

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
(Butler/East Hwy 290 & 13100 N. FM 973)

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (the "Third Amendment"), is entered into as of the 20th day of December 2023 (the "Third Amendment Effective Date"), by and among **13100 FM 973, INC.**, a Texas corporation ("Owner") and the **CITY OF MANOR, TEXAS**, a home rule municipality located in Travis County, Texas (the "City"). The City and Owner are herein sometimes referred to individually as a "Party" and collectively as the "Parties". Capitalized terms used herein and not otherwise defined herein shall have those meanings ascribed to them in the Agreement (defined below).

RECITALS

A. WHEREAS, the City, Butler Family Partnership, a Texas limited partnership ("Butler") and Owner entered into that certain Development Agreement dated June 15, 2022 and, that certain First Amendment to Development Agreement dated April 19, 2023, relating to the development and improvement of certain parcels of land located within the municipal boundaries of the City consisting of approximately 95.16 acres (the "Property") as a mixed-use project, as more particularly described therein.

B. WHEREAS, the portion of the Property owned by Butler and defined as "Parcel A" in the Agreement was conveyed to GCP XXXI, LTD., a Texas limited partnership and GCP XXXII, LTD., a Texas limited partnership (together, "Gencap").

C. WHEREAS, the City, Butler, Gencap and Owner entered into that certain Second Amendment to Development Agreement dated June 7, 2023 (the Development Agreement, as amended as described herein is hereinafter referred to as the "Agreement").

D. WHEREAS, Section 7.6(b) of the Agreement provides that to the extent a Party requests that the Agreement be further amended and such amendment pertains to less than all of the current landowners of the Property and does not modify the obligations in the Agreement as to the remaining landowners of the Property, then the Agreement may be modified or amended by joint action of only (a) the City, and (b) the landowners expressly subject to the modification or amendment at the time of such modification or amendment.

E. WHEREAS, Owner is the owner in fee simple of all of the Property, save and except Parcel A which is owned by Gencap.

F. WHEREAS, pursuant to the rights set forth in Section 7.6(b) of the Agreement, the Parties now desire to amend certain provisions of the Agreement with respect to Lot 2A, the Grocery Store Parcel, as depicted in Exhibit B-1 of the Agreement and Lots 2B, 2C, and 2D, as depicted in Exhibit B-1 of the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Third Amendment to the same extent as if set forth herein in full.

2. Exhibit C – Code Modifications. Exhibit "C" to the Agreement is hereby amended as to Lot 2A, the Grocery Store Parcel and Lots 2B, 2C and 2D to incorporate the additional Code Modifications described in Exhibit C attached hereto.

3. Miscellaneous.

(a) Except as expressly amended hereby, the Agreement and all rights and obligations created thereby or thereunder are in all respects ratified and confirmed and remain in full force and effect. Where any section, subsection or clause of the Agreement is modified or deleted by this Third Amendment, any unaltered provision of such section, subsection or clause of the Agreement shall remain in full force and effect. However, where any provision of this Third Amendment conflicts or is inconsistent with the Agreement, the provisions of this Third Amendment shall control.

(b) This Third Amendment (i) shall be governed by, construed under and enforced in accordance with the laws of the State of Texas; (ii) constitutes a covenant that runs with the Property and is binding on future owners of the Property; and (iii) shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(c) This Third Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

4. No Waiver. Neither City's nor Owner's execution of this Third Amendment shall (a) constitute a waiver of any of its rights and remedies under the Agreement or at law with respect to the other Party's obligations under the Agreement or (b) be construed as a bar to any subsequent enforcement of any of its rights or remedies against the other Party.

5. Governing Law. This Third Amendment shall be construed and enforced in accordance with the laws of the State of Texas.

6. Signatory Warranty. The signatories to this Third Amendment warrant that each has the authority to enter into this Third Amendment on behalf of the organization for which such signatory has executed this Third Amendment.

7. Interpretation. This Third Amendment has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Third Amendment.

8. Entire Agreement. This Third Amendment, together with any exhibits attached hereto, and the Agreement, as amended by this Third Amendment, constitute the entire agreement between the Parties with respect to the subject matter stated therein, supersedes all prior agreements relating to such subject matter. The Parties hereto agree and understand that no oral agreements or understandings shall be binding unless reduced to a writing which is signed by the

Parties and dated subsequent to the date hereof. The Parties hereto agree and understand that this Third Amendment shall be binding on them, their personal representatives, heirs, successors and assigns.

