

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

This FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT (the "Fifth Amendment"), is entered into as of the ____ day of _____, 2024 (the "Fifth Amendment Effective Date"), by and between **13100 FM 973, INC.**, a Texas corporation ("FM973"), **H-E-B, LP**, a Texas limited partnership, **DOS AMIGOS MANOR, LLC**, a Texas limited liability company, **BOGATA PARTNERS, LTD.**, a Texas limited partnership, **10600 APPLIANCES, LLC**, a Texas limited partnership, **MANOR RESTAURANT INVESTORS, LTD.**, a Texas limited partnership, **UNIVERSITY FEDERAL CREDIT UNION**, a federal credit union, **MANOR AND HWY 290 PROPERTY, LLC**, a Delaware limited liability company, **MC RETAIL LP**, a Texas limited partnership, **SPARTA PROPERTIES 9 LTD**, a Texas limited partnership, **HALLE PROPERTIES, L.L.C.**, an Arizona limited liability company, and **HOME DEPOT U.S.A., INC.**, a Delaware corporation (collectively, the "Additional Landowners"), **GCP XXXI, LTD.**, a Texas limited partnership and **GCP XXXII, LTD.**, a Texas limited partnership (together, "GenCap"). and the **CITY OF MANOR, TEXAS**, a home rule municipality located in Travis County, Texas (the "City"). FM973 and the Additional Landowners shall collectively be referred to herein as the "Owner". The City, Owner, and GenCap 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 FM973 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 City, Butler, Gencap and FM973 entered into that certain Second Amendment to Development Agreement dated June 7, 2023.

C. WHEREAS, the City and FM973 entered into that certain Third Amendment to Development Agreement dated December 20, 2023, and that certain Fourth Amendment to Development Agreement dated February 21, 2024 (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 (the “Shopping Center”).

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 (i) the entire Shopping Center and (ii) the Property as more particularly set forth herein.

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 Fifth Amendment to the same extent as if set forth herein in full.

2. Lighting. Notwithstanding Section 15.05.008(c) and (j) of the Code of Ordinances, the following shall apply to Lots 2A, 2B, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in the Shopping Center (collectively, the “Shopping Center Lots”):

(a) Light trespass, up to 3 foot candle, shall be allowed at any shared property line(s) between the Shopping Center Lots within and adjacent to the Access Drives shown on Exhibit D, and at the shared property line between Lot 2A and 2B. Combined light trespass from Lots 2A and 2B shall not exceed 3 foot candles.

(b) Internal drives labeled as Access Drive A, B, C, D, E and F (collectively, the “Access Drives”) on Exhibit D attached hereto and made a part hereof, shall have a target average illumination of 1.0-1.5 foot candles average.

(c) Access Drives shall be illuminated by the various lots adjacent to the Access Drives, as shown on Exhibit D in compliance with the standards of this Amendment.

(d) Lighting of the Access Drives shall be excluded from the lumen acre calculation of any Lot and shall not count toward allowable lighting of the Lot.

(e) For the purpose of cohesive lighting of the Access Drives, pole lighting shall be as follows:

- Luminaire mounting height on Lots 2A and 2B on the west side of Access Drive E and north of Access Drive B shall be 40’ above finished grade.
- Luminaire mounting heights on and between Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 shall be 30’ above finished grade.
- Luminaires for the Access Drives shall meet the following criteria:
 - (i) Luminaire Performance Requirements (Based on IES TM-30);
 - (ii) $4,000 \leq$ Correlated Color Temperature $< 4,500$; and
 - (iii) Color Fidelity ($R_f \geq 70$).

3. Concrete Pouring. While the Property is being developed, concrete pouring may occur on the Property between the hours of midnight and 7 a.m. every day, in addition to the hours

allowed by Article 8.04 of the Code of Ordinances.

4. Artificial Turf. The use of artificial turf is allowed but may not be used in place of the minimum required landscape.

5. 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 Fifth 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 Fifth Amendment conflicts or is inconsistent with the Agreement, the provisions of this Fifth Amendment shall control.

(b) This Fifth 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 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; (iii) may be modified or amended only in writing by each Party hereto; and (iv) embodies the entire Fifth Amendment and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to such subject matter.

(c) This Fifth 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.

6. No Waiver. Neither the City's, nor Owner's, nor GenCap's execution of this Fifth 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.

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

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

9. Interpretation. This Fifth 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 Fifth Amendment.

10. Entire Agreement. This Fifth Amendment, together with any exhibits attached hereto, and the Agreement, as amended by this Fifth 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

Fifth Amendment shall be binding on them, their personal representatives, heirs, successors and assigns.

11. 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 Fifth Amendment.

