

MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

GREYSTAR DEVELOPMENT CENTRAL, LLC

CONCERNING THE ST. JOHN PROPERTY

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MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (this "Agreement") is made to be effective as of the 20th day of October, 2023 (the "Effective Date"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "City"), and GREYSTAR DEVELOPMENT CENTRAL, LLC, a Delaware limited liability company ("Greystar").

RECITALS

- A. On December 8, 2008, the City acquired the long-vacant Home Depot store located at 7211 N. IH-35 (together with all rights and appurtenances pertaining to the real property at that address and any improvements on the property, including any right, title, and interest of the City in and to the rights, benefits, privileges, easements, hereditaments, and appurtenances to the property and all right, title, and interest of the City, if any, in and to adjacent streets, alleys, and rights of way, whether public or private, the "Former Home Depot Property") using general obligation bonds for new public safety facilities (the "Bonds").
- B. On October 21, 2013, the City acquired the long-vacant Chrysler dealership location at 7309 N. IH-35 (together with all rights and appurtenances pertaining to the real property at that address and any improvements on the property, including any right, title, and interest of the City in and to the rights, benefits, privileges, easements, hereditaments, and appurtenances to the property and all right, title, and interest of the City, if any, in and to all strips and gores and adjacent streets, alleys, and rights of way, whether public or private, the "Former Chrysler Dealership Property") using the Bonds.
- C. The Former Home Depot Property and the Former Chrysler Dealership Property are adjacent to each other, now have the address of 800 E. St. John's Avenue, and are described together on Exhibit "A-1," and together constitute the "Property."
- D. The City no longer envisions using this location for public safety facilities.
- E. In December 2017, the Austin City Council began the process of creating a new vision for the Property, which culminated in the Austin City Council passing Resolution 20200729-117 and issuing a Request for Proposal on September 16, 2020.
- F. On June 21, 2021, Greystar issued its Best and Final Offer, which the City selected to pursue.
- G. The City and Greystar entered into an Exclusive Negotiating Agreement (as amended and extended, the "ENA") dated effective April 13, 2022 covering the Property. The parties have extended the term of the ENA to October 20, 2023.
- H. On June 16, 2022, the City Council approved the sale of the Property to a public facility corporation controlled by HACA.
- I. Greystar has advised the City that it plans to work with the Housing Authority of the City of Austin ("HACA") to use its existing instrumentality, South Congress Public Facility Corporation, a Texas public facility corporation ("SCPFC"), to acquire ownership of the Property as an accommodation party. SCPFC is functioning as an accommodation party, not as a successor of Greystar, and therefore has no obligations or liabilities or rights under this Agreement. SCPFC then intends to immediately enter into a lease (the "Development Lease") with a single-purpose limited liability company (the "Company" or "Developer Occupant") composed of Greystar, SCPFC (or affiliates of of the two), and certain investors (the "Investors") to develop and operate the Property in accordance with this Agreement.
- J. During the past several months, the City and Greystar have:

1. Engaged with the "St. John Community," defined as those who currently live or have other connections to the area shown outlined on Exhibit "A-2". This area is sometimes referred to as "St. John."
 2. Negotiated and agreed upon the schematic plans attached as Exhibit "B" (the "Conceptual Master Plan" or "Conceptual Site Plan and Building Massing" as required in the ENA) for the development of the Property (the "Project"), which shows the site plan, massing, and preliminary elevations.
 3. Obtained new zoning for the Property to CS-MU-V-NP and future land use map to mixed use (collectively, the "New Zoning").
 4. Negotiated certain restrictive covenants, attached as Exhibit "C" (the "Restrictive Covenants"). The Restrictive Covenants must be recorded before the City conveys the Property to the SCPFC and must be written so that the City can enforce them against the owner of the Property. The Restrictive Covenants contain the required community benefits that are part of the purchase price for the Property and the City's right to repurchase the Property at a specified date in the future.
 5. Negotiated a repurchase right for the failure to begin construction within a specified time period and the failure to finish construction within a different time period, attached as Exhibit "D" (the "Construction Failure Repurchase Agreement"). The Construction Failure Repurchase Agreement must be recorded immediately after (in other words, as the next document after the deed) the City conveys the Property to SCPFC.
- K. On December 8, 2022, the City Council approved the Essential Terms for the Project (as amended by Council Action, the "Term Sheet").
- L. On October 5, 2023, the City Council approved the ability to negotiate the previously-approved Term Sheet under the amended Chapter 303 of the Local Government Code.
- M. The purpose of this Agreement is to set forth the terms and conditions of the steps required before the Closing, the requirements of the Closing, and certain other agreements and requirements related to the sale and redevelopment of the Property.
- N. A list of defined terms and the Section in which they are defined is attached to the end of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Greystar agree as follows:

ARTICLE I BASIC TERMS

- 1.1 Term of Agreement. The term of this Agreement commences on the Effective Date and continues until the earliest to occur of: (a) the date which is the 2nd anniversary of the Effective Date (extended by the number of days that the Closing Date was extended (if any)) pursuant to Section 4.1(B) below, (b) the date this Agreement is earlier terminated pursuant to the terms hereof, and (c) the date upon which the Closing occurs (the "Term").
- 1.2 ENA. The execution of this Agreement terminates the ENA as of the Effective Date and neither party has any ongoing responsibilities or liabilities under the ENA, except Sections 9.01(d) and Article 13 of the ENA, to the extent they expressly survive termination or expiration.

Notwithstanding such termination, any defined term in the ENA specifically referenced herein will be given full force and effect.

ARTICLE II

REPRESENTATIONS

2.1 Representations of the City. The City represents to Greystar as follows:

- (A) Title. The City presently has and will be able to convey to SCPFC good and indefeasible title to the Property on the Closing Date, subject to the matters listed on Exhibit "F" (the "Permitted Encumbrances").
- (B) Parties in Possession. On the Closing Date, there will not be any party in possession of the Property and no party will have a then-current right or any future right to occupy any portion of the Property. The Development Lease is a closing document and if executed before closing, will be deemed an exception to this representation.
- (C) Proceeding by Governmental Authority; Definition of Actual Knowledge. There is no pending or, to the City's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof. As used in this Agreement, "Actual Knowledge" means, as to the City, the actual, current, conscious knowledge of (a) the current or any future Director of the City's Economic Development Department as to knowledge of that person while he/she/they serves as Director, and (b) the Redevelopment Project Manager serving from time to time as to knowledge of that person while he/she/they serves as Redevelopment Project Manager, without any duty of inquiry or investigation, and does not include constructive, imputed, or inquiry knowledge. As to Greystar, "Actual Knowledge" means the Director of Development at Greystar, David Walsh, who is responsible for this project, without any duty of inquiry or investigation, and does not include constructive, imputed, or inquiry knowledge. As to SCPFC, "Actual Knowledge" means the knowledge of Ron Kowal, and does not include constructive, imputed, or inquiry knowledge.
- (D) Litigation or Administrative Proceeding. To the City's Actual Knowledge, the City has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the City to perform any of its obligations hereunder.
- (E) Performance Will Not Result in Breach. Performance of this Agreement pursuant to the terms hereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the City is a party or by which the City or the Property is bound, if the remedy for the breach of defaults would materially and adversely affect title to or the permitted use of the Property.
- (F) Execution. The execution and delivery of, and the City's performance under, this Agreement are within the City's powers and have been duly authorized by all requisite municipal action. The person executing this Agreement on behalf of the City has the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the City enforceable in accordance with its terms.
- (G) Not a Foreign Person. The City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder.
- (H) Environmental. To the City's Actual Knowledge, the City has delivered copies, or otherwise made available, to Greystar the final written reports relating to the

environmental condition of the Property and any response action (including removal and remediation), which are listed below, in reverse chronological order (the "Environmental Site Assessments"):

- (1) Limited Phase II Environmental Site Assessment by INTERA for the City of Austin and Austin Brownfields Revitalization Office dated September 2023.
 - (2) Field Activity and Sampling Report prepared by Baer Engineering & Environmental Consulting, Inc. for the City of Austin dated April 22, 2021.
 - (3) Test Report: Asbestos Fiber Analysis by Transmission Electron Microscopy (TEM) performed by EPA 40 CFR Part 763 Appendix A Subpart E, prepared by EMSL Analytical, Inc. for Baer Engineering & Environmental, dated 03/17/2021.
 - (4) Sample Summary Report by Omni Environmental, Inc. for Baer Engineering, Inc., undated.
 - (5) Asbestos Investigation Report, St. John's – Former Chrysler Tract Asbestos Study (Three Buildings), City of Austin – Brownfields Environmental Services, Assignment Notification #28, prepared by Baer Engineering and Environmental Consulting, Inc. for City of Austin – Austin Resource Recovery, dated March 2, 2021.
 - (6) Former Chrysler Site – Follow-up Phase II Limited Site Investigation prepared by Rosengarten, Smith & Associates, Inc. and sent to Mr. Thomas Balestiere on June 14, 2013.
 - (7) Former Chrysler Site – Environmental Site Assessment, Phase I + Phase II Report prepared by Rosengarten, Smith & Associates, Inc. and sent to Mr. Thomas Balestiere on June 14, 2013.
 - (8) Memorandum of Review of the Terracon Survey prepared by Thomas Balestiere of the City of Austin for Gloria Aguilera, Property Agent and dated June 12, 2013.
 - (9) Asbestos and Lead Paint Survey report prepared by Terracon Consulting Engineers & Scientists (Terracon Project No. 96137180) for the City of Austin, dated May 15, 2013 (the "Terracon Survey")
 - (10) Former Chrysler Site – TCEQ Release Determination Report dated 12-14-2012.
 - (11) Memorandum of Review of the Home Depot Phase I prepared by Thomas Balestiere of the City of Austin for Sharon Mooer, Property Agent and dated January 25, 2008.
 - (12) Former Home Depot Site – Environmental Assessment, Phase I Report, by Terracon for the City of Austin, January 15, 2008 (the "Home Depot Phase I").
- (I) Broker. The City has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. To the extent allowed by Applicable Laws, the City agrees to hold harmless Greystar from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby.

- (J) No Third Party Agreements. To the City's Actual Knowledge, the City has not entered into any unrecorded agreements with neighboring property owners that will affect the Property.
- (K) Status of the Bonds. The amount that will be outstanding on the Bonds at the Closing will be less than or equal to \$11 million. Nothing in the Bonds themselves and the City is not aware of anything else that prohibits the act of defeasing the Bonds, other than the absence of approval by the City Council.

2.2 Representations of Greystar. Greystar represents to the City as follows:

- (A) Authorization. Greystar is duly organized and legally existing under the laws of the State of Texas. Greystar is duly qualified to do business in the State of Texas. The parties acknowledge that HACA and SCPFC have not yet adopted resolutions authorizing their participation in this development.
- (B) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Greystar is a party or by which Greystar is bound.
- (C) Execution. The execution and delivery by Greystar of, and Greystar's performance under, this Agreement are within Greystar's powers and have been duly authorized by all requisite organizational action. The person executing this Agreement on behalf of Greystar has the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of Greystar enforceable in accordance with its terms.
- (D) Broker. Greystar has not authorized any broker or finder to act on its behalf in connection with the acquisition of the Property and it has not dealt with any broker or finder purporting to act on behalf of any other party. Greystar agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. This Section will survive any expiration or termination of this Agreement.
- (E) Ability. Greystar represents and warrants that it, or its contractors who will work on this Project, have experience in the area of building and operating affordable housing and neighborhood commercial buildings.
- (F) No Other Parties. There are not and will not be at Closing any parties with an interest in the transaction described in this Agreement other than Greystar, HACA, SCPFC, the Developer Occupant, the Developer Occupant's mortgage lenders, and the Investors.

2.3 Representations of SCPFC. SCPFC represents to the City as follows, but except for these limited representations, SCPFC is functioning as an accommodation party, not as a successor of Greystar, and therefore has no obligations or liabilities under this Agreement and is not responsible for Greystar's breaches or failures under this Agreement:

- (A) Authorization. SCPFC is duly organized and legally existing under the laws of the State of Texas. SCPFC is duly qualified to do business in the State of Texas. The parties acknowledge that HACA and SCPFC have not yet adopted resolutions authorizing their participation in this development.
- (B) Performance. Performance of its role under this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which SCPFC is a party or by which SCPFC is bound.

- (C) Broker. SCPFC has not authorized any broker or finder to act on its behalf in connection with the acquisition of the Property and it has not dealt with any broker or finder purporting to act on behalf of any other party. SCPFC agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. This Section will survive any expiration or termination of this Agreement.
- (D) No Other Parties. There are not and will not be at Closing any parties with an interest in the transaction described in this Agreement other than SCPFC, HACA, Greystar, the Developer Occupant, the Developer Occupant's mortgage lenders, and the Investors.

2.4 **NO OTHER REPRESENTATIONS OR WARRANTIES**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING IN ANY EXHIBIT ATTACHED HERETO, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "AS IS," "WHERE IS," AND WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY THE CITY. THE CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN THE CITY'S SPECIAL WARRANTY OF TITLE CONTAINED IN THE DEED), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND THE CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. GREYSTAR AND SCPFC EACH ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT, INCLUDING IN ANY EXHIBIT, THE CITY HAS NOT MADE ANY REPRESENTATIONS AND WARRANTIES AND THAT GREYSTAR AND SCPFC EACH IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY THE CITY OR ANY REPRESENTATIVE OF THE CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF THE CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN OR, IN THE CASE OF SCPFC, GREYSTAR'S EXAMINATION AND INSPECTION OF THE PROPERTY. GREYSTAR REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENT AND BE DEEMED INCORPORATED INTO THE DEED. GREYSTAR AND SCPFC EACH FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN THE CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO SCPFC. SCPFC IS RELYING SOLELY ON THE INFORMATION AND REPRESENTATIONS AND WARRANTIES OF GREYSTAR.

2.5 Change in Representations. If, after the Effective Date and prior to the Closing Date, any party obtains Actual Knowledge of any fact, matter, or circumstance which causes any of its representations made in Sections 2.1, 2.2, or 2.3 to be inaccurate or untrue in more than a minor way, such party must submit written notice thereof to the other party (a "Disclosure Notice") specifying in reasonable detail such fact, matter, or circumstance. The disclosure of such fact, matter, or circumstance by a Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter, or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as to the Property by the

Closing Date, then such party is obligated to cause the representation to be true as of the Closing Date, and the other party has no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter, or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct, then such other party has until the date which is 10 days after the date of the Disclosure Notice, at its option, to terminate this Agreement. The failure to elect to terminate within the 10-day period described in the preceding sentence will be deemed to be a waiver of the fact, matter, or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect thereto. Except as amended in accordance with this Section, all representation and warranties survive closing.

2.6 Covenants of the City. The City covenants to, and agrees with, Greystar as follows:

- (A) Litigation. The City will notify Greystar of any litigation or administrative proceeding, of which the City has Actual Knowledge, affecting the Property.
- (B) No Further Sales. The City will not voluntarily sell or otherwise transfer all or any portion of the Property to a party other than Greystar or SCPFC, without the prior written consent of Greystar which Greystar may grant or deny in its sole and absolute discretion.
- (C) No Further Leases. Without the prior written consent of Greystar (which Greystar may grant or deny in its sole and absolute discretion), the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any portion of the Property.
- (D) Easements. The City will cooperate, at no expense to the City, with Greystar to terminate or modify any City-held easements identified as requiring change as part of the title review under Article IV. Without the prior written consent of Greystar or unless requested by Greystar, the City will not enter into an easements, restrictions, or other agreements that will affect the Property after Closing or inhibit pre-development efforts.
- (E) Use of Site. The City will not use the Property to store any debris or other materials that would create impediments to the development of the Property in accordance with the terms of this Agreement.

2.7 Covenants of Greystar.

- (A) General. The City is only permitted to object to drawings submitted on the basis that those drawings fail to comply with the Conceptual Master Plan, this Agreement, the Term Sheet, and Restrictive Covenants. As to the design of the public park and the design of improvements to recognize the history of the St. John neighborhood only, the City may further review and comment on Greystar's incorporation of feedback provided by the community on those matters. Greystar will not be obligated to make changes, regardless of scope, for anything previously approved by the City unless Greystar has materially changed the item in question. For the purposes of this Agreement, the City will act through the Redevelopment Project Manager for the City of Austin's Economic Development Department. The City will not review drawings for regulatory reasons, which will be handled by other City departments. Approval or comments by the City shall be provided within 10 days after the City receives the proposed drawings. If approval or applicable comments have not been received within 10 days after the City has received proposed drawings, those drawings will be considered approved without reservation or comment. In the event applicable

comments are provided and are reasonable and will not affect the design timeline, Greystar will resubmit documents with updates as soon as commercially reasonable.

- (B) Design of the Development. Greystar will immediately begin and pursue with all diligence architectural and engineering work necessary to develop the Property in accordance with the Conceptual Master Plan. This obligation continues the obligation to engage with the community through the Community Advisory Committee established as part of Greystar's engagement with the St. John community, which engagement is more fully described in Exhibit "E-1" and to plan all construction in accordance with the Statement of Responsibility attached as Exhibit "E-2" (the "Statement of Responsibility") which was prepared by the City of Austin Small & Minority Business Resources department ("SMBR").
- (1) Subject to SMBR availability, Greystar will meet with SMBR within 21 days after the Effective Date of this Agreement.
 - (2) Subject to the City and Greystar availability, Greystar will meet with representatives of the City twice a month, preferably the 1st and 3rd Monday of the month, or a mutually-agreed-upon alternative date, to go over Greystar's progress (each a "Required Progress Meeting"). Greystar's failure to have Required Progress Meetings shall constitute an Event of Default if there have not been any Required Progress Meetings for 30 consecutive days and Greystar has not provided 4 available 30-minute windows of time across 3 separate week days as alternative meeting times.
- (C) Site Development Permit Drawings. The City hereby approves the Conceptual Master Plan shown on Exhibit "B," including the site massing and building elevations, and agrees that the Conceptual Master Plan will form the basis for the final plans and specifications for the construction of the Project. Greystar must provide the City with drafts of the Site Development Permit (the "SDP") drawings, which must include the improvements to the parkland (the "Parkland Improvements"), are at approximately 75% completion for approval by the City (the "SDP Deadline"). The City may make comments on the Parkland improvements, some of which may be a part of the SDP drawings. The remaining details regarding Parkland improvements will be included in the Commercial Building Permit drawings (the "Building Construction Drawings") for the regulatorily-approved building permit ("Building Permit"). Greystar has submitted an application for the SDP. The approved SDP drawings are referred to as "SDP Documents" and the improvements described in the SDP Documents are referred to as the "Site Development Improvements." The Site Development Improvements cover both open space and parkland.
- (D) Building Permit Drawings. The City and Greystar will follow the following schedule for improvements being designed in accordance with the approved Conceptual Master Plan:
- (1) Greystar must provide the City with drafts of the Building Schematic Design, including Parkland improvements details not included in the SDP Documents (the "SDs") drawings at 100% completion within 60 days of the Effective Date for approval by the City.
 - (2) Greystar must provide the City with the Building Design Development Drawings, including Parkland improvements details not included in the SDP Documents (the "DDs") at 100% completion by 60 days after approval by the City of the SDs.
 - (3) Greystar must provide the City with drafts of the Building Construction Drawings, including Parkland improvements details not included in the SDP

Documents (the "CDs") 50% completion by 100 days after approval by the City of the DDs. The approved CDs are referred to as "Building Construction Documents".

- (4) Greystar must apply for the Demolition Permit issued by the City of Austin and for the Commercial Building Permit within 90 days after the City approval of the 50% complete CDs (the "Demolition and Commercial Building Permit Application Deadline") and must diligently pursue obtaining those permits.
- (E) Obtain Funding for Development. Greystar must apply for and actively pursue obtaining third-party investment and mortgage debt.
- (F) Satisfy all other Conditions for Development. Greystar will perform all other conditions necessary or convenient to enable Greystar to develop the Property in accordance with this Agreement and the Closing Documents.
- (G) No Work On Site. Greystar may not perform any construction work, including turning dirt, until after the Closing under this Agreement. The preceding sentence does not prohibit the investigations permitted under Section 3.3 because they are not construction work.
- (H) SCPFC. Greystar and SCPFC will enter into an agreement concerning their obligations in connection with this Property, which will be formalized and implemented in final documents before Closing.
- (I) Development Lease. Greystar hereby covenants and agrees that it will enter into the Development Lease with a Developer Occupant meeting the terms of Recital H above.

ARTICLE III

AGREEMENT TO SELL AND BUY

- 3.1 Agreement to Sell. The City agrees to sell the Property to Greystar's accommodation party and designee, SCPFC, and SCPFC agrees to purchase the Property from the City. SCPFC advises the City that it will be using funds from the Company to make the Cash Payment.
- 3.2 Purchase Price. The purchase price ("Purchase Price") to be paid to the City for the Property is the sum of Eleven Million Dollars (\$11,000,000) (the "Cash Payment"), plus performance of all of the Community Benefits described in and required by the Restrictive Covenants.
- 3.3 Sale "As-Is, Where-Is".
 - (A) Greystar. Greystar acknowledges and agrees that upon Closing, the City will sell and convey to SCPFC and SCPFC shall accept the Property "**AS-IS, WHERE-IS, WITH ALL FAULTS,**" except to the extent expressly provided otherwise in this Agreement and any document executed by the City and delivered to SCPFC at Closing. Except as expressly set forth in this Agreement, Greystar has not relied and will not rely on, and the City has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by the City, or any property manager, real estate broker, agent or third party representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. Greystar represents that it is a knowledgeable, experienced, and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Greystar's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by the City.

