

**EXCLUSIVE NEGOTIATING AGREEMENT FOR
ST. JOHNS SITE (7211 N IH 35 AND 7309 N IH 35)**

This Exclusive Negotiating Agreement for the redevelopment of 7211 N IH 35 and 7309 N IH 35 (this "Agreement") is dated effective as of April 13, 2022, 2022 (the "Effective Date"), by and between the City of Austin, a Texas home rule city and municipal corporation (the "City") and Greystar Development Central, LLC (the "Developer"). The City and the Developer are collectively referred to as the "Parties" and individually as a "Party".

In consideration of the mutual covenants and agreements contained herein, the City and the Developer agree as follows:

Article I. Definitions. As used in this Agreement, each of the following terms has the meaning given it in this Article or in the sections referred to below:

"Act" is the Texas Public Information Act, Chapter 552, Texas Government Code.

"Authorized Purposes" means conducting inspections, tests, examinations, surveys, studies, and appraisals, as set out and limited in Section 9.01.

"City Council" means the elected City Council of the City.

"City Property" means the Property and all other real and personal property, or property of any other kind or character, owned by the City.

"Claim" means all claims, demands, actions, damages, loss, liabilities, judgments, costs and expenses, including without limitation, reasonable legal fees, and court costs, as set out in Section 13.01.

"Community Benefits" are those benefits identified in Section 3.02(b)(iii).

"Confidential Information" is any information submitted by the Developer in the course of the negotiations carried out under this Agreement that is clearly marked "Privileged" or "Confidential" in accordance with Section 7.01.

"Desired Elements" are those development elements which are desired by the City and which are described in Resolution No. 20171207-058 including Exhibit A, Resolution No. 20200729-117, the RFP, the RFP Response, and the July 29, 2021 City Council meeting minutes. The Community Benefits are also Desired Elements; the Desired Elements include the Community Benefits.

"Event of Default" are the events identified in Section 5.01.

"MDA" means the Master Development Agreement to be negotiated by the City, the

Developer which will set forth the terms and conditions for the redevelopment of the Property. The MDA will include the MDA Master Plan.

“MDA Master Plan” means the graphics, text, and tables illustrating the development of the Property, to be attached as an exhibit(s) to the MDA.

“Plans” are all documents, plans, studies, analyses, and similar documents regarding the planning, engineering, infrastructure, and preparation of any public/private parking facilities, streets, utilities, and other public infrastructure for the Property, as identified in Section 3.03.

“Property” means certain real property located in the City of Austin, Travis County, Texas, together with a building located thereon at 7211 N IH 35 and vacant site at 7309 N IH 35, as more particularly described in the RFP and in the map attached hereto as Exhibit A.

“RFP” means the Request for Proposal 5500 SMW3005, dated September 16, 2020, issued by the City for the solicitation of Redevelopment of approximately 19-acre St. John Site (Former Home Depot and Former Chrysler Dealership), including all exhibits and addenda issued by the City.

“RFP Response” means the response to the RFP submitted by the Developer on March 2, 2021, the Best and Final Offer submitted by the Developer on June 21, 2021, and all supplemental materials submitted by the Developer including supplemental materials submitted in response to clarification requests by the City.

“Right of Entry” means the right to enter the Property, as identified and limited in Section 9.01.

“Source of Income” means lawful, regular, and verifiable income including, but not limited to, housing vouchers and other subsidies provided by government and non-governmental entities, child support, or spousal maintenance, but does not include future gifts.

“Term” is the term of this Agreement, as defined in Section 2.01.

Article II. Negotiations.

Section 2.01 Term. The term of this Agreement will commence on the Effective Date and terminate on the date which is nine months following the Effective Date (the "Term"). If, at the expiration of the Term, the Developer and the City have not agreed on the essential terms of the MDA, the Parties may further extend the Term for a successive three-month period upon mutual agreement. If, at the expiration of such extended Term, the Developer and the City have not agreed on the essential terms of the MDA, the City Manager of the City may (but is not obligated to) further extend the Term for successive three-month periods upon written notice to the Developer. If the initial Term is extended, "Term" will mean the initial Term as it is so extended.

Section 2.02 Good Faith Negotiations. The City and the Developer agree to negotiate diligently and in good faith throughout the Term with the goal of completing the tasks set forth in Article III and negotiating the MDA.

Section 2.03 Exclusivity. During the Term, the City agrees not to negotiate with any other person or entity to act as a master developer of the Property or solicit bids or proposals to do so.

Article III. Roles and Responsibilities.

Section 3.01 Tasks. During the Term, the City and the Developer shall use good faith efforts to endeavor to negotiate, develop, and prepare the following documents and complete the following tasks:

(a) **Due Diligence.** Define the roles and responsibilities of the Developer and the City with respect to the completion of all due diligence regarding the Property.

(b) **Desired Elements.** The Parties shall negotiate the MDA with a good faith effort to include the Desired Elements, including the Community Benefits. If the Parties cannot or will not include one of these elements in the MDA, the Parties shall identify the reason(s) in writing for the City to provide to City Council. A description of the Desired Elements follows.

(i) *Affordable Housing Development.* The City desires affordable housing to be a significant use of the Property. Accordingly, the Developer shall seek to offer at least 50% of the units (and the Developer acknowledges that the City has expressed a preference for more than 50%) in the Property as income-restricted for rent housing, to include one-bedroom and some family-oriented multi-bedroom (2 and 3 bedrooms) housing for households earning at or below 60% median family income ("MFI") for rental on the Property, and the Developer acknowledges that the City has expressed a preference for for-sale units to be included as part of the overall housing program. The Developer will use good faith efforts to investigate creative public and private methods that can offer more on-site affordable housing, including for-sale units at or below 80% median family income, 3- and 4-bedroom units and deeper levels of affordability that can accommodate permanent supportive housing.

(ii) *Affordable Housing Management.* To the extent feasible, the City desires for the management of affordable housing to adhere to City requirements as of January 1, 2021, including but not limited to:

- 1) Tenant protection provisions from the City's Rental Housing Development Assistance Program Guidelines (RHDA) attached hereto as **Exhibit B**;
- 2) Require covenants on the affordable housing units to reserve the units as affordable;
- 3) Provide for Source of Income protection by accepting housing choice vouchers from the HUD Housing Choice Voucher program under 24 CFR Part 982, the City's local housing vouchers, and other lawful, regular, and verifiable rental subsidies;
- 4) Adjust income restrictions (and rent restrictions) for household size under HUD guidelines;
- 5) Set sale price of affordable homes at no more than 3 times the household's annual income (or 3.5 times the household's income if someone in the household has completed approved homebuyer counseling or education);
- 6) Subject ownership units to an equity cap in which the homeowner's equity can increase up to 2% per year for 30 years (at which point no additional equity can be earned).

(iii) *Community Benefits.* The City desires the Developer to offer the following community benefits to the extent feasible with guidance through the on-going Community Engagement Plan and MDA process:

1) The City desires the Developer to recruit and lease a significant percentage of the commercial space to local businesses including retailers and grocers and to non-profit entities including those that provide services such as workforce training and youth development.

2) The City desires the Developer to explore the feasibility of high-quality, affordable childcare on site.

3) The City desires the Developer to provide a site layout that improves access to the Property from the adjacent St. John neighborhood.

4) The City desires the Developer to explore creative ways for the project to recognize and highlight the history of the St. John Neighborhood in a way that is accessible to the public.

5) The City desires the Developer to work with the City and local community organizations to develop an affirmative marketing plan that markets available residential units to St. John Neighborhood residents including former residents who have been displaced from Austin and residents who speak a language other than English as their first language.

6) The City desires the Developer to work with the City to identify potential partnerships that address "Right To Stay" and "Right to Return" programs.

7) The City desires the Developer provide active and community-accessible open space that incorporates such elements as green space, a splash pad, walking trails, community gardening, and an active boulevard that are accessible to multigenerational users including families and children.

8) The City desires the Developer to explore options for replacing parking spaces with other uses as defined in the community vision.

(iv) Defeasement Bonds. The Developer will be required to make an upfront lump sum payment equal to or greater than the amount required to fully pay off and defeasement the bonded indebtedness on the Property.

(v) Sale of Property. The City's strong preference is for the Property to be leased to the Developer rather than sold. Additionally, if the City agrees in the MDA to sell (rather than lease) any portion of the Property, the Developer

acknowledges that such sale will be limited to a sale in which title is conveyed to a public facility corporation as defined in Chapter 303 of the Local Government Code or other entity approved by the City. Any sale of any portion of the Property will include a right of first refusal to the City on terms reasonably acceptable to the Developer and the City and, if necessary or appropriate, a right of reverter.

