released to the WV Developer.

9. **Concerning the Escrow Agent**. The Parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any Escrow Agreement out of which this escrow may arise, other than this Escrow Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow or any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same.

(c) In the event Escrow Agent becomes involved in litigation in connection with this escrow, the WV Developer and Senior Bond Holder agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses and attorney's fees suffered or incurred by Escrow Agent as a result thereof. The obligations of the Parties under this paragraph shall be performable at the principal office of Escrow Agent in Austin, Texas.

(d) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(e) Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it

shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Escrow Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such this Escrow Agreement continues or such doubt exists, and in such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by Escrow Agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this Escrow Agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Travis County, Texas, and interplead all documents and instruments held by it into the registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties or from the funds so interplead. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

10. **Notices**. Any notice, instrument or other communication required or permitted to be given by one of the parties hereto to the other under this Escrow Agreement shall be considered as properly given if in writing and (a) hand delivered, or (b) mailed by registered or certified mail, return receipt requested and postage prepaid, or (c) sent by telecopy or electronic mail, in each case at the address below.

If to Senior Bond Holder: ORIX Public Finance LLC
1717 Main Street, 9th Floor
Dallas, Texas 75201
Attn: Kandice Stephens
Telephone: (214) 237-2135
Facsimile: (214) 237-2018
Email: kstephens@orix.com

If to City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Director, Austin Water
Telephone: (512) 974-7890
Facsimile: (512) 370-3838
Email: bart.jennings@austintexas.gov

| | |
|---|---|
| With a copy to: | City of Austin<br>PO Box 1088<br>Austin, Texas 78767<br>Attn: Law Department<br>Telephone: (512) 974-2268<br>Facsimile: (512) 974-6490<br>Email: Sharon.smith@austintexas.gov |
| If to WV Developer: | Taurus of Texas<br>c/o Douglas H. Gilliland<br>9285 Huntington Square<br>North Richland Hills, Texas 76180<br>Telephone: (817) 788-1000<br>Facsimile: (817) 788-1670<br>Email: DouglasG33@aol.com |
| With a copy to: | Talley J. Williams<br>Metcalfe Williams, LLP<br>301 Congress Avenue, Suite 1075<br>Austin, Texas 78701<br>Telephone: (512) 961-8844<br>Facsimile: (512) 551-4943<br>Email: twilliams@metcalfewilliams.com |
| If to Escrow Agent: | Nancy Grasshoff<br>Heritage Title Company of Austin, Inc.<br>401 Congress Avenue, Suite 1500<br>Austin, Texas 78701<br>Telephone: (512) 505-5000<br>Facsimile: (512) 505-5024<br>Email: ngrasshoff@heritage-title.com |

11. **Consultation with Legal Counsel**. Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities under this Escrow Agreement or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by Escrow Agent in good faith upon the advice of such counsel. Escrow Agent may act through its officers, employees, agents and attorneys.

12. **Compensation and Reimbursement of Expenses**. For its ordinary services hereunder, Escrow Agent shall be entitled to an initial fee of $0.00, payable, by the Developer, concurrently with its acceptance hereof by the WV Developer, and to additional compensation as follows:

In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this

escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, Escrow Agent shall be reasonably compensated therefor and reimbursed for all costs and expenses occasioned thereby, and the Senior Bond Holder and WV Developer agree jointly and severally to pay the same, and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, as permitted by law. It is understood and agreed that in the case of any controversy, Escrow Agent may refrain from acting in any manner until it receives written Escrow Agreement from all parties hereto, or Escrow Agent may interplead the subject matter of this escrow into any court of competent jurisdiction, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder.

13. **Resignation**. Escrow Agent may resign upon ten (10) days' prior written notice to the Parties, and upon joint instructions of the Parties, shall deliver the WV Escrowed Funds to any designated substitute Escrow Agent mutually selected by the Parties. If the Parties fail to mutually designate a substitute Escrow Agent within ten (10) days after the giving of such notice, Escrow Agent may, in its sole discretion and its sole option, institute a bill of interpleader as contemplated herein.

14. **Severability**. If one or more of the provisions shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Escrow Agreement.

15. **Assignment**. The WV Developer may not assign its rights and obligations under this Escrow Agreement (except to a Designated Successor or Assign), without the approval of the City. In the event the Senior Bond Holder sells Senior Bonds to multiple holders, then Senior Bond Holder shall notify all Parties of such sale within three (3) business days of such sale and shall designate one bond holder, in writing, to act on behalf of all bond holders and such designee shall be considered the "Senior Bond Holder" hereunder; and at any time after such designation, the Parties hereto shall provide notice (including Request Forms) to the designated Senior Bond Holder and the designee shall be entitled to act on behalf of all the bond holders, including giving notices required hereunder and submitting a Request Form where applicable.