Greystar will conduct such inspections and investigations of the Property as Greystar deems necessary, including, the physical and environmental conditions thereof, and shall rely upon same. Greystar acknowledges that the City has afforded Greystar a full opportunity to conduct such investigations of the Property as Greystar deemed necessary to satisfy itself as to the condition of the Property and will rely solely upon same and not upon any information provided by or on behalf of the City or its agents or employees with respect thereto, other than such representations, warranties and covenants of the City as are expressly set forth in this Agreement. Upon Closing, Greystar shall assume the risk that adverse matters, including, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Greystar's inspections and investigations. Greystar hereby represents and warrants to the City that: (1) Greystar is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (2) Greystar is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Greystar's residence. Greystar waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to the City. This disclaimer survives Closing.

- (B) SCPFC and Developer Occupant. SCPFC and Developer Occupant each acknowledges and agrees that upon Closing, the City will sell and convey to SCPFC and SCPFC shall accept the Property "**AS-IS, WHERE-IS, WITH ALL FAULTS,**" except to the extent expressly provided otherwise in this Agreement and any document executed by the City and delivered to SCPFC at Closing. Except as expressly set forth in this Agreement, SCPFC and Developer Occupant have not relied and will not rely on, and the City has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by the City, or any property manager, real estate broker, agent or third party representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. By becoming the Developer Occupant, the Developer Occupant represents that it is relying solely on its own expertise and that of Greystar's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by the City. Developer Occupant will conduct or rely on such inspections and investigations of the Property as Developer Occupant deems necessary, including, the physical and environmental conditions thereof, and shall rely upon same. Developer Occupant acknowledges that the City has afforded Developer Occupant and Greystar, upon whose investigations Developer Occupant is relying with Greystar's permission, a full opportunity to conduct such investigations of the Property as Developer Occupant deemed necessary to satisfy itself as to the condition of the Property and will rely solely upon same and not upon any information provided by or on behalf of the City or its agents or employees with respect thereto, other than such representations, warranties and covenants of the City as are expressly set forth in this Agreement. Upon Closing, Developer Occupant shall assume the risk that adverse matters, including, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Greystar's inspections and investigations. SCPFC and Developer Occupant each hereby represents and warrants to the City that: (1) SCPFC and Developer Occupant each is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (2) SCPFC and Developer Occupant each is purchasing the Property for business, commercial, investment or other similar purpose and not for use as SCPFC and Developer Occupant's residence. SCPFC and Developer Occupant each waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to the City. This disclaimer survives Closing.

- 3.4 Title Commitment and Survey. Greystar acknowledges receipt of the As-Built, Topographic, and Tree Survey prepared for Greystar Development Central, LLC by Manhard Consulting (Abram C. Dashner) and dated March 15, 2023 (the "Survey") and accepts the Permitted Encumbrances. Within 20 days following the Effective Date, the City, at the City's sole expense, must cause the Title Company to furnish to Greystar and Greystar's legal counsel a current Commitment for Title Insurance (the "Commitment"), effective as of a date which is on or after the Effective Date of this Agreement, in a form consistent with policies issued by the Title Company in the State in which the Property is located covering the Property and listing the City as the record title owner of the Property and Greystar and SCPFC as the proposed insured and showing the Purchase Price as the policy amount, together with readily legible copies of all documents and plats, if any, which the Commitment specifies as exceptions on the Commitment (the "Title Documents"), and contain the terms upon which the Title Company agrees to issue to or for Greystar or SCPFC a standard owner's policy of title insurance (the "Title Policy") insuring good and indefeasible fee simple title to the Property to be vested in Greystar or SCPFC, subject to the terms of and exceptions specified in the Title Policy.
- (A) Title Review Period. Greystar has a period (the "Title Review Period") ending 21 days after the date on which Greystar and Greystar's legal counsel receives the last to be received of the Commitment and the Title Documents, in which to notify the City of any objections Greystar has to any matters shown or referred to in the Commitment or on the Survey other than the Permitted Encumbrances (each, an "Objection" and collectively, the "Objections"). Any title encumbrances or exceptions which are referred to in the Commitment or on the Survey and to which Greystar does not object during the Title Review Period will be deemed to be additional Permitted Encumbrances. Greystar has a continuing right to update the Commitment and Survey after the Title Review Period up until Closing and may give objections to any new exceptions that appear on an updated Commitment within 14 days after Greystar receives the updated Commitment or survey (this time period is deemed included in the term "Title Review Period"). Any such objection is also an "Objection" under this Agreement. The City has no obligation to cure any Objection except liens disclosed in the Commitment (or any subsequent commitment); items on Schedule C that are exclusively within the City's control; all other exceptions disclosed in the Commitment (or any subsequent commitment) which arise on or after the Effective Date of this Agreement and are not attributable to actions by Greystar; and Objections that the City agrees in writing to cure at or prior to Closing (collectively, the "Mandatory Cure Items").
- (B) Objections to Status of Title. If Greystar makes an Objection to any matters referred to in the Commitment or on the Survey other than the Permitted Encumbrances during a Title Review Period, the City has a period of 14 days (the "Cure Period") within which to notify Greystar whether or not the City will cure the Objections (except Mandatory Cure Items, which the City must cure). If the City does not notify Greystar in writing that the City will cure an Objection, then the City will be deemed to have advised Greystar that it will *not* cure the Objection. Except for the Mandatory Cure Items, the City has no obligation to cure any Objection raised by Greystar during any Title Review Period. If the City fails to cure any Objection (other than an objection to a Permitted Encumbrance) within the Cure Period, Greystar may, on before the date which is 14 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (x) terminate this Agreement in writing or (y) accept such title to the Property as the City can deliver and such objectionable matters will be deemed approved by Greystar as Permitted Encumbrances and Greystar may attempt to cure on its own, without involvement of the City, such objectionable matters.

- (C) Mandatory Cure Items. All Mandatory Cure Items must be satisfied, cured or removed by the City, at the City's sole cost and expense, at or prior to the Closing, as a condition precedent to Greystar's obligation to purchase the Property.
- 3.5 Option Fee. Greystar must pay the City \$100.00 (the "Option Fee") as non-refundable consideration for Greystar's exclusive right to inspect the Property, assign the right to purchase (or have SCPFC purchase) the Property pursuant to this Agreement and for the City's execution, delivery, and performance of this Agreement.

ARTICLE IV

CLOSING

4.1 Closing and Closing Date.

- (A) "Closing" means the execution and delivery of all the documents and instruments necessary to complete the sale under Section 4.3 (the "Closing Documents"), delivery of the Purchase Price to the Title Company, and the Title Company releasing and recording in accordance with this Agreement and the City's instructions the Closing Documents and the Purchase Price. The Closing must be coordinated through the offices of Heritage Title of Austin at 200 West 6th Street, Suite 1600, Austin, Texas 78701 (the "Title Company") and may be in-person or remote. Subject to the City's right to select a different escrow officer, Marcie Warnke is the Escrow Officer through whom the Closing will occur. Her contact information is mwarnke@heritage-title.com.
- (B) "Closing Date" means the date that is 16 months after the Effective Date of this Agreement. The Closing Date may be extended by 60 days up to 3 times, for a total of 180 days, by Greystar, at no cost to Greystar. Greystar may extend the Closing Date by 60 days an additional 3 times, for another total of 180 days, but Greystar must pay the City \$75,000 (each, an "Extension Fee") for each of these last 3 extensions. If the Closing occurs by the end of the last permitted and exercised extension, then the total of all Extension Fees paid by Greystar will be applied to the Cash Price. If the Closing has not occurred by the end of the last permitted and exercised extension, then the City will be permitted to retain all Extension Fees that have been paid. The extensions must all be exercised by written notice to the City. The only exception to Greystar's right to extend is that Greystar may not extend after the City has begun the process of defeasing the Bonds, which shall not be earlier than 90 days prior to the then-scheduled closing. Thereafter, no extension is permitted without the consent of both the City and Greystar. Notwithstanding the foregoing, Greystar may elect an earlier closing date so long as it provides at least 90 days prior written notice to the City. If Greystar does elect an earlier Closing Date, the Closing will occur within such 90-day period, but the City may extend the Closing past the 90 days (by up to 20 days) at the City's written request. The Closing Date cannot occur during the 30 days before or 5 days after any March 1 or September 1.

4.2 Conditions to Closing.

- (A) The City's Conditions. The City's obligation to complete the Closing is conditioned upon the following:
- (1) The missing exhibits to the Restrictive Covenants are agreed upon and attached to the Restrictive Covenants.
 - (2) No person or entity having an interest that is prior to the Restrictive Covenants or the Construction Failure Repurchase Agreement.
 - (3) The City's approval of the Development Lease and the Memorandum of Understanding in connection with SCPFC, not to be unreasonably withheld or

delayed. Further, the City's right to object is limited to the Development Lease or Memorandum of Understanding not complying with the requirements of this Agreement, the Term Sheet, or the Restrictive Covenants.

- (4) City Council's approval to defease the Bonds.
 - (5) Confirmation that the Purchase Price meets or exceeds the requirements for the City to sell the Property, but the City agrees to make this determination no later than 180 days before the Closing Date.
 - (6) No work by any person or entity other than the City or its agents, contractors, or employees having been performed on the Property before the Closing actually occurs. This prohibition does not apply to any studies or surveys as long as they do not constitute construction work.
 - (7) HACA's authorization of the Closing. HACA is executing this Agreement for the purpose of evidencing its participation in the negotiations of this Agreement and approval of the terms.
 - (8) SCPFC's authorization of the Closing. SCPFC is executing this Agreement for the purpose of evidencing its participation in the negotiations of this Agreement.
- (B) Greystar's Conditions. Greystar's obligation to close is conditioned upon the following, any of which may be waived by Greystar in its sole and absolute discretion.
- (1) Greystar obtaining adequate funding through investors and mortgage loans.
 - (2) Greystar's receipt of the SDP and the Demolition Permit and the Commercial Building Permit.
 - (3) All City representations and warranties are true in all material and respects, and there is no existing Event of Default by the City under this Agreement.

4.3 Closing Matters.

- (A) The City's Closing Obligations. At the same time as the Cash Payment is delivered to the Title Company, the City must deliver the items in subsections (1) through (4) to the Title Company to be held in escrow until the Bonds are defeased, at which time the Title Company will record the Restrictive Covenants, the Deed, and the Construction Failure Repurchase Agreement, in the order listed, and release the other documents and instruments: For avoidance of doubt, it is intended that once the Cash Payment is used to defease the Bonds, the City is unconditionally obligated to transfer title to the Property to SCPFC.
- (1) Execute, acknowledge, and deliver to the Title Company the Restrictive Covenants, if they have not already been recorded (which pre-Closing recording is expressly permitted);
 - (2) Execute, acknowledge, and deliver to SCPFC a Special Warranty Deed ("Deed") in the form attached as Exhibit "G," conveying to SCPFC good and indefeasible title in fee simple to the Property, subject only to a lien for ad valorem taxes for the year of Closing not yet due and payable and the Permitted Encumbrances;
 - (3) If there is any personal property for the City to convey to SCPFC, execute and deliver a Bill of Sale in the form promulgated by the State Bar of Texas conveying all personal property not covered by the Deed.

- (4) Execute, acknowledge, and deliver to SCPFC an affidavit in form and substance reasonably satisfactory to SCPFC confirming that the City is not a foreign person or entity within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
 - (5) Execute and deliver any and all other items contemplated by this Agreement or reasonably required by SCPFC, SCPFC's legal counsel, or the Title Company.
 - (6) Pay all premium costs for the Title Policy, but not any endorsements, pay for any costs the City incurs in connection with curing title issues, pay for ½ of all recording fees, and pay for its costs and expenses associated with this Agreement.
 - (7) Deliver possession of the Property to SCPFC, subject only to the Permitted Encumbrances.
 - (8) Deliver a closing instruction letter to the Title Company, which will include the obligation to record the Restrictive Covenants, if not already recorded, before any other documents or instruments.
- (B) SCPFC's and Developer Occupant's Closing Obligations. As part of Closing, SCPFC or the Developer Occupant must do the following:
- (1) Deliver the Cash Payment to the Title Company by no later than 3 days before the Closing Date so that the Title Company can coordinate with the escrow company that will be defeasing the Bonds. SCPFC acknowledges that the Title Company will use the Purchase Price to pay for costs and expenses associated with the Bonds before the Closing occurs and consents to that use.
 - (2) Deliver \$50,000 to the City to be used in connection with the publicly-accessible art/memorial to highlight the history of the St. John community.
 - (3) Deliver such evidence of the authority and capacity of SCPFC and its representatives as the City, the City's legal counsel or the Title Company may reasonably require; and
 - (4) Execute and deliver such other documents as may be reasonably required by the Title Company.
 - (5) Execute and deliver to the Title Company the Construction Failure Repurchase Agreement.
 - (6) Execute and deliver the Statement of Responsibility.
 - (7) Pay for all of its investigations of the Property, pay for ½ of all recording fees (including the recording of the Deed), pay for any construction bonds required by Developer Occupant's lender or investor, for all of the costs and expenses of Closing other than those the City is required to pay, and pay for its costs and expenses associated with this Agreement.
- (C) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the Property for the calendar year of closing, to the extent the City is obligated to pay such items, will be apportioned between the City and SCPFC at the Closing as of midnight of the day preceding the Closing Date.

ARTICLE V

INSURANCE AND INDEMNITY

5.1 Insurance.

- (A) Greystar's Required Insurance. Greystar must, and, as applicable, must require its contractors to, carry and maintain throughout the term of this Agreement the following insurance policies:
- (1) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
 - (2) Commercial Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Greystar, or its agents or contractors on Greystar's behalf, will use with respect to the Property in a minimum amount of \$1,000,000, combined single limit.
 - (3) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum general aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.
 - (4) For contractors/subcontractors providing professional services under this Agreement, Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the insured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured.
- (B) No Lapse. Neither Greystar nor its contractors will cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. Required insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of B+VII or better or otherwise acceptable to the City. Additionally with respect to Sections 5.1(A)(1), (2), (3), and (4), all such policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Applicable Laws and in the insurance market. Greystar must deliver to the City any notice of cancellation or non-renewal within 30 days after receiving that notice, reduced to 10 days in the case of non-payment of premium. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Within 14 days after execution of the agreement, Greystar will submit adequate proof of insurance to the City providing evidence of insurance coverage required by this Agreement. Greystar will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

- (C) City as Additional Insured. All endorsements, waivers, and notices of cancellation as well as the evidence of insurance must indicate the City as an additional insured and be delivered to: City of Austin, Economic Development Department, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as the City may notify Greystar in writing.
- (D) Greystar's Financial Obligations Concerning Insurance. Greystar is responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Greystar. All deductibles or self-insured retentions greater than \$499,999 must be disclosed on the certificate of insurance. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Greystar or the City under this Agreement.

5.2 Indemnity and Release.

- (A) Indemnification. Greystar indemnifies 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 agents for and with respect to, all claims, demands, actions, damages, losses, 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 any such Claim arises from or in connection with (i) any Event of Default by Greystar, and (ii) any alleged, established or admitted negligent or wrongful act or omission of Greystar or any agents, contractors, representatives or employees of Greystar with respect to the deconstruction of the existing improvements (but not with respect to any governmental approvals required for that deconstruction or the application for or pursuit of same); provided, however, such indemnification, hold harmless and reimbursement does not include any Claim to the extent caused by, arising from, or in connection with (x) the established or admitted negligent or wrongful act or omission of the City and/or any agents, contractors, representatives or employees of the City or (xi) any environmental condition, whether known or unknown, existing on, under, or otherwise with respect to the Property (including offsite areas impacted by migration from the Property, if any) as of the Effective Date.
- (B) Greystar's Duty of Defense. If the City notifies Greystar of any Claim, Greystar must assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Greystar but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Greystar and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Greystar, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Greystar must pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies and Greystar fails to assume within 20 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 Greystar, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Greystar's expense using counsel selected by the City; provided, that if any such failure by Greystar continues for 30 days or more after Greystar is 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 Greystar's consent and without releasing Greystar from any obligations to the City under this Section so long

as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Greystar does not admit liability or agree to affirmative obligations on behalf of the City, Greystar is authorized to settle a Claim for itself and the City.

- (C) Notice of Claims. The City must (i) use its best efforts to provide prompt written notice to Greystar of a Claim, and (ii) reasonably cooperate with Greystar in the investigation and defense of a Claim. If the City breaches its obligations contained in the previous sentence, Greystar's liability under this Section will be reduced by the amount such breach directly caused a material impairment of the defense of the Claim.
- (D) Survival of Obligations. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

6.1 Events of Default by Greystar. Each of the following constitutes an "Event of Default" by Greystar under this Agreement:

- (A) Failure to Pay. Greystar fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 30 days from the date of written notice thereof from the City.
- (B) Failure to Perform Obligations. Without limiting any other provision of this Section, Greystar fails to perform any other obligations or duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the City to Greystar to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Greystar fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.
- (C) Failure to Carry or Prove Insurance. Greystar fails to maintain and prove to the City that it is maintaining the insurance required under Section 6.1 hereof and such failure continues for a period of 7 days after the date of written notice thereof from the City.
- (D) Unauthorized Assignment. Greystar violates the terms of Section 7.14 hereof and such violation continues for a period of 30 days.
- (E) Other Agreement Events of Default. Greystar commits an Event of Default under any document or instrument evidencing Greystar's obligations to the City regarding the Property, which continues past any applicable grace, notice or cure periods.
- (F) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Greystar, either in a proceeding brought by Greystar, as applicable, or in a proceeding brought against Greystar, and such appointment is not discharged or such possession is not terminated within sixty (60) days after the effective date thereof or Greystar consents to or acquiesces in such appointment or possession. Greystar files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing collectively, "Applicable Bankruptcy Law") or an involuntary petition for relief is filed against Greystar under any Applicable Bankruptcy Law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Greystar is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or

other relief of debtors now or hereafter existing is requested or consented to by Greystar.

6.2 Remedies of the City. Upon the occurrence of an Event of Default by Greystar prior to the Closing, the City has, as the City's sole and exclusive remedies, the remedies set forth below, with the City waiving any other right or claim of monetary damages or equitable relief against Greystar for and Event of Default by Greystar:

- (A) Termination of Right to Develop. The City may terminate Greystar's rights under this Agreement, and any other agreements executed and/or delivered in connection herewith, upon not less than 30 days' written notice to Greystar.
- (B) Specific Performance. The City may institute an action for specific performance, to the extent permitted by Applicable Laws. Notwithstanding the foregoing, the City shall have no right to enforce specific performance of Greystar's obligation to close under this Agreement.
- (C) Damages. The City may pursue a claim against Greystar for actual, but not punitive or consequential, damages.
- (D) Assignment. Upon not less than 30 days written notice, the City may cause Greystar to assign to another person or entity selected by the City its rights and obligations without any representations or warranties (a) under this Agreement, (b) under any escrow agreements related to the Property, (c) to the extent assignable under any and all contracts or agreements entered into by Greystar concerning the development of the Property and any improvements, and (d) all marketing and informational materials prepared for, or on behalf of, Greystar including without limitation all intellectual property and website domains.
- (E) License Agreement. The City may cause Greystar to assign all of its rights and obligations related to any community improvements.
- (F) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the Event of Default by Greystar existed.

6.3 Events of Default by the City. The following are Events of Default by the City:

- (A) Failure to Pay. The City fails to pay any amount required to be paid hereunder when due and such failure continues for more than 30 days after the date of written notice thereof from Greystar.
- (B) Failure to Perform Obligations. Without limiting any other provision of this Section, the City fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefore, or if no such time is specified, within 30 days after the written demand by Greystar to the City to perform such obligation and duty, or, in the case of a default not susceptible of cure within 30 days, the City fails to promptly commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.
- (C) Assignment. City violates the terms of Section 7.14(B) hereof.

6.4 Remedies of Greystar for an Event of Default by the City. Upon the occurrence of an Event of Default by the City, Greystar has, as its sole and exclusive remedies, the remedies set forth below:

- (A) Termination of the Development. Greystar may terminate its obligations under this Agreement to purchase the Property.

- (B) Specific Performance. Greystar may institute an action against the City for specific performance, to the extent permitted by Applicable Laws.
 - (C) Tolling of Other Obligations. Greystar may toll performance of its obligations under this Agreement, the Construction Failure Repurchase Agreement and Restrictive Covenants, and any required time for performance thereof will be extended by the number of days the Event of Default by the City existed.
- 6.5 Rights and Remedies Are Cumulative. The rights and remedies of the parties to this Agreement are cumulative and the exercise by either party of any 1 or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.
- 6.6 Plans and Data. If the City terminates this Agreement under Section 6.2(A) or causes the assignment of the right to develop under Section 6.2(D), Greystar must deliver to the City, without any representations or warranties as to accuracy or completeness or the City's right to rely thereon and without any liability to Greystar therefor, copies of any and all documents, studies, reports, cost estimates, plans, and specifications in the possession of or, to the extent reasonably available to Greystar, prepared for Greystar or the City for the Property within 30 days after demand or notice from the City.
- 6.7 Exclusive Negotiation Period. Notwithstanding anything to the contrary contained herein, in the event that either (i) the remedy of specific performance is not available or (ii) the City elects not to close because a failure of the conditions to closing contained in Sections 4.2(A)(4) and (5), then the City agrees that it will negotiate with Greystar in good faith for a period of at least 18 months after scheduled closing date to come up with alternative structure for Greystar to acquire and develop the project generally in accordance with the terms hereof. During such 18-month time frame, the City shall not enter into discussions to sell the Property to any other third party.