(vi) Other Desired Elements. To the extent feasible, the City desires the Developer to meet other requirements and elements described in Resolution No. 20171207-058, Resolution No. 20200729-117, the RFP, the RFP Response, and the July 29, 2021 City Council meeting minutes.

(c) Conceptual Site Plan and Building Massing. The City desires for the Developer to initiate, produce, and revise a conceptual site plan in connection with the preparation of the MDA. The conceptual site plan should address such issues as site access from the adjacent neighborhood, placement of proposed open space, connections to transit, and relationship of the buildings to public streets. The City desires the Developer to include with the conceptual site plan, building massing that depicts the exterior elevations of proposed buildings including their scale and relationship to St. John Neighborhood and public streets. The conceptual site plan should have sufficient detail to convey the overall architectural style of the proposed project on the Property, the commercial and residential spaces, open space, stormwater detention and water quality, and a parking plan for the Property for review and comment by the City. The conceptual site plan should explore options for phasing development, in which later phases could convert excess or underutilized parking spaces into other uses within the St. John community vision. The site plan need not include the same level of detail that would be required under the City's Land Development Code. The City shall review and provide comment on the site plan.

(d) Zoning and Subdivision. The Parties acknowledge that rezoning of the Property site will be initiated by the City. Developer acknowledges that the City zoning and subdivision staff do not act on behalf of or make binding decisions for the City Council, the Zoning and Platting Commission, the Planning Commission, and the other commissions of the City, or City staff acting in a regulatory capacity. The Parties agree that it will be mutually beneficial and advantageous to undertake rezoning after the Effective Date. All external materials, documents or instruments typically generated by the landowner of a property for such zoning and subdivision process (e.g., plats), will be generated by Developer, at its sole cost and expense, for approval by the City in its landowner capacity before being submitted for regulatory approval. The Developer shall be responsible for any fees or fiscal posting requirements concerning such zoning and subdivision. Developer may be eligible for certain fee waivers based on the availability, participation, and fulfillment of City programs as applicable. Developer will require that the property will be rezoned to category(s) (including, if appropriate and necessary, overlays) that allow development that is consistent with the terms hereof prior to making any payments to defease or pay off the current bonded indebtedness on the Property.

(e) Mandatory Elements. The Parties acknowledge that the Developer shall meet certain requirements to be included in the MDA in accordance with applicable local, state, and federal laws, regulations, and policies including but not limited to:

(i) WBE/MBE subcontracting goals in accordance with City Code Chapter 2-9B and all other applicable codes, resolutions, rules, or ordinances; and

(ii) City Council "Third Party Resolutions," regarding the applicability of certain OSHA requirements, Prevailing Wage Rates, environmental design requirements, rest breaks, and M/WBE participation (without duplication as to (i) immediately above) in projects involving the private development of City Property.

(f) Public Comment and Outreach.

(i) The Parties shall allow public comment on the proposed conceptual site plan and building massing and MDA terms prior to City Council authorization of the MDA. This may include, but is not limited to, presentations to the City boards and commissions as well as posting relevant information on City websites. The Developer shall prepare conceptual site plans and other documents, at its sole costs and expense, as reasonably necessary for public comment and participate in public meetings as needed; and

(ii) The Parties will develop a Community Engagement Plan that includes clear timelines, decision-making milestones, deliverables, and outreach tools tailored to the St. John community that illustrate how the Parties will engage and maximize participation with existing communities in relation to the redevelopment of the Property. The Parties will establish the method and responsibility for informing adjacent communities of construction activities throughout the redevelopment of the Property and, to the extent feasible, minimizing the impact of these activities on those communities as necessary.

(iii) The Parties will establish a Community Advisory Board that, once established, the Parties will coordinate with as needed to obtain public comment on the programming of the site, conceptual site plan and building massing, feedback for rezoning, and subdivision.

Section 3.02 Deposit. On the Effective Date, the Developer shall tender a non-refundable deposit to the City in the amount of \$15,000.00 (the "Deposit"). If the Parties enter into an MDA, the Deposit will be applied to the initial payment of any consideration payable to the City under the MDA or any other documents executed pursuant thereto. If an MDA is not entered or this Agreement otherwise expires or is terminated other than due to a Developer Event of Default, the City will retain the Deposit.

Section 3.03 Documents.

