

## FIRST AMENDMENT TO FINANCING AGREEMENT

THIS FIRST AMENDMENT TO FINANCING AGREEMENT (this “Amendment”) is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between **CITY OF AUSTIN**, a Texas home-rule city and municipal corporation, located in Travis, Williamson, and Hays Counties, Texas (“City”) and **SLF III – ONION CREEK L.P.**, a Texas limited partnership (“Owner”).

### RECITALS

**WHEREAS**, City and Owner are parties to that certain Estancia Hill Country Public Improvement District Financing Agreement, dated as of June 20, 2013 (as amended, the “Financing Agreement”); and

**WHEREAS**, City and Owner desire to amend the Financing Agreement upon the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby agree as follows:

1. Regulatory Requirements. Section 3.07(a) of the Financing Agreement is hereby deleted in its entirety, and the following substituted in its place:

(a) The Public Improvements shall be subject to City’s construction, policies, bidding, and contract documents, unless the Public Improvements meet the requirements set forth in Texas Local Government Code Section 252.022(a)(9), and are exempt from competitive bidding (“Exemptions”). Section 252.022 (a) (9) provides that a project will be exempt from competitive bidding if “paving, drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.”

(b) For any Public Improvement that comply with the Exemption, that are not contracted for as of the Effective Date of this Amendment, for which Owner is requesting reimbursement from PID proceeds, the Owner shall endeavor to procure bids from at least three (3) independent, competent contractors for the construction of the Public Improvements and provide copies of the bids to the City. Owner shall not be required to enter into a contract with the apparent low bidder and may select the contractor who provides, in Owner’s sole discretion, the best value. The Public Improvements shall be bid based on the construction plans and specifications approved by the City. In addition to the foregoing, bidders for contracts for the Public Improvements will be required to submit the following to Owner:

(i) itemized bids that identify separately the portions of the contract that are for construction of the Public Improvements, and for the construction of any improvements other than the Public Improvements;

(ii) documentation showing the contractor has at least five years of experience constructing projects in and around the City and is eligible to work on City projects;

(iii) documentation showing that the contractor has completed projects similar in scope, cost, and type to that which is being bid upon;

(iv) documentation demonstrating the percentage of the work that will be performed by the contractor, and the percentage of the work that will be performed by a subcontractor; and

(v) documentation showing the contractor is bondable.

3. Future Modification. The City Manager shall have the authority to execute modifications and amendments to the Financing Agreement and this Amendment.

4. Capitalized Words. All capitalized words used in this Amendment and not otherwise defined herein shall have the respective meanings given to such words in the Financing Agreement. The Financing Agreement is incorporated herein by reference for all purposes.

5. Ratification and Compliance. Except as expressly amended or modified by this Amendment, the Financing Agreement shall continue in full force and effect. Owner and City each hereby ratify, affirm, and agree that the Financing Agreement, as herein modified, represents the valid, binding and enforceable obligations of Owner and City respectively. Owner and City each promise and agree to perform and comply with the terms, provisions and conditions of and the agreements in the Financing Agreement, as modified by this Amendment. In the event of any conflict or inconsistency between the provisions of the Financing Agreement and this Amendment, the provisions of this Amendment shall control and govern.

6. Entire Agreement and Amendments. The Financing Agreement, as expressly modified by this Amendment, constitutes the sole and only agreement of the parties to the Financing Agreement, and supersedes any prior agreements between the parties concerning the terms of the Financing Agreement. The Financing Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

7. Owner Authority. Owner and the person signing on behalf of it jointly and severally warrant and represent to City that (i) Owner has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize Owner to enter into this Amendment and to carry out Owner's obligations hereunder has been taken, and (iii) the person signing on behalf of Owner has been duly authorized by Owner to sign this Amendment on its behalf.

8. City Authority. City and the person signing on behalf of City jointly and severally warrant and represent to Owner that (i) City has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize City to enter into this Amendment and to carry out City's obligations hereunder has been taken, and (iii) the person signing on behalf of City has been duly authorized by City to sign this Amendment on its behalf.

9. Binding. This Amendment shall be binding on and inure to the benefit of City, Owner and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10. Governing Law. This Amendment shall be construed and governed by the laws of the State of Texas in effect from time to time.

11. Section Headings. The section headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof.

13. Construction. Each party acknowledges that it and its counsel have had the opportunity to review this Amendment; that the normal rule of construction shall not be applicable and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Amendment.

14. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties to this Amendment may execute the Amendment by signing any of the counterparts. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Amendment had been delivered. City and Owner (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Amendment based on the foregoing forms of signature.

[Signature Page follows]

IN WITNESS WHEREOF, City and Owner have executed this Amendment through their duly authorized representatives to be effective as of the Effective Date.

**City:**

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

By: \_\_\_\_\_

Name:

Title:

Approved as to form:

By: \_\_\_\_\_

Assistant City Attorney

**Owner:**

**SLF III – ONION CREEK L.P.,**  
a Texas limited partnership,

By: \_\_\_\_\_

Name:

Title: