

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made as of the ____ day of April, 2017, by and between **SPC HILLCREST LP**, a Texas limited partnership ("SPC"), and **CITY OF UNIVERSITY PARK** ("City").

WITNESSETH:

WHEREAS, SPC is the owner of that certain tract of land in the City of University Park, County of Dallas, State of Texas, being more particularly described on **Exhibit A** attached hereto and made a part hereof (the "SPC Property"); and

WHEREAS, SPC intends to construct, among other things, a six-story building with a multi-story underground garage on the SPC Property (the "SPC Improvements"); and

WHEREAS, City is the owner of that certain tract of land adjacent to the SPC Property in the City of University Park, County of Dallas, State of Texas, being more particularly described on **Exhibit B** attached hereto and made a part hereof (the "City Property"); and

WHEREAS, City intends to construct, among other things, a multi-story underground garage with open-space improvements on the surface on the City Property (the "City Improvements"); and

WHEREAS, it is the intent and desire of SPC and City by the terms of this Agreement to cooperate in connection with the construction and installation of the SPC Improvements and the City Improvements.

NOW THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SPC and City hereby agree as follows:

1. **Temporary Construction Easements.** (a) SPC and City do hereby reserve to themselves and grant to the other for the benefit of SPC and City, and for the benefit of their respective agents, contractors and subcontractors a temporary and non-exclusive construction and access easement and the right to bring onto the SPC Property and the City Property, as applicable, such construction equipment, materials, vehicles, tools, machinery, and properly trained and supervised personnel as are reasonably necessary (and only to the extent reasonably necessary) to complete the construction and installation of the SPC Improvements (the "SPC Work") and the City Improvements (the "City Work"), as applicable, including, without limitation, the right to install and use temporary utilities in locations mutually agreed upon by SPC and City. The temporary easement granted to SPC herein shall terminate on the earlier to occur of (i) completion of the SPC Improvements or (ii) thirty (30) days after SPC's receipt of notice from City terminating such temporary easement (the applicable date being referred to as the "SPC Time and Date of Termination"). The temporary easement granted to City herein shall terminate on the earlier to occur of (i) completion of the City Improvements or (ii) thirty (30)

days after City's receipt of notice from SPC terminating such temporary easement (the applicable date being referred to as the "City Time and Date of Termination").

(b) SPC shall perform, or cause to be performed, at SPC's sole cost and expense except as hereinafter set forth, the SPC Work in a good, workmanlike and lien-free manner, and shall keep the City Property free and clear of any and all liens. SPC will indemnify, protect, defend, and hold City harmless from and against all losses, damages, costs, claims, liabilities, and expenses (including reasonable attorneys' fees and court costs) arising from or in connection with (i) any act or omission of SPC or its agents, contractors and subcontractors (each a "SPC Party") solely in connection with the SPC Work (it being acknowledged and agreed that SPC and City may have some of the same contractors and contractors), (ii) any failure by SPC to perform any of its obligations under this Agreement, (iii) the creation or existence of any lien or other claim arising in connection with the SPC Work, and/or (iv) any damage to the City Property or injury to persons asserted against or suffered by City solely in connection with the SPC Work or any act or omission of any SPC Party whether or not contemplated by this Agreement solely in connection with the SPC Work. On or prior to the SPC Time and Date of Termination, SPC shall remove all construction equipment, materials, vehicles, tools, machinery and other items brought onto the City Property solely for the purpose of constructing and installing the SPC Improvements that are not incorporated as permanent improvements made as part of the SPC Work, any debris resulting solely in connection with the SPC Work, and also repair any damage caused solely by or solely in connection with the SPC Work. The foregoing indemnity obligations and removal and restoration obligations shall survive the SPC Time and Date of Termination and the termination of this Agreement. SPC shall comply (and will use commercially reasonable efforts to ensure that each other SPC Party complies) with all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances applicable to the SPC Work and the performance thereof, and will use commercially reasonable efforts to cooperate with, and minimize disruption to, the operations, if any, of City, its tenants, contractors, subcontractors and agents, and any ongoing business operations (whether by existing tenants or otherwise), if any, at the City Property. SPC shall diligently and in good faith pursue and obtain all licenses and permits necessary to conduct any of the SPC Work at its sole cost and expense.