(a) Document Production. The City and its consultants shall initiate and produce each interim draft and final forms of the MDA. The Developer shall produce analyses required for negotiation of the MDA, including without limitation: Plans as defined and including site plans, architectural plans and renderings as necessary to evaluate and communicate physical and programmatic elements of the project; financial pro formas reflecting sources and uses of funds for predevelopment, construction, and operation of the project, including Community Benefits; and agreements among Development Team members regarding roles and responsibilities that the City may review. The Developer's consultants will produce the MDA Master Plan, as well as those studies, cost estimates, infrastructure engineering, project proformas, and other development information reasonably necessary to support the MDA.

(b) Delivery of Documents; Ownership of Documents. The Developer shall provide the City with copies of all reports, studies, analyses, project proformas, and similar documents, prepared or commissioned by the Developer with respect to this Agreement and the Property, promptly upon their completion and after an internal review by the Developer. The City shall provide the Developer with copies of all reports, studies and analyses prepared or commissioned by the City with respect to this Agreement and the Property, promptly upon their completion and after an internal review by the City. Notwithstanding the provisions of this Section, in no event will any Party be required to disclose to any other Party information to the extent such information is proprietary or protected by the attorney-client privilege. All documents, plans, studies, analyses and similar documents (the "Plans") regarding the planning, engineering, infrastructure and preparation of any public/private parking facilities, streets, utilities, and other public infrastructure for the Property will be the sole property of the ordering Party subject to the rights of the consultants preparing same. All other plans prepared on behalf of the Developer shall be the property of the Developer or its consultants, as applicable.

Section 3.04 Basis for Negotiations. The negotiations conducted under this Agreement, as well as the principal and initial basis for preparation of the MDA, will be based on the redevelopment described in the RFP, the RFP Response, Resolution No. 20171207-058, Resolution No. 20200729-117, and the July 29, 2021 City Council meeting minutes. It is expressly understood and stipulated that the development parameters set forth in the RFP Response have not been accepted, adopted or approved by the City, nor have such parameters or any of them been approved or selected as a preferred alternative. It is expressly understood and stipulated that, except as contained in the RFP Response, the development parameters set forth in the RFP, Resolution No. 20171207-058, Resolution No. 20200729-117, and the July 29, 2021 City Council meeting minutes have not been accepted, adopted or approved by the Developer, nor have such parameters or any of them been approved or selected as a preferred alternative. The Parties acknowledge and agree that the final development parameters for the Property shall be negotiated in good faith and agreed upon in the executed MDA approved by City Council and the governing body of the Developer.

Article IV. Expense Payment. The Developer and the City shall each pay their respective costs incurred in connection with negotiation of and actions undertaken by the parties in furtherance of this Agreement.

Article V. Events of Default and Remedies; Failure to Agree Upon the MDA

Section 5.01 Event of Default. Each of the following circumstances will constitute an "Event of Default" hereunder.

(a) **General Breach by Either Party.** A breach of this Agreement (other than those listed in Section 5.01(b) or (c)) by either Party and such breach continues for a period of 30 days following written notice of such breach to the breaching Party, which notice must specify in reasonable detail the basis of such claim of breach;

(b) **Unauthorized Assignment by the Developer.** Except as authorized in Section 6.01, the Developer assigns its interest in this Agreement or otherwise fails to comply with Section 6.01, and such breach continues for a period of 10 business days following written notice of such breach to the Developer;

(c) **Bankruptcy or Insolvency.** Bankruptcy or insolvency of the Developer.

Section 5.02 Remedies.

(a) **Developer Event of Default.** In the event the Developer commits an Event of Default, the City may, as its sole and exclusive remedy, terminate this Agreement upon written notice to the Developer.

(b) **City Event of Default.** In the event the City commits an Event of Default, the Developer may, as its sole and exclusive remedy, terminate this Agreement upon written notice to the City.

(c) Damages and Equitable Relief. Each Party waives any right or claim of monetary damages or equitable relief against the other Party for such Party's default of this Agreement.

(d) Effect of Termination. In the event this Agreement is terminated pursuant to its terms, neither Party shall have any further rights or obligations under this Agreement, except those rights or obligations that expressly survive termination pursuant to its terms.

(e) Damages. Each Party expressly waives the right to recover damages from the other Party under this Agreement and neither Party may recover from the other actual, consequential, indirect, punitive, exemplary, special or other damages of any kind or nature whatsoever.