ARTICLE VII

MISCELLANEOUS PROVISIONS

- 7.1 Notices. Formal notices, demands and communications between the parties will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

| | |
|------------------|--|
| <u>Greystar:</u> | Greystar 2500 Bee Cave Road Building III, Suite 500 Austin, Texas 78746 Attention: David Walsh |
|------------------|--|

with a copy to: Matthew Warren
Director of Finance of Greystar
465 Meeting Street
Suite 500
Charleston, SC 29403

with a copy to: Metcalfe Wolff Stuart & Williams
221 W. 6th Street
Suite 1300
Austin, Texas 78701
Attention: Steven Metcalfe

with a copy to: John Nolan
Winstead PC
2728 N. Harwood Street
Suite 500
Dallas, Texas 75201

and South Congress Public Facility Corporation
1124 S. IH 35
Austin, Texas 78704
Attention: Suzanne Schwertner

Coats Rose, P.C.
2700 Via Fortuna, Suite 350
Austin, Texas 78746
Attn: Bill Walter

City: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

with a copy to: City of Austin
Economic Development Department
5202 E. Ben White Blvd., Suite 400
Austin, Texas 78741
Attention: Christine Freundl

and: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: Kent Smith

and: Steptoe & Johnson
500 North Akard, Suite 3200
Dallas, Texas 75201
Attention: Harriet Tabb

Such written notices, demands, and communications will be effective when received or, if earlier, on the contracted-for delivery date or, in the case of certified mail, 2 days following deposit of such instrument in the United States Mail.

- 7.2 Limitation on Liability. No member, official or employee of the City is personally liable to Greystar in the event of any default or breach by the City, or for any amount which may become due to Greystar, or on any obligations under the terms of this Agreement. No officer, director, partner, member, official or employee of Greystar or any Affiliate of Greystar is personally liable to the City in the event of any default or breach by Greystar, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.
- 7.3 Severability. If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such term or provision of this Agreement to other situations, remains in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Greystar of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Greystar must meet and confer and must make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Greystar.
- 7.4 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Greystar and the City, and no presumption or rule that ambiguities are construed against the drafting party applies to the interpretation or enforcement of this Agreement.
- 7.5 Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the parties and supersede all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.
- 7.6 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement impairs any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party must be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver cannot be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.
- 7.7 Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.
- 7.8 Governing Laws. This Agreement must be construed and enforced in accordance with the laws of the State of Texas. This Agreement is performable in Travis County, Texas.
- 7.9 Attorneys' Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court. If the City is the prevailing party, the City shall be entitled to reasonable attorneys' fees even if the City is represented in the legal action by in-house City of Austin attorneys. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Applicable Laws.
- 7.10 No Third Party Beneficiaries. The City and Greystar hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein may be construed as giving any other person or entity third party beneficiary status.

- 7.11 Counterparts and Facsimile Execution; Electronic Mail Transmission: This Agreement may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document. It is not necessary that the signature or acknowledgment of, or on behalf of, any of the parties to this Agreement appear on each counterpart. All counterparts collectively constitute one instrument. It is not necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgments of, or on behalf of the parties to this Agreement. Any signature or acknowledgment page to any counterpart may be detached from a counterpart and attached to another counterpart in order that all signatures and acknowledgments appear on one document, although such action is not necessary to make this Agreement enforceable. The parties intend that any facsimile or electronic copy of a signature to this Agreement or any execution through DocuSign or similar companies will have the effect of an original and it is not necessary to confirm facsimile execution or electronic mail delivery by delivery of the original that was transmitted by facsimile or electronic mail.
- 7.12 Time of Performance. All performance dates (including notice dates and cure dates) expire at 5:00 p.m. Central Standard Time, on the performance, notice, or cure date. A performance or cure date which falls on a Saturday, Sunday, or Official City Holiday will be deemed to have been extended to the next day that is not a Saturday, Sunday or Official City Holiday. The "Official City Holidays" are New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Juneteenth Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day, or other holidays that the City of Austin makes public each year.
- 7.13 Estoppel Certificates. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City and Greystar each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. This certificate may only be used by the parties specifically identified by name in the request (which cannot include any party to this Agreement) to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.
- 7.14 Greystar Obligations Binding on SCPFC; Successors and Assigns.
- (A) General. Except as provided in this Agreement, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the City and Greystar and where the terms "Greystar" or "the City" are used in this Agreement, they mean and include their respective permitted successors and assigns. If any party to this Agreement assigns its interest herein as permitted hereby, the assigning party will not be released from its obligations hereunder, except to the extent it obtains a written release from the beneficiary party to such obligations, which such beneficiary party may give or withhold in its sole and absolute discretion.
- (B) City Assignment. Without Greystar's prior consent, the City may only assign its interest in the Property to a special entity to facilitate the redevelopment of the Property, provided the City remains liable for the City's obligations to Greystar in this Agreement. If the City assigns its interest hereunder, the City's assignee shall execute an assumption agreement unconditionally assuming the City's obligations hereunder, a copy of which shall be provided to Greystar.
- (C) Greystar Assignment. Greystar shall not assign (including without limitation, by transfer or pledge of a majority of or controlling ownership interests, merger, or

dissolution, which transfer or pledge of majority interest of or controlling ownership interests, merger, or dissolution shall be deemed an assignment), transfer or hypothecate all or any interest in this Agreement (a "Transfer"), without the City's prior written consent, except as set forth in the next sentence. Without the City's prior consent (but with prior written notice to the City), Developer Occupant may Transfer its interest in this Agreement to (i) an Affiliate of Greystar provided that such Affiliate is owned or controlled by the people or entities that own or control Greystar as of the Effective Date; or (ii) to SCPFC, as described above; or (iii) a transferee in which Greystar or an Affiliate is either the managing member or the managing partner; or (iv) to the project mortgage lenders as security, but only upon request in conjunction with Closing. Greystar must provide a copy of all of its assignment documents, together with proof that an assignee meets the requirements set forth above if Greystar wishes to assign without the City's consent. If the City's consent is required, the City cannot unreasonably withhold its consent to an assignment if Greystar has given the City all of the information the City requires in order to evaluate the assignment and any assignee. This information includes, but is not limited to, the identity of the assignee, all nonproprietary and nonconfidential financial information and pertinent operational information about the assignee, and the terms of the assignment.

- (D) As used in this Agreement, "Affiliate" means any person or entity controlling, controlled by or under common control with any other person or entity. For purposes of this definition, the term "control" when used with any respect to any person or entity means the power to direct the management or policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

7.15 No Recording/Filing. Neither party is permitted to record or file this Agreement or any memorandum thereof in any public recording office.

7.16 Effects of Permitted Delay. If Greystar or the City is delayed or prevented from performance of any of its respective non-monetary obligations under this Agreement by reason of any Permitted Delay, the time for performance of such obligation is automatically extended for the period of such delay, subject to the remainder of this paragraph. No party may use this provision to delay payment of money or carrying required insurance. "Permitted Delay" means Force Majeure or City-Caused Delay, or both.

- (A) "Force Majeure" means any event, such as pandemics, strikes, riots, war, governmental laws, regulations, or restrictions that are beyond the reasonable control of the affected party (other than (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a force majeure event described above, or (b) acts of the party claiming the delay) and if such party has not otherwise committed an Event of Default hereunder which is continuing, the time for performance of such obligation. Any government-mandated closure of all or most business operations in the City of Austin constitutes Force Majeure.

- (B) "City-Caused Delay" constitutes a Permitted Delay for Greystar and means any actual delay to the extent caused solely by the City and described below:

- (1) With respect to the City's obligations outside of this Agreement and solely in its capacity as a governmental entity to timely approve a plat, site development permit, or issue any other permits or approvals or inaction.
- (2) With respect to the City's obligations in this Agreement by its unreasonable delay in such action or inaction, or

- (3) In the City's capacity as a landowner (such as design approval and financial approvals), by its failure to meet the specific time frames for action set forth in this Agreement.
- (C) Pre-Conditions to Claiming Permitted Delay. The party claiming a Permitted Delay will not be entitled to do so unless that party complies with the following requirements:
 - (1) The claiming party gives prompt written notice of such occurrence to the other party, with "prompt" meaning no less than business 10 days; and
 - (2) The claiming party diligently attempts to remove, resolve, or otherwise eliminate such the delaying effects of the Permitted Delay, keeps the other party advised with respect to its efforts and the results of its efforts, and commences performance of its affected obligations under this Agreement immediately upon such removal, resolution, or elimination.
- 7.17 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Greystar agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.
- 7.18 Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City or its designee. However, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement that conflicts with the Council-approved Term Sheet without approval of the Austin City Council.
- 7.19 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Greystar, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.
- 7.20 Interstate Land Sales Full Disclosure. The City and Greystar acknowledge and agree that the sale of each portion of the Property in accordance with this Agreement will be exempt from the provisions of the Interstate Land Sales Full Disclosure Act in accordance with the exemption applicable to the sale or lease of property to any person or entity who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to person or entity engaged in such business.
- 7.21 References and Titles. All references in this Agreement to exhibits, articles, paragraph, subparagraph, sections, subsections and other subdivisions refer to the exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and are disregarded in construing the language contained in such subdivisions. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this paragraph" and "this subparagraph" and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word "or" is not exclusive, and the

word "including" (in its various forms) means "including without limitation." Pronouns in masculine, feminine and neuter genders must be construed to include any other gender, and words in the singular form must be construed to include the plural and vice versa, unless the context clearly otherwise requires. References to any constitutional, statutory, or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.

- 7.22 Agreement Concerning Existing Improvements Demolition. The City and Greystar hereby acknowledge and agree that the City has demolished the roof and walls of the improvements that were on the Property, so that all of the demolition work that remains belongs to Greystar. The cost of the demolition is \$135,000.00 and that amount is less than the excess of \$11 million over the cost to defease the Bonds (the "Defeasement Delta"). The cost to defease the bonds shall consist of principal, interest, and actual out-of-pocket third-party closing costs such as escrow fees, recording fees, legal fees, due diligence fees, and the fees due to the company or companies handling the defeasement. If the Defeasement Delta is ever less than the cost of demolition, then Greystar must pay the City the excess of the cost of demolition over the Defeasement Delta within 30 days after the City notifies Greystar of the amount due. If the Closing does not occur when required by this Agreement for any reason other than a default by the City, Greystar must reimburse the City for the entire cost of the demolition.
- 7.23 Ratification of Clarifications. If this Agreement further clarifies the Term Sheet, those clarifications are ratified and binding.
- 7.24 Applicable Laws. "Applicable Laws" or its singular means the applicable zoning or other land use controls and all applicable restrictive covenants, service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations; public finance laws (i.e., relevant Texas statutes dealing with public finance, and the provisions of the Internal Revenue Code pertaining to the issuance of tax-exempt obligations); and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

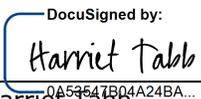
THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By:  _____
DocuSigned by:
Veronica Briseno
7CD763F2D7164E7...
Name: _____
Title: _____

Approved as to form and content

For the City by the City's outside legal counsel,

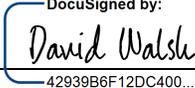
Step toe & Johnson PLLC:

By:  _____
DocuSigned by:
Harriet Tabb
0A59647B04A24BA...
Harriet Tabb

GREYSTAR:

GREYSTAR DEVELOPMENT CENTRAL, LLC,

a Delaware limited liability company

By:  _____
Name: _____
Title: _____

HACA:

HOUSING AUTHORITY OF THE CITY OF AUSTIN,
a public housing authority

By:  _____
5977F868D7C14E0...

Name: Michael Gerber

Title: President and CEO

SCPFC:

SOUTH CONGRESS PUBLIC FACILITY CORPORATION,
a Texas public utility corporation

By:  _____
45D2F003F6DB42C...

Name: Ron Kowal

Title: Vice President

EXHIBIT "A-1"

(the "Property")

BEING A 19.056 ACRE (OR 830,083 SQUARE FEET) TRACT OF LAND SITUATED IN THE THOMAS J. CHAMBERS SURVEY, ABSTRACT NO. 7, CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, THE REMAINDER OF LOT 1 OF THE CHRYSLER ADDITION, AN ADDITION TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 49, PAGE 1, PLAT RECORDS, TRAVIS COUNTY, TEXAS, AND BEING ALL OF A CALLED 5.300 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN INSTRUMENT NUMBER 2013198275, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND ALL OF THE REMAINING PORTION OF A CALLED 13.808 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN INSTRUMENT NUMBER 2008196617, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, SAID 19.056 ACRE (OR 830,083 SQUARE FEET) TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD FOUND (CONTROLLING MONUMENT & RECORD MONUMENT) AT THE NORTHEAST CORNER OF SAID 5.300 ACRE TRACT AND BEING THE NORTHEAST CORNER OF SAID LOT 1 OF THE CHRYSLER ADDITION, AND THE SOUTHERLY RIGHT-OF-WAY LINE OF A 5-FOOT RIGHT-OF-WAY DEDICATION TO BLACKSON AVENUE (A 60-FOOT WIDE RIGHT-OF-WAY, AT THIS POINT) AS RECORDED IN VOLUME 3611, PAGE 798, DEED RECORDS, TRAVIS COUNTY, TEXAS AND ALSO BEING THE WEST LINE OF LOT 8, BLOCK 16, ST. JOHN'S COLLEGE ADDITION, AN ADDITION TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 4, PAGE 71, PLAT RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH A 1/2-INCH IRON ROD FOUND BEARS SOUTH 62 DEGREES 25 MINUTES 09 SECONDS EAST, 159.00 FEET, AND FROM WHICH A 1/2-INCH IRON PIPE FOUND BEARS SOUTH 57 DEGREES 58 MINUTES 14 SECONDS WEST, 0.85 FEET;

THENCE, SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, COINCIDENT WITH THE COMMON LINE OF SAID BLOCK 16 AND CALLED 5.300 ACRE TRACT, IN PASSING AT A DISTANCE OF 146.70 FEET A 1/2-INCH PIPE FOUND (RECORD MONUMENT) AT THE COMMON LOT CORNER OF LOT 5 AND LOT 6, SAID BLOCK 16, CONTINUING ALONG SAID COMMON LINE, IN PASSING AT A DISTANCE OF 148.26 FEET A 1/2-INCH IRON ROD WITH 2-INCH YELLOW CAP STAMPED "DCA INC SURVEY MARKER" FOUND (RECORD MONUMENT) FOR THE SOUTHEAST CORNER OF SAID CALLED 5.300 ACRE TRACT AND THE NORTHEAST CORNER OF AFORESAID CALLED 13.808 ACRE TRACT, CONTINUING ALONG THE COMMON LINE OF SAID BLOCK 16 AND CALLED

13.808 ACRE TRACT, IN PASSING AT A DISTANCE OF 296.70 FEET A 1/2-INCH IRON PIPE FOUND AT THE COMMON LOT CORNER OF LOT 2 AND LOT 3, SAID BLOCK 16, CONTINUING ALONG THE COMMON LINE OF SAID BLOCK 16 AND CALLED 13.808 ACRE TRACT IN ALL FOR A TOTAL DISTANCE OF 297.79 FEET TO A 1/2-INCH IRON ROD FOUND (CONTROLLING & RECORD MONUMENT) AT THE COMMON CORNER OF SAID 13.808 ACRE TRACT AND A CALLED 0.97 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 2835, PAGE 167, DEED RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND 0.97 ACRE TRACT THE FOLLOWING COURSES AND DISTANCES:

NORTH 62 DEGREES 34 MINUTES 24 SECONDS WEST, A DISTANCE OF 201.05 FEET TO A 1/2-INCH IRON ROD WITH 2-INCH YELLOW CAP STAMPED "DCA INC SURVEY MARKER" FOUND (RECORD MONUMENT) FOR CORNER;

SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, A DISTANCE OF 210.34 FEET TO A POINT FOR CORNER, FROM WHICH A 1/2-INCH IRON ROD WITH AN ILLEGIBLE RED CAP FOUND BEARS NORTH 24 DEGREES 10 MINUTES 47 SECONDS WEST, A DISTANCE OF 0.59 FEET;

SOUTH 62 DEGREES 34 MINUTES 24 SECONDS EAST, A DISTANCE OF 201.05 FEET TO A POINT FOR THE COMMON CORNER OF SAID 13.808 ACRE TRACT, SAID 0.97 ACRE TRACT, AND LOT 8 AND LOT 9, BLOCK 9 OF SAID ST. JOHNS COLLEGE ADDITION, FROM WHICH A 1/2-IRON ROD FOUND (RECORD MONUMENT) BEARS NORTH 62 DEGREES 34 MINUTES 24 SECONDS WEST, A DISTANCE OF 0.40 FEET;

THENCE, SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID BLOCK 9, IN PASSING AT A DISTANCE OF 300.00 FEET A 1/2-INCH IRON ROD FOUND AT THE COMMON CORNER OF LOT 2 AND LOT 3 OF SAID BLOCK 9, CONTINUING ALONG SAID COMMON LINE IN PASSING AT A DISTANCE OF 350.00 FEET A 1/2-INCH IRON PIPE FOUND AT THE COMMON CORNER OF LOT 1 AND LOT 2 OF SAID BLOCK 9, CONTINUING ALONG SAID COMMON LINE FOR A TOTAL DISTANCE OF 369.91 FEET TO THE SOUTHEAST CORNER OF SAID 13.808 ACRE TRACT AND BEING IN THE NORTHERLY RIGHT-OF-WAY LINE OF A 30-FOOT RIGHT-OF-WAY DEDICATION TO ST. JOHNS AVENUE AS A SAVE AND

EXCEPT (A 80-FOOT WIDE RIGHT-OF-WAY, AT THIS POINT) RECORDED IN VOLUME 4632, PAGE 1175, DEED RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH THE SOUTHWEST CORNER OF LOT 1, BLOCK 9 BEARS SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, A DISTANCE OF 30.00 FEET, AND ALSO FROM WHICH A 5/8-INCH IRON FOUND BENT BEARS SOUTH 30 DEGREES 52 MINUTES 38 SECONDS WEST, A DISTANCE OF 14.08 FEET;

THENCE, NORTH 64 DEGREES 58 MINUTES 41 SECONDS WEST, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID NORTHERLY RIGHT-OF-WAY LINE, IN PASSING AT A DISTANCE 0.58 FEET A 1/2-INCH IRON ROD FOUND, CONTINUING ALONG SAID COMMON LINE IN ALL A TOTAL DISTANCE OF 880.52 FEET TO A 5/8 INCH IRON ROD WITH A 3-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION R.O.W. MONUMENT" FOUND (RECORD MONUMENT) AT THE SOUTHEAST CORNER OF PARCEL NO. 30 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN INSTRUMENT NUMBER 2021083035, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE NORTHERLY LINE OF SAID PARCEL NO. 30 THE FOLLOWING COURSES AND DISTANCES:

NORTH 20 DEGREES 04 MINUTES 43 SECONDS WEST, A DISTANCE OF 95.68 FEET TO A 5/8 INCH IRON ROD WITH A 3-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION R.O.W. MONUMENT" FOUND (RECORD MONUMENT) AT A POINT FOR CORNER;

NORTH 64 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 9.68 FEET TO A 5/8 INCH IRON ROD WITH A 2-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION PROPERTY CORNER" FOUND (RECORD MONUMENT) AT A POINT FOR CORNER ON THE COMMON LINE OF SAID 13.808 ACRE TRACT AND THE EASTERLY RIGHT-OF-WAY LINE INTERSTATE HIGHWAY 35 (IH35), A VARIABLE WIDTH RIGHT-OF-WAY, AS CONVEYED IN PARCEL NO. 43 TO THE STATE OF TEXAS AS RECORDED IN VOLUME 2176, PAGE 421, DEED RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, NORTH 24 DEGREES 49 MINUTES 20 SECONDS EAST, DEPARTING SAID NORTHERLY LINE OF SAID PARCEL NO. 30, COINCIDENT WITH THE COMMON LINE OF SAID EASTERLY RIGHT-OF-WAY LINE AND PARCEL NO. 43 AND SAID 13.808 ACRE TRACT A DISTANCE OF 75.91 FEET TO A 5/8-

INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR CORNER;

THENCE, NORTH 24 DEGREES 36 MINUTES 49 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 224.70 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR COMMON CORNER OF SAID PARCEL NO. 43 AND A PREVIOUSLY RECORDED PARCEL NO. 43 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN VOLUME 11005, PAGE 1122, AND VOLUME 10978, PAGE 1300, DEED RECORDS, TRAVIS COUNTY, TEXAS, AND BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

THENCE, CONTINUING ALONG SAID 13.808 ACRE TRACT AND EASTERLY RIGHT-OF-WAY LINE, AND ALONG SAID NON-TANGENT CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 41.71 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 50 MINUTES 15 SECONDS, A RADIUS OF 2,853.29 FEET, AND A LONG CHORD WHICH BEARS NORTH 27 DEGREES 19 MINUTES 28 SECONDS EAST, A DISTANCE OF 41.71 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR CORNER;

THENCE, NORTH 27 DEGREES 44 MINUTES 35 SECONDS EAST, ALONG THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID EASTERLY RIGHT-OF-WAY LINE, IN PASSING AT A DISTANCE OF 220.22 FEET THE COMMON CORNER OF SAID 13.808 ACRE TRACT AND AFORESAID 5.300 ACRE TRACT, ALSO BEING THE SOUTHEAST CORNER OF PARCEL NO. 42 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN VOLUME 11916, PAGE 856, DEED RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH A 60D NAIL FOUND IN CONCRETE BEARS NORTH 64 DEGREES 56 MINUTES 44 SECONDS WEST, A DISTANCE OF 0.36 FEET, CONTINUING ALONG COMMON LINE OF SAID EASTERLY RIGHT-OF-WAY LINE AND SAID 5.300 ACRE TRACT FOR A TOTAL DISTANCE OF 501.66 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR CORNER;

THENCE, NORTH 72 DEGREES 43 MINUTES 41 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE A DISTANCE OF 21.18 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR THE NORTHWEST CORNER SAID 5.300 ACRE TRACT AND BEING IN AFORESAID SOUTHERLY LINE OF BLACKSON AVENUE;

THENCE, SOUTH 62 DEGREES 06 MINUTES 24 SECONDS EAST, COINCIDENT WITH THE COMMON LINE OF SAID 5.300 ACRE TRACT AND SAID SOUTHERLY RIGHT-OF-WAY, A DISTANCE OF 956.72 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 830,083 SQUARE FEET OR 19.056 ACRES OF LAND.