9. Captions. The captions preceding the text of each section and paragraph hereof, if any, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Third Amendment.

10. Severability. If any provision of this Third Amendment shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, unless enforcement of this Third Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this Third Amendment.

11. Anti-Boycott Verification. To the extent this Third Amendment constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Owner represents that neither Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner (i) boycotts Israel, or (ii) will boycott Israel through the term of this Third Amendment. The terms “boycotts Israel” or “boycott Israel” as used in this paragraph shall have the meanings ascribed to the “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

12. Iran, Sudan and Foreign Terrorist Organizations. To the extent this Third Amendment constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable law, Owner represents that neither Owner nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

13. Anti-Boycott Verification – Energy Companies. Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Third Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, “boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal or state law; or (B) does business with a company described in the preceding statement in (A).

14. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Third Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, firearm accessories; or (b) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.

[Signature page(s) to follow]

EXECUTED in multiple originals, and in full force and effect as of the Third Amendment Effective Date.

CITY:

CITY OF MANOR, TEXAS,
a Texas home-rule municipal corporation

By: _____
Name: Dr. Christopher Harvey
Title: Mayor

Attest:

By: _____
Name: Lluvia T. Almaraz
Title: City Secretary

Approved as to form:

By: _____
Name: Veronica Rivera
Title: Assistant City Attorney

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Dr. Christopher Harvey, Mayor of Manor, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

My Commission Expires: _____

[NOTARIAL SEAL]

OWNER:

13100 FM 973, INC.,
a Texas corporation

By: _____
Edward S. Butler, President

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Edward S. Butler, the President of 13100 FM 973, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

My Commission Expires: _____

[NOTARIAL SEAL]

[Signatures continue on next page.]

Exhibit C

Additional Code Modifications as to Lot 2A

- **OFF-STREET PARKING REQUIREMENTS (Modifying Code of Ordinances Section 15.02.004)**
 - Minimum Parking Requirements:
 - The minimum parking requirements for Lot 2A are hereby reduced from 1 stall/225 Square Feet to 1 stall/350 Square Feet (**Modifying Code of Ordinances Section 15.02.004a**)
 - Parking Space and Parking Lot Design (Modifying Code of Ordinances Section 15.02.004a (e) (B))
 - Wheel stops and wheel stop curbing in parking areas and parking stalls are not required on Lot 2A EXCEPT for ADA parking stalls.
 - Outdoor display (Section 14.02.049(c)(1))
 - Displayed merchandise can occupy no more than 20% of provided parking spaces.

- **SCREENING REQUIREMENTS (Modifying Code of Ordinances Section 15.03.021 (c) (2))**
 - Screening of outdoor storage is not required on Lot 2A when storage areas are located in the rear of the structure.

- **BUFFERYARD STANDARDS (Modifying Code of Ordinances Section 15.03.023 (5) (A) – (G))**
 - A bufferyard wall is not required on Lot 2A if the provided number of bufferyard plantings are tripled from the code required amount of bufferyard plantings.

- **LANDSCAPING REQUIREMENTS (Modifying Code of Ordinances Section 15.03.005)**
 - Minimum required landscaping on Lot 2A shall be 1 tree per 600 square feet.

- **ON-SITE SIGNS (Modifying Code of Ordinances Section 15.04.018 (3) (F) regarding Attached Signs)**
 - The maximum size of any one attached sign on Lot 2A shall not exceed 450 square feet.

- **SITE LIGHTING FOR LOT 2A**
 - The minimum lighting criteria for Lot 2A shall be as follows:
 - Top of luminary height – 40ft overall height (OAH) measured from finished grade
 - Fixtures – Full cutoff

- **TEMPORARY USES AND STRUCTURES (Modifying Code of Ordinances Section 14.02.048(a)(1))**
 - Lot 2A to be permitted by right the temporary sales of seasonal products common to Home Depot stores.

- **NON-RESIDENTIAL AND MIXED-USE LAND USE CONDITIONS (Modifying Code of Ordinances Section 14.02.019)**
 - Garden Center:
 - Stacked materials on Lot 2A are allowed to exceed the height of any screen fence within or adjacent to the Garden Center.
- **HOURS OF OPERATION**
 - A home improvement store on Lot 2A shall be permitted to operate, at a minimum, from 6 a.m. – 10 p.m.