(c) SPC and City acknowledge and agree that certain parking equipment ("Parking Equipment") will be designed and installed on the SPC Property for the benefit and use of City. SPC and City shall agree in writing to the incremental increase in the cost of design and installation of the Parking Equipment that is for the benefit and use of City, and City shall, within thirty (30) days after receiving from SPC a bill therefor, together with supporting documentation, reimburse SPC for such incremental increase in the cost of design and installation of the Parking Equipment that is for the benefit and use of City. The cost of design and installation of any Parking Equipment solely located on the City Property shall be the responsibility of City.

(d) City shall perform, or cause to be performed, at City's sole cost and expense, the City Work in a good, workmanlike and lien-free manner, and shall keep the SPC Property free and clear of any and all liens. To the extent allowed by applicable law, City will indemnify, protect, defend, and hold SPC harmless from and against all losses, damages, costs, claims,

liabilities, and expenses (including reasonable attorneys' fees and court costs) arising from or in connection with (i) any act or omission of City or its agents, contractors and subcontractors (each a "City Party") solely in connection with the City Work (it being acknowledged and agreed that SPC and City may have some of the same contractors and subcontractors), (ii) any failure by City to perform any of its obligations under this Agreement, (iii) the creation or existence of any lien or other claim arising in connection with the City Work, and/or (iv) any damage to the SPC Property or injury to persons asserted against or suffered by SPC solely in connection with the City Work or any act or omission of any City Party whether or not contemplated by this Agreement solely in connection with the City Work. On or prior to the City Time and Date of Termination, City shall remove all construction equipment, materials, vehicles, tools, machinery and other items brought onto the SPC Property solely for the purpose of constructing and installing the City Improvements that are not incorporated as permanent improvements made as part of the City Work, any debris resulting solely in connection with the City Work, and also repair any damage caused solely by or solely in connection with the City Work. The foregoing indemnity obligations and removal and restoration obligations shall survive the City Time and Date of Termination and the termination of this Agreement. City shall comply (and will use commercially reasonable efforts to ensure that each other City Party complies) with all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances applicable to the City Work and the performance thereof, and will use commercially reasonable efforts to cooperate with, and minimize disruption to, the operations, if any, of SPC, its tenants, contractors, subcontractors and agents, and any ongoing business operations (whether by existing tenants or otherwise), if any, at the SPC Property. City shall diligently and in good faith pursue and obtain all licenses and permits necessary to conduct any of the City Work at its sole cost and expense.

2. Insurance. On or prior to commencement of its work, SPC and City, each at its sole cost and expense, shall cause its contractors to obtain and maintain for at least the duration of the temporary easements, (i) commercial general liability insurance with coverage limits of not less than the combined single limit for bodily injury, personal injury, death and property damage liability per occurrence of Three Million and No/100 Dollars (\$3,000,000.00), and a general aggregate limit of at least Five Million and No/100 Dollars (\$5,000,000.00) (with a Ten Million (\$10,000,000.00) umbrella policy) insuring against any and all liability of either SPC or City that arises out of the use or occupancy of the SPC Property or the City Property by the other or related to the exercise of any rights of either SPC or City pursuant to the temporary easements granted herein, (ii) automobile liability insurance with limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) for any single incident and covering any use of vehicles in connection with the exercise of any rights pursuant to either or both of the temporary easements, and (iii) statutory workers compensation and employers liability with coverage limits of One Million and No/100 Dollars (\$1,000,000.00) covering all employees in compliance with all state and federal law. From the commencement of construction through at the least the completion of such party's work, each party shall keep and maintain, or cause to be kept and maintained, policies of builder's risk insurance. All policies of insurance provided for in this Agreement shall be issued by insurance companies with general policy holder's rating of not less than A and a financial rating of not less than Class VIII, as rated in the most current available "Best's Key Rating Guide", and which are qualified to do business in the state of Texas. All such policies shall be of a non-reporting nature and all liability policies shall name SPC and City as additional