16. **General**. The section headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The terms and provisions of this Escrow Agreement constitute the entire Escrow Agreement between the parties hereto. This Escrow Agreement or any provision of the Escrow Agreement may be amended, modified, waived or terminated only by written instrument duly signed by the parties or their successors and assigns. This Escrow Agreement shall inure to the benefit of and be binding upon the parties, and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and assigns.

Nothing in this Escrow Agreement, express or implied, is intended to confer upon any other person rights or remedies under or by reason of this Escrow Agreement. To the extent there is any conflict between this Escrow Agreement and the Restated Cost Reimbursement Agreement, the terms of the Restated Cost Reimbursement Agreement shall control as between the Parties and not Escrow Agent.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first above written.

**City**:

CITY OF AUSTIN

By:_____
Name: Rudy Garza
Title: Assistant City Manager

**WV Developer**:

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

**Senior Bond Holder**:

ORIX PUBLIC FINANCE LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

**Escrow Agent**:

HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

(WV Property)

EXHIBIT B
(WV Bond Share)

| **Trigger for release of WV Bond Share:** | **Amount of WV Bond Share To Be Released:** | **Beneficiary of Funds:** |
|---|---|---|
| 1. Senior Bonds are retired/paid off | Entire WV Bond Share | City |
| 2. Occurrence of a Property Owner Delinquency | Entire WV Bond Share [to be applied as set forth in Paragraph 4(b)(ii)] | Trustee |
| 3. During any Holding Period | Entire WV Bond Share [to be applied as set forth in Paragraph 4(b)(ii)] | Trustee |
| 4. After the expiration of a Holding Period | 2/3 of WV Bond Share | Trustee |
| 5. Funds are needed to satisfy the amount due on a Repayment Deadline (above and beyond the WV City Share) | Amount of WV Bond Share necessary to satisfy the portion of the WV First Repayment Amount due on such Repayment Deadline | City |
| 6. After the first Repayment Deadline (i.e., October 31, 2020), funds are needed to pay the WV Maximum Outstanding Balance in full (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) | Amount of WV Bond Share necessary to satisfy the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) | City |
| 7. After the first Repayment Deadline (i.e., October 31, 2020), funds are needed to pay the Alternative Line portion of the WV Maximum Outstanding Balance in full | Amount of WV Bond Share necessary to satisfy the Alternative Line portion of the WV Maximum Outstanding Balance | City |

The triggers are listed in order of priority. If more than one trigger exists at any given time, the higher rule in the matrix controls.

EXHIBIT B
(WV City Share)

| **Trigger for release of WV City Share:** | **Amount of WV City Share To Be Released:** | **Beneficiary of Funds:** |
|---|---|---|
| Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the WV Property | WV City Share in an amount not to exceed the WV Current Outstanding Balance | City |
| Third Party Sale | WV City Share in an amount not to exceed the WV Current Outstanding Balance | City |
| Occurrence of a Repayment Deadline | WV City Share in an amount equal to the balance due on such Repayment Deadline that remains due as of such date | City |
| Five (5) years after the City's acceptance of entire Alternative Line (Line 5 or both Line 6A 6B) | WV City Share – not to exceed the WV Current Outstanding Balance | City |

EXHIBIT C
(Request Form)

**WHISPER VALLEY PROJECT REQUEST FORM RELATING TO NOTICE OF THIRD PARTY SALE, REIMBURSEMENTS, AND PAYMENTS**

**Date:** _____, 20__

**To:** [City of Austin (the "City")
Heritage Title Company of Austin, Inc. (the "Escrow Agent")
ORIX Public Finance LLC ("Senior Bond Holder")
Club Deal 120 Whisper Valley, Limited Partnership (the "WV Developer")]

**From:** _____

**Re:** First Amendment to the "Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions" ("Restated Cost Reimbursement Agreement"); and Escrow Agreement by and among the City, Escrow Agent, Senior Bond Holder, and WV Developer dated _____, 2011 ("WV Escrow Agreement")

