

**WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1
REIMBURSEMENT AGREEMENT**

This Whisper Valley Public Improvement District Improvement Area #1 Reimbursement Agreement (this “Reimbursement Agreement”), pertaining to the first improvement area (“Improvement Area #1”) of the Whisper Valley Public Improvement District (the “District”), is executed between the City of Austin, Texas (“City”) and Club Deal 120 Whisper Valley, L.P., a Delaware limited partnership (the “Owner”) (each individually referred to as a “Party” and collectively as the “Parties”), and is effective _____ 2019. Capitalized terms not defined herein shall have the meaning ascribed to them in the PID Financing Agreement (hereinafter defined).

RECITALS

WHEREAS, on August 26, 2010, the City Council of the City (the “City Council”) passed and approved Ordinance No. 20100826-026 (the “Creation Resolution”) authorizing the creation of the District, covering approximately 2,066 acres of land described by a map thereof attached as Exhibit A to the Creation Resolution (the “District Property”); and

WHEREAS, on November 1, 2011, the City Council approved that certain Whisper Valley Public Improvement District Financing Agreement by and between the Owner and City (as amended from time to time, the “PID Financing Agreement”); and

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

WHEREAS, the District Property is contemplated to be developed in phases and the Owner intends that certain Public Improvements be constructed over time to serve District Property (or portions thereof); and

WHEREAS, on August 23, 2018, the City Council approved and accepted the assessment ordinance for Improvement Area #1 (the “Assessment Ordinance”), and levied the assessments on the property located in Improvement Area #1 (the “Improvement Area #1 Assessments”); and

WHEREAS, on February 7, 2019, the City Council ratified and confirmed the prior levy of the Improvement Area #1 Assessments; and

WHEREAS, on _____, 2019 the City Council approved and accepted the 2019 Amended and Restated Service and Assessment Plan (as may be amended or updated from time to time, the “Service and Assessment Plan”);

WHEREAS, contemporaneously herewith, the City Council intends to issue its “City of Austin, Texas Special Assessment Revenue Bonds, Series 2019 (Whisper Valley Public Improvement District Improvement Area #1)” (the “Improvement Area #1 Bonds”) to finance a portion of the Actual Costs of the improvements benefitting Improvement Area #1 (the improvements benefitting Improvement Area #1 are referred to as the “Improvement Area #1 Improvements” and the costs associated thereto are referred to as the “Improvement Area #1 Improvement Costs”); and

WHEREAS, the Improvement Area #1 Bonds shall be issued pursuant to that certain Indenture of Trust dated on _____, 2019 (the “Indenture”) by and between the City and U.S. Bank National Association (the “Bond Trustee”) and secured by the Pledged Revenues (as defined in the Indenture); and

WHEREAS, forty-two (42) parcels within Improvement Area #1 were sold to third-party homebuyers prior to the date of the Assessment Ordinance (the “Previously Sold Assessed Parcels”), and the Parties intend that the Improvement Area #1 Assessments pertaining to the Previously Sold Assessed Parcels, exclusive of amounts collected as administrative expenses (the “Reimbursement Assessments”), will not be included as Assessment Revenues or Pledged Revenues, each as defined in the Indenture; and

WHEREAS, the Parties intend that the revenues collected from the Reimbursement Assessments shall be paid to the Owner for the reimbursement of the Improvement Area #1 Improvement Costs pertaining to the Previously Sold Assessed Parcels pursuant to the terms of this Reimbursement Agreement and the Indenture; and

WHEREAS, pursuant to the Indenture, the City shall deposit the revenues collected by the City from the Reimbursement Assessments, including delinquency proceeds, and Reimbursement Prepayments, into the Reimbursement Fund (each as defined in the Indenture) and then further transferred to the Owner pursuant to the terms of this Reimbursement Agreement; and

WHEREAS, pursuant to the Indenture, amounts deposited in the Reimbursement Fund shall be used solely and exclusively to pay the hereinafter defined Reimbursement Obligation; and

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

1. Recitals. The recitals to this Reimbursement Agreement are true and correct, and are incorporated as part of this Reimbursement Agreement for all purposes.