Section 5.03 Failure to Agree Upon the MDA. Notwithstanding anything to the contrary in this Agreement, the failure to reach agreement upon the MDA will not be deemed an Event of Default by either Party. In the event the Term expires and the Parties have failed to reach agreement upon the MDA, this Agreement will terminate and neither Party will have any further rights or obligations under this Agreement, except those rights or obligations which expressly survive termination pursuant to the terms of this Agreement.

Article VI. Assignment; Development Team.

Section 6.01 Assignment. The Developer shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale of stock or sale of assets, mortgage, pledge or otherwise transfer) its interests in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion; provided, however that the Developer may assign its interests in this Agreement to an affiliate with notice to the City but without the City's consent. The City acknowledges that the entity that will enter into any MDA will involve the parties that currently comprise the Developer and may also include other entities or individuals. The City also acknowledges that the entity that will enter into any MDA may enter into joint ventures, partnerships, or other co-development arrangements with other entities and individuals. Developer acknowledges that the City must be assured that the Developer and the entity that enters into the MDA as the "developer" have the financial and development capabilities to satisfy its obligations under the MDA, and if such entities do not have such capabilities, the City may require a guaranty or similar assurance of such obligations. The City may transfer its interest in this Agreement to a special entity or entities formed by the City to facilitate the development of the Property without the prior consent of the Developer but with written notice to the Developer of any such transfer.

Section 6.02 Developer's Development Team. As provided in the RFP Response, the Developer's development team shall include (1) Greystar or its subsidiaries as the development lead; (2) the Housing Authority of Austin (HACA) as development partner; TBG Partners as lead landscape architect; and Cortez Consulting as Public Engagement lead. The Developer shall use commercially reasonable efforts to keep its development team consultants and individuals identified in the RFP Response (as updated in Exhibit D attached hereto) assigned to perform the

responsibilities identified therein and to satisfy its obligations in the RFP Response. In the event of changes in consultants or personnel, consultants or individuals of substantially equivalent seniority, experience, and qualifications will be assigned. The Developer shall provide written notice to the City of changes in its consultants and personnel and their respective responsibilities and shall furnish to the City information on the seniority, experience, and qualifications of any additional or substituted consultants or individuals.

Article VII. Confidentiality of Information and Negotiations.

Section 7.01 Confidentiality. The City and the Developer enter this Agreement with the understanding that, during the negotiation of the MDA, the City may require, and if so, then the Developer shall provide, information of a privileged and confidential nature relevant to the Property or the RFP Response (which shall not include financial, operational or trade secret information about other Developer projects) to the extent necessary for the City to verify financial, operational, or trade secret information that is relevant to the negotiations. The City agrees that it will, to the extent not prohibited by the Texas Public Information Act ("Act"), Chapter 552, Texas Government Code, keep confidential and not disclose any information submitted by the Developer in the course of the negotiations that is clearly marked "Privileged" or "Confidential" ("Confidential Information") except for disclosures (a) in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby and who are informed of this confidentiality requirement and who agree to be bound to it; (b) in response to a legal process or as otherwise required by law after giving the Developer the opportunity to contest any such process or requirement; or (c) in any manner to which the Developer consents in writing. Subject to any third-party rights under the Act as discussed in Section 7.02, the City and the Developer agree that neither shall have the right to require the other to disclose proprietary or attorney-client privileged communications or work product.

Section 7.02 Public Information Requests. The City shall use reasonable efforts to provide prompt written notice to the Developer of any request received by the City pursuant to the Act requesting Confidential Information or information collected, assembled or maintained for the City and to which the City has contractual access, for the purpose of providing the Developer an opportunity to seek to protect such information from disclosure. Under the Act, documents collected, assembled or maintained for the City and to which the City has access under the terms of a contract may be deemed public information, subject to the exceptions in the Act. The City makes no representation as to how the Attorney General of Texas will rule on any public information request, but agrees to reasonably cooperate with the Developer in asserting exemption claims under the Act, provided any extensive briefing or analysis of documentation will be the responsibility of the Developer.

Section 7.03 Press Releases and Public Communications. The Parties acknowledge and agree that the proposed redevelopment of the Property is a matter of substantial interest to the community and will require regular, on-going communications by each Party, including responses to inquiries from officials of the City, members of community groups and neighborhood associations, and representatives of the media. The Parties agree to cooperate and coordinate in the responses to inquiries from media, elected and non-elected officials, and other members of the

community. The Parties agree to coordinate press releases and other communications regarding the Property and proposed redevelopment prior to publishing.