**PURPOSE OF NOTICE (check one)**

____ **1. Notice of Third Party Sale (Escrow Agent to complete):**

Closing Date for Third Party Sale: _____, 20__

Subject Property: See Exhibit "A" attached

A. WV Bond Share of SSA: $_____

B. WV City Share of SSA: $_____

C. **Total SSA for Third Party Sale:** $_____ (A + B)

____ **2. Notice of Additional Reimbursement Amount for WV Project Paid to Trustee (City to complete):**

Date of Additional Reimbursement to Trustee: _____, 20__

D. Additional Reimbursement Amount: $_____

____ **3. Notice of Repayment Deadline (Escrow Agent to complete):**

Date of Repayment Deadline: _____, 20__

E. Amount Due on Repayment Deadline: $_____

____ **4. Notice of Property Owner Delinquency Under Senior Bonds (Senior Bond Holder to complete):**

Date of Property Owner Delinquency: _____, 20__

F. Delinquency Amount under Senior Bonds: $_____

____ **5. Notice that SSA No Longer Required (WV Developer or Escrow Agent to complete)**

Balance in WV Escrow Account equals WV Maximum Outstanding Balance. (I = Q)

____ **6. Notice that Senior Bonds Are No Longer Outstanding (Senior Bond Holder to complete)**

Date Senior Bonds retired or paid in full: _____, 20__

**BALANCE IN ESCROW ACCOUNT (Escrow Agent to complete)**
**(amounts after Third Party Sale, if applicable, and prior to disbursement)**

G. WV Bond Share in WV Escrow Account: $_____ (prior balance + A)

H. WV City Share in WV Escrow Account: $_____ (prior balance + B)

I. **Total Amount in WV Escrow Account:** $_____ (G + H)

**DISBURSEMENT OF ESCROWED FUNDS (Requesting Party to complete; Escrow Agent to verify)**

J. Portion of WV Bond Share to release to City: $_____

K. Portion of WV Bond Share to release to Trustee: $_____
(only if Property Owner Delinquency has occurred and Holding Period in effect)

L. Portion of WV City Share to release to City: $_____

**BALANCES AFTER TRANSACTION AND DISBURSEMENT (Escrow Agent to complete):**

M. Maximum Reimbursement Amount (attributable to WV Project): $_____

N. Portion of Maximum Reimbursement Amount paid to Trustee to date (attributable to WV Project): $_____

O. WV First Repayment Amount and Alternative Line Repayment Amount repaid to date: $_____

P. **WV Current Outstanding Balance:** $_____ (N – O)

Q. **WV Maximum Outstanding Balance:** $_____ (M – O)

R. Remaining WV Bond Share in WV Escrow Account: $_____ (G – J – K)

S. Remaining WV City Share in WV Escrow Account: $_____ (H – L)

**Total Amount in WV Escrow Account:** $_____ (R + S)
(not to exceed WV Maximum Outstanding Balance)

**RELEASE OF PROPERTY (if applicable):**

Property to be released from Transfer Restriction Notice: See Exhibit "B" attached

By their signature below, the parties hereto acknowledge that (i) to the parties' knowledge, the amounts set forth above are accurate as of the date of this Notice, (ii) payments disbursed to the City shall be made or transferred to the Austin Water Utility, and (iii) the Escrow Agent shall have the right to release the WV Escrowed Funds in the amount and to the parties as set forth in the WV Escrow Agreement.

If Exhibit "B" is attached hereto, then by their signature below, the parties hereto acknowledge that execution of this Request Form, in accordance with the Restated Cost Reimbursement Agreement, shall be considered approval for the WV Developer to execute and record a Release in the Official Public Records of Travis County, Texas releasing the property described in Exhibit "B" from the Notice Regarding Transfer Restrictions and Requirements recorded as Document No. _____ in the Official Public Records of Travis County, Texas.

[SIGNATURE PAGE FOR WHISPER VALLEY PROJECT REQUEST FORM]

**WV Developer:**
GLUB 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

Date: _____, 20__

**City:**
CITY OF AUSTIN

By: _____
Name: _____
Title: _____

Date: _____, 20__

**Senior Bond Holder:**
ORIX Public Finance LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

Date: _____, 20__

**Escrow Agent:**
HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____
Name: _____
Title: _____

Date: _____, 20__

# EXHIBIT G

# THIRD AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT

| | | |
|---|---|---|
| **STATE OF TEXAS** | § | |
| | § | **THIRD AMENDMENT TO THE** |
| | § | **COST REIMBURSEMENT AGREEMENT** |
| **COUNTY OF TRAVIS** | § | |

**THIS THIRD AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT** (**"Third Amendment"**) is entered into by and between the **City of Austin**, a Texas municipal corporation (the **"City"**); and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited liability company, or any other corporation, and any other person acting on behalf of any of the same persons, hereinafter referred as the **"Developer."** The Developer shall also include any person acting on behalf of, under the control of, or at the direction of any person who holds an interest or rights in the Property (collectively, the "**Parties**").

