

ORDINANCE NO. 20110310-015

AN ORDINANCE APPROVING A MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE 5TH AND BRAZOS PARKING GARAGE PROJECT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that the 5th and Brazos Parking Garage Project described in SPC-05-0031C(XT2).MGA, is a large, long-term project under City Code Section 25-1-540 (*Managed Growth Agreements*).

PART 2. The Council approves the managed growth agreement ("MGA") covering the 5th and Brazos Parking Garage Project between the City of Austin and Walton Stacy Development Partners IV, LP, attached to and incorporated into this ordinance as Exhibit A. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

PART 3. The City Manager or his designee may execute the agreement for the City.

PART 4. The Council waives board or commission review, if any, required for the MGA.

PART 5. This ordinance takes effect on March 21, 2011.

PASSED AND APPROVED

_____, March 10, 2011 §
§
§

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
Acting City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

EXHIBIT A

MANAGED GROWTH AGREEMENT **BETWEEN THE CITY OF AUSTIN AND** **WALTON STACY DEVELOPMENT PARTNERS IV, LP.**

This Managed Growth Agreement ("Agreement") between the City of Austin, Texas ("City") and Walton Stacy Development Partners IV, LP ("Walton Stacy") is made and entered into by the City, a home-rule municipal corporation acting by and through its duly authorized City Manager and Walton Stacy. Walton Stacy and the City may be referred to jointly as Parties or singly as "Party" in this Agreement.

RECITALS

1. On November 22, 2005, Walton Stacy filed an application for a consolidated site plan for the construction of the 5th & Brazos Parking Garage on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On June 6, 2006, the City approved Site Plan No. SPC-05-0031C, authorizing the construction of a 12-story 273,000 square foot parking structure, 8,800 square feet of retail space and 1,265 square feet of financial services on 0.812 acres. ("the Project").
3. Walton Stacy desires to extend the life of the project to obtain all necessary permits and complete the various phases, realizing that due to the current economical conditions, it could take 10 years to construct all improvements.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Walton Stacy agree as follows:

ARTICLE I **PURPOSE & LEGAL AUTHORITY**

Section 1.01 Purpose.

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for Walton Stacy to acquired permits and complete the Project in phases.

Section 1.02 Legal Authority.

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a large project consisting of three or more phases, is a long-term mixed-use project, provides site redevelopment, and benefits development around the convention center.

Section 1.03 Expiration Date

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. By Ordinance No. _____, the City Council directed that the expiration date is to be March 22, 2021.

ARTICLE II **TERMS**

Section 2.01 Original Regulations; Expiration Date

Subject to Section 2.03 below, Walton Stacy may construct the Project to comply with City regulations in effect on November 22, 2005, which is the day the application was originally submitted under the Comprehensive Watershed Ordinance and Land Development Code ("Original Regulations"). The expiration date of Site Plan No. SPC-05-0031C for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be March 22, 2021.

Section 2.02 Revisions to the Site Plan

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, Walton Stacy may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Site Plan No. SPC-05-0031C without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations.

Section 2.03 Exceptions from Right to Develop Under Original Regulations

In this section, Walton Stacy agrees to comply with City regulations adopted after March 22, 2011, as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City.

A R T I C L E I I I **MISCELLANEOUS PROVISIONS**

Section 3.01 Notice.

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice ") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin: City Manager
 P.O. Box 1088
 Austin, Texas 78767

with required copy to: City Attorney
 P.O. Box 1088
 Austin, Texas 78767

Owner: Walton Stacy Development Partners IV, LP
(Tom Stacy)
823 Congress Ave., Suite 111
Austin, Texas 78701

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 3.02 Severability.

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

Section 3.03 Waiver.

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

Section 3.04 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 3.05 Incorporation of Exhibits.

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 3.06 Assignability, Successors, and Assigns.

This Agreement is not assignable by Walton Stacy or the City without the prior written consent of the City Council or Walton Stacy.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 3.07 Amendment.

This Agreement may only be amended in writing on the approval of the City Council and Walton Stacy.

A R T I C L E I V
DEFAULT AND REMEDIES FOR DEFAULT

Section 4.01 Default.

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

Walton Stacy Development Partners IV, LP

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

City of Austin

Brent Lloyd
Assistant City Attorney

Sue Edwards
Assistant City Manager
Date:

EXHIBIT A

"The Property"

Original City of Austin Block 57, Lots 1 through Lots 6, Original City of Austin
Subdivision