Section 7.04 Survival. The terms of this Article VII shall survive the expiration or earlier termination of this Agreement, but will be superseded by the terms of the MDA, if fully executed.

Article VIII. Disposition, Outside Negotiations, and Existing Occupancies.

Section 8.01 Disposition. During the Term, the City shall not, without the written consent of the Developer, which consent will not be unreasonably withheld (i) sell, lease, encumber or otherwise dispose of all or a portion of the Property in any manner which would affect Developer's right to develop the Property under the MDA; provided that the City may convey the Property to a special entity formed by the City; or (ii) except as specifically contemplated by this Agreement, engage in any development activities or construct any improvements on the Property. In no event may any such sale, lease, encumbrance, disposition, development activities, or construction of improvements affect the Property in any adverse manner if it will extend into the term of the MDA, if an MDA is executed between the Parties, without the express, prior written consent of the Developer in its sole discretion.

Section 8.02 Outside Negotiations. During the Term, Developer shall have the exclusive right to negotiate with third parties to facilitate the development of the Property in accordance with the MDA, provided that any letter of intent or agreement between the Developer and such third party shall contain the following disclaimer:

Notwithstanding anything to the contrary contained herein, (a) [Developer] is acting in its capacity as the proposed independent master developer for the [Property] and is not authorized to make any warranty, representation, or covenant on behalf of the City of Austin or to bind the City of Austin to any agreement or other contract, and (b) the potential transaction mentioned herein is subject to the final negotiation and execution of certain agreements between [Developer] and the City of Austin, including without limitation, a master development plan and a master development agreement.

During the Term, the City shall refer to the Developer all third party offers or requests for negotiations received by the City concerning the redevelopment of any portion of the Property.

Section 8.03 Existing Occupancies/Activities. Developer acknowledges that portions of the Property are currently occupied by various City departments as listed on **Exhibit E** attached hereto. Such occupancies will be terminated by the City prior to any conveyance of an interest in the Property to the Developer in the event the MDA is finalized and executed. Developer acknowledges that improvements in the right-of-way adjacent to the Property and other construction activities not under the City's control are currently taking place on and/or near the Property.

Article IX. Right of Entry and Insurance.

Section 9.01 Right of Entry. The City hereby grants the Developer, its employees, agents, and contractors, the right to enter the Property during the Term solely for the Authorized Purposes (the "Right of Entry"), subject to the following terms, conditions, and covenants:

(a) Notice. The Developer must use best effort to provide written notice to Christine Freundl, at christine.freundl@austintexas.gov, at least 24 hours prior to entering the Property.

(b) Costs. All inspections, tests, examinations, surveys, and appraisals performed by the Developer on the Property shall be at the Developer's sole expense and in accordance with applicable laws.

(c) Delivery of Insurance Certificates. Neither Developer, nor a Developer agent or contractor, may enter the Property until certificates of insurance have been delivered to the City evidencing that the insurance coverages required by Section 9.02 hereof have been obtained and are in force.

(d) Repair of Damage. If, for any reason, the Parties do not agree to the terms and provisions of the MDA, Developer shall repair any damage to the Property to the extent caused by Developer, or its agents, contractors or employees, arising out of or concerning this Right of Entry, and restore the Property to substantially the same condition it was in prior to the occurrence of damage unless specifically waived in writing by the City. If the Developer fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration of the Property to completion, the City may perform such repair and restoration work, and the Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses promptly after receipt of an invoice. Developer shall cause its agents and contractors to execute and deliver to the City such waivers of liability as the City may reasonably request as a condition to entry upon the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(e) Occupants. In making any inspection or test hereunder, the Developer will use, and will cause any representative of the Developer to use, discretion so as not to unreasonably disturb the occupants of the Property.

Section 9.02 Insurance. Developer, and its contractors, shall carry and maintain throughout the Term the insurance coverage set forth in the attached Exhibit C.

Article X. Real Estate Commissions. The Developer represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer agrees to indemnify and hold the City harmless from any claim by any broker, agent or finder retained by the Developer. The City represents that it has engaged no broker, agent, or finder in connection with this transaction and the City, to the extent permitted by law, agrees that the City, not the Developer, will be responsible for any claim by any broker, agent, or finder retained by the City.

