

## **THIRD AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT**

THIS THIRD AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this “**Amendment**”), is effective as of August 16, 2022, by and between City of Austin, a Texas home rule city and municipal corporation (the “**City**”), and Aspen Topco II, LLC, a Delaware limited liability company (“**Developer**”).

### **RECITALS:**

A. City and Developer entered into that certain Exclusive Negotiating Agreement dated as of May 17, 2021 (as modified and amended from time to time, the “**Agreement**”).

B. The City and Developer extended the Agreement on February 9, 2022 and May 18, 2022.

C. The parties have not yet agreed on the essential terms of the MDA, but are continuing negotiations and desire to amend Section 2.01 of the Agreement with regard to the Term.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Extension of Term. In accordance with the City Council vote on July 28, 2022, the Term of the Agreement is extended to September 30, 2022.

2. Binding Effect. This Amendment is binding upon and shall inure to the benefit of the Parties, and their respective successors and permitted assigns.

3. Counterparts. This Amendment may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. The use of electronically transmitted signatures, in place of original signatures on this Amendment is expressly allowed.

4. Amendment. Except as amended hereby, the Agreement remains unmodified as written. The Agreement as amended by this Amendment may only be further amended by written instrument signed by the Parties.

5. Applicable Law. This Amendment will be governed by, and construed in accordance with, the laws of the State of Texas.

6. Defined Terms. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.

**CITY:**

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

By:

Rodney Gonzales  
Name: Rodney Gonzales  
Title: Assistant City Manager

**DEVELOPER:**

ASPEN TOPCO II, LLC, a Delaware limited  
liability company

By:

Greg Henry  
Name: Greg Henry  
Title: Authorized Signatory

Approved as to form for the City:

R. P. [Signature]  
Assistant City Attorney