12. Severability. If any provision of this Fifth 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 Fifth Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this Fifth Amendment.

13. Anti-Boycott Verification. To the extent this Fifth 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 and GenCap represent that neither Owner, GenCap nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner or GenCap (i) boycotts Israel, or (ii) will boycott Israel through the term of this Fifth 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.

14. Iran, Sudan and Foreign Terrorist Organizations. To the extent this Fifth 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 and GenCap represent that neither Owner, GenCap nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner or GenCap is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

15. Anti-Boycott Verification – Energy Companies. Owner and GenCap hereby verify that they and their 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 Fifth 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).

16. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. Owner and GenCap hereby verify that they and their 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 Fifth 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 pages to follow]

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

CITY:

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

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

Attest:

Lluvia Almarez, City Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2024, 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]

[signature pages continue]

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 _____, 2024, 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]

[signature pages continue]

DOS AMIGOS MANOR, LLC, a Texas limited liability company

By: _____
John C. Lewis, Manager

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2024, by John C. Lewis, the Manager of DOS AMIGOS MANOR, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

BOGATA PARTNERS, LTD., a Texas limited partnership
By: RUFUS, L.C., a Texas limited liability company,
General Partner

By: _____
John C. Lewis, Manager

10600 APPLIANCES, LLC,
a Texas limited liability company

By: _____
Jimmy Nassour, Manager

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024,
by _____, the manager of RUFUS, L.C., a Texas limited liability company, general
partner to BOGATA PARTNERS, LTD., a Texas limited partnership, on behalf of said entities.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024,
by Jimmy Nassour, the manager of 10600 APPLIANCES, LLC, a Texas limited liability
company, on behalf of said limited liability company.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

Manor Restaurant Investors, Ltd., a Texas limited partnership

By: CNB 1065, LLC, a Texas limited liability company, General Partner

By: _____
Buck Cody, Manager

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by Buck Cody, the Manager of CNB 1065, LLC, a Texas limited liability company, general partner of Manor Restaurant Investors, Ltd., a Texas limited partnership, on behalf of said entities.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

UNIVERSITY FEDERAL CREDIT UNION,
a federal credit union

By: _____
Chris J. Turnley
Executive Vice President-Member
Experience

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2024,
by Chris J. Turnley, the Executive Vice President of UNIVERSITY FEDERAL CREDIT
UNION, a federal credit union, on behalf of said federal credit union.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

MANOR AND HWY 290 PROPERTY, LLC, a Delaware limited liability company

By: SS TX Properties, LLC, a Delaware limited liability company, its Member

By: SS TX Holdings, LLC, a Delaware limited liability company, its Member

By: _____
Barry M. Barron, Sr., President

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by Barry M. Barron, Sr., the President of SS TX Holdings, LLC, a Delaware limited liability company, member of SS TX Properties, LLC, a Delaware limited liability company, member of MANOR AND HWY 290 PROPERTY, LLC, a Delaware limited liability company, on behalf of said entities.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

MC RETAIL LP,
a Texas limited partnership

By: MC Retail GP LLC,
a Texas limited liability company,
General Partner

By: _____
Clay Pickering, Manager

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024,
by Clay Pickering, the Manager of MC Retail GP LLC, a Texas limited liability company, General
Partner of MC RETAIL LP, a Texas limited partnership, on behalf of said entities.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

Sparta Properties 9 LTD, a Texas limited partnership

By: Sparta Properties 9 GP LLC, a Texas limited liability company, its General Partner

By: _____
Judith Crane, Manager

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2024, by Judith Crane, Manager of Sparta Properties 9 GP LLC, a Texas limited liability company, general partner to Sparta Properties 9 LTD, a Texas limited partnership, on behalf of said entities.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

Halle Properties, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Halle Properties, L.L.C., an Arizona limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

HOME DEPOT U.S.A., INC., a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2024, by _____, the _____ of HOME DEPOT U.S.A., INC., a Delaware corporation, on behalf of said corporation.

Notary Public, State of Texas

[SEAL]

My Commission Expires: _____

[signature pages continue]

GENCAP:

GCP XXXI, LTD., a Texas limited partnership

By: GCP XXXI GP, LLC
a Texas limited liability company,
its general partner

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2024, by _____, _____ of GCP XXXI GP, LLC, general partner of GCP XXXI, LTD., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL)

Notary Public, State of Texas

GCP XXXII, LTD., a Texas limited partnership

By: GCP XXXII GP, LLC
a Texas limited liability company,
its general partner

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2024, by _____, _____ of GCP XXXII GP, LLC, general partner of GCP XXXII, LTD., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL)

Notary Public, State of Texas

Exhibit D

Access Drives