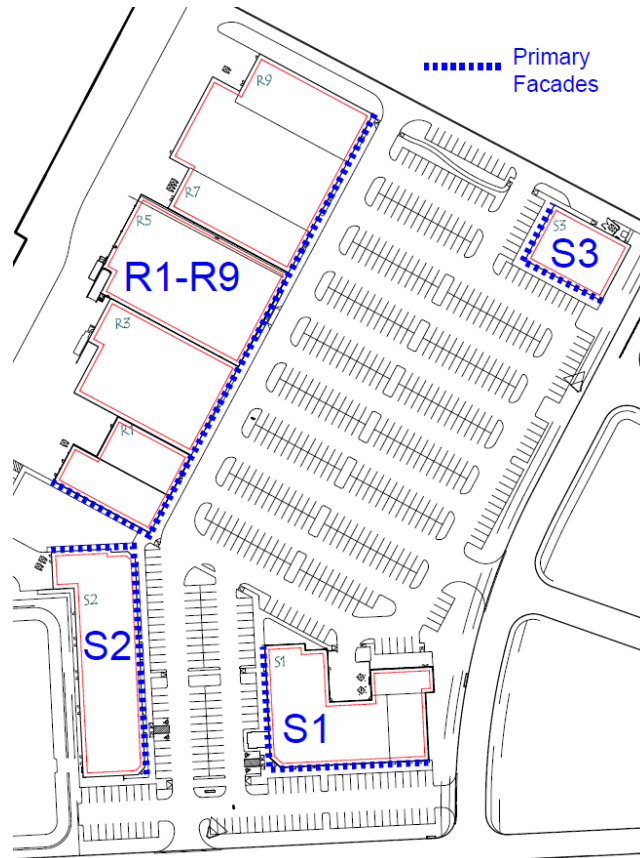
Additional Code Modifications Applicable solely to Grocery Store Parcel

- **Internal circulation standards** – Internal access drives do not need to be aligned and can be offset less than 60 feet measured centerline to centerline. This modification does not apply to internal access drives when they are connecting to a public roadway.
- **LANDSCAPING REQUIREMENTS (Modifying Code of Ordinances Section 15.03.005)**
 - Minimum required landscaping on the Grocery Store Parcel shall be 1 tree per 600 square feet.

Additional Code Modifications applicable as to Lots 2B, 2C, and 2D

The following articulation standards shall be applicable to Lots 2B, 2C, and 2D buildings S1, S2 and S3 as identified in Site Plan below:

- **Building Horizontal Articulation (14.02.065 (b) 3 (D) (i) (a):** A building facade may not extend for a distance greater than three times its average height without a perpendicular offset of at least ten percent of such building height; and **14.02.065 (b) 3 (D) (i) (b):** The total length of all facade walls in a single plane may not exceed 60 percent of the total facade length.)
 - Primary façade may not extend greater the four times its average height
 - Primary facade shall be allowed a max of 75% in a single plane
- **Building Vertical Articulation (14.02.065 (b) 3 (D) (ii) (a) :** A horizontal wall may not extend for a distance greater than three times its height without a change in elevation of at least 15 percent of such height; and **14.02.065 (b) 3 (D) (ii) (b) :** The total length of all vertical elevation changes in the roofline shall be no less than 20 percent and no more than 40 percent of the total facade length)
 - Primary facades shall provide a minimum vertical articulation of 10% of the average height
- **Primary Façade:**
 - Primary façades for Lot 2B, 2C, and 2D buildings shall be as shown in the site plan below:



- **Off-Street Parking Requirements (15.02.004a; and 15.02.004a (e) (B))**
 - The minimum parking requirements shall be 1 stall/350 Square Feet
- **Screening Requirements (15.03.021 (c) (2))**
 - Screening of outdoor storage is not required when storage areas are located in the rear of the structure or buildings R1 thru R9 (refer site plan above).
- **Landscaping Requirements (15.03.005)**
 - Minimum required landscaping on Lots 2B, 2C, and 2D shall be 1 tree per 600 square feet.
- **Site Lighting (15.05.008) (j):** total outdoor light output of any development project shall not exceed 100,000 lumens per net acre and **15.05.009:** Lighting standards (poles) shall not exceed 30 feet above adjacent grade
 - Total light output shall be 150,000 lumens per net acre
 - Pole luminaires shall have a maximum mounting height of 40'