

**FIRST AMENDMENT TO WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT**

This FIRST AMENDMENT TO WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT (this "Amendment") is made effective ____ day of _____, 2019 (the "Effective Date"), by and 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 (each individually referred to as a "Party" and collectively as the "Parties").

RECITALS

A. The City and Developer are parties to that certain Whisper Valley Public Improvement District Finance Agreement dated effective November 1, 2011 (as amended, the "Agreement").

B. Pursuant to the Agreement, it was contemplated that Phased PID Bonds would be issued periodically in the future as individual Improvement Areas of the Project are developed and such Phased PID Bonds would fund Phased PID Bond Public Improvements within each Improvement Area.

C. In order to allow for the efficient development of the Project, the Parties agreed that the Developer may receive reimbursements for the Phased PID Bond Public Improvements within each given Improvement Area once such Phased PID Bond Public Improvements have been constructed and accepted by the City or County, as applicable.

D. All the Subordinate Master PID Bonds have been paid off, but the Senior Master PID Bonds remain outstanding.

E. On June 15, 2017, the City levied a Special Assessment on the District that was only in the amount of the Annual Installment (as defined in the Service and Assessment Plan) for one calendar year (the "2017 Special Assessments"). The revenue from the 2017 Special Assessments has been collected by the City for the reimbursement of Actual Costs.

F. Developer has already commenced and completed the Improvement Area #1 Authorized Improvements, and pursuant to the 2018 Addendum to Whisper Valley Public Improvement District Service and Assessment Plan adopted pursuant to Ordinance No. 20180823-073 (the "2018 SAP Addendum"), additional Special Assessments have been levied on Improvement Area #1, and the Improvement Area #1 Authorized Improvements have been identified.

G. The City passed Ordinance No. 20190207-002 on February 7, 2019 ratifying and confirming the Special Assessments levied for Improvement Area #1.

NOW, THEREFORE, Developer and City hereby agree as follows:

1. Recitals/Defined Terms. The foregoing Recitals are true and correct in all material respects and are incorporated by reference herein and made a part of this Amendment for all purposes. Unless otherwise defined in this Amendment, any capitalized terms used in this Amendment shall have the meanings given to them in the Agreement.

2. Definitions. The following definitions, as well as the defined terms in the Recitals above, are hereby added to Exhibit "A."

"2018 SAP Addendum" means the 2018 Addendum to Whisper Valley Public Improvement District Service and Assessment Plan adopted pursuant to Ordinance No. 20180823-073.

"2019 Amended and Restated SAP" means the Whisper Valley Public Improvement District 2019 Amended and Restated Service and Assessment Plan, approved contemporaneously herewith.

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

"Future Improvement Area(s)" means the Improvement Areas of the Property that do not include Improvement Area #1.

"Improvement Area #1" shall be the area identified as such in the Assessment Plan.

"Improvement Area #1 Improvements" shall mean a portion of the costs of the local infrastructure benefitting Improvement Area #1

"Phased PID Bond Public Improvements" means those Public Improvements to be funded by Phased PID Bonds.

3. Amendment of Provision Related to Public Bidding.

Section 3.07(a) of the Agreement is hereby deleted and replaced with the following:

(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 ("**Exemption**"). Section 252.022 (a) (9) provides that a project will be exempt from competitive bidding for "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 (i) complies with the Exemption, and (ii) any Public Improvement which is not funded with either Senior Master PID Bonds or Improvement Area #1 Bonds, and for which Developer is requesting reimbursement from

PID proceeds, the Developer 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. Developer shall not be required to enter into a contract with the apparent low bidder and may select the contractor who provides, in Developer'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 Developer:

- (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.

The documents described in clauses (i) through (v) above shall be promptly provided to the City after receipt by the Developer.

4. Amendment of Provisions Related to Funding of Phased PID Bond Public Improvements and Levy of Special Assessments.

Section 4.02 of the Agreement is hereby amended through the addition of subsection (e):

(e) *Payoff of Senior Master PID Bonds.* In conjunction with the Phased PID Bonds issuance for any Future Improvement Area, some of the proceeds of those Phased PID Bonds may be used to pay off that portion of the Senior Master PID Bonds allocable to such Future Improvement Area, such that the Special Assessments attributable to the Future Improvement Area levied and pledged as security for Senior Master PID Bonds shall be discharged and deemed paid in full upon the defeasance of such Senior Master PID Bonds.