EXHIBIT "A-2"

ST. JOHN COMMUNITY

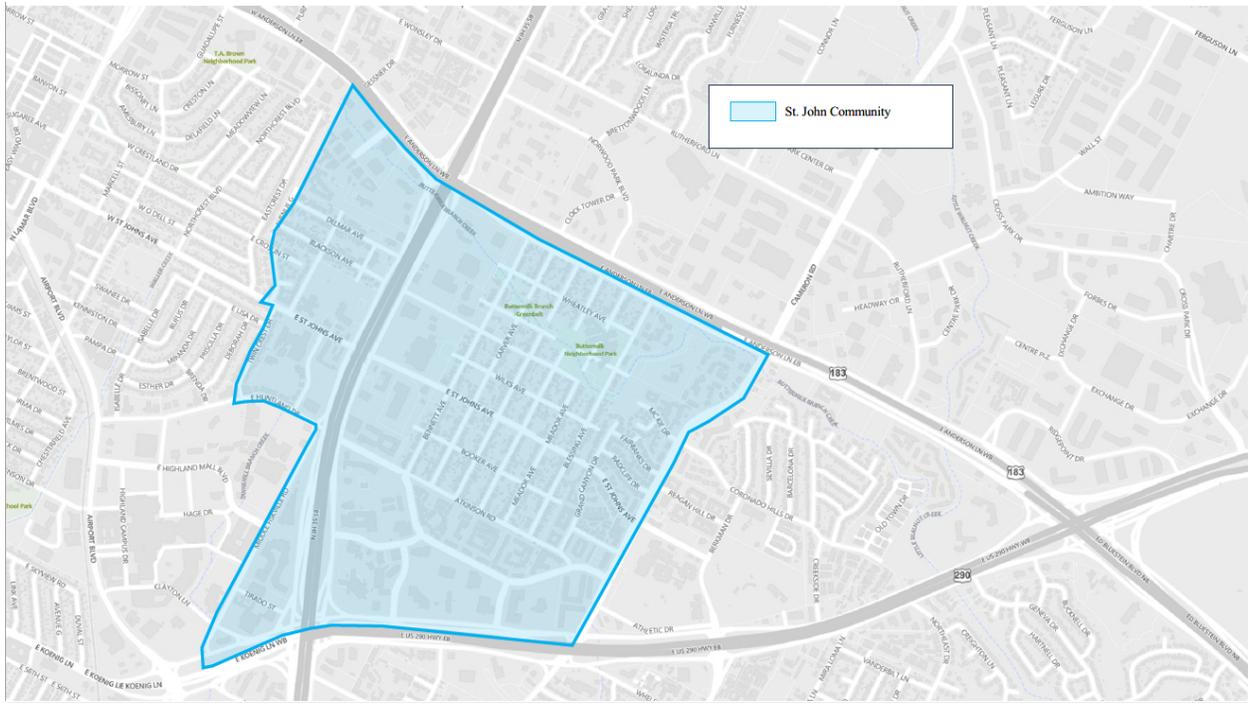
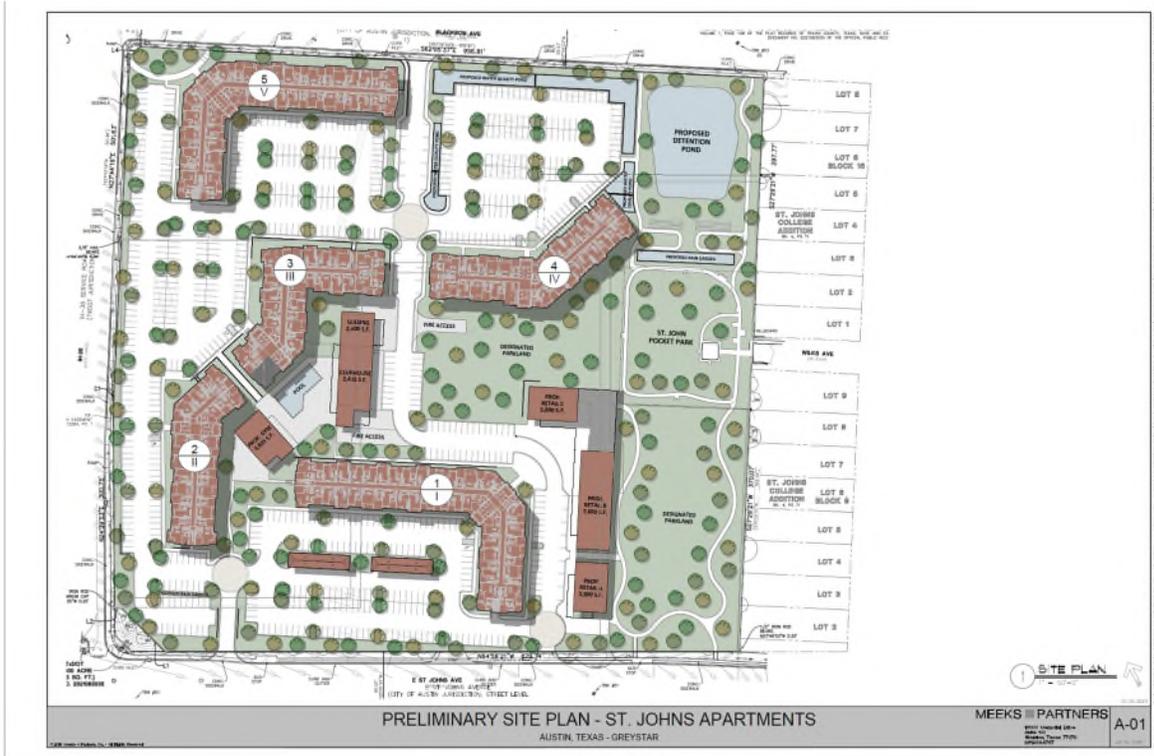


EXHIBIT "B"

CONCEPTUAL MASTER PLAN



Please note that the site plan shown above is in draft form and is subject to change.



Please note that the residential building elevation shown above is in draft form and is subject to change.



L A - N - D
LEMMO ARCHITECTURE AND DESIGN

CLUBHOUSE RENDERING | ST JOHNS CLUBHOUSE + RETAIL SD PRESENTATION

0721.23

Please note that the clubhouse building elevation shown above is in draft form and is subject to change.

EXHIBIT "C"
RESTRICTIVE COVENANTS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:

City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: Kent Smith

DECLARATION OF RESTRICTIVE COVENANTS
(ST. JOHN)

This Declaration of Restrictive Covenants (this "Declaration") is made to be effective as of the 20th day of October, 2023 by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("Declarant").

RECITALS:

- A. Declarant is the fee simple owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached to and made a part of this Declaration for all purposes (the "Real Property," with the Real Property and all improvements and structures now or hereafter located on the Real Property, including without limitation, the Improvements, being referred to as the "Property" or the "Project").
- B. Declarant and Greystar Development Central, LLC, a Delaware limited liability company ("Greystar") entered into that certain Master Development Agreement ("MDA") dated October 20, 2023 relating to the purchase, sale and initial development of the Property.
- C. Pursuant to the terms of the MDA, Declarant is selling the Property to South Congress Public Facility Corporation ("Property Owner," which term includes all subsequent owners of the Property);
- D. Declarant wishes to impose certain restrictions on the Property for the overall benefit of the Property and to ensure the Property's integration into the area shown on Exhibit B (the "St. John Community").

NOW, THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, and occupied subject to the following restrictions which bind the Property Owner, any person or entity who has an interest in the Property, excluding Tenants, but including any owner of a leasehold interest in the Property, and any person or entity who occupies all or any portion of the Property. If Property Owner enters into a lease of the entire Property with the goal of developing the Property, that lease is referred to as a "Development Lease" and the occupant is referred to as a "Developer Occupant." By taking occupancy of the Property, the Developer Occupant agrees that it is bound by the terms of this Declaration. If there is no Development Lease, then the references to "Developer Occupant" will be deemed to be to Property Owner or any person or entity who has assumed more than a minor portion of the obligations hereunder. For the purposes of clarity, this Declaration binds any Property Owner, no matter how they acquired the Property, if there is no Development Lease in effect. During the pendency of construction and leasing of the initial Improvements, including under Sections 5, 6, 7, 8, 9, and 12 (the "Initial Period"), the Developer Occupant will be _____, a _____. Any occupant that a Developer Occupant allows to use any part of the Property is referred to as a "Tenant."

1. Term. The term of this Declaration commences upon the date of filing this instrument for record in the land records of Travis County, Texas and continues for a term of 99 years (as it may be amended, the "Term"), unless earlier terminated pursuant to express provisions contained herein including, without limitation, under Section 10 of this Declaration, and notice of such termination is filed of record. Because the tax benefits of the Public Facility Corporation (the "PFC tax benefits") structure expire 60 years after the execution of the Development Lease, the following terms apply:
 - A. No later than 2 years before the expiration of the PFC tax benefits, Developer Occupant must notify Declarant whether or not SCPFC is able to renew the PFC tax benefits for at least the remainder of the Term, with comparable tax or cash flow benefits under the then-current enabling legislation. If that option is possible, then Developer Occupant, Property Owner, and Declarant must commence whatever process is then required for such extension (which is separate from Option 1 below, in which comparable benefits, but not a renewal of the PFC tax benefits is accomplished). If Developer Occupant determines that 1 of the 3 options described below is required, then Developer Occupant must provide the Declarant with all information described under each of Options 1, 2 and 3 below for operating the Property during the remainder of the Term. Notwithstanding anything set forth elsewhere in this Declaration, Developer Occupant does not lose any right to pursue maintaining or reinstating the PFC tax benefits should they fail to provide timely full notice; rather Property Owner and Developer Occupant may reapply for the PFC tax benefits at any time before or after the existing tax benefits expire unless a deed is recorded if Option 2 is selected. Developer Occupant must notify Declarant if it is successful in those efforts within 14 days after that success.
 - (i) Declarant has 180 days after receiving the information in Section 1(A) to select an option. If Option 1 or 2 is selected, Declarant must, to the extent within Declarant's control, accomplish the required actions before the expiration of the PFC tax benefits, subject to subsection (iii) below. Developer Occupant must cooperate with the City in accomplishing whichever of Option 1 and 2 is selected.
 - (ii) If Developer Occupant does not send any notice or fails to send a complete and timely notice and information as outlined below, then Declarant shall provide Property Owner and Developer Occupant with a reminder notice. Declarant's failure to send this notice will not affect Developer Occupant's obligation to comply with the terms of this Declaration.
 - (iii) Declarant shall have no less than 18 months after a full notice (full notice includes the notice plus all required information) in which to evaluate and effectuate options. If Declarant has less than 18 months between full notice and expiration of the PFC tax benefits, Developer Occupant and Property Owner will operate the Property under this Declaration, including affordability levels, despite not enjoying the PFC tax benefits, until an option is chosen and effectuated by Declarant. Declarant must choose and effectuate the Option by the end of the 18-month period after full notice. If Declarant does not choose within that 18-month time period, then Declarant will be deemed to have chosen Option 3.
 - B. If a renewal of the PFC tax benefits is not possible for any reason, then Declarant must choose among the 3 options described below but to the extent possible, the parties agree to attempt to achieve Option 1:
 - (1) Option 1: If Declarant chooses Option 1, the parties will execute mutually agreeable financial incentives for affordability through extension or renewal of comparable tax advantages, partnership with Austin Housing Finance Corporation, or other means available to the Declarant at that time that have substantially the same effect on the property's cash flow. In any case, if Option 1 is effective, the property must continue to operate under the affordability restrictions for the remainder of the Term. Developer Occupant's required

information with its notice is preliminary identification of and due diligence on alternative partnerships or agreements.

- (2) Option 2: Declarant purchases the Property and Improvements at Fair Market Value if Declarant chooses Option 2. The calculation of "fair market value" upon the expiration of the PFC tax benefits must be based on the value of the improvements given their documented cash flow as a mixed-income property including 50% affordable with the PFC tax benefits and must reflect the Declarant's right to acquire the property at the end of the Term for \$1, rather than as if it were a "fee simple" transaction with ongoing cash flow for an unlimited period of time. For example, one approach would be to use the net present value of the projected cash flow for the remainder of the Term at a developer's rate of return, but ultimately the appraiser shall use the appraisal methods prevalent at the time.
- (a) Developer Occupant's required information with its notice is:
- (i) the previous 3 years of audited financial records demonstrating the rent roll (market-rate and affordable units, commercial tenants), other revenues, operating expenses, property taxes (paid and foregone), and net operating income, to be provided by the ownership entity,
 - (ii) a proposal for an initial appraisal of the property's Fair Market Value at least 18 months prior to the expiration of the PFC tax benefits, and
 - (iii) a proposal for a final appraisal within the required timeframe for closing at the expiration of the PFC tax benefits.
- (b) Declarant may accept the time periods set forth in Section 1(B)(2)(a)(ii) and (iii) and respond to any other proposals from Developer Occupant. Developer Occupant and Declarant must work together to reach agreement on the time periods and other proposals.
- (c) Declarant may require that Developer Occupant and Declarant each selects its own appraiser within the time period to which they agree under Section 1(B)(2)(b) above. If the higher appraisal is 105% or less of the lower appraisal, then the Fair Market Value will be deemed to be the average of the two appraisals. If the higher appraisal is more than 105% of the lower appraisal, then the two appraisers will choose a third appraiser, who must issue an appraisal within 60 days after selection. The appraised value that is between the higher and the lower appraisals will be deemed to be the Fair Market Value. Declarant and Developer Occupant shall each pay for the costs of their chosen appraisals and, if needed, shall split the cost of the third appraisal 50/50.
- (3) Option 3: Declarant chooses not to extend financial incentives, including under the Public Facility Corporation arrangement or other comparable means arrangements (Option 1) and not to purchase the property (Option 2). In this event (or if any Declarant fails to timely choose) the Property and Improvements would revert to market rate housing for the remainder of the Term and the Declarant is entitled to buy the Property for \$1 at the end of the Term pursuant to the procedures in Section 2(B) below. In this option, all restrictive covenants except those in Section 9(D)(1) through and including (20) will be terminated and the right of first refusal found in Section 2(A) shall also be terminated, but the purchase rights in Section 2(B) and the Use Restrictions in Section 9(D)(1) through and including (20) will remain in effect. However, Tenants of Affordable Units in occupancy at the time the PFC tax benefits expire must be eligible to renew their leases until 3 years after the expiration of the PFC tax benefits at

rental rates consistent with Section 6(A) (as such may be amended from time-to-time), but once a Tenant of an Affordable Unit leaves that Affordable Unit, the unit is no longer required to be rented as an Affordable Unit. Developer Occupant's required information with its notice is (a) documentation of the ongoing rights of Tenants of Affordable Units to remain in those Affordable Units, including duration of such rights and affordability/rent levels, and (b) proposal to communicate those rights to the Tenants of Affordable Units in a timely manner, (c) proposal to use its commercially reasonable efforts to give non-financial assistance to Tenants of Affordable Units for relocation to other affordable properties. Notwithstanding the foregoing, it is acknowledged that in this scenario, it is likely the fee simple title to the land will be conveyed from SCPFC to the for-profit owner/investor members of the Developer Occupant at the time (and that conveyance will not be subject to the below-defined Right of First Refusal), the Developer Occupant will be dissolved, and HACA, SCPFC and its affiliates will no longer have an interest in the Property or Improvements. This does not limit or amend Declarant's right to purchase the Property for \$1 at the end of the Term.

2. Declarant's Purchase Rights.

A. Right of First Refusal. Declarant has a right of first refusal to purchase all of the Property, subject to the following terms and conditions:

- (1) If a proposed buyer directly or indirectly expresses interest to the then-current Property Owner in buying all of the Property (the "ROFR Property") and the Property Owner intends to sell the ROFR Property to that proposed buyer, then the Property Owner must give a written notice (the "ROFR Notice") which (i) identifies the proposed buyer, (ii) summarizes the business terms of the proposed contract, and (iii) offers to sell the ROFR Property to Declarant on those same terms. Declarant shall then have a period of 20 days after the delivery of such notice (the "ROFR Delivery Date") to accept the sale offered by the Property Owner.
- (2) If within the 20-day period after the ROFR Delivery Date, Declarant does not give the Property Owner written notice of its acceptance of the sale offered by the Property Owner in the ROFR Notice, then the Property Owner may enter into a contract for the ROFR Property with the proposed buyer identified in the with the Property Owner upon substantially the terms and conditions, with only minor variations, as set forth in the ROFR Notice.
- (3) If Declarant accepts the offer within the 20-day period after the ROFR Delivery Date, then Property Owner will prepare a contract using the State Bar form of contract reflecting the terms and conditions of the ROFR Notice and deliver it to Declarant and, if it accurately reflects the agreement, Declarant must execute that contract within 10 days after the Property Owner delivers the contract to Declarant (the "Execution Deadline"). If Declarant does not deliver the executed contract to the Property Owner by the Execution Deadline, then the Property Owner may execute a contract with the proposed buyer identified in the ROFR Notice upon substantially the terms and conditions, with only minor variations, as set forth in the ROFR Notice.
- (4) This right of first refusal is on-going, so that it binds all Property Owners through the end of the Term.
- (5) Any person or entity that acquires the Property will acquire title subject to the burdens and benefits of the Development Lease, if any.

B. Purchase Right at End of the Term. Declarant is entitled to purchase the Property from the then-current Property Owner upon payment of \$1.00 within one year after the end of the Term, which end of the Term is not accelerated by Declarant selecting or being

deemed to have selected Option 3 described in Section 1 above. Declarant may exercise this right by sending a written notice to the then-current Property Owner at the address on file in the tax records for the Property and by filing a notice of exercise in the real property records of Travis County, Texas, specifying the time, date, and location of the closing, which shall be thirty (30) days thereafter (the "Repurchase Closing Date"). Such notice must be sent within one year after the end of the Term and, if the notice is not sent within that time period, the right of repurchase expires; provided, however, Property Owner shall give Declarant at least 30 days prior written notice of expiration of the one-year period. Then then-current Property Owner must deliver a Special Warranty Deed to Declarant on the Repurchase Closing Date in return for the \$1.00 payment and must deliver such other documents that sellers customarily deliver in closings in Travis County, Texas at no cost to such Property Owner. All fees and expenses (including title insurance and property taxes) shall be at the cost of the Declarant. The conveyance of the Property will be 'as is' with no representation warranties, but free of all liens.

3. Design Approval for Improvements.

A. Demolition of Existing Improvements and Construction of New Improvements.

(1) Approval. Declarant approves the "SDP Documents" attached as Exhibit B-1, which are also sometimes called the "Site Development Plans." The improvements described in the SDP Documents are referred to as the "Site Development Improvements." Declarant also approves the "Building Construction Documents" attached as Exhibit B-2. The improvements described in the Building Construction Documents are referred to as the "Building Improvements" which, along with the Site Development Improvements, shall be together referred to as the "Improvements". The Site Development Plans and the Building Construction Documents are sometimes collectively referred to as the "Site and Building Documents" and show the full scope of the Developer Occupant's obligation concerning construction of the Site Development Improvements and the Building Improvements. The Site and Building Documents will be used to apply for the "Demolition Permit" and the "Commercial Building Permit" from the City of Austin Development Services Department.

(2) Construction. The Developer Occupant must perform its construction: (i) in accordance with the Site Development Permit, Demolition Permit, and the Commercial Building Permit; (ii) with due diligence to Substantial Completion of Construction of the Improvements in a good and workmanlike manner, using quality materials typically used for similar projects used in Austin, Texas; (iii) to comply with the private and governmental requirements applicable thereto (including variances, amendments, and modifications), including, without limitation, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof. As to any alterations to the Property, the term "Substantial Completion" means that the alterations are completed in accordance with the approved plans so that they can be used for their intended purpose or that further improvements made by other persons or entities can be performed. For example, "Substantial Completion of Construction of the Improvements" means that the Improvements are sufficiently complete in accordance with the Site and Building Documents that the residential Tenants can occupy or use the Building Improvements for their intended purpose and the commercial Tenants can begin construction of their tenant improvements.

B. Composition of the Project. There are three parts to the Improvements: the commercial portion, identified on Exhibit C (the "Commercial Improvements"), the Parkland, and the remainder of the Improvements (referred to as the "Residential Improvements").