insureds. All policies shall include a waiver of subrogation in favor of SPC and City. Copies of a valid certificate(s) of insurance shall be delivered to SPC and City prior to entry onto the SPC Property or City Property for any purpose. All such insurance policies (a) shall be endorsed to read that such policies are primary policies and that any insurance carried by either SPC and City shall be noncontributing with respect to such policies; and (b) must contain a provision that the company writing the policy will give each of SPC and City at least thirty (30) days' notice in writing, in advance, of any cancellation or lapse or the effective date of any reduction in the amounts of insurance.

3. Default. In the event that SPC or City (each, a "Defaulting Party", for purposes of this Section 3) fails to perform any of its obligations under this Agreement ("Default"), the non-defaulting party (each, a "Non-Defaulting Party" for purposes of this Section 3) may give written notice the Defaulting Party, as applicable, of said Default (the "Default Notice"). If the Defaulting Party, as applicable, does not cure any such Default within five (5) business days after receipt of the Default Notice, then the Non-Defaulting Party shall be entitled to all remedies available at law or in equity, including, without limitation, (i) the right to specific performance or (ii) the right to take such self-help measures as are necessary to cure the Default. In connection with such self-help measures, the Non-Defaulting Party may, among other things, perform any such maintenance, repair and/or replacement as is necessary to cure the Default. Any costs or expenses incurred by the Non-Defaulting Party shall be reimbursed by the Defaulting Party, as applicable, within ten (10) days of presentation of appropriate statements of actual costs and expenses incurred therefor. To the extent that the costs or expenses owed by a Defaulting Party are not reimbursed within such time, or other amounts owed under this Agreement are not paid when due, such amounts will immediately begin accruing interest at the lesser of (a) the maximum rate allowed by law for non-usurious interest, and (b) the Prime Rate (defined herein) plus six percent (6%) per annum. As used in this Lease, the "Prime Rate" shall mean, on any day, the rate of interest per annum reported as the prime rate in the "Money Rates" listing of The Wall Street Journal, Central Edition (or the average prime rate if a high and a low prime rate are therein reported), which prime rate shall change without notice with each change in such prime rate as of the date such change is reported.

4. Notices. All notices required or permitted to be delivered under this Agreement shall be delivered either by (i) hand delivery, (ii) certified mail, return receipt requested, or (iii) FedEx or other comparable overnight delivery service, for next business day delivery, and if to SPC or City, shall be addressed as follows:

If to SPC: c/o Strobe Property Company
6801 Snider Plaza, Suite 220
Dallas, Texas 75205
Attn: Adam Richey

with a copy to: Condon Tobin Sladek Thornton PLLC

8080 Park Lane, Suite 700
Dallas, Texas 75231
Attn: Steven M. Thornton

If to City: City of University Park
3800 University Blvd.
University Park, Texas 75205
Attn: City Manager

with a copy to: Nichols, Jackson, Dillard, Hager & Smith L. L. P.
500 N. Akard, Suite 1800
Dallas, Texas 75201
Attn: Robert L. Dillard III

Such notice shall be deemed delivered upon the earlier of actual receipt or three (3) days after deposit with the United States Postal Service if sent via certified mail and the next business day following deposit with FedEx or other comparable delivery service.

5. Successors and Assigns. This Agreement is appurtenant to and runs with the land and shall also be binding upon and inure to the benefit of SPC and City and their respective successors and assigns.