2. City Deposit of Revenue. The City shall cause the Reimbursement Assessments to be deposited in the Reimbursement Fund as provided in the Indenture.
3. Reimbursement Obligation. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse the Owner an amount not to exceed \$_____ (the “Reimbursement Obligation”) and the Owner shall be entitled to receive from the City the Reimbursement Assessments deposited into the Reimbursement Fund from time to time pursuant to Section 2 above, in accordance with the terms of this Reimbursement Agreement until ____, 203__ (the “Maturity Date”), unless the Reimbursement Assessments have been paid in full prior to the Maturity Date. It is hereby acknowledged that the City is not responsible hereunder for any amount in excess of the amount of the Reimbursement Assessments collected. The Reimbursement Obligation, including accrued and unpaid interest, shall be payable to the Owner, solely from the Reimbursement Assessments deposited in the Reimbursement Fund. The Reimbursement Obligation is authorized by the PID Act and was approved by the City Council. The interest rate paid to the Owner on the Reimbursement Obligation shall be the same as the interest rate on the Improvement Area #1 Bonds. The interest rate has been approved by the City Council and complies with the PID Act. Interest will accrue from the effective date of this Agreement and shall be calculated on the basis of a 360-day year, comprised of twelve 30-day months.
4. Obligated Payment Sources. The Reimbursement Obligation, plus accrued and unpaid interest as described above, is payable to the Owner and secured under this Reimbursement Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Reimbursement Obligation is not paid in full at the Maturity Date, and the Reimbursement Obligation is not a debt of the City, within the meaning of Article XI, Section 5, of the Constitution of the State of Texas. The City acknowledges and agrees that until the Reimbursement Obligation and accrued and unpaid interest is paid in full, the obligation of the City to use amounts on deposit in the Reimbursement Fund to pay the Reimbursement Obligation and accrued and unpaid interest to the Owner is absolute and unconditional and the City does not have, and will not assert, any defenses to such obligation.
5. City Collection Efforts. The City will use all reasonable efforts to receive and collect, or cause to be received and collected by the Travis County Tax Assessor-Collector, the Improvement Area #1 Assessments, including the Reimbursement Assessments (including any charges due and owing under the Service and Assessment Plan) in the manner described in the PID Financing Agreement.
6. Process for Payment for the Reimbursement Obligation. The Owner shall submit to the City a written request for payment (a “Payment Request”) of any funds then

available in the Reimbursement Fund following March 10th of each year. Upon receipt of the Payment Request, the City shall cause funds within the Reimbursement Fund to be disbursed to the Owner within thirty (30) days. This process will continue until the Reimbursement Obligation and accrued and unpaid interest is paid in full or the Maturity Date.

7. Termination. Once all payments paid to the Owner under this Reimbursement Agreement equal the Reimbursement Obligation and accrued and unpaid interest, this Reimbursement Agreement shall terminate; provided, however that if on the Maturity Date, any portion of the Reimbursement Obligation or accrued and unpaid interest remains unpaid, such Reimbursement Obligation shall be canceled and for all purposes of this Reimbursement Agreement shall be deemed to have been conclusively and irrevocably PAID IN FULL; provided however that if any Reimbursement Assessments remain due and payable and are uncollected on the Maturity Date, such revenues from the Reimbursement Assessments, when, as, and if collected after the Maturity Date, shall be paid to the Owner and applied to the Reimbursement Obligation.
8. Non-Recourse Obligation. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from the Reimbursement Assessments actually collected by the City and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. Neither the City nor any of its elected or appointed officials nor any of its employees shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of this Reimbursement Agreement or their acts or omission under this Reimbursement Agreement.
9. No Waiver. Nothing in this Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Reimbursement Agreement against any person or entity involved in the design, construction, or installation of the Improvement Area #1 Improvements.
10. Governing Law, Venue. This Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Reimbursement Agreement. In the event of a dispute involving this Reimbursement Agreement, venue for such dispute shall lie in any court of competent jurisdiction in Travis County, Texas.
11. Notice. Any notice required or contemplated by this Reimbursement Agreement shall be deemed given at the addresses shown below: (i) one (1) business day after deposit with a reputable overnight courier service for overnight delivery such as FedEx or

UPS; or (ii) one (1) business day after deposit with the United States Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section.