Article XI. Limitations of this Agreement.

Section 11.01 Submission Not an Offer. The submission of this Agreement by the City will not be construed as an offer. Until executed by the Parties, the final terms and provisions are subject to revision.

Section 11.02 No Disposition or Exchange. By executing this Agreement, neither Party is committing itself to, or agreeing to undertake: (a) the exchange or transfer of land; (b) the disposition of land to the Developer or the acquisition of land from the City; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by, respectively, the City or any agency or department of the City, on the one hand, or the Developer, on the other hand. This Agreement does not constitute a disposition or exchange of property by the City or the Developer. Execution of this Agreement by the City and the Developer is merely an agreement to enter into a period of exclusive negotiations according to these terms, reserving final discretion and approval by the City Council, on the one hand, and the governing body of the Developer, on the other hand, of the MDA. If negotiations culminate in a MDA between the City and the Developer, such MDA shall become effective only after and upon the approval of the City Council and its execution by the City Manager pursuant to direction of the City Council, on the one hand, and by the Developer and its governing body, on the other hand.

Article XII. The City's Right to Obtain Information and to Consult with Others. The City reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity, or group.

Article XIII. General Terms and Conditions

Section 13.01 Hold Harmless and Indemnity. The Developer will indemnify, defend and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, employees and/or agents for and with respect to, all claims, demands, actions, damages, loss, liabilities, judgments, costs and expenses, including without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees and agents to the extent, but only to the extent, any such Claim arises from or in connection with any alleged, established or admitted negligent, willful, or wrongful act or omission of the Developer, its respective officers, directors, employees and agents, with respect to (i) the Right of Entry or (ii) the activities of the Developer or its employees, agents, or representatives on the Property, including without limitation the Authorized Purposes; provided, however, such indemnification, defense and hold harmless does not include any Claim to the extent (y) caused by the established or admitted negligent or wrongful act or omission of the City, or (z) caused by wrongful act or omission solely of the City. **THE FOREGOING OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS SHALL INCLUDE CLAIMS REGARDING THE NEGLIGENT ACTS AND OMISSIONS OR STRICT LIABILITY OF BOTH THE CITY AND THE DEVELOPER (AS OPPOSED TO SOLELY THE NEGLIGENT ACTS OR OMISSIONS OR STRICT LIABILITY OF THE CITY).**

Section 13.02 Hold Harmless and Indemnity Parameters. If the City notifies Developer of any Claim, Developer shall assume the Claim on behalf of the City and conduct with due diligence and in good faith the investigation and defense of the Claim and the response to it with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City shall have the right to be represented by legal counsel of its own selection and at its own expense; and provided further, that if any such Claim involves both Developer and the City and the City shall have been advised in writing by legal counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City shall have the right to select separate legal counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate legal counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume promptly (and in any event within 15 days after being notified of the Claim) the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using legal counsel selected by the City; provided, that if any such failure by Developer continues for 30 days or more after Developer notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of legal counsel to the City, the settlement or payment in full is clearly advisable. So long as the Developer does not admit liability or agree to affirmative obligations on behalf of the City, the Developer is authorized to settle a Claim.

Section 13.03 City Indemnity Obligations. The City shall (a) provide prompt written notice to the Developer of a Claim, and (b) reasonably cooperate with the Developer in the investigation and defense of a Claim. In the event the City breaches its obligations contained in the previous sentence, the liability of Developer under this Article XIII shall be reduced by the amount such breach directly caused a material impairment of the defense of the Claim and any time period affected by the City breach will be extended accordingly.

Section 13.04 Survival. The provisions of this Article XIII will survive the expiration or earlier termination of this Agreement.

Section 13.05 Notices. When this Agreement requires the Parties to provide notice to each other, the notice shall be in writing. Notices must be addressed, hand-delivered, or emailed only to the person designated for receipt of notice. A mailed notice shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested, postage prepaid. Hand-delivered notices are considered delivered only when the addressee receives those notices. Notices delivered by e-mail are considered delivered three (3) business days after transmittal or when received by the addressee whichever is earlier. The Parties may make routine communications by first class mail, email, or other commercially accepted means. Notices and routine communications to the City and Developer shall be addressed as follows:

Developer

c/o Greystar Development Central, LLC
Attn: David Walsh, Development Associate
Attn: Nic Whittaker, Senior Director,
Development