4. Notice of Compliance. Property Owner or Developer Occupant may upon compliance with any one or more of the deadlines set forth in Section 3(A) above, request that Declarant execute in recordable form a notice of compliance (such execution not to be unconditionally withheld, conditioned, or delayed). Declarant is not required to execute any more than 1 notice of compliance for any deadline.
5. Modifications to the Site and Building Documents; Subsequent Modifications of Improvements or New Improvements.
 - A. Declarant's Approval Required. Capital improvement and renovation projects that do not change the assortment of units or size of the Commercial Improvements available for lease shall not require Declarant's approval. All other improvements made on the Property require advance approval by Declarant. Declarant has approved the Improvements, but any changes to the Site and Building Documents that are more than minor and any construction not reflected on the Site and Building Documents require approval in writing of Site Plan Development Documents and Building Permit Documents, or their equivalents for construction not referenced on the Site and Building Documents (the "Submittals") by Declarant through the Redevelopment Project Manager in the Economic Development Department of the City of Austin ("EDD") (or appropriate successor department) (the "Design Approval"). Declarant will not have any rights under this Declaration to review or approve interior aspects of the Improvements, including Tenant Improvements.
 - B. Declarant's Considerations. In reviewing for a Design Approval at any time before Substantial Completion, Declarant is only permitted to object to Submittals for failure to comply with the general arrangement of the Conceptual Master Plan (as defined in the MDA), Term Sheet, Exhibits B-1 and Exhibit B-2, the agreed-to Community Benefits, and this Declaration or for failure to address the requirements or concerns of the City of Austin Parks Department (or appropriate successor department), ("PARD") and the St. John Community. On or after Substantial Completion of Construction of the Improvements, Declarant is only permitted to object to drawings submitted for failure to comply with (i) this Declaration, or (ii) if physical access to the Parkland is restricted by more than a minor amount by the proposed construction. PARD's requirements and concerns are limited to objecting to something that would significantly increase their maintenance costs and maintenance time commitment and their inability to reasonably operate the Improvements in the future.
 - C. Deemed Approval; Approval Options. If Declarant fails to notify applicant in writing of its approval, disapproval or comments to the required submittals within 10 days of Declarant's deemed receipt thereof, applicant may provide Declarant a second written Design Approval Request (containing a statement in all bold and capital letters that reads "**FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 10 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST**"). If Declarant fails to respond to this second notice within 10 days after deemed receipt of the notice, Declarant will be deemed to have provided Design Approval. Declarant will notify the applicant in writing of any materials that Declarant believes are missing to make a Design Approval complete. The Declarant may: (i) provide a Design Approval with or without conditions; (ii) provide Design Approval of a portion of the required submittal and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) not provide Design Approval.
 - D. Re-Submittal. If Declarant provides a Design Approval with conditions or approves only a portion of the submittal and disapproves other portions, and Developer Occupant has submitted revised drawings responding to these conditions, Declarant shall notify the applicant in writing of the final determination on any such revised submittal no later than 10 days after its receipt.
 - E. Regulatory Approvals. Developer Occupant is expressly permitted to apply, at its own risk, for regulatory approvals before obtaining the approvals described in this Section 5.

However, once Developer Occupant has received a Design Approval, Developer Occupant must promptly (in any event, within twelve (12) months for any construction after the initial construction) apply for regulatory approval ("Regulatory Approval" includes issuance of a building permit) and, after submission, diligently pursue obtaining that Regulatory Approval to construct the work covered by the Design Approval. If construction of the Improvements covered by the Design Approval does not commence within the period required by such Regulatory Approval, the Design Approval will automatically expire, and the Developer Occupant must reapply for approval before commencing any construction activities. Once construction of the Improvements covered by the Design Approval is commenced, Developer Occupant must diligently pursue that construction to completion.

6. Community Benefits. Developer Occupant must perform all of the obligations described below, which constitute payment of a part of the purchase price for the Property under the MDA, for the first 60 years of Property Owner’s ownership, extended under Section 1, if applicable.

A. Agreement to Provide Affordable Housing. Developer Occupant must comply with the following restrictions for the entire Term, unless modified under Section 1 of this Declaration, and the units so restricted are referred to as "Affordable Units":

(1) For Rental Units: 50% of the units will be leased or reserved for lease to income-restricted households averaging not more than 60% median family income ("MFI") across all households ("Qualifying Rental Households"). For clarity, it is hereby acknowledged that market rate units will not be included in the calculation of the 60%.

(2) Affordable Housing Program: The following types of housing will be offered as follows:

| MFI | Studio | 1BR | 2BR | 3BR | Total |
|------------|--------|-----|-----|-----|-------|
| 50% | 29 | 53 | 18 | 4 | 104 |
| 60% to 80% | 44 | 77 | 27 | 11 | 159 |
| Subtotal | 73 | 130 | 45 | 15 | 263 |

(3) Source of income: Developer Occupant must accept all lawful, regular, and verifiable rental subsidies, including Housing Choice Vouchers from the HUD Housing Choice Voucher program and the City of Austin’s local housing vouchers.

(4) Compliance: Developer Occupant must comply with the Tenant Protection Provisions in Exhibit D. This obligation arises under this Declaration and not under the City statutes. This obligation also fulfills the requirements of Section 303.0425(k) of the Local Government Code.

(5) HUD Guidelines: The determination of median family income and percentage of market rents will be adjusted from time in accordance with HUD Guidelines, which are currently found at https://www.austintexas.gov/sites/default/files/files/Housing_%26_Planning/MFI%20Chart%20Effective_2023.pdf, but the City of Austin may change the location at which the information can be found as long as the City of Austin makes the location of the information generally available to the public or specifically available to Developer Occupant. If HUD ceases issuing guidelines, then the City of Austin may issue guidelines or may select a new set of guidelines to use.

- (6) Developer Occupant Reliance: Declarant acknowledges that the applicable Developer Occupant will be relying on prospective tenants to provide the applicable Developer Occupant with the information to determine whether or not such prospective tenants are Qualifying Rental Households. Declarant agrees that in no event will the applicable Developer Occupant be held liable for a breach of Section 6(A) due to having received false information.
- B. Highlight the History of the St. John Neighborhood. Declarant will work with the City of Austin's Art in Public Places program to create a publicly accessible art/memorial to highlight the history of the St. John Community. Developer Occupant will cooperate with the design, outreach, and placement of the art/memorial.
- C. Agreement to Integrate with the St. John Community, including Preference Policy.
- (1) Physical Integration. Developer Occupant will provide connections from the Project into the St. John Community as determined through the SDP Documents.
- (2) Preference Policy. This preference policy will only apply during the initial lease of the residential portion of the Improvements. Declarant must approve Developer Occupant's plan and implementation of this policy.
- (a) For Affordable Units, unit sizes and MFIs must be evenly distributed between preference and non-preference units.
- (b) At least 60% of the Affordable Units must be available to the general public.
- (c) No more than 40% of the Affordable Units should be filled using a ranked preference.
- (d) Use two or more the following factors with the understanding that Developer Occupant will be responsible for verifying applicant eligibility in all categories, but the Declarant will conduct the audit of each application concerning category "(iii)" below. Each household may receive 1 point for each category in which it qualifies. Households that include an individual with a disability will be given preference for units with disability modifications. If there are more applicants in any category than units, then they may be allocated by lottery. A "preference unit" is an Affordable Unit that will initially be leased to a household meeting the requirements of this Subsection 6(C)(2).
- (i) Household holds a voucher.
- (ii) Households that currently reside in census tracts identified as vulnerable in the Uprooted study.
- (iii) One or more household members was displaced due to government action or private redevelopment (City of Austin Tenant Notification and Relocation provisions).
- (iv) Households that include an individual with a disability.
- (e) Developer Occupant will identify partnerships that market to qualified participants of the Preference Policy
- (3) Affirmative Marketing. During the initial lease of the residential portion of the Improvements, Developer Occupant must work with City to connect with local community organizations to ensure that community groups, especially those with ties to the St John community, participate in the affirmative marketing. The affirmative marketing should focus on communities that may not know about affordable housing opportunities, including families who have

been displaced from Austin and families who speak a language other than English as their first language.

- D. Building Requirements under Environmental Site Assessments. Developer Occupant has received and reviewed the recommendations of the City of Austin and Austin Brownfields Revitalization Office Final Report Limited Phase II Environmental Site Assessment by INTERA for the City of Austin and Austin Brownfields Revitalization Office dated September 2023 (the "Intera Study"). The Conclusion and Recommendations of the Intera Study are attached as Exhibit "G" ("Intera Study Conclusions and Recommendations") and Developer Occupant agrees to comply with the Intera Study Conclusions and Recommendations set forth on Exhibit "G".
- E. Agreement to Comply with MBE/WBE Requirements. Developer Occupant must comply with the terms of the City of Austin's MBE/WBE program and endeavor to meet the Annual Participation Goals, as defined by that program and the Statement of Responsibility attached as Exhibit F during construction of the initial Improvements contemplated herein. This obligation arises under this Declaration and not under the statutes of the City of Austin.
- F. Agreement to Comply with Worker Safety Requirements. Developer Occupant must comply with the Worker Safety Program Requirements described in Resolution 20110728-106. This obligation arises under this Declaration and not under the statutes of the City of Austin.
- G. Agreement to Provide Worker Protections. During construction of the initial Improvements contemplated in this Declaration, and for any subsequent contract for redevelopment or construction of improvements entered into by Developer Occupant in excess of \$15,000,000 (with the \$15,000,000.00 increased based on increases in the Consumer Price Index for the South Region ("CPI") as reported by the Bureau of Labor Statistics from the effective date of this Declaration to the date of execution for the subsequent contract for redevelopment or construction of improvements. Developer Occupant must participate in and comply with the requirements of the Better Builder Program (such requirements being described in applicable City Resolutions in effect on the date of this Declaration), for all construction on the Property and provide at least the following protections for the construction workers on the Project (the "Worker Protections"). This obligation arises under this Declaration and not under the statutes of the City of Austin.
 - (1) Wages no less than the prevailing wage in effect on the date of this Declaration, as adjusted by the City's Living Wage in effect on the date of this Declaration, which amount may escalate as the City of Austin increases the City's Living Wage, but that increase from one Living Wage amount to another Living Wage amount cannot exceed the increase in CPI from (i) the date on which the construction contract of the initial Improvements is executed to (ii) the date on which the construction contract for subsequent redevelopment or construction of improvements to which this Section 6(G)(1) applies is executed. The Living Wage for the construction of the initial Improvements shall be set on the date on which the construction contract for the initial Improvements is executed. The Living Wage for the construction of the initial Improvements shall not be less than \$20.80 per hour. The applicable Living Wage for a subsequent redevelopment or construction of improvements shall be governed by the escalations described above and will be set for the subsequent redevelopment or construction as of the date that the construction contract for subsequent redevelopment or construction of improvements is executed. For example, if the applicable Living Wage at the time of the construction contract for the initial Improvements is \$20.80 per hour, that figure will apply as the minimum Living Wage throughout the construction period of the initial Improvements, which may be several years. If, at the time of a subsequent redevelopment or construction of improvements, the City's Living Wage has increased by 50%, but CPI has increased by only 40%, the Developer Occupant must pay

construction workers the minimum wage of \$29.12 per hour (i.e., 140% of \$20.80), and at least that minimum wage must be paid for the duration of the subsequent redevelopment or construction of improvements, which may be several years.

- (2) Completion of OSHA 10-hour training;
- (3) Worker's compensation insurance coverage;
- (4) Hiring goals from local craft training programs that at least meet the requirements of City of Austin Resolution 20180628-061;
- (5) Compliance with all applicable state, federal, and local laws; and
- (6) Third-Party on-site monitoring of Developer Occupant's compliance with the requirements in 1 through 5 by a person or entity reasonably approved by the Declarant; provided, however, the third party does not have to be Better Builder certified.

H. Commercial Improvements. Developer Occupant will use commercially reasonable efforts to lease a significant percentage of the Commercial Improvements for uses that primarily focus on and are targeted to the St. John Community, with particular focus on leasing space in the Commercial Improvements ("Commercial Space") to local vendors or vendors with one of the following main purposes:

- (1) Not-for-profit office or meeting space
- (2) Small scale grocer, which may be provided through a co-op
- (3) Workforce/Vocational training
- (4) Youth development
- (5) Health care/Health/Medical space
- (6) Small business office, workspace or incubator
- (7) Creative Space
- (8) Community Center

I. Commercial Rent. During the initial lease up of the Commercial Improvements, Developer Occupant must use diligent, good faith efforts to lease at least 5,000 square feet of Commercial Improvements for at least 5 years to a Local Non-Profit Entity or Entities for no more than the Non-Profit Rent during such 5-year period. If there is only 5,000 square feet of Commercial Improvements remaining unleased, then any lease that does not meet these requirements will require approval from Declarant. If after 3 years after Developer Occupant's leasing efforts begin for the Commercial Improvements, Developer Occupant has not, despite its diligent, good faith efforts to attempt to lease space to a Non-Profit Entity or for the Non-Profit Rent, found tenants meeting these requirements, then Developer Occupant is no longer required to attempt to lease space to a Non-Profit Entity or for the Non-Profit rent. Except for non-profit tenants not meeting the requirements of this Section I or under the circumstances described in the second sentence of this Section I, Declarant will not have approval rights concerning the tenants of the Commercial Improvements. Developer Occupant may begin leasing efforts for the Commercial Improvements at any time up to 18 months before Substantial Completion of Commercial Improvements, if, and only if, Developer Occupant notifies Declarant that Developer Occupant is beginning leasing efforts for the Commercial Improvements.

- (1) A "Non-Profit Entity" is an organization entitled to exemption from taxation under Section 501(c)(3) of the Internal Revenue Code.

- (2) "Non-Profit Rent" means 50% of the prevailing market rent for the applicable Commercial Space leased to non-profit entities, but 100% of all ownership costs, such as taxes, common area maintenance, and insurance.
 - (3) "Local Non-Profit Entity" means tenants with strong ties to the City of Austin (as opposed to nationally-focused nonprofit organizations)
 - J. Finish-Out Arrangements. During the initial lease up of the Commercial Improvements, including to Non-Profit Entities, Developer Occupant must offer each occupant of space in the Commercial Improvements \$74 per rentable square foot of area within that space to be used for tenant improvements beyond the level of the Site and Building Documents (these additional improvements are referred to as the "Tenant Improvements"). Any money that Developer Occupant makes available to a Tenant for Tenant Improvements may be provided to Tenant as an allowance if Tenant makes the Tenant Improvements or hires another party to do such work.
 - K. S.M.A.R.T Housing™. Developer Occupant will cause all residential units constructed on the Property to be initially constructed in accordance with the S.M.A.R.T. policy adopted by the City Council on November 29, 2007; link: <https://www.austintexas.gov/edims/document.cfm?id=111622>. This obligation arises under this Declaration and not under the statutes of the City of Austin.
7. Further Obligations. Developer Occupant must also perform the following obligations, which do not constitute payment for the Property.
- A. Parkland and Storm Water Detention Pond. Developer Occupant must improve the parkland (the "Parkland") and the detention pond (the "Detention Pond"), both as shown on the Site and Building Documents, in a good and workmanlike manner and accordance with the Site and Building Documents. When the improvements to the Parkland are fully complete, Developer Occupant must dedicate the Parkland as parkland and convey it to the Austin Parks and Recreation Department, using the forms PARD requires. The Detention Pond shall be designed as an amenity and integrated into the open space and parkland program for the Project and as such, the Developer Occupant will install walking trails and/or vegetation, as approved by the Declarant.
 - B. Further Disposition of the Property. Developer Occupant may enter into leases or contracts of sale directly with residential and commercial occupants without requiring approval by Declarant except as provided in Section 6(I) above. Developer Occupant may also transfer its interest in the Development Lease ("Leasehold Interest") without Declarant's consent, provided, however, that any purchaser of the Leasehold Interest must include HACA and assume the Development Lease. Any sale of the Property or the Improvements to any person or entity is subject to the right of first refusal described in Section 2(A) above.
 - C. Transfer of Interests in Developer Occupant. The Housing Authority of the City of Austin ("HACA") or its nonprofit affiliate may not ever transfer its interests in Developer Occupant except to another of HACA's nonprofit affiliates, including another public facility corporation owned by HACA, or with the Declarant's prior written approval if such transfer is to be made to an entity not affiliated with HACA. The non-HACA members of Developer Occupant, which must initially include Greystar or its permitted Assignees as allowed by Section 7.14(C) of the MDA, may each transfer its interest in Developer Occupant to an affiliate of that non-HACA member at any time, but may not transfer its interest in Developer Occupant to a third party without Declarant's consent until after Substantial Completion of the Improvements. After Substantial Completion of the Improvements, the non-HACA members of Developer Occupant may each freely transfer its interest in the Developer Occupant without Declarant's consent.

8. Reporting.

A. Reporting Obligations and Audit Rights for Affordable Housing.

- (1) By no later than January 31, April 30, July 31, and October 31 of any year, Developer Occupant must prepare and submit to the Director of Housing Department, or its replacement or successor entity ("HD") at the City of Austin an Affordable Housing Report covering the calendar quarter ending on the last day of the immediately-preceding month and, in the case of the January 31 report, the calendar year ending the previous December 31 (each quarterly period and the calendar year are a "Reporting Period"). HD will use such report in its reporting of the status of affordable housing within the City of Austin. "Affordable Housing Report" means: a rent roll for Affordable Units as of the first day of the Reporting Period, the average occupancy of the Affordable Units for the Reporting Period, and the number of households receiving Section 8 Choice Housing Voucher assistance, or any replacement program of housing assistance during the Reporting Period. All information must be presented using both Area Median Income and MFI. Developer Occupant must also send Declarant all copies of reports it makes to the State of Texas (which term includes the administrative bodies of the State of Texas) concerning affordable housing as it is then understood at the same time as it sends those reports to the State of Texas.
- (2) The Declarant may at any time conduct an audit of Developer Occupant's books and records concerning affordability, which must include the income for each household that occupied an Affordable Unit. Developer Occupant must keep books and records concerning operations in a location accessible to the Declarant in Austin. Developer Occupant must keep all books and records for a period of 3 years after the year to which they apply. The Declarant and its representatives are entitled to inspect or audit the books and records at all times upon no less than 15 days' prior written notice at the Declarant's own cost and effort.

B. Reporting Obligations for Construction. On or before December 1 and June 1 of each calendar year through 90 days after the date that a Certificate of Occupancy was issued for the Improvements, Developer Occupant must prepare and submit to the Declarant an M/WBE Report covering the prior 6-month period and a report demonstrating Developer Occupant's compliance with the Worker Protections for that same 6-month period. The form of the report must be as required by the Declarant. This obligation ends when the Site Development Improvements have received a final Certificate of Occupancy.

C. Residential Tenant Mix - Developer Occupant must deliver to EDD a summary of the final residential tenant mix in each phase of the Residential Improvements by no later one year after Substantial Completion of that phase of the Residential Improvements.

D. Commercial Tenant Mix - Developer Occupant must deliver to EDD an annual summary of the commercial tenant mix in the Commercial Improvements through the earlier of the Commercial Improvements being fully leased or expiration of the obligations in Section 6.I above.

E. Affirmative Marketing Report. Developer Occupant must deliver to EDD the final marketing plan describing Tenant's affirmative marketing efforts by the date that is 3 months before occupancy by the first residential tenant.

F. Preference Policy. Within 30 days after the completion of the Preference Policy obligations and in any event by January 1 of each year, Developer Occupant must deliver a report showing its compliance with Preference Policy and Affirmative Marketing. This reporting obligation will end 30 days after the Preference Policy and Affirmative Marketing obligations end.

9. Maintenance. The Developer Occupant must at all times maintain the Property, including all structures, parking areas, landscaping, and other improvements but specifically not the dedicated parkland, in full compliance with the applicable building codes and in good condition and repair.
- A. Improvements. The Developer Occupant must repair, replace, and repaint all improvements, including structures, located on the Property in a timely manner as commercially reasonable for similar improvements.
- B. Property Generally. Maintenance of the remainder of the Property includes, but is not limited to, the following (as applicable), which will be performed in a reasonably timely manner:
- (1) Prompt removal of all litter, trash, refuse, and waste.
 - (2) Tree and shrub pruning.
 - (3) Watering.
 - (4) Keeping exterior lighting and mechanical facilities in working order.
 - (5) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.
 - (6) Keeping planting beds free of turf grass.
 - (7) Keeping sidewalks and driveways in good condition, repair and appearance.
 - (8) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all but the most immaterial respects.
- C. Casualty. The Developer Occupant shall carry property insurance for the full replacement cost of all insurable improvements on the Property, less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. The property insurance must comply with the requirements of Section 14(B) through 14 (D) below. As soon as possible after any damage to or destruction of any improvement constructed upon the Property (but in any event within 365 days after such event, unless the insurance assessor has not released its report for reasons that are not within Developer Occupant's control), Developer Occupant must notify Declarant if Developer Occupant will rebuild the improvements or tear down some or all of the improvements and clear debris. If a building is partially damaged, Developer Occupant must tear down the entire building and clear the debris or receive Declarant's approval to handle the partially-damaged building in a different manner. All reconstruction of Improvements must be consistent with the original construction of the Site Development Improvements or such other plans and specifications as are approved hereunder and diligently pursued same to completion. If Developer Occupant demolishes a building, it must remove all debris and maintain the property in a neat and attractive landscaped condition. All work must be commenced within 365 days after the damage or destruction and diligently pursued to completion within no later than 365 days after commencement.
- D. Use Restrictions. From and after the date of the execution of this Declaration, no party may use the Property for anything other than construction of Improvements described in the Site and Building Documents and operation of the Project required by this Declaration; provided, however, Developer Occupant may make alterations to the Project so long as the other requirements of the Declarations are met. Developer Occupant is prohibited from operating or permitting any of the following on the Property, but Declarant may waive any of the following use restrictions in writing at any time and from time to time without the joinder of any other party, including without limitation the Developer Occupant:

- (1) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary retail, restaurant, office, hotel, or residential in a mixed-use community) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the improvements on the Property.
- (2) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).
- (3) Any sexually-oriented massage parlor.
- (4) Any hotel, bed and breakfast lodge, or similar use, which prohibition includes a prohibition on short-term rental use, with "short-term rental" meaning any type of lease, agreement, or arrangement that provides to any person or entity the right to use any lease space for less than 3 consecutive months, except for the following shall be allowed:
 - (i) up to 20% of the market rate units may be leased for less than 3 months
 - (ii) more than 20% of the market rate units may be leased for less than 3 months if Developer Occupant provides written notice to Declarant that market conditions require shorter term rentals to achieve sufficient returns
 - (iii) Affordable Units may be leased for less than 3 months if HACA determines it is necessary to move tenants into the Property due to fires, natural disasters, or other emergencies
- (5) Any blood or plasma centers and any other use that requires special medical waste arrangements, except for Tenants specifically desired and qualified under Section 6(H)(5) above.
- (6) Any veterinary hospital which provides care of large animals, such as livestock, except a veterinary clinic which provides medical care and boarding for small animals is permitted.
- (7) Any mortuary, funeral home, or crematorium.
- (8) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; provided, however, this will not prohibit governmental-sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation of the governmental entity or charity.
- (9) An operation primarily used as a storage or mini-warehouse operation and any assembling, manufacturing, fabricating, distilling, refining, smelting, agricultural or mining operation.
- (10) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live nude or partially clothed dancers or wait staff or similar establishments; provided, however, this will not prohibit the operation of a movie theater or book retailer so long as such operations are not an adult-oriented business (as defined in the sexually-oriented business ordinance of the City of Austin).
- (11) A dry cleaning plant or central laundry facility, provided this will not prohibit a dry cleaning or laundry drop off and pick up use or a self-serve communal laundry facility for residents of the Property.