If to City: City of Austin
Attn: City Treasurer
P.O. Box 2106
Austin, Texas 78768

With a copy to: City of Austin
Attn: City Attorney
P.O. Box 1088
Austin, Texas 78767-1088

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

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

12. Invalid Provisions; Severability. If any provision of this Reimbursement Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions, and the remainder of this Reimbursement Agreement shall remain in full force and effect. If any provision of this Reimbursement Agreement directly conflicts with the terms of the Indenture the Indenture shall control.
13. Exclusive Rights of Owner. Owner's right, title and interest into the payments of the Reimbursement Obligation (including accrued and unpaid interest thereon), as described herein, shall be the sole and exclusive property of Owner (or its Transferee) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its Reimbursement Obligation (including accrued and unpaid interest thereon) to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Owner has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest under this Reimbursement Agreement including, but not limited to, any right, title or interest of Owner in and to payment of its Reimbursement Obligation and accrued and unpaid interest thereon (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"). Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The Owner agrees that the City may rely conclusively on any written notice of a

Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

14. Assignment.

- a. Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Reimbursement Agreement with respect to all or part of the Project from time to time to any party in connection with the sale of the Project or any portion thereof and in connection with a corresponding assignment of the rights and obligations in the PID Financing Agreement 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 Reimbursement Agreement or the PID Financing Agreement. Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Reimbursement Agreement and shall have no further liability with respect to this Reimbursement Agreement for the part of the Project so assigned.
- b. 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.
- c. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.
- d. Notwithstanding anything to the contrary contained herein, this Section 14 shall not apply to Transfers which shall be governed by Section 13 above.
- e. It is hereby acknowledged that the limitations on the ability to make a Transfer as described in Section 13 above shall also apply to the Designated Successors and Assigns.

15. Failure; Default; Remedies.

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

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

- b. If the Owner is in Default, the City's sole and exclusive remedy shall be to seek specific enforcement of this Reimbursement Agreement. No Default by the Owner, however, shall: (1) affect the obligations of the City to use the revenues from the Reimbursement Assessments on deposit in the Reimbursement Fund as provided in Section 6 of this Reimbursement Agreement; or (2) entitle the City to terminate this Reimbursement Agreement. In addition to specific enforcement, the City shall be entitled to attorney's fees, court costs, and other costs of the City to obtain specific enforcement.
 - c. If the City is in Default, the Owner's sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance by the City; or (2) seek specific enforcement of this Reimbursement Agreement.
 - d. Notwithstanding any provision in this Reimbursement Agreement to the contrary, the City shall not be required to undertake collection actions against delinquent accounts in violation of applicable state law, court order, or existing contractual provisions between the City and its appropriate collections enforcement designees. Furthermore, both Parties hereby acknowledge and agree that the City will not initiate foreclosure actions against delinquent accounts.
16. Estoppel Certificate. Within thirty (30) days after the receipt of a written request by Owner or any Transferee, the City will certify in a written instrument duly executed and acknowledged to any person, firm or corporation specified in such request as to (i) the validity and force and effect of this Reimbursement Agreement in accordance with its terms, (ii) modifications or amendments to this Reimbursement Agreement and the substance of such modification or amendments; (iii) the existence of any default to the best of the City's knowledge; and (iv) such other factual matters that may be reasonably requested.
17. Anti-Boycott Verification. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Reimbursement Agreement is a contract for goods or services, will not boycott Israel during the term of this Reimbursement Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an

Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owner understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

18. Iran, Sudan and Foreign Terrorist Organizations. The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

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

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

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

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

19. Form 1295. Submitted herewith is a completed Form 1295 in connection with the Owner’s participation in the execution of this Reimbursement Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Owner, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Owner and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the City nor its consultants have verified such information.

20. Miscellaneous.

- a. The failure by a Party to insist upon the strict performance of any provision of this Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party’s right to insist and demand strict compliance by such other Party with the provisions of this Reimbursement Agreement.
- b. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Owner to enforce its remedies under this Reimbursement Agreement.

- c. Nothing in this Reimbursement Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owner any rights, remedies, or claims under or by reason of this Reimbursement Agreement, and all covenants, conditions, promises, and agreements in this Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Owner.
- d. This Reimbursement Agreement may be amended only by written agreement of the Parties.
- e. This Reimbursement Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signature pages to follow]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Reimbursement Agreement to be effective as of the date written on the first page of this Reimbursement Agreement.

CITY OF AUSTIN, TEXAS

By: _____
Name: Spencer Cronk
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Spencer Cronk, 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 _____, 2019.

(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 qualified to do business in Texas
Its: General Partner

By: _____
Douglas H. Gilliland, Manager

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, a Notary Public, on this day personally appeared Douglas Gilliland, as Manager of CD120 GP, LLC, general partner of Club Deal 120 Whisper Valley, 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 that limited partnership.

[SEAL]

Notary Public, State of Texas