6. Governing Law. This Agreement and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas.

7. Headings. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

8. Severability. Should any provision of this Agreement be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

9. Amendment. This Agreement may only be amended or terminated by a written instrument executed and acknowledged by SPC and City.

10. Attorneys' Fees. In the event SPC or City institutes any action or proceeding against the other relating to the interpretation or enforcement of the provisions of this Agreement or any violation hereunder, the prevailing party shall be entitled to reasonable attorney fees, costs, and other expenses from the non-prevailing party.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together, shall constitute one and the same instrument.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, SPC and City have executed this Agreement as of the day and year first above written.

SPC:

SPC HILLCREST LP,
a Texas limited partnership

By: SPC Hillcrest General, LLC,
a Texas limited liability company,
General Partner

By: M. Adam Richey, Manager
M. Adam Richey, Manager

CITY:

CITY OF UNIVERSITY PARK

By: _____
Olin B. Lane, Mayor

EXHIBIT A

SPC Property

The east one-half of Lot 6 and Lots 7, 8, 9, 10, 11 and 12 in Block 3 of University Park, an addition to the City of University Park, Dallas County, Texas, according to the Map recorded in Volume 2, Page 6 of the Map Records of Dallas County, Texas.

EXHIBIT B

City Property

A tract of land situated in the John Scurlock Survey, Abstract No. 1351, City of University Park, Dallas County, Texas, and all of Lot 4, Lot 5, and the west one-half of Lot 6, Block 3 of University Park, an addition to the City of University Park, Dallas County, Texas according to the plat recorded in Volume 2, Page 6, Map records, Dallas County, Texas, and all of Lot 4 described in deed to SPC Hillcrest, LP recorded under Instrument Number 201500282787, Official Public Records, Dallas County, Texas, and all of Lot 5 and part of Lot 6 described in deed to SPC Hillcrest, LP recorded under Instrument Number 201500282785, Official Public Records, Dallas County, Texas, and more particularly described as follows:

Beginning at a chiseled "x" in concrete found for corner in the south line of Daniel Avenue (variable width right-of-way), and the northwest corner of said Lot 4 and the northeast corner of Lot 3 of said University Park;

Thence North 89 deg. 16 min. 53 sec. East along the south line of said Daniel Avenue, passing at a distance of 60.00 feet a ½ inch iron rod with yellow plastic cap stamped "RLG INC" found at the northeast corner of said Lot 4 and the northwest corner of said Lot 5, and continuing along said course passing at 120.00 feet the northeast corner of said Lot 5 and the northwest corner of said Lot 6, and continuing along said course a total distance of 150.00 feet to a ½ inch iron rod with yellow plastic cap stamped "RLG INC" set in the north line of said Lot 6 for the northeast corner of the tract being described herein;

Thence South 00 deg. 43 min. 07 sec. East across said Lot 6 a distance of 150.00 feet to a ½ inch iron rod with yellow plastic cap stamped "RLG INC" set in the south line of said Lot 6 and the north line of Haynie Avenue (50 foot right-of-way) for the southeast corner of the tract being described herein;

Thence South 89 deg. 16 min. 53 sec. West along the north line of said Haynie Avenue, passing at a distance of 30 feet a ¾ inch iron pipe found at the southwest corner of said Lot 6 and the southeast corner of said Lot 5, and continuing along said course passing at 90.00 feet a ½ inch iron rod with yellow plastic cap stamped "RLG INC" found at the southwest corner of said Lot 5 and the southeast corner of said Lot 4, and continuing along said course a total distance of 150.00 feet to a ½ inch iron rod with yellow plastic cap stamped "RLG INC" set for corner at the southwest corner of said 4 and southeast corner of said Lot 3;

Thence North 00 deg. 43 min. 07 sec. West along the west line of said Lot 4 and the east line of said Lot 3 a distance of 150.00 feet to the point of beginning, and containing 22,500 square feet or 0.5165 acres, more or less.