## I.
## RECITALS:

**A.** On August 26, 2010, the City Council approved the creation of the Public Improvement District (**"PID"**) for the Whisper Valley project. The PID was created to provide the developer a means to fund infrastructure improvements to the property.

**B.** The City and the Developer entered into the Cost Reimbursement Agreement (as amended by the First Amendment and the Second Amendment, the "**Agreement**") on June 21, 2007, which provided for the design and construction of wastewater mains and an interim wastewater treatment plant and reimbursement by the City for hard construction costs for the improvements. The Agreement was amended by (i) that certain First Amendment to the Cost Reimbursement Agreement dated October 9, 2009 ("**First Amendment**") which addressed necessary analysis for the type of wastewater treatment plant to be constructed at the property and (ii) that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated as of November 1, 2010 ("**Second Amendment**") which allowed the Developer to also be reimbursed by the City for certain wastewater soft costs.

**C.** The Second Amendment also contemplated that the Developer would reimburse the City for those certain wastewater soft costs through certain City issued PID bonds.

**D.** The PID bond structure has changed since the execution of the Second Amendment and therefore, the Second Amendment, as currently written does not accurately describe the types of PID bonds that are anticipated to be issued for the construction of the Wastewater Project. The new bond structure which includes (i) Senior Master PID Bonds and Subordinate Master PID Bonds, which are to be issued up front to fund the Wastewater Project; and (ii) Phased PID Bonds, which will be issued as phases of the Wastewater Project are developed in the future, and which will fund internal improvements in the given phases and may refund all or a portion of the Senior Master PID Bonds. A more definite description of the bond structure is contained in the PID Finance Agreements (as defined below).

**E.** On even date herewith, the City and WV Developer have executed that certain Whisper Valley Public Improvement District Finance Agreement ("**PID Finance Agreement**") which, among other things, describes the types of bonds that the City intends to issue for the Property.

**F.** The Parties desire to amend the Agreement to, among other things, reflect changes necessitated by the updated PID bond structure related solely to City reimbursed wastewater costs for the Wastewater Project.

**NOW THEREFORE**, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

## II.
## AGREEMENT

**A.** Section 2.11 of the Agreement shall remain as is and the following is hereby added at the end of the existing Section 2.11, to provide consistency between default provisions, and to revise the City's construction options:

> "Notwithstanding anything to the contrary contained herein, with respect to any component of the Wastewater Project for which the reimbursement amount through the Agreement secures the Subordinate Master PID Bonds (pursuant to and as defined in the PID Finance Agreement), if the Developer fails or refuses to timely complete the construction of a given component of the Wastewater Project according to the plans and specifications by the required completion date (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), the City shall provide the Developer with written notice of said default and provide thirty (30) days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, Developer shall have such additional time as is reasonably necessary to cure as long as the Developer commences the cure within 30 days and diligently pursues the same to completion. If Developer has still not completed the applicable component of the Wastewater Project after the notice and cure periods provided for above, the City shall either:
>
> i. Assume the construction management role and direct the completion of the applicable component of the Wastewater Project so that it qualifies for the agreed upon reimbursement amount specified herein, in which event the reimbursement amount will be funded by the City to the Trustee (as defined in the PID Finance Agreement) and will be used by the Trustee to repay the applicable PID Bonds; or
>
> ii. Assume the construction management role and direct the closeout of the applicable component of the Wastewater Project as determined by the City so that such component qualifies for a partial reimbursement payment pursuant to Section 3.06(b) (for the work completed) in which event the partial reimbursement amount payment will be funded to the Trustee and together with unspent applicable PID

Bond proceeds in the Project Fund (as defined in the PID Finance Agreement), will be used to fund the repayment of the applicable PID Bonds.

In the event the City assumes the construction management role for a given component of the Wastewater Project (as provided above) then the Developer agrees as follows:

(1) the City may draw down funds from the Project Fund to complete the component of the Wastewater Project in question;

(2) all construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such given component of the Wastewater Project by the Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Wastewater Project, will automatically without further action by the Developer become the property of the City;

(3) the Developer will automatically forgo and release any claims or rights to those items listed in (2) above; and

(4) the City may draw down on any Fiscal Security posted to complete such component of the Wastewater Project."

**B.** The following is hereby added as a new Section 2.14 to the Agreement, to address changes to posting Fiscal Security:

"Notwithstanding anything to the contrary contained herein, with respect to components of the Wastewater Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds, if there are funds in a segregated account within a Project Fund sufficient to pay for the completion of a given component, as reasonably determined by the City, it is intended that Developer not be required to post Fiscal Security for the applicable component of the Wastewater Project. For example, if a separate account is formed within the Subordinate Master PID Bond Project Fund for the Interim Whisper Valley WWTP (which fully funds the reimbursement eligible cost of the Interim Whisper Valley WWTP), then no Fiscal Security will be required for the Whisper Valley WWTP. Fiscal Security will still be required for any costs of a given component of the Wastewater Project not deposited in a segregated account within the Project Fund for that component.