- (12) Dance clubs, bars or cocktail lounges with aggregate square footage in excess of 8,000 square feet on the ground level of a building (provided that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).
- (13) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.
- (14) Bail bond services; correctional or detention facilities.
- (15) Any drop-off recycling facilities.
- (16) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).
- (17) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).
- (18) Tools and heavy equipment sales.
- (19) Collection agencies.
- (20) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, bicycles, boats) or for the Project.

10. Modifications and Termination. This Declaration may be modified upon the written consent of (a) Declarant, and (b) the owner of the fee simple interest in the Property, and (c) the owner of the leasehold interest in the Property (if an approved Development Lease is in place) or if a Development Lease is not in place, the owner of a leasehold interest in at least 51% of the floor area of the improvements within the Property (or land area if no improvements are located on the Property). Any amendment must be evidenced by a written document in recordable form executed by the appropriate parties and recorded in the Real Property Records of Travis County, Texas (or, if different, the form in which documents related to real estate are made public). Declarant's consent will be required for any amendment or termination of the Development Lease to the extent such amendment or termination would result in non-compliance with the terms of this Declaration more than to a minor extent.

11. Default.

- A. Failure to Comply. If Developer Occupant fails to comply with this Declaration, Developer Occupant will have 60 days in which to cure such default after receipt of notice of said default from Declarant or such longer period, not to exceed a total of 120 days, as may be reasonably necessary if the default cannot be cured in 60 days. Notwithstanding the foregoing, if the Developer Occupant provides a written report from a third party that more than 120 days is needed to cure and the reason extra time is needed, then the cure period will be extended up to an additional 60 days (i.e. for a total cure period of 180 days). Declarant shall also deliver such written notice of a default to any unaffiliated, third party lender ("Lender") of such Developer Occupant if Declarant is provided notice of such Lender in writing (with a contact name and address including one provided pursuant to an estoppel) and such Lender will have the same right of cure hereunder as the Developer Occupant and the time frame for cure will run concurrently with such Developer Occupant's cure period.
- B. Abandonment or Suspension. Subject to Force Majeure and City Caused Delays, Developer Occupant voluntarily abandons or substantially suspends its efforts to make the Site Development Improvements or the Building Improvements or any subsequent improvements approved by Declarant for more than 90 consecutive days and Developer Occupant fails to, in good faith, recommence such construction within 30 days after the date of written demand by Declarant to do so.

- C. Rights and Remedies. If Developer Occupant fails to comply with this Declaration, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against Developer Occupant.
- (1) With regard to Section 6(A), if the Developer Occupant fails to comply with a covenant in Section 6(A)(1) and the Developer Occupant has received written notice from Declarant that a failure to comply has occurred, Developer Occupant is obligated to diligently and in good faith pursue curing the failure to comply. Developer Occupant must provide an update in the Affordable Housing Report at the next occurring quarterly reporting date after it was notified of the failure to comply that either (i) the failure to comply has been cured or (ii) a plan to reach full compliance as soon as reasonably possible. The compliance plan shall be subject to the Declarant's approval, such approval not to be unreasonably conditioned, withheld, or delayed. If Developer Occupant fails to reach compliance in accordance with the compliance plan approved by the Declarant, the Developer Occupant must pay liquidated damages in the amount of \$1,000 per month until compliance is reached for each rental unit that would need to be re-leased or reserved for a Qualifying Rental Household in order to maintain the 50% requirement set forth in Section 6(A)(1) above.
 - (2) With respect to a default of maintenance responsibilities under Section 9 of this Declaration, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all reasonable actual out-of-pocket costs incurred by the Declarant against such defaulting Developer Occupant; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. Developer Occupant acknowledges that because the maintenance and repairs are done on a last-minute basis, the costs can be extraordinary and still be reasonable.
 - (3) **THE DECLARANT AND ITS RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR PROPERTY OWNER'S NEGLIGENCE OR STRICT LIABILITY).**
- D. No Termination. In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Developer Occupant, nor terminate the rights of any other Property Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Property Owner by reason of any default by such Developer Occupant, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Developer Occupant.
12. Developer Occupant's Indemnification and Waiver. By taking occupancy of the Property, Developer Occupant will be conclusively deemed to have agreed to the following (the parties acknowledge that notwithstanding any other provision set forth herein, the provisions in this Section 12 shall not be imputed to SCPFC):
- A. To the fullest extent permitted by law, Developer Occupant hereby indemnifies and holds the Declarant Parties harmless from and against all Claims arising from the existence of any Hazardous Materials in, on, or under the Property, no matter the source of the Hazardous Materials or when they were placed on the Property (these matters are referred to in this Declaration collectively as the "Matters Indemnified by Developer Occupant" and individually as a "Matter Indemnified by Developer Occupant"):
 - B. To the fullest extent permitted by law, Developer Occupant, on behalf of all Developer Occupant Parties, waives any and all Claims against the Declarant Parties arising from any of the Matters Indemnified by Developer Occupant.

- C. Developer Occupant, at Developer Occupant's expense, must assume on behalf of the Declarant Parties and conduct with due diligence and in good faith the defense of any Matter Indemnified by Developer Occupant. The defense must be by counsel satisfactory to the Declarant, but Declarant agrees not to unreasonably withhold or delay its approval of such counsel. Declarant further agrees to cooperate in Developer Occupant's defense of any action or proceeding brought by a person or entity in connection with any Matter Indemnified by Developer Occupant. Any final settlement by Developer Occupant of any action or proceeding in connection with any Matter Indemnified by Developer Occupant must be approved by Declarant, which approval may not be unreasonably withheld or delayed. Declarant has the right, at its option, to be represented by advisory counsel of its own selection and at its own expense. If Developer Occupant fails to fully perform its indemnification, hold harmless, and defense obligations, Declarant, at its option, and without relieving Developer Occupant of its obligations under this Section, may so perform, but Developer Occupant must reimburse Declarant for all costs and expenses so incurred, together with interest at the maximum contractual rate permitted at law.
- D. Developer Occupant's indemnification, hold harmless, and defense obligations are not and cannot be deemed to be limited to damages, compensation, or benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employee benefit acts.
13. Definitions. The following terms have the following definitions:
- A. "Affiliate" means any person controlling, controlled by or under common control with any other person or entity. For purposes of this definition, the term "control" when used with any respect to any person or entity means the power to direct the management or policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
- B. "Claims" means any and all liabilities, claims, damages (including, consequential or special damages), losses, penalties, demands, causes of action (whether in tort or contract, in law or at equity, or otherwise), suits, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses) incurred in investigating, defending, or prosecuting any litigation, claim, proceeding, or cause of action (whether in tort or contract, in law or at equity, or otherwise).
- C. "Declarant Parties" means (a) Declarant, Declarant's partners, affiliated companies of Declarant or of any partner of the Declarant, (b) Declarant's lenders, and (c) as to each of the persons or entities listed in "(a)" and "(b)" above, the following persons or entities: such person or entity's partners, partners of their partners, and any successors, assigns, heirs, personal representatives, devisees, agents, stockholders, officers, directors, employees, and affiliates. "Declarant Party" means any one of the Declarant Parties.
- D. "Developer Occupant Parties" means (a) Developer Occupant itself, (b) any contractor of Developer Occupant, (c) the employees of Developer Occupant or of any contractor of Developer Occupant, (d) any person that Developer Occupant or any contractor of Developer Occupant's controls or exercises control over, (e) any licensee of Developer Occupant, (f) subtenants of Developer Occupant, (h) as to each of the persons or entities listed in "(a)" through and including "(f)" above, the following persons: such person or entity's partners, partners of their partners, and all successors, assigns, heirs, personal representatives, devisees, agents, stockholders, officers, directors, employees, and affiliates of such parties. "Developer Occupant Party" means any one of the Developer Occupant Parties, but the Company, as Developer Occupant, will have those obligations and benefits. SCPFC and HACA, on their own behalf and on behalf of affiliates and related parties are each deemed to have agreed not to make a claim against Declarant or the City relating to Hazardous Materials or any Matter Indemnified by Developer

Occupant. SCPFC cannot indemnify and does not carry insurance, but will require that Developer Occupant carry all required insurance.



BE SURE TO READ AND UNDERSTAND THIS!!!

E. Allocation of Risk between Declarant and Developer Occupant.

(1) Allocation of Risk to Developer Occupant under Article 4. Except as set forth in the next-succeeding sentence, the indemnities and waivers contained in **Section 13** apply regardless of the active or passive negligence or joint, concurrent, or comparative negligence of the Declarant Parties and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on any of the Declarant Parties. If the final judgment of a court of competent jurisdiction establishes, under the principles of comparative negligence in the State of Texas, that the sole negligence, gross negligence, or willful misconduct of Declarant proximately caused a percentage of the damage suffered by a third party, then, as to such percentage only, the indemnities and waivers contained in **Section 13** will not apply to Declarant, but will apply to any damage in excess of such percentage and to all other indemnified parties.

(2) Allocation of certain Other Risks between Declarant and Developer Occupant. Wherever this Declaration imposes the obligation on Developer Occupant to indemnify and hold the Declarant Parties harmless from and against or waive or release any Claims, that indemnification, waiver, or release applies to all liabilities, losses, and damages, including any liability, loss, or damage that is attributable to the active or passive joint, concurrent, or comparative negligence of Declarant, but excludes that portion of any liability, loss, or damage caused by the willful misconduct or gross negligence of Declarant.

F. "Hazardous Materials" Defined. For purposes hereof, "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

14. Insurance.

A. Developer Occupant's Required Insurance. Developer Occupant must, and, as applicable, must require its contractors to, carry and maintain throughout the term of this Declaration the following insurance policies:

- (1) Workers Compensation Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
- (2) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer Occupant, or its agents or contractors on Developer Occupant's behalf, will use with respect to the Property in a minimum amount of \$1,000,000, combined single limit.

- (3) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.
- (4) The Property Insurance required by Section 9(C) above.
- (5) Pollution Legal Liability Insurance coverage approved by the Declarant and listing the Declarant as an additional insured with a minimum limit of \$5,000,000.
- (6) For contractors/subcontractors providing professional services under this Declaration, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the insured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured.
- (7) For work that involves asbestos or any hazardous materials or pollution, the following will be in addition to the other insurance required hereunder, but the insurance required under this subsection will only be required for the entity which is actually performing such work. For example, if a contractor (instead of Developer Occupant) is performing such work, the contractor, not Developer Occupant, will be required to carry such insurance:
 - (a) Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any hazardous materials or pollution and must provide "occurrence" coverage without a sunset clause.
 - (b) Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos must provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other hazardous materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

B. No Lapse. Neither Developer Occupant nor its contractors will cause or permit any insurance required hereunder to be canceled or lapse during the term of this Declaration. Required insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of B+VII or better or otherwise acceptable to Declarant. Additionally with respect to Section 14(A), all such policies must contain a provision in favor of Declarant waiving subrogation or other rights of recovery against Declarant, to the extent available under Applicable Laws. Developer Occupant must deliver to Declarant any notice of cancellation or non-renewal within 30 days after receiving that notice, reduced to 10 days in the case of non-payment of premium.

Declarant must be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by Declarant being excess and non-contributing. Developer Occupant will submit a certificate of insurance to Declarant providing evidence of insurance coverage required by this Declaration. Developer Occupant will be responsible for (i) overseeing its contractors with respect to such contactors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

- C. Declarant as Additional Insured. All applicable endorsements, waivers, and notices of cancellation as well as the evidence of insurance must indicate Declarant as an additional insured and be delivered to: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as Declarant may notify Developer Occupant in writing.
 - D. Developer Occupant's Financial Obligations Concerning Insurance. Developer Occupant is responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Developer Occupant. All deductibles or self-insured retentions greater than \$499,999 must be disclosed on the certificate of insurance. The insurance coverages required under this Declaration are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Developer Occupant or Declarant under this Declaration.
15. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, the City Manager does not have the authority to execute any modification to anything that was covered by the Term Sheet called "Version 12" and dated December 1, 2022, approved by the Austin City Council on December 8, 2022, as affected by the City Council action on October 5, 2023 (the "Term Sheet"). With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval. If the rights and duties of the City Manager as they are understood in 2023 are transferred to another person or entity or office, then any references to "City Manager" will be deemed to apply to the person, entity, or office to whom or to which those rights and duties have been transferred.
16. Miscellaneous.
- A. Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL ACTIONS OF DECLARANT TAKEN SOLELY WITH RESPECT TO THIS DECLARATION WILL BE ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. PROPERTY OWNER AND DEVELOPER OCCUPANT EACH ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.**
 - B. Notices. Formal notices, demands and communications must be in writing and will be deemed delivered and received when received or, regardless of when or if received, when delivered personally, including by courier; 3 days after being deposited in the U.S. Mail, if sent by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the

parties shown as follows, or such other address as the Declarant may designate in writing from time to time. Notwithstanding anything in this Declaration to the contrary, a party may change its notice address by providing notice to the other parties.

If to Declarant: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

With a copy to: City of Austin
Economic Development Department
5202 E. Ben White Blvd., Suite 400
Austin, Texas 78741
Attention: Director

With a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

If to Property Owner: Notices to the Property Owner will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity) and, if required by the other provisions of this Declaration, to the Property Owner's Lender.

With a copies to: St. John Developer Occupant
2500 Bee Cave Rd. Building III, Suite 500
Austin, TX 78746
Attn: David Walsh

South Congress Public Facility Corporation
1124 S. IH 35
Austin, Texas 78704
Attn: Suzanne Schwertner

- C. Consents. Whenever pursuant to this Declaration, Declarant's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of Declarant and such consent or approval may be withheld for any reason.
- D. Developer Occupant Bound. By taking an ownership interest in the Property, Developer Occupant is bound by the terms of this Declaration.
- E. Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Property Owner and Developer Occupant and that provide for sanctions against the Developer Occupant for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Developer Occupant shall use commercially reasonable efforts to cause all occupants (including lessees) of the Property Owner's portion of the Property to comply with this Declaration and any rules and regulations adopted

notwithstanding the fact that those occupants (including lessees) of the Property Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

- F. Estoppel. Upon 30 days' prior written notice and not more than once in any 12-month period, the Declarant agrees to deliver to any lender of the Developer Occupant of the Property an estoppel certifying compliance with specific terms of this Declaration, in form and content reasonably acceptable to the Declarant and such Developer Occupant and its lender. Neither Developer Occupant, Developer Occupant's lender, nor any other person or entity may rely on the estoppel, but Declarant will be estopped, as to Developer Occupant's lender only, from claiming that the facts are other than as set forth in the estoppel.
- G. Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.
- H. Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the property owners and the Developer Occupant in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Property Owner will be considered a separate owner, and no Property Owner will have the right to act as an agent for another Property Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Property Owner to be charged.
- I. Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Property Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.
- J. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.
- K. Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.
- L. Time. Time is of the essence of this Declaration.
- M. Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.
- N. No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.
- O. Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

- P. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.
- Q. Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only binding on each Developer Occupant personally but also as Developer Occupant of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such Developer Occupant appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Developer Occupant or Developer Occupants of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Developer Occupants. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Developer Occupants of the Property.
- R. Remedies Cumulative. All of the remedies permitted or available to the Declarant or Property Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.
- S. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.
- T. Modification of Declaration. Declarant, acting in accordance with Sections 10 and 15 above, may amend this Declaration if such amendment is necessary to accomplish any of the following goals, but Declarant is not obligated to make any changes that Declarant does not believe are appropriate:
- (1) To bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict;
 - (2) To enable any reputable title company to issue title insurance coverage for any portion of the Property;
 - (3) To enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Property, but under no circumstances will Declarant be required to accept this Declaration being subordinate to any person, entity, lien, or other right;
 - (4) To satisfy the requirements of any local, state, or governmental agency;
 - (5) To address changes in law that have occurred since these restrictions were recorded.

- U. Effect of Permitted Delay. If the Declarant or Property Owner or Developer Occupant is delayed or prevented from performance of any of its respective non-monetary obligations under this Declaration by reason of any Permitted Delay, the time for performance of such obligation is automatically extended for the period of such delay, subject to the remainder of this paragraph. No party may use this provision to delay payment of money or carrying required insurance. "Permitted Delay" means Force Majeure or City-Caused Delay, or both.
- (1) "Force Majeure" means any event, such as pandemics, strikes, riots, war, governmental laws, regulations, or restrictions that are beyond the reasonable control of the affected party (other than (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a force majeure event described above, or (b) acts of the party claiming the delay) and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation. Any government-mandated closure of all or most business operations in the City of Austin constitutes Force Majeure.
 - (2) "City Caused Delay" constitutes a Permitted Delay for Developer Occupant and means any actual delay to the extent caused solely by the Declarant and described below:
 - (a) With respect to the Declarant's obligations outside of this Declaration and solely in its capacity as a governmental entity to timely approve a plat, site development permit, or issue any other permits or approvals or inaction.
 - (b) With respect to the Declarant's obligations in this Declaration by its unreasonable delay in such action or inaction, or
 - (c) In the Declarant's capacity as a landowner (such as design approval and financial approvals), by its failure to meet the specific time frames for action set forth in this Declaration.
 - (3) Pre-Conditions to Claiming Permitted Delay. The party claiming a Permitted Delay will not be entitled to do so unless that party complies with the following requirements:
 - (a) The claiming party gives prompt written notice of such occurrence to the other party, with "prompt" meaning no less than 14 days; and
 - (b) The claiming party diligently attempts to remove, resolve, or otherwise eliminate such the delaying effects of the Permitted Delay, keeps the other party advised with respect to its efforts and the results of its efforts, and commences performance of its affected obligations under this Declaration immediately upon such removal, resolution, or elimination.
- V. Ratification of Clarifications. If this Declaration further clarifies the Term Sheet, then Declarant ratifies and confirms those clarifications.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

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

By: _____
Name: _____
Title: _____

Approved as to form and content for the City
by the City's external legal counsel:

STEPTOE & JOHNSON, PLLC

Harriet Tabb

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20____, by _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

EXHIBIT A (RECITAL A)
TO DECLARATION OF RESTRICTIVE COVENANTS

PROPERTY

BEING A 19.056 ACRE (OR 830,083 SQUARE FEET) TRACT OF LAND SITUATED IN THE THOMAS J. CHAMBERS SURVEY, ABSTRACT NO. 7, CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, THE REMAINDER OF LOT 1 OF THE CHRYSLER ADDITION, AN ADDITION TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 49, PAGE 1, PLAT RECORDS, TRAVIS COUNTY, TEXAS, AND BEING ALL OF A CALLED 5.300 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN INSTRUMENT NUMBER 2013198275, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND ALL OF THE REMAINING PORTION OF A CALLED 13.808 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN INSTRUMENT NUMBER 2008196617, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, SAID 19.056 ACRE (OR 830,083 SQUARE FEET) TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD FOUND (CONTROLLING MONUMENT & RECORD MONUMENT) AT THE NORTHEAST CORNER OF SAID 5.300 ACRE TRACT AND BEING THE NORTHEAST CORNER OF SAID LOT 1 OF THE CHRYSLER ADDITION, AND THE SOUTHERLY RIGHT-OF-WAY LINE OF A 5-FOOT RIGHT-OF-WAY DEDICATION TO BLACKSON AVENUE (A 60-FOOT WIDE RIGHT-OF-WAY, AT THIS POINT) AS RECORDED IN VOLUME 3611, PAGE 798, DEED RECORDS, TRAVIS COUNTY, TEXAS AND ALSO BEING THE WEST LINE OF LOT 8, BLOCK 16, ST. JOHN'S COLLEGE ADDITION, AN ADDITION TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 4, PAGE 71, PLAT RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH A 1/2-INCH IRON ROD FOUND BEARS SOUTH 62 DEGREES 25 MINUTES 09 SECONDS EAST, 159.00 FEET, AND FROM WHICH A 1/2-INCH IRON PIPE FOUND BEARS SOUTH 57 DEGREES 58 MINUTES 14 SECONDS WEST, 0.85 FEET;

THENCE, SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, COINCIDENT WITH THE COMMON LINE OF SAID BLOCK 16 AND CALLED 5.300 ACRE TRACT, IN PASSING AT A DISTANCE OF 146.70 FEET A 1/2-INCH PIPE FOUND (RECORD MONUMENT) AT THE COMMON LOT CORNER OF LOT 5 AND LOT 6, SAID BLOCK 16, CONTINUING ALONG SAID COMMON LINE, IN PASSING AT A DISTANCE OF 148.26 FEET A 1/2-INCH IRON ROD WITH 2-INCH YELLOW CAP STAMPED "DCA INC SURVEY MARKER" FOUND (RECORD MONUMENT) FOR THE SOUTHEAST CORNER OF SAID CALLED 5.300 ACRE TRACT AND THE NORTHEAST CORNER OF AFORESAID CALLED 13.808 ACRE TRACT, CONTINUING ALONG THE COMMON LINE OF SAID BLOCK 16 AND CALLED 13.808 ACRE TRACT, IN PASSING AT A DISTANCE OF 296.70 FEET A 1/2-

