

FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT

THIS FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this “**Amendment**”), is entered into as of February 09, 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 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 Section 2.01 of the Agreement, the Term of the Agreement currently expires on February 17, 2022. The Parties hereby agree to extend the Term for an additional ninety (90) days to May 18, 2022 in accordance with Section 2.01 of the Agreement.

2. Notices: Section 14.05, Notices, is amended to amend the points of contact for the parties as follows:

Developer c/o Aspen Heights Partners
Attn: David Helfrich
President of Development
Attn: Nick Galen
Development Manager
Attn: Jenni Simmons
Director of Financial & Legal Administration
1301 S. Capital of Texas Highway
Site B-201
Austin, Texas 78746
dhelfrich@ahpliving.com
ngalen@ahpliving.com
jsimmons@ahpliving.com

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.

with a copy to:
DuBois, Bryant & Campbell LLP
Attn: Rick Reed; Travis Siebeneicher
303 Colorado Street
Suite 2300
Austin, Texas 78701
rreed@dbcllp.com
tsiebeneicher@dbcllp.com

City of Austin:
City of Austin
City Manager's Office
Attn: City Manager
301 W. Second Street
Austin, Texas 78701

with a copy to:
City of Austin
Economic Development Department
Attn: Margaret Shaw
P.O Box 1088
Austin, Texas 78767-1088

If by Courier / Hand Delivery:
City of Austin
Economic Development Department
Attn: Margaret Shaw
2006 East 4th Street
Austin, Texas 78702
Margaret.shaw@austintexas.gov

with a copy to:
City of Austin
Law Department
Attn: City Attorney
301 W. Second Street
Austin, Texas 78701
ron.pigott@austintexas.gov

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.

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: President

Approved as to form for the City:

RP
Assistant City Attorney