The estimated costs for the components of the Wastewater Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds shall be determined prior to placement of funds in a segregated account within the Project Fund for the applicable component. If at any time (including if any shortfall becomes evident after construction bids are received) it is reasonably determined by the City that (i) there are insufficient funds contained in a segregated account within a Project Fund to complete the construction of the given component for which the segregated account was established, and (ii) there are no additional bond proceeds available to cover the

shortfall between the funds contained in the segregated account for applicable component and the estimated cost to complete the construction of the applicable component, then the Developer agrees to post Fiscal Security for such shortfall amount prior to the City's reasonable deadline. Until such time that adequate Fiscal Security is posted, the City may withhold, at its discretion, any advances of bond proceeds to the Developer or reimbursements to the Trustee (as defined in the PID Finance Agreement).

**C.** The following is hereby added as a new Section 3.06(b) to the Agreement and the existing Section 3.06 shall now be titled "Section 3.06 (a)":

Notwithstanding anything to the contrary, the parties hereby acknowledge that if the City elects to assume the construction management role and elects to direct the close out of the unpaid expenses for the uncompleted components of the Wastewater Project secured by the applicable PID Bonds as provided in subpart (ii) of Section 2.11 above, then the City will pay the Reimbursement Amounts to the Trustee as contemplated in subpart (ii) of Section 2.11 above, despite the fact that the given component of the Wastewater Project has not been completed and finally accepted by the City. The Reimbursement Amount so paid will be calculated on the total PID-eligible costs incurred by the Developer to date for the applicable component of the Wastewater Project as determined by the Director based on contracts, invoices, bills paid affidavits, City reimbursement eligible costs, and related materials submitted to the City by the Developer (and accepted by the City) throughout the construction process. It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Wastewater Project that were eligible to be reimbursed by the City shall be deemed paid for purposes of this Agreement and shall reduce the Maximum Reimbursement Amount on a dollar per dollar basis.

(i) The following paragraph is added to Section 2.12 of the Agreement:

The Whisper Valley Northwest Line (30-inch wastewater interceptor) may be constructed in a manner in which a component of the line would be constructed, finally accepted by the City, and fiscal security released to the Developer and then the sequence repeated until the necessary portion of wastewater line to provide wastewater service to the particular development phase of the WV Property is completed. The City will work in a cooperative manner with the Developer on this issue, but the City will have sole discretion in the determination of the portion of line for a particular component. All other components of the Wastewater Project will be handled in accordance with the City's standard procedures.

## III.

## MISCELLEANOUS

**A.** **Agreement Provisions.** All other provisions of the Agreement are in full force and effect. In the event of conflict between this Amendment and any provision of the Agreement, this Amendment shall control

**B.** **Effective Date.** This Amendment will be effective upon execution by all parties.

**C.** **Defined Terms**. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

**[Signature Pages to Follow]**

**CITY OF AUSTIN:**

**By:** _____
**Rudy Garza**
**Assistant City Manager**

**Date:** _____

**STATE OF TEXAS** )
)
**COUNTY OF TRAVIS** )

**THIS INSTRUMENT** was acknowledged before me on this ___ day of _____, 2011, by Rudy Garza, Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of that municipal corporation.

(SEAL)

_____
Notary Public, State of Texas

**[Signatures Continue on Next Page]**

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

By: CD120 GP, LLC, a Delaware limited liability company
Its: General Partner

**By:** _____
Douglas H. Gilliland, Manager

**Date:** _____

**STATE OF TEXAS** )
)
**COUNTY OF TRAVIS** )

**THIS INSTRUMENT** was acknowledged before me on this ___ day of _____, 2011, by 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 on behalf of that limited liability company and limited partnership.

(SEAL) _____
Notary Public, State of Texas

# EXHIBIT H

# CONTINUING DISCLOSURE AGREEMENT

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

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**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

| **Date:** | **Delinquency Clock:** | **Activity** |
|---|---|---|
| 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.** |
| 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. |
| April 15 | 75 | **Issuer shall notify Trustee (Trustee shall notify EMMA) of the plan of collections and foreclosure.** |
| May 1 | 90 | Preliminary Foreclosure activity commences with final demand letters and commencement of actual foreclosure analysis including ordering of title reports, etc. |
| | | 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.