INCH IRON PIPE FOUND AT THE COMMON LOT CORNER OF LOT 2 AND LOT 3, SAID BLOCK 16, CONTINUING ALONG THE COMMON LINE OF SAID BLOCK 16 AND CALLED 13.808 ACRE TRACT IN ALL FOR A TOTAL DISTANCE OF 297.79 FEET TO A 1/2-INCH IRON ROD FOUND (CONTROLLING & RECORD MONUMENT) AT THE COMMON CORNER OF SAID 13.808 ACRE TRACT AND A CALLED 0.97 ACRE TRACT CONVEYED TO THE CITY OF AUSTIN AS RECORDED IN VOLUME 2835, PAGE 167, DEED RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND 0.97 ACRE TRACT THE FOLLOWING COURSES AND DISTANCES:

NORTH 62 DEGREES 34 MINUTES 24 SECONDS WEST, A DISTANCE OF 201.05 FEET TO A 1/2-INCH IRON ROD WITH 2-INCH YELLOW CAP STAMPED "DCA INC SURVEY MARKER" FOUND (RECORD MONUMENT) FOR CORNER;

SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, A DISTANCE OF 210.34 FEET TO A POINT FOR CORNER, FROM WHICH A 1/2-INCH IRON ROD WITH AN ILLEGIBLE RED CAP FOUND BEARS NORTH 24 DEGREES 10 MINUTES 47 SECONDS WEST, A DISTANCE OF 0.59 FEET;

SOUTH 62 DEGREES 34 MINUTES 24 SECONDS EAST, A DISTANCE OF 201.05 FEET TO A POINT FOR THE COMMON CORNER OF SAID 13.808 ACRE TRACT, SAID 0.97 ACRE TRACT, AND LOT 8 AND LOT 9, BLOCK 9 OF SAID ST. JOHNS COLLEGE ADDITION, FROM WHICH A 1/2-IRON ROD FOUND (RECORD MONUMENT) BEARS NORTH 62 DEGREES 34 MINUTES 24 SECONDS WEST, A DISTANCE OF 0.40 FEET;

THENCE, SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID BLOCK 9, IN PASSING AT A DISTANCE OF 300.00 FEET A 1/2-INCH IRON ROD FOUND AT THE COMMON CORNER OF LOT 2 AND LOT 3 OF SAID BLOCK 9, CONTINUING ALONG SAID COMMON LINE IN PASSING AT A DISTANCE OF 350.00 FEET A 1/2-INCH IRON PIPE FOUND AT THE COMMON CORNER OF LOT 1 AND LOT 2 OF SAID BLOCK 9, CONTINUING ALONG SAID COMMON LINE FOR A TOTAL DISTANCE OF 369.91 FEET TO THE SOUTHEAST CORNER OF SAID 13.808 ACRE TRACT AND BEING IN THE NORTHERLY RIGHT-OF-WAY LINE OF A 30-FOOT RIGHT-OF-WAY DEDICATION TO ST. JOHNS AVENUE AS A SAVE AND EXCEPT (A 80-FOOT WIDE RIGHT-OF-WAY, AT THIS POINT) RECORDED IN VOLUME 4632, PAGE 1175, DEED RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH THE SOUTHWEST CORNER OF LOT 1, BLOCK 9 BEARS SOUTH 27 DEGREES 25 MINUTES 36 SECONDS WEST, A DISTANCE OF 30.00 FEET, AND ALSO FROM

WHICH A 5/8-INCH IRON FOUND BENT BEARS SOUTH 30 DEGREES 52 MINUTES 38 SECONDS WEST, A DISTANCE OF 14.08 FEET;

THENCE, NORTH 64 DEGREES 58 MINUTES 41 SECONDS WEST, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID NORTHERLY RIGHT-OF-WAY LINE, IN PASSING AT A DISTANCE 0.58 FEET A 1/2-INCH IRON ROD FOUND, CONTINUING ALONG SAID COMMON LINE IN ALL A TOTAL DISTANCE OF 880.52 FEET TO A 5/8 INCH IRON ROD WITH A 3-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION R.O.W. MONUMENT" FOUND (RECORD MONUMENT) AT THE SOUTHEAST CORNER OF PARCEL NO. 30 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN INSTRUMENT NUMBER 2021083035, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, DEPARTING SAID COMMON LINE, COINCIDENT WITH THE NORTHERLY LINE OF SAID PARCEL NO. 30 THE FOLLOWING COURSES AND DISTANCES:

NORTH 20 DEGREES 04 MINUTES 43 SECONDS WEST, A DISTANCE OF 95.68 FEET TO A 5/8 INCH IRON ROD WITH A 3-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION R.O.W. MONUMENT" FOUND (RECORD MONUMENT) AT A POINT FOR CORNER;

NORTH 64 DEGREES 48 MINUTES 59 SECONDS WEST, A DISTANCE OF 9.68 FEET TO A 5/8 INCH IRON ROD WITH A 2-INCH ALUMINUM CAP STAMPED "TEXAS DEPT. OF TRANSPORTATION PROPERTY CORNER" FOUND (RECORD MONUMENT) AT A POINT FOR CORNER ON THE COMMON LINE OF SAID 13.808 ACRE TRACT AND THE EASTERLY RIGHT-OF-WAY LINE INTERSTATE HIGHWAY 35 (IH35), A VARIABLE WIDTH RIGHT-OF-WAY, AS CONVEYED IN PARCEL NO. 43 TO THE STATE OF TEXAS AS RECORDED IN VOLUME 2176, PAGE 421, DEED RECORDS, TRAVIS COUNTY, TEXAS;

THENCE, NORTH 24 DEGREES 49 MINUTES 20 SECONDS EAST, DEPARTING SAID NORTHERLY LINE OF SAID PARCEL NO. 30, COINCIDENT WITH THE COMMON LINE OF SAID EASTERLY RIGHT-OF-WAY LINE AND PARCEL NO. 43 AND SAID 13.808 ACRE TRACT A DISTANCE OF 75.91 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR CORNER;

THENCE, NORTH 24 DEGREES 36 MINUTES 49 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 224.70 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR COMMON CORNER OF SAID PARCEL NO. 43 AND A PREVIOUSLY RECORDED PARCEL

NO. 43 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN VOLUME 11005, PAGE 1122, AND VOLUME 10978, PAGE 1300, DEED RECORDS, TRAVIS COUNTY, TEXAS, AND BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

THENCE, CONTINUING ALONG SAID 13.808 ACRE TRACT AND EASTERLY RIGHT-OF-WAY LINE, AND ALONG SAID NON-TANGENT CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 41.71 FEET, THROUGH A CENTRAL ANGLE OF 00 DEGREES 50 MINUTES 15 SECONDS, A RADIUS OF 2,853.29 FEET, AND A LONG CHORD WHICH BEARS NORTH 27 DEGREES 19 MINUTES 28 SECONDS EAST, A DISTANCE OF 41.71 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR CORNER;

THENCE, NORTH 27 DEGREES 44 MINUTES 35 SECONDS EAST, ALONG THE COMMON LINE OF SAID 13.808 ACRE TRACT AND SAID EASTERLY RIGHT-OF-WAY LINE, IN PASSING AT A DISTANCE OF 220.22 FEET THE COMMON CORNER OF SAID 13.808 ACRE TRACT AND AFORESAID 5.300 ACRE TRACT, ALSO BEING THE SOUTHEAST CORNER OF PARCEL NO. 42 CONVEYED TO THE STATE OF TEXAS AS RECORDED IN VOLUME 11916, PAGE 856, DEED RECORDS, TRAVIS COUNTY, TEXAS, FROM WHICH A 60D NAIL FOUND IN CONCRETE BEARS NORTH 64 DEGREES 56 MINUTES 44 SECONDS WEST, A DISTANCE OF 0.36 FEET, CONTINUING ALONG COMMON LINE OF SAID EASTERLY RIGHT-OF-WAY LINE AND SAID 5.300 ACRE TRACT FOR A TOTAL DISTANCE OF 501.66 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR CORNER;

THENCE, NORTH 72 DEGREES 43 MINUTES 41 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE A DISTANCE OF 21.18 FEET TO A 3-INCH BRASS DISK IN CONCRETE STAMPED "TEXAS DEPARTMENT OF HIGHWAY PUBLIC TRANSPORTATION" FOUND (RECORD MONUMENT) FOR THE NORTHWEST CORNER SAID 5.300 ACRE TRACT AND BEING IN AFORESAID SOUTHERLY LINE OF BLACKSON AVENUE;

THENCE, SOUTH 62 DEGREES 06 MINUTES 24 SECONDS EAST, COINCIDENT WITH THE COMMON LINE OF SAID 5.300 ACRE TRACT AND SAID SOUTHERLY RIGHT-OF-WAY, A DISTANCE OF 956.72 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 830,083 SQUARE FEET OR 19.056 ACRES OF LAND.

**EXHIBIT B (RECITAL D)
TO DECLARATION OF RESTRICTIVE COVENANTS**

ST. JOHN COMMUNITY

**EXHIBIT B-1 (SECTION 3.A.)
TO DECLARATION OF RESTRICTIVE COVENANTS**

(SITE DEVELOPMENT PLAN)

EXHIBIT B-2 (SECTION 3.A.)
TO DECLARATION OF RESTRICTIVE COVENANTS
(BUILDING CONSTRUCTION DOCUMENTS)

EXHIBIT C (SECTION 3.B)

COMMERCIAL IMPROVEMENTS

EXHIBIT D (SECTION 6.A.)

TENANT PROTECTION PROVISIONS

The Tenant Protection Provisions are as set forth in Section 303.0425(e) through and including (j) of the Local Government Code of the State of Texas, as it may be amended, if the amendment applies to the Project, or relocated. This obligation is contractual and not merely a requirement to comply with local laws.

**EXHIBIT E (SECTION 5.D)
TO DECLARATION OF RESTRICTIVE COVENANTS**

ENVIRONMENTAL SITE ASSESSMENTS

1. Limited Phase II Environmental Site Assessment by INTERA for the City of Austin and Austin Brownfields Revitalization Office dated September 2023.
2. Field Activity and Sampling Report prepared by Baer Engineering & Environmental Consulting, Inc. for the City of Austin dated April 22, 2021.
3. Test Report: Asbestos Fiber Analysis by Transmission Electron Microscopy (TEM) performed by EPA 40 CFR Part 763 Appendix A Subpart E, prepared by EMSL Analytical, Inc. for Baer Engineering & Environmental, dated 03/17/2021.
4. Sample Summary Report by Omni Environmental, Inc. for Baer Engineering, Inc., undated.
5. Asbestos Investigation Report, St. John's – Former Chrysler Tract Asbestos Study (Three Buildings), City of Austin – Brownfields Environmental Services, Assignment Notification #28, prepared by Baer Engineering and Environmental Consulting, Inc. for City of Austin – Austin Resource Recovery, dated March 2, 2021.
6. Former Chrysler Site – Follow-up Phase II Limited Site Investigation prepared by Rosengarten, Smith & Associates, Inc. and sent to Mr. Thomas Balestiere on June 14, 2013.
7. Former Chrysler Site – Environmental Site Assessment, Phase I + Phase II Report prepared by Rosengarten, Smith & Associates, Inc. and sent to Mr. Thomas Balestiere on June 14, 2013.
8. Memorandum of Review of the Terracon Survey prepared by Thomas Balestiere of the City of Austin for Gloria Aguilera, Property Agent and dated June 12, 2013.
9. Asbestos and Lead Paint Survey report prepared by Terracon Consulting Engineers & Scientists (Terracon Project No. 96137180) for the City of Austin, dated May 15, 2013 (the "Terracon Survey")
10. Former Chrysler Site – TCEQ Release Determination Report dated 12-14-2012.
11. Memorandum of Review of the Home Depot Phase I prepared by Thomas Balestiere of the City of Austin for Sharon Mooer, Property Agent and dated January 25, 2008.
12. Former Home Depot Site – Environmental Assessment, Phase I Report, by Terracon for the City of Austin, January 15, 2008 (the "Home Depot Phase I").

EXHIBIT F (Section 5.E)

STATEMENT OF RESPONSIBILITY



STATEMENT OF RESPONSIBILITY

Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program

City Code Chapters 2-9A, as amended, establish a Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE) Procurement Program in Construction. The aim of this program is to promote MBE and WBE participation in City procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an opportunity to compete for City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or Business Enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with City Code Chapter 2-9A, as amended, goals for MBE and WBE participation differ from contract to contract, based on the type of contract, the availability of MBEs and WBEs to perform the functions of the contract, and other factors.

In an effort to meet the requirements of the MBE/WBE Procurement Program for the "St. John Site Master Development Agreement"; this Statement of Responsibility shall be submitted as a part of the contract agreement.

Upon execution of the Master Development Agreement, Greystar Development Central, LLC., will meet with the Small & Minority Business Resources Department to discuss program expectations for the construction phase. The City will establish appropriate MBE/WBE goals and Greystar Development Central, LLC., shall submit an MBE/WBE Compliance Plan meeting the goals or demonstrating Good Faith Efforts to meet the established MBE/WBE goals.

I understand that the MBE/WBE Program Statement of Responsibility is a part of the Master Development Agreement for the St John Site. I further understand that the City of Austin will require me to comply with the City's MBE/WBE Procurement Program. This signed Statement of Responsibility is my commitment to the MBE/WBE Procurement Program standards and principles which are a part of my contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

EXHIBIT G (Section 6.D)

CONCLUSIONS AND RECOMMENDATIONS



5.0 Conclusions and Recommendations

Based on the review of historical and 2023 analytical results, the following conclusions were formed:

- Historical (April 2013) and current (August 2023) soil gas analytical results indicated concentrations of TPH, benzene, and naphthalene in excess of EPA VISLs.
- Current soil gas analytical data indicate ethylbenzene and xylenes in excess of EPA VISLs.
- Current soil gas analytical data indicate that historical concentrations of PCE, chlorobenzene, and 1,4-dichlorobenzene that were observed in excess of EPA VISLs may have attenuated. However, elevated PCE, as high as 86.5 $\mu\text{g}/\text{m}^3$ was still observed in one location (PSG-04) during the August 2023 soil gas assessment.
- Historical surface soil analytical data indicates several concentrations of TPH in excess of TCEQ TRRP residential total-soil-combined PCLs for a 30-acre source area.
- Historical surface soil analytical data indicates TPH, arsenic, and lead in excess of TCEQ TRRP residential soil-to-groundwater PCLs for a 30-acre source area.
- Based on the absence of groundwater to 75 ft bgs at the Site, and/or if an appropriate groundwater survey can provide evidence that there is no exposure to groundwater in the vicinity of the Site, the soil-to-groundwater pathway may be considered incomplete.

The following recommendations are provided based on the results and conclusions of the Phase II ESA:

- Conduct surface soil sampling down to 15 ft bgs in the location of historical Tank #22, Tank #23, and Tank #30-2, the locations of exceedances of TRRP residential total-soil-combined PCLs, to determine if remediation is necessary prior to or during proposed redevelopment.
- Prepare and implement a Soil Management Plan if excavation and disposal and/or relocation of potentially impacted soils is planned during Site redevelopment to prevent construction worker or future site occupant exposure to soils and/or soil gas above health-protective values.
- Soil vapor intrusion concerns for proposed future site structures could also be mitigated by the use of products such as TerraShield® (65 mil barrier) or other similar barrier systems paired with a passive venting system like TerraVent® or other similar passive venting systems. Vapor intrusion barrier systems, if installed correctly, represent a cost-effective method to prevent contaminant vapors from entering the building through the foundation at concentrations above health-protective values.

or to limestone/rock, whichever first occurs

SCHEDULE OF DEFINED TERMS

| | |
|---|--------------------------|
| <u>Affiliate</u> | Section 13.A |
| <u>Affordable Housing Report</u> | Section 8.A(1) |
| <u>Affordable Unit</u> | Section 6.A |
| <u>Building Construction Documents</u> | Section 3.A(1) |
| <u>Building Improvements</u> | Section 3.A(1) |
| <u>City Caused Delay</u> | Section 16.U(2) |
| <u>City Manager</u> | Section 15 |
| <u>Claims</u> | Section 13.B |
| <u>Commercial Building Permit</u> | Section 3.A(1) |
| <u>Commercial Improvements</u> | Section 3.B |
| <u>Commercial Space</u> | Section 6.H |
| <u>CPI</u> | Section 6.G |
| <u>Declarant</u> | opening paragraph |
| <u>Declarant Party(ies)</u> | Section 13.C |
| <u>Declaration</u> | opening paragraph |
| <u>Demolition Permit</u> | Section 3.A(1) |
| <u>Design Approval</u> | Section 5.A |
| <u>Detention Pond</u> | Section 7.A |
| <u>Developer Occupant</u> | Paragraph after Recitals |
| <u>Developer Occupant Party (ies)</u> | Section 13.D |
| <u>Development Lease</u> | Paragraph after Recitals |
| <u>EDD</u> | Section 5.A |
| <u>Execution Deadline</u> | Section 2.A(3) |
| <u>Force Majeure</u> | Section 16.U(1) |
| <u>Greystar</u> | Recital B |
| <u>HACA</u> | Section 7.C |
| <u>Hazardous Material(s)</u> | Section 13.F |
| <u>HD</u> | Section 8.A(1) |
| <u>Home Depot Phase I</u> | Exhibit E |
| <u>Improvements</u> | Section 3.A(1) |
| <u>Initial Period</u> | Paragraph after Recitals |
| <u>Intera Study</u> | Section 6.D |
| <u>Intera Study Conclusions and Recommendations</u> | Section 6.D |
| <u>Leasehold Interest</u> | Section 7.B |
| <u>Lender</u> | Section 11.A. |
| <u>Local Non-Profit Entity</u> | Section 6.I(3) |
| <u>Matters Indemnified by Developer Occupant</u> | Section 12.A |
| <u>MDA</u> | Recital B |
| <u>MFI</u> | Section 6.A(1) |
| <u>Non-Profit Entity</u> | Section 6.I(1) |
| <u>Non-Profit Rent</u> | Section 6.I(2) |
| <u>PARD</u> | Section 5.B |
| <u>Parkland</u> | Section 7.A |
| <u>Permitted Delay</u> | Section 16.U |
| <u>PFC tax benefits</u> | Section 1 |
| <u>preference unit</u> | Section 6.C(2)(d) |
| <u>Project</u> | Recital A |
| <u>Property</u> | Recital A |
| <u>Property Owner</u> | Recital C |
| <u>Qualifying Rental Households</u> | Section 6.A(1) |
| <u>Real Property</u> | Recital A |
| <u>Regulatory Approval</u> | Section 5.E |
| <u>Reporting Period</u> | Section 8.A(1) |
| <u>Repurchase Closing Date</u> | Section 2.B |

| | |
|---|--------------------------|
| <u>Residential Improvements</u> | Section 3.B |
| <u>ROFR Delivery Date</u> | Section 2.A(1) |
| <u>ROFR Notice</u> | Section 2.A(1) |
| <u>ROFR Property</u> | Section 2.A(1) |
| <u>SDP Documents</u> | Section 3.A(1) |
| <u>Short-Term Rental</u> | Section 9.D(4) |
| <u>Site and Building Documents</u> | Section 3.A(1) |
| <u>Site Development Improvements</u> | Section 3.A(1) |
| <u>Site Development Plans</u> | Section 3.A(1) |
| <u>St. John Community</u> | Recital D |
| <u>St. John Site Master Development Agreement</u> | Exhibit F |
| <u>Subcontractor</u> | Exhibit F |
| <u>Submittals</u> | Section 5.A |
| <u>Substantial Completion</u> | Section 3.A(2) |
| <u>Substantial Completion of Construction of the Improvements</u> | Section 3.A(2) |
| <u>Tenant</u> | Paragraph after Recitals |
| <u>Tenant Improvements</u> | Section 6.J |
| <u>Term</u> | Section 1 |
| <u>Term Sheet</u> | Section 15 |
| <u>Terracon Survey</u> | Exhibit E |
| <u>Worker Protections</u> | Section 6.G |

EXHIBIT "D"

CONSTRUCTION FAILURE REPURCHASE AGREEMENT

This Construction Failure Repurchase Agreement (this "Agreement") is by and between THE CITY OF AUSTIN, a Texas home rule city (the "City"), South Congress Public Facility Corporation, a Texas corporation (the "SCPFC"), and _____, a Texas _____ (the "Developer Occupant") and is dated as of _____ (the "Effective Date").

RECITALS

- A. The City has transferred the Property described on Exhibit "A" to the SCPFC by a Special Warranty Deed executed the same date as the Effective Date, pursuant to a Master Development Agreement dated October 20, 2023 (the "MDA").
- B. The SCPFC has entered into a lease dated as of the Effective Date leasing the Property to the Developer Occupant (the "Development Lease").
- C. Developer Occupant has prepared or caused to be prepared the drawings for the improvements to be made to the Property and the City has approved them. There are two sets of drawings. The first set of drawings are the drawings for the changes to the property itself. These approved first set of drawings are referred to as "SDP Documents" or the "Site Development Plans" and are attached as Exhibit "B-1." The improvements described in the SDP Documents are referred to as the "Site Development Improvements." The second set of drawings are for the demolition of the existing structures and construction of the new improvements (the "Building Improvements"). Those drawings are attached as Exhibit "B-2" (the "Building Construction Documents"). The Site Development Improvements and the Building Improvements are referred to as the "Improvements." There are two parts to the Improvements: the Commercial Portion, identified on Exhibit "B-2" (the "Commercial Improvements"), and the remainder of the Improvements (referred to as the "Residential Improvements").
- D. The City wishes to impose the obligation on the Developer Occupant to begin construction, complete construction, and fully complete construction of the Residential Improvements and the Commercial Improvements by specific dates and to be entitled to repurchase the property from the SCPFC if those deadlines are not met.

