

FIFTH AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT

THIS FIFTH AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this “**Amendment**”), is executed to be effective as of December 31, 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, May 18, 2022, August 16, 2022 and October 1, 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 Section 2.01 of the Agreement, the Term of the Agreement is extended to March 31, 2023.
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: President

Approved as to form for the City:

R. P. [Signature]
Assistant City Attorney