

MANAGED GROWTH AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
RIVER PLACE POINTE LP,
PACIFICA RIVERPLACE LP,
AND UNITED HERITAGE CREDIT UNION

This Managed Growth Agreement (“Agreement”) between the City of Austin, Texas (“City”) and River Place Pointe LP, Pacifica Riverplace LP, and United Heritage Credit Union (“the Owners”) is made and entered into by the City, a home-rule municipal corporation acting by and through its duly authorized City Manager and the Owners. The Owners and the City may be referred to jointly as Parties or singly as “Party” in this Agreement.

RECITALS

1. On October 3, 2007, the Owners filed an application for a consolidated site plan for the construction of the River Place Center project on property described in Exhibit A, which is attached hereto and incorporated herein (“the Property”). An extension to the application was filed July 14, 2011.
2. On May 6, 2008, the Zoning and Platting Commission approved Site Plan, SPC-2007-0561C, authorizing the construction of a mixed use development with a 5 buildings which will include an amount not to exceed 125,000 square feet of administrative/professional office, 40,000 square feet of medical office, 3,626 square feet of financial services, 100 room hotel, and 5,100 square feet of restaurant space, a parking garage, surface parking and other associated improvements on 22.8 acres (“the Project”).
3. The Owners 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 five years to construct all units.

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 the Owners 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 the Owners to acquire 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, long-term mixed-use project, and completed several phases including utilities, driveways and pond facility of the project and has one building currently under construction.

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.

ARTICLE II
TERMS

Section 2.01 Original Regulations; Expiration Date

Subject to Section 2.03 below, the Owners may construct the Project to comply with City regulations in effect on July 14, 2011, 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-2007-0561C 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 October 3, 2016.

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, the Owners 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-2007-0561C 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, the Owners agree to comply with City regulations adopted after July 14, 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; and
- d. state and/or federal regulatory requirements.

ARTICLE III **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

Owners: For Lots 1A, 3A, 5A-8A:

 River Place Pointe LP (Brenda Tworoger)
 c/o Aspen Growth Properties/Aquila Commercial LLC
 1717 West Sixth Street, Suite 450
 Austin, Texas 78703

For Lot 4A:

 Pacifica Riverplace LP (Ash Ishrani)
 Pacifica Companies
 1785 Hancock Street, Suite 100
 San Deigo, California 92110-2051

For Lot 2A:

 United Heritage Credit Union (Buddy Schoeder)
 2009 South Capital of Texas Highway #100
 Austin, Texas 78746

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 the Owners or the City without the prior written consent of the City Council or the Owners.

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 the Owners.

ARTICLE IV
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.

Owners:

River Place Pointe LP

By: _____

Name: Brenda Tworoger

Title: President

Date: _____

STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on _____, 2011 by Brenda Tworoger, President of River Place Pointe LP, a _____ limited partnership, on behalf of said limited partnership.

[seal]

_____.

Pacifica Riverplace LP,

By: _____

Name: Ash Israni

Title: President

Date: _____

STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on _____, 2011 by Ash Israni, President of Pacifica Riverplace LP, a _____ limited partnership, on behalf of said limited partnership.

[seal]

_____.

United Heritage Credit Union

By: _____

Name: Buddy Schoeder

Title: President/CEO

Date: _____

STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on _____, 2011 by Buddy Schoeder, President/CEO of United Heritage Credit Union, on behalf of said credit union.

[seal]

_____.

Approved as to form:

City of Austin

Brent Lloyd
Assistant City Attorney

Sue Edwards
Assistant City Manager
Date: _____

EXHIBIT A

"The Property"

22.8 acres more or less as described as
Lots 1A-8A, of the Resubdivision of
Lot 1 at River Place Center, Lot 1, Block A, Four Points South
and Lot 1, Block A, River Place at 2222
recorded in Document No. 200800201
of the Official Public Records of Travis County, Texas.

AFTER RECORDING, RETURN TO:

City of Austin
Planning and Development Review Department
P.O. Box 1088
Austin, Texas 78767
Project Name: River Place Center
Attn: Sue Welch Case Number:
Case No. SPC-2007-0561C(XT2).MGA