AGREEMENT

- 1. General. The City hereby reserves the preferential and exclusive option to repurchase the Property (the "Repurchase Right") under the circumstances set forth below.
- 2. Repurchase Price. In the event of an exercise of the Repurchase Right during the Construction Commencement Repurchase Period, the price to repurchase the Property shall be the equal to the purchase price originally paid by Developer Occupant (whether directly or through the SCPFC) to City. In the event of an exercise of the Repurchase Right during the Construction Completion Repurchase Period, the price to repurchase the Property and all Improvements constructed to-date shall be equal to \$11 million plus the cost of those deliverables and Improvements that the City is legally able to use, which may include plans and specifications as long as the owner and person or entity entitled to use the plans and specifications has authorized the City to use them to the same extent such owner was entitled to use them.
- 3. Manner of Exercise: The Repurchase Right may be exercised by the City during the periods set forth below upon written notice delivered to all parties to the MDA at the addresses below which shall contain a statement by City of its election to exercise the Repurchase Right and

shall designate a date and hour of closing ("Notice of Exercise"). Where used herein, the term "Closing" shall mean the event and time at which the City delivers the Purchase Price as set forth above to _____ and at which SCPFC conveys fee simple title to the property to City with a deed in substantially the same form as the deed by which the SCPFC received title from the City. The conveyance shall be "as is" with no representations or warranties, except that it must be lien free and Developer Occupant must cause all liens to be released. The City will bear all costs and expenses of the repurchase, including paying all outstanding ad valorem taxes. The Closing Date so designated by the City shall be no more than ninety (90) days following the effective date of the Notice to Exercise.

4. Opportunity to Satisfy Requirements to Avoid Repurchase: Upon receipt of any Notice of Exercise, if SCPFC or Developer Occupant commences Construction or Substantially Completes Construction, as the case may be, within thirty (30) days, such Notice of Exercise shall be nullified and void. Further, if within the aforementioned thirty (30) days after a Notice to Exercise was provided for failure to complete construction, Property Owner or Developer Occupant demonstrates by clear and convincing evidence that they are diligently pursuing completion, the Notice of Exercise shall be suspended until construction is completed or construction has ceased for a total of 30 consecutive days, subject to Permitted Delays ("Work Stoppage") or has failed to make substantial progress during the any 3-month period, subject to Permitted Delays (the "Work Slowdown"). Similarly, to the extent the Mortgage Lender has foreclosed and is diligently pursuing completion of the Project, the Notice of Exercise will be suspended until construction is completed or a Work Stoppage or Work Slowdown has ended.
5. Construction Commencement Repurchase Period. Subject to Permitted Delays, if neither the SCPFC nor the Developer Occupant has commenced pouring concrete footings or slabs for construction ("Construction") of the Residential Improvements and Commercial Improvements on the Property on or before the date which is 2 years after the Effective Date of this Agreement (the "Required Construction Commencement Date"), the City may elect to exercise its Repurchase Right pursuant to the terms of Section 3 above within one year after the Required Construction Commencement Date.
6. Construction Completion Repurchase Period. Subject to Permitted Delays, if the SCPFC or the Developer Occupant commences Construction of the Improvements, but neither the SCPFC nor the Developer Occupant Substantially Completes Construction of the Improvements within 4 years after SCPFC or Developer Occupant commences Construction of the Improvements (the "Required Completion Date"), then the City may elect to exercise its Repurchase Right pursuant to the terms of Section 3 above within one year after the Required Completion Date.
7. Substantial Completion of Improvements. "Substantial Completion" of improvements to terminate the above Construction Completion Repurchase Period shall mean, as it relates to Residential Improvements, that the Building Construction Document accordance with the so that residential tenants can occupy or use the Building Improvements for their intended use and that the Commercial Improvements are completed so commercial tenants can begin construction of their tenant Improvements.
8. Expiration of Time Periods. If any Repurchase Right is not exercised within the required time period, that Repurchase Right will terminate and be of no further force and effect. Upon termination of a Repurchase Right and receipt of a written request from the SCPFC or Developer Occupant, the City will promptly execute in recordable form a notice of termination of that Repurchase Right. If none of the Repurchase Rights is exercised within the required time period, then this Agreement shall terminate, and the City shall provide a written notice of termination in recordable form.
9. Runs With the Land; Expiration. The Repurchase Right will run with the land and bind future owners of the Property but will automatically terminate if the required Construction is

commenced by the Required Construction Commencement Dates and the required Construction is Substantially Completed by the Required Completion Dates.

10. Certain Terms. The Commencement Repurchase Right and the Completion Repurchase Right are collectively referred to as the "Repurchase Rights" and individually as a "Repurchase Right."
11. Defined Terms. All capitalized terms used herein and not otherwise defined will have the same meanings given to them in the Restrictive Covenants.
12. Notices. Formal notices, demands and communications between the parties will be sufficiently given and deemed delivered if, actually received or, if earlier and regardless of when received, on the date delivered personally, 3 days after being dispatched by certified mail, postage prepaid, return receipt requested, or the date of contracted delivery if sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

with a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: Kent Smith

SCPFC: South Congress Public Facility Corporation
1124 S. IH 35
Austin, TX 78746
Attn: Suzanne Schwertner

Developer Occupant: _____

THE CITY OF AUSTIN, a Texas home rule city

By: _____
Name: _____
Title: _____

SOUTH CONGRESS PUBLIC FACILITY CORPORATION, a Texas public facility corporation

By: _____
Name: Ron Kowal
Title: Vice President

DEVELOPER OCCUPANT:

_____, a

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____ by _____ of The City of Austin, a municipal corporation, on behalf said corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____ by Ron Kowal, Vice President of South Congress Public Facility Corporation, a Texas public facility corporation, on behalf of said public facility corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on _____ by _____ of _____, a _____, on behalf said _____.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

EXHIBIT "E-1"

COMMUNITY ENGAGEMENT PLAN

Please note that the dates outlined below are approximate and are subject to change.

November 2023

- Host Community Advisory Committee Meeting #5.
- Share CAC #5 feedback report and data with design consultants.
- Create and distribute St. John E-Newsletter (End of Year Edition).

December 2023 - April 2024

- Artist Selection and Planning for Honoring the History of St. John

Step 1: Initial Park Concept Planning (Current Phase)

- TBG to kick off park design process independently

Step 2: Art + Landscape Team Brainstorming Session

- Greystar to facilitate meeting between Art in Public Places team and Landscape Architect to begin identifying opportunities for art and landscaping to interact with a focus on honoring the history of St. John

Step 3: Project Team Brainstorming Session

- Landscape Architect and Art in Public Places to share findings and refine ideas with broader design group as well as Cortez Consulting, Economic Development Department team members, and Greystar

Step 4: Community Feedback Session I

- Community to vote or provide feedback on any concepts identified above. Results of feedback will inform concept that will be brought out in Step 5
 - Includes CAC as well as broader community survey

Step 5: Request for Proposals

- With concept/parameters identified, Greystar/Cortez teams approach artists for proposals

Step 6: Internal Proposal Review

- Design teams to give a first review of proposals, removing any options that are not viable due to budget or logistical constraints

Step 7: Community Feedback Session II

- CAC and community have the opportunity to vote on or provide feedback on proposals

Step 8: Artist Selection

- Artist is selected.
- Community is informed of artist selection and concept plan through e-newsletter and St. John webpage updates

- Synthesize and incorporate existing community feedback on park space and seek continued feedback from CAC and community at-large on park programming and design.

May 2024 (or 90 days before anticipated construction start)

- Begin preparing St. John neighbors and other community members for coming construction start by providing updates via channels such as the St. John webpage, email blasts, social media, and mailers to community members

July 2024

- Anticipated Construction Start

EXHIBIT "E-2"

STATEMENT OF RESPONSIBILITY



STATEMENT OF RESPONSIBILITY

**Minority-owned Business Enterprise and Women-owned Business Enterprise
Procurement Program**

City Code Chapters 2-9A, as amended, establish a Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE) Procurement Program in Construction. The aim of this program is to promote MBE and WBE participation in City procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an opportunity to compete for City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or Business Enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with City Code Chapter 2-9A, as amended, goals for MBE and WBE participation differ from contract to contract, based on the type of contract, the availability of MBEs and WBEs to perform the functions of the contract, and other factors.

In an effort to meet the requirements of the MBE/WBE Procurement Program for the "St. John Site Master Development Agreement"; this Statement of Responsibility shall be submitted as a part of the contract agreement.

Upon execution of the Master Development Agreement to which this Exhibit is attached, Greystar Development Central, LLC., will meet with the Small & Minority Business Resources Department to discuss program expectations for the construction phase. The City will establish appropriate MBE/WBE goals and Greystar Development Central, LLC., shall submit an MBE/WBE Compliance Plan meeting the goals or demonstrating Good Faith Efforts to meet the established MBE/WBE goals.

I understand that the MBE/WBE Program Statement of Responsibility is a part of the Master Development Agreement for the St John Site. I further understand that the City of Austin will require me to comply with the City's MBE/WBE Procurement Program. This signed Statement of Responsibility is my commitment to the MBE/WBE Procurement Program standards and principles which are a part of my contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

EXHIBIT "F"

PERMITTED ENCUMBRANCES

Home Depot Property

1. Deed (Controlled Access Highway Facility), recorded July 13, 1989, under Film Code No. 4498044, as Document No. 89058779, in Volume 10978, Page 1300, and re-recorded August 21, 1989, under Film Code No. 4510394, as Document No. 89070980, in Volume 11005, Page 1122, of the Real Property Records of Travis County, Texas
2. Terms, conditions and stipulations of Special Warranty Deed (and acceptance thereof) from Austin Independent School District, to Home Depot U.S.A., Inc., recorded in Volume 12278, Page 870, Real Property Records, Travis County, Texas.
3. Wastewater Easement in favor of the City of Austin, recorded April 25, 1989, under Film Code No. 4472548, as Document No. 89033768, in Volume 10924, Page 78, of the Real Property Records, Travis County, Texas.
4. Sidewalk Easement in favor of the City of Austin, recorded October 3, 1994, under Film Code No. 5204408, in Volume 12284, Page 1, of the Real Property Records of Travis County, Texas.
5. Temporary Electric Utility Easement in favor of the City of Austin, recorded February 7, 1995, under Film Code No. 5251458, in Volume 12369, Page 493, of the Real Property Records of Travis County, Texas.
6. Water Main Easement in favor of the City of Austin, recorded February 17, 1995, under Film Code NO. 5254817, in Volume 12377, Page 556, of the Real Property Records of Travis County, Texas.
7. Agreement Granting Easements between Rosewood Properties, Inc. and Austin Independent School District, recorded November 8, 1988, under Film Code 4422422, in Volume 10813, Page 509, of the Real Property Records, Travis County, Texas.
8. Declaration of Use Restriction executed by HD Development Properties, L.P.
9. All matters shown on survey prepared by Manhard Consulting (Abram C. Dashner) and dated March 15, 2023, including but not limited to overhead power lines with poles and guys located along the southwest, west, northwest, northeasterly most and the southeasterly most property line; three water valves located along the northwest property line; and encroachment of the existing wood fence along the southeasterly property line.
10. Terms, Conditions, and Stipulations of/in connection with Controlled Access Highway Facility Deed recorded in Volume 2176, page 421, Deed Records, Travis County, Texas to the State of Texas for construction/maintenance/operation of highway.
11. Terms, Conditions, and Stipulations of Controlled Access Highway Facility Deed recorded in Volume 10978, Page 1300, corrected by Volume 11005, Page 1122, both of the Real Property Records, of Travis County, Texas regarding controlled access.
12. Non-delinquent ad valorem taxes and current installments of special assessments against the Property which are not yet due and payable;

Chrysler Property

1. Non-delinquent ad valorem taxes and current installments of special assessments against the Property which are not yet due and payable;
2. Highways, rights-of-way, easements, rights, covenants, mineral reservations and licenses and restrictions of record generally;
3. Zoning ordinances, building and use restrictions and other governmental limitations;
4. Restrictions, not currently of record, which any governmental agency may impose to satisfy governmental requirements;
5. Matters which might be disclosed by an accurate inspection and survey of the Property.

Both Properties

1. Matters that would be or are reflected in a current survey.

EXHIBIT "G"

FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

_____, a Texas _____ ("Grantor"), whose mailing address is _____, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration to it paid by _____, a Texas _____ ("Grantee"), whose mailing address is _____, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain land ("Land") described in Exhibit "A" attached to and made a part of this Deed for all purposes, together with all and singular all rights and appurtenances pertaining to the Land and any improvements on the Land, including any right, title, and interest of Grantor in and to any strips and gores and adjacent streets, alleys, and rights of way (whether public or private) (the Land and other rights and appurtenances described above are collectively called the "Property").

This conveyance is given and accepted subject to the matters described on Exhibit "B" (the "Permitted Encumbrances").

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances to the Property, subject to the Permitted Encumbrances and the reservation set forth above, unto Grantee, its legal representatives, successors, and assigns forever by, through, or under Grantor, but not otherwise.

Grantor hereby sells and conveys to Grantee and Grantee, by accepting the Property, accepts the Property "**AS-IS, WHERE-IS, WITH ALL FAULTS,**" except to the extent expressly provided otherwise in this Deed. Grantee has not relied and will not rely on, and Grantor has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Grantor, or any property manager, real estate broker, agent or third party representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing. By accepting the Property, SCPFC is hereby deemed to have represented that it is a knowledgeable, experienced, and sophisticated purchaser of real estate and that it is relying solely on its own expertise and that of Grantee's consultants in purchasing the Property and

has made an independent verification of the accuracy of any documents and information provided by Grantor. Grantee acknowledges that Grantor afforded Grantee a full opportunity to conduct any and all investigations of the Property as Grantee deemed necessary to satisfy itself as to the condition of the Property and will rely solely upon same and not upon any information provided by or on behalf of Grantor or its agents or employees with respect thereto, other than such representations, warranties and covenants of Grantor as are expressly set forth in this Agreement. By accepting the Property, Grantee assumes the risk that adverse matters, including, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Grantee's inspections and investigations. By accepting the Property, Grantee is deemed to have represented and warranted to Grantor that: 1. Grantee is represented by legal counsel in connection with the transaction contemplated by this Agreement; and 2. Grantee is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Grantee's residence. Grantee waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Grantor. However, the representations made by Grantor in Section 2.1(C), (D), (H), (I), and (J) of the Master Development Agreement dated October 20, 2023 are incorporated into this Deed as representations from Grantor to Grantee.

Executed this ___ day of _____, 20__

GRANTOR:

a _____

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ___ day of _____, 20__, by _____, _____ of _____, a _____, on behalf of said _____.

(SEAL)

Notary Public, State of _____

Commission Expires:

Notary Name Printed or Typed:

AFTER RECORDING RETURN TO:

EXHIBIT "A"

DESCRIPTION OF THE LAND

EXHIBIT "B"

PERMITTED ENCUMBRANCES

SCHEDULE OF DEFINED TERMS

| TERM | LOCATION |
|---|-------------------------------|
| <u>Actual Knowledge</u> | <u>Section 2.1(C)</u> |
| <u>Affiliate</u> | <u>Section 7.14(D)</u> |
| <u>Agreement</u> | <u>Preamble</u> |
| <u>Applicable Laws</u> | <u>Section 7.24</u> |
| <u>Applicable Bankruptcy Law</u> | <u>Section 6.1(F)</u> |
| <u>Bonds</u> | <u>Recital A</u> |
| <u>Building Construction Documents</u> | <u>Section 2.7(D)(3)</u> |
| <u>Building Construction Drawings</u> | <u>Section 2.7(C)</u> |
| <u>Building Improvements</u> | <u>Exhibit D, Recital C</u> |
| <u>Building Permit</u> | <u>Section 2.7(C)</u> |
| <u>Cash Payment</u> | <u>Section 3.2</u> |
| <u>CDs</u> | <u>Section 2.7(D)(3)</u> |
| <u>City</u> | <u>Preamble</u> |
| <u>City Caused Delay</u> | <u>Section 7.16(B)</u> |
| <u>Claim</u> | <u>Section 5.2(A)</u> |
| <u>Closing</u> | <u>Section 4.1(A)</u> |
| <u>Closing Date</u> | <u>Section 4.1(B)</u> |
| <u>Closing Documents</u> | <u>Section 4.1(A)</u> |
| <u>Commercial Improvements</u> | <u>Exhibit D, Recital C</u> |
| <u>Commitment</u> | <u>Section 3.4</u> |
| <u>Company</u> | <u>Recital I</u> |
| <u>Conceptual Master Plan</u> | <u>Recital J.2</u> |
| <u>Conceptual Site Plan and Building Massing</u> | <u>Recital J.2</u> |
| <u>Construction</u> | <u>Exhibit D, Paragraph 5</u> |
| <u>Construction Failure Repurchase Agreement</u> | <u>Recital J.5</u> |
| <u>Cure Period</u> | <u>Section 3.4(B)</u> |
| <u>DDs</u> | <u>Section 2.7(D)(2)</u> |
| <u>Deed</u> | <u>Section 4.3(A)(2)</u> |
| <u>Defeasement Delta</u> | <u>Section 7.22</u> |
| <u>Demolition and Commercial Building Permit Application Deadline</u> | <u>Section 2.7(D)(4)</u> |
| <u>Developer Occupant</u> | <u>Recital I</u> |
| <u>Development Lease</u> | <u>Recital I</u> |

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|--|-------------------------------------|
| <u>Disclosure Notice</u> | <u>Section 2.5</u> |
| <u>Effective Date</u> | <u>Preamble</u> |
| <u>ENA</u> | <u>Recital G</u> |
| <u>Environmental Site Assessments</u> | <u>Section 2.1(H)</u> |
| <u>Event of Default</u> | <u>Section 6.1</u> |
| <u>Extension Fee</u> | <u>Section 4.1(B)</u> |
| <u>Force Majeure</u> | <u>Section 7.16(A)</u> |
| <u>Former Chrysler Dealership Property</u> | <u>Recital B</u> |
| <u>Former Home Depot Property</u> | <u>Recital A</u> |
| <u>Grantee</u> | <u>Exhibit G, Opening Paragraph</u> |
| <u>Grantor</u> | <u>Exhibit G, Opening Paragraph</u> |
| <u>Greystar</u> | <u>Preamble</u> |
| <u>HACA</u> | <u>Recital I</u> |
| <u>Home Depot Phase I</u> | <u>Section 2.1(H)(12)</u> |
| <u>Improvements</u> | <u>Section Exhibit D, Recital C</u> |
| <u>Investors</u> | <u>Recital I</u> |
| <u>Land</u> | <u>Exhibit G, Opening Paragraph</u> |
| <u>Mandatory Cure Items</u> | <u>Section 3.4(A)</u> |
| <u>MDA</u> | <u>Exhibit D, Recital A</u> |
| <u>New Zoning</u> | <u>Recital J.3.</u> |
| <u>Notice of Exercise</u> | <u>Exhibit D, Paragraph 3</u> |
| <u>Objection(s)</u> | <u>Section 3.4(A)</u> |
| <u>Official City Holidays</u> | <u>Section 7.12</u> |
| <u>Option Fee</u> | <u>Section 3.5</u> |
| <u>Parkland Improvements</u> | <u>Section 2.7(C)</u> |
| <u>Permitted Delay</u> | <u>Section 7.16</u> |
| <u>Permitted Encumbrances</u> | <u>Section 2.1(A)</u> |
| <u>Project</u> | <u>Recital J.2.</u> |
| <u>Property</u> | <u>Recital C</u> |
| <u>Purchase Price</u> | <u>Section 3.2</u> |
| <u>Repurchase Right</u> | <u>Exhibit D, Paragraph 1</u> |
| <u>Required Progress Meeting</u> | <u>Section 2.7(B)(2)</u> |
| <u>Required Completion Date</u> | <u>Exhibit D, Paragraph 6</u> |
| <u>Required Construction Commencement Date</u> | <u>Exhibit D, Paragraph 5</u> |
| <u>Residential Improvements</u> | <u>Exhibit D, Recital C</u> |

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| <u>Restrictive Covenants</u> | <u>Recital J.4.</u> |
| <u>SCPFC</u> | <u>Recital I</u> |
| <u>SDs</u> | <u>Section 2.7(D)(1)</u> |
| <u>SDP</u> | <u>Section 2.7(C)</u> |
| <u>SDP Deadline</u> | <u>Section 2.7(C)</u> |
| <u>SDP Documents</u> | <u>Section 2.7(C)</u> |
| <u>Site Development Improvements</u> | <u>Section 2.7(C)</u> |
| <u>Site Development Plans</u> | <u>Exhibit D, Recital C</u> |
| <u>SMBR</u> | <u>Section 2.7(B)</u> |
| <u>Statement of Responsibility</u> | <u>Section 2.7(B)</u> |
| <u>St. John</u> | <u>Recital J.1.</u> |
| <u>St. John Community</u> | <u>Recital J.1.</u> |
| <u>Subcontractor</u> | <u>Exhibit E-2, First Paragraph</u> |
| <u>Substantial Completion</u> | <u>Exhibit D, Paragraph 7</u> |
| <u>Survey</u> | <u>Section 3.4</u> |
| <u>Term</u> | <u>Section 1.1</u> |
| <u>Term Sheet</u> | <u>Recital K</u> |
| <u>Terracon Survey</u> | <u>Section 2.1(H)(9)</u> |
| <u>Title Company</u> | <u>Section 4.1(A)</u> |
| <u>Title Documents</u> | <u>Section 3.4</u> |
| <u>Title Policy</u> | <u>Section 3.4</u> |
| <u>Title Review Period</u> | <u>Section 3.4(A)</u> |
| <u>Transfer</u> | <u>Section 7.14(C)</u> |
| <u>Work Slowdown</u> | <u>Exhibit D, Paragraph 4</u> |
| <u>Work Stoppage</u> | <u>Exhibit D, Paragraph 4</u> |