

THIRD AMENDMENT TO BRACKENRIDGE DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO BRACKENRIDGE DEVELOPMENT AGREEMENT ("*Third Amendment*") is entered into effective as of 19TH day of NOVEMBER, 2019 (the "*Effective Date*"), by and between BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("*The University*") and CITY OF AUSTIN, TEXAS (the "*City*").

RECITALS

A. The City and The University entered into that Brackenridge Development Agreement dated effective as of May 25, 1989 (the "*Original Development Agreement*"), concerning the development of certain real property commonly known as the "Brackenridge Tract" located in the City of Austin, Travis County, Texas. The Original Development Agreement was recorded on June 27, 1989, in Volume 10968 and Page 386 of the Real Property Records of Travis County, Texas.

B. The City and The University corrected the description of a portion of the Brackenridge Tract designated as the "Stratford Tract" under the Original Development Agreement pursuant to that certain Metes and Bounds Correction to Brackenridge Development Agreement dated December 6, 1989, and recorded on December 29, 1989, in Volume 11093 and Page 267 of the Real Property Records of Travis County, Texas (the "*Stratford Description Correction*"). Additionally, the City and The University amended the Original Development Agreement pursuant to that certain First Amendment to Brackenridge Development Agreement dated effective as of November 16, 2018, and recorded on March 7, 2019, under Document Number 2019032042 of the Official Public Records of Travis County, Texas (the "*First Amendment*"), and that certain Second Amendment to Brackenridge Development Agreement dated effective as of February 28, 2019, and recorded on March 7, 2019, under Document Number 2019032043 of the Official Public Records of Travis County, Texas (the "*Second Amendment*"). As used herein, "*Development Agreement*" means the Original Development Agreement, as affected by the Stratford Description Correction and as amended by the First Amendment and the Second Amendment.

C. The City and The University now desire to amend the Development Agreement to modify certain Negotiated Development Regulations applicable to the Safeway Tract (as defined in Section 1.3.d of the Original Development Agreement), subject to the terms and conditions set forth herein.

AGREEMENT

In consideration of the recitals, the respective obligations of the parties set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by each of the undersigned, the City and The University hereby agree to amend the Development Agreement as follows, effective as of the Effective Date:

1. **Safeway Tract.** Section 7.3 of the Original Development Agreement is hereby amended and restated in its entirety as follows:

Section 7.3. Safeway Tract. The following Negotiated Development Regulations shall apply to the Safeway Tract:

- a. F.A.R. shall not exceed 1.0:1.0.
- b. The maximum Height of any structures shall be three stories, not to exceed 40 feet.

- c. The Building Setback Line shall be a minimum of 25 feet from the current property line separating the Safeway Tract and the existing right-of-way of Lake Austin Boulevard, 10 feet from West Eighth Street, 10 feet from Newman Drive, and 15 feet from the current property line separating the Safeway Tract and the existing Exposition Boulevard right-of-way. (For purposes of this subsection c, current property line means the property line existing as of July 31, 2019.)
- d. Building Coverage shall not exceed 90% of the gross area of the Safeway Tract.
- e. Impervious Cover for the Safeway Tract shall not exceed 90% of the gross area of said Tract.
- f. Driveways:
 - 1. One driveway shall be permitted along Lake Austin Boulevard.
 - 2. One driveway shall be permitted along Newman Drive, except as provided in Section 7.3.f.3.
 - 3. Two driveways shall be permitted along Exposition Boulevard.
 - 4. The University shall join the West Austin Neighborhood Group in requesting the closing of West Seventh Street between Newman Drive and Lake Austin Boulevard. If requested, the City will process a right-of-way vacation request in accordance with standard City of Austin procedures, but The University acknowledges that the vacation request is subject to approval or denial by the Austin City Council. The University may request that the City convey the right-of-way at no cost to The University, but any agreement to convey the right-of-way at no cost to The University is subject to approval or denial by the Austin City Council.
 - 5. If the Safeway Tract is developed for a Non-University Purpose, the University shall require the Applicant for the Non-University Purpose to design and construct at the Applicant's sole cost the transportation improvements identified in the TIA Memorandum (herein so called) dated October 23, 2019 (revised October 24, 2019) prepared by Austin Transportation Department. The University hereby confirms that it has informed the Applicant of the requirement to complete the transportation improvements identified in the TIA Memorandum. The City shall have no obligation to undertake or pay for any transportation improvements for the proposed redevelopment of the Safeway Tract described in this Third Amendment.
 - 6. If the Safeway Tract is developed for a Non-University Purpose, the University shall require the Applicant for the Non-University Purpose to fully fund any required water and wastewater improvements necessary to serve the development project. The University hereby confirms that it has informed the Applicant of the requirement to complete the water and wastewater improvements. The City shall have no obligation to undertake or pay for any water and wastewater improvements for the proposed redevelopment of the Safeway Tract described in this Third Amendment.