2500 Bee Caves Road
Building III, Suite 500
Austin, Texas 78746
david.walsh@grevstar.com
nic.whittaker@grevstar.com

with a copy to:

Metcalf Wolff Stuart & Williams, LLP
Attn: Steven C. Metcalfe
221 West 6th Street, Suite 1300
Austin, Texas 78701
512-404-2209
smetcalfe@mwswtexas.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: Director
301 W. Second Street
Austin, Texas 78701
Christine.Freundl@austintexas.gov

with a copy to:

City of Austin
Law Department
Attn: City Attorney
301 W. Second Street
Austin, Texas 78701
Kent.Smith@austintexas.gov

Section 13.06 Nonliability of the City.

(a) THE DEVELOPER (A) AGREES THAT IT DOES NOT NOW, AND SHALL NOT AT ANY TIME WHETHER BEFORE OR AFTER EXECUTION OF THIS AGREEMENT, HAVE OR MAKE ANY CLAIM OR CLAIMS AGAINST THE CITY OR THE CITY PROPERTY, (B) AGREES THAT THE CITY DOES NOT HAVE ANY LIABILITY WHATSOEVER OF ANY KIND OR CHARACTER, DIRECTLY OR

INDIRECTLY, AND (C) FURTHER EXPRESSLY AND ABSOLUTELY WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION AGAINST THE CITY OR CITY PROPERTY, ARISING OUT OF OR CONCERNING THE RIGHT OF ENTRY, THE RFP, THE RFP RESPONSE, THIS AGREEMENT OR THE NEGOTIATION OF THE MDA. IT IS THE INTENT OF THIS SECTION TO CONFIRM THAT THE DEVELOPER IS PROCEEDING AT ITS OWN RISK AND EXPENSE. As used in this Section, the term "Party" includes its respective members, officers, employees, agents, contractors, consultants, successors, and assigns.

Section 13.07 Non-Regulatory Capacity of the City. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, CITY IS EXECUTING THIS AGREEMENT SOLELY IN ITS CAPACITY AS THE OWNER OF THE PROPERTY AND NOT IN ITS CAPACITY AS A REGULATORY BODY (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY). FURTHER, DEVELOPER SPECIFICALLY ACKNOWLEDGES THAT THE CITY CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

Section 13.08 Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Travis County, Texas, and venue for any dispute arising hereunder will lie exclusively in the state courts located in Travis County, Texas.

Section 13.09 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the negotiation of the MDA. This Agreement may be modified only by written agreement signed by the duly authorized representatives of the Parties hereto.

Section 13.10 Captions. Captions at the beginning of each Article and Section of this Agreement are for reference only and will in no way define or interpret any provision hereof.

Section 13.11 Construction. The provisions of this Agreement have been jointly drafted by the Parties and will be constructed as to the fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

Section 13.12 Counterparts; Electronic Transmission of Signatures. This Agreement 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 Agreement is expressly allowed. The Parties intend to be bound by the signatures on such electronically transmitted document; are aware that the other Party will rely on the electronically transmitted signatures; and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

Section 13.13 Successor and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns, as long as the assignment was in accordance with Article VII.

Section 13.14 Severability. If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.

Section 13.15 Relationship of Parties; No Third-Party Beneficiaries. The City and the Developer are not partners or joint venturers, nor is either Party the principal or agent of the other party, and nothing herein will be construed to create any such relationship between the Parties, or to render either Party liable for any obligations of the other. The only beneficiaries of this Agreement are the Parties. There are no third-party beneficiaries.

Section 13.16 Time of Essence. Time is of the essence with respect to the performance of each of the obligations and deadlines contained in this Agreement.

Section 13.17 Attorneys' Fees. In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorney's fees, the Developer knowingly and intentionally waives its right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement. This section does not in any way impact the handling of attorneys' fees in the indemnification requirements of Article XIII.

IN WITNESS WHEREOF, the Parties, who have had the opportunity to consult with their attorneys with respect hereto and who fully and completely understand the terms and provisions hereof, have executed this Agreement as of the date set forth below their signatures.

Greystar Development Central,
LLC


Name Derek Brown

AUTHORIZED SIGNATORY
Title


4/1/22
Date

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


Rodney Gonzales, Assistant City
Manager

4/13/2022
Date

APPROVED AS TO FORM


Kent Smith
Assistant City Attorney