5. Provisions Related to Improvement Area #1. The following is hereby added as a new Sections 4.02(A) and 4.02(B) to the Agreement:

Section 4.02(A). Improvement Area #1

Notwithstanding the terms contained in Section 4.02, since Improvement Area #1 Improvements have been constructed and accepted by either the County or the City (as applicable), and the Special Assessments to fund the Improvement Area #1 Improvements have been levied pursuant to Ordinance No. 20180823-073, the

process set forth in Section 4.02(a) is hereby adjusted as follows as to Improvement Area #1 only:

(1) It is hereby acknowledged that provisions for the prepayment of the Senior Master PID Bonds that are allocable to Improvement Area #1 have been made through a (a) prepayment of assessments and (b) transfer of certain funds held pursuant to the terms of the indenture of trust applicable to the Senior Master PID Bonds. As a result of such prepayment, the lien and Special Assessments associated with the Master PID Bonds allocable to Improvement Area #1 will be extinguished.

(2) In conjunction with the issuance of the Improvement Area #1 PID Bonds, Developer is required to submit Certification for Payment in accordance with the provisions of Section 4.01 for the amount of Actual Costs for the Improvement Area #1 Improvements to be funded by the bonds as well as any other qualified and permitted costs submitted to the City (e.g. bond issuance costs or consultant fees). Any disbursement of funds shall be made in accordance with the trust indenture applicable to the Improvement Area #1 Bonds.

Section 4.02(B). 2017 Special Assessments

Notwithstanding the terms contained in Section 4.02 and 4.02(A), on June 15, 2017, the 2017 Special Assessments were levied to fund a portion of the costs of the Improvement Area #1 Improvements. The revenues collected from the 2017 Special Assessments are not included in the pledged revenues which serve as the security for the Phased PID Bonds for Improvement Area #1 pursuant to the trust indenture thereto. The City and the Developer intend for this Amendment to provide for the payment to the Developer of a portion of such costs of the Improvement Area #1 Improvements from proceeds of the 2017 Special Assessments. The process set forth in Section 4.02(a) is hereby adjusted as follows as to Improvement Area #1 and the proceeds of the 2017 Special Assessments which have been previously collected thereby discharging the lien associated with such assessments:

(1) The City has collected the 2017 Special Assessments and holds and will continue to hold such revenues in a designated account separate from the City's other accounts.

(2) To receive funds from the proceeds of the 2017 Special Assessments to pay a portion the Actual Cost of the Phased PID Bond Improvements, the Developer is required to provide the City with (i) a Certification for Payment evidencing the actual cost, (ii) evidence of acceptance by the City or County of the Phased PID Bond Public Improvements to be funded by the 2017 Special Assessments in question as described in Section 3.01 above, and (iii) an assignment of the warranties and guarantees, if applicable, for the Phased PID Bond Public

Improvements to be funded by the 2017 Special Assessments in question, in a form reasonably acceptable to the City. Nothing herein shall prohibit Developer from being reimbursed for design costs associated with a Phased PID Bond Public Improvement.

(3) In conjunction with the Certification for Payment being submitted to the City, the City shall conduct a review to confirm those Phased PID Bond Public Improvements to be funded by the 2017 Special Assessments were constructed in accordance with the plans therefor and to verify the Actual Cost of the Phased PID Bond Public Improvements specified in such Certification for Payment. The City agrees to conduct such review in connection with the Certification for Payment that is to be submitted to the City and the Developer agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that Phased PID Bond Public Improvements to be funded by the 2017 Special Assessments have been constructed in accordance with the plans therefor, and verification and approval of the Actual Cost of those Phased PID Bond Public Improvements, the City shall sign the Certification for Payment and forward the same to the City Representative. The City Representative shall then forward the executed Certification for Payment to the City Controller. The City Controller shall then have up to thirty (30) days to disburse payment to the Developer.

6. Section References. Unless expressly stated otherwise, any and all references to sections or other enumerated provisions in this Amendment shall refer to the corresponding sections or provisions in the Agreement.

7. Ratification; Entire Agreement. The Agreement, as amended by this Amendment, is hereby ratified and affirmed and continues in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment control.

8. Counterparts. This Amendment may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

This Amendment is signed as of the date of the acknowledgement below, but shall be effective as of the Effective Date of this Amendment.

[Signature pages to follow]

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

By: _____
Name: _____
Title: _____

[CITY SIGNATURE PAGE]

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**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

[DEVELOPER SIGNATURE PAGE]

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