2. City Liaison and University Liaison.

- a. The City hereby confirms that, effective as of the Effective Date, Andrew Linseisen, Assistant Director of the City of Austin Development Services Department, is the City Liaison (as

defined in Section 1.9 of the Development Agreement), and shall continue to serve as the City Liaison until the City designates a replacement City Liaison and notifies The University of the replacement City Liaison.

- b. The University hereby confirms that Kirk S. Tames, Executive Director of Real Estate of The University of Texas System, is the currently-serving University Liaison (as defined in Section 1.10 of the Development Agreement), and shall continue to serve as the University Liaison until The University designates a replacement University Liaison and notifies the City of the replacement University Liaison.

3. **Capitalized Words.** All capitalized words used in this Third Amendment and not otherwise defined herein shall have the respective meanings given to such words in the Development Agreement. The Development Agreement is incorporated herein by reference for all purposes.

4. **Rights; Defenses.** Except for the specific provisions of this Third Amendment, the parties agree that the execution of this Third Amendment does not change the rights of the parties or prejudice any defenses which the parties have.

5. **Entire Agreement and Amendments.** The Development Agreement, as expressly modified by this Third Amendment, constitutes the sole and only agreement of the parties to the Development Agreement (as modified herein) and supersedes any prior agreements between the parties concerning the matters covered therein. The Development Agreement, as expressly modified by this Third Amendment, may be amended or supplemented only by an instrument in writing executed by both parties hereto.

6. **City Authority.** The City and the person signing on behalf of it jointly and severally warrant and represent to The University that (i) the City has the full right, power and authority to enter into this Third Amendment, (ii) all requisite action to authorize the City to enter into this Third Amendment and to carry out the City's obligations hereunder has been taken, and (iii) the person signing on behalf of the City has been duly authorized by the City to sign this Third Amendment on its behalf.

7. **The University Authority.** The University and the person signing on behalf of The University jointly and severally warrant and represent to the City that (i) The University has the full right, power and authority to enter into this Third Amendment, (ii) all requisite action to authorize The University to enter into this Third Amendment and to carry out The University's obligations hereunder has been taken, and (iii) the person signing on behalf of The University has been duly authorized by The University to sign this Third Amendment on its behalf.

8. **Binding.** This Third Amendment shall be binding on and inure to the benefit of The University, the City and their respective heirs, executors, administrators, legal representatives, successors and assigns.

9. **Governing Law.** This Third Amendment shall be construed and governed by the laws of the State of Texas in effect from time to time.

10. **Paragraph Headings.** The paragraph headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof.

11. **Construction.** Each party acknowledges that it and its counsel have had the opportunity to review this Third Amendment; that the normal rule of construction shall not be applicable and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Third Amendment.

12. Counterparts. This Third Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties to this Third Amendment may execute the Third Amendment by signing any of the counterparts.

[Signatures and acknowledgements appear on the following pages.]

EXECUTED by the authorized, respective representatives of The University and the City, to be effective as of the Effective Date.

THE UNIVERSITY: BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM

By: [Signature]
 Name: Kirk S. Tames
 Title: Executive Director of Real Estate
 The University of Texas System

CITY: CITY OF AUSTIN, TEXAS

By: [Signature]
 Name: Rodney Gonzales
 Title: Assistant City Manager

Approved as to form: By: [Signature]
 Name: Kent Smith
 Title: Assistant City Attorney

STATE OF TEXAS §

COUNTY OF TRAVIS §

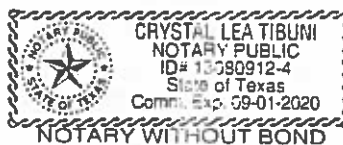
This instrument was acknowledged before me on the 19th day of November, 2019, by Kirk S. Tames, Executive Director of Real Estate of The University of Texas System, on behalf of the Board of Regents of The University of Texas System.

[Signature]
 Notary Public in and for the State of Texas

[Signature]
 Printed/stamped name of Notary

My Commission expires:

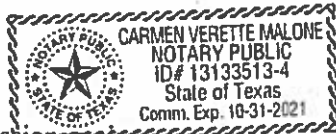
9.1.2020



STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 2nd day of December, 2019, by _____ of the City of Austin, Texas, on behalf of the City of Austin, Texas.



My Commission expires _____

Carmen Verette Malone

Notary Public in and for the State of Texas

Carmen Verette Malone

Printed/stamped name of Notary

After Recording, Return to:

The University of Texas System
Real Estate Office
210 West 7th Street
Austin, Texas 78701
Attn: Executive Director of Real Estate