

City of La Quinta

CITY COUNCIL MEETING: October 17, 2023

STAFF REPORT

AGENDA TITLE: APPROVE AMENDMENT NO. 5 AND RELATED DOCUMENTS TO PURCHASE, SALE, AND DEVELOPMENT AGREEMENT WITH SILVERROCK DEVELOPMENT COMPANY, LLC, SILVERROCK PHASE I, LLC, AND SILVERROCK LAND II, LLC, TALUS LA QUINTA (FORMERLY SILVERROCK GOLF RESORT) AND REQUIRE DEVELOPER TO PRESENT MONTHLY PROGRESS UPDATES AT COUNCIL MEETINGS ONCE FINANCING IS CLOSED AND UNTIL THE LUXURY HOTEL IS OPEN

RECOMMENDATION

Approve Amendment No. 5 and related documents to the Purchase, Sale, and Development Agreement with SilverRock Development Company, LLC, SilverRock Phase I, LLC, SilverRock Land II, LLC, and TALUS La Quinta (formerly SilverRock Golf Resort); authorize the City Manager and City Attorney to make minor revisions and additions as necessary that do not substantively change the business terms, and execute and implement said agreements and other documents necessary; and require developer to present monthly progress updates at Council meetings once financing is closed and until the luxury hotel is open.

EXECUTIVE SUMMARY

- In November 2014, Council approved a Purchase, Sale, and Development Agreement (PSDA) with SilverRock Development Company (SDC).
- In May 2017, SDC initiated the work to realign golf course holes to accommodate the luxury hotel and improve the golf experience; this work was completed in November 2017.
- Amendment No. 3 was executed in November 2018 primarily to update schedule and project phasing to enable closing of the \$212 million construction financing with Mosaic Real Estate (Mosaic).
- In April 2019, SDC commenced mass grading of the site in preparation for vertical development; this work was completed in November 2019.
- In March 2020, just after the COVID-19 pandemic started, SDC provided the first of several updates to Council including notification that they would be delaying the start of vertical construction as a result of the pandemic but that both SDC and

their financing partner, Mosaic, are committed to the successful completion of TALUS La Quinta.

- On April 15, 2020, SDC provided the City with a Force Majeure notice related to impacts to the development schedule associated with the COVID-19 pandemic.
- In April 2021, the City issued a notice of default to SDC, per the terms of the PSDA which identified completion of the two hotels, spa, conference facility, and permanent golf clubhouse by December 31, 2020.
- In September 2021, SDC provided verification of revised capitalization.
- Amendment No. 4 to the PSDA was executed on October 12, 2021, modifying the development schedule; decreasing the amount of a rebate available (which is calculated based on transient occupancy tax (TOT) receipts) by 5% for the 15-year term when calculating any rebate for continuous operation of the hotels, once opened, under TOT Covenant Agreements; identifying additional project milestones; increasing the purchase price on “Future Resort Property” (Option Property) for missing milestones; and requiring hotel operator to manage all resort residential short-term vacation rentals.
- Since January 17, 2023, when Robert Green gave his last update presentation to Council, construction at TALUS has continued but at a slow pace and with a focus on the Montage residential units while SDC has worked to secure additional funding necessary to recapitalize the project.
- As proposed, Amendment No. 5:
 - ✓ Resets financial penalties for missed milestones and reset the schedule of performance to coincide with the loan closings.
 - ✓ Allows for the recapitalization of the project due to the rising interest rates and costs for labor and materials since the COVID-19 Pandemic and identifies new lenders to be brought into the project.
 - ✓ Outlines further reductions in rebates based on Transient Occupancy Tax (TOT) receipts that SDC faces if completion dates for either of the two hotels are not met. For example, should the hotels be six months late, the rebate program as agreed to under the original PSDA and modified by Amendment No. 4 will be reduced from 15 years to 14 years and 6 months.
 - ✓ Includes a provision giving the City additional oversight over how project funding is expended by SDC, ensuring that contractors and others are being paid on time.

FISCAL IMPACT

The development of TALUS La Quinta will generate revenue for the City and the greater community. As the project is developed, the City will receive an estimated \$7 million of Developer Impact Fees (DIF); annual property tax revenue that will continue to increase as the property is improved and sold (estimated to be over \$640,000 annually within 10 years); sales tax generated through food, beverage and retail sales (estimated to exceed \$580,000 annually within 10 years); and net TOT revenue from hotels and resort residences (estimated to exceed \$2 million annually within 10 years). Furthermore, it is estimated that the project will generate 1,750 temporary construction jobs and 465 full-time permanent operational jobs at the resort. The average Montage/Pendry employee is among the highest paid in the hospitality industry and would introduce to the community more than \$19 million in employment opportunities. Finally, the City will be relieved from funding operational deficits associated with the golf course, dust control and parkway maintenance costs averaging approximately \$600,000 annually.

BACKGROUND/ANALYSIS

Since the approval of Amendment No. 4 and during the construction of the luxury and lifestyle hotels, golf clubhouse and conference and shared facility (Core Project Components), SDC informed the City that the capitalization for the construction of those components would no longer include Mosaic, due to rising interest rates and costs of labor and materials which had brought the cost for project development from an estimated \$400 million to an estimated \$600 million. Instead, the funding would consist of three integrated components: C-Pace financing in the approximate amount of \$170 million, a real property secured construction loan to SDC in the approximate amount of \$95 million funded by bonds, and EB-5 funding of up to \$90 million with the ability to obtain an additional \$18 million.

It has been two years since Amendment No. 4 with SDC was executed, during which project construction on the two hotels, conference center and shared facility and new golf clubhouse continued on schedule until second half of 2022 when construction was paused. Major milestones have gone unmet while SDC works to close on new funding sources. Amendment No. 5 raises the purchase and sale price of Phase 2 land to the developer by \$2 million as penalty for missing project milestones.

In December 2022, Robert Green secured a construction loan for \$48 million from Builders Capital allowing SDC to continue work on the first 13 of 29 Montage luxury residential units with purchase agreements for most of the units which is required to close on financing needed to continue construction on the Core Project Components. He also received a commitment for a \$49 million construction loan from Builders Capital for the construction of 20 of 55 Pendry residential units and was approved for \$108 million in EB-5 financing which has begun funding capital for the project.

There are two "Bridge Loans" associated with the project as well:

- An up-to \$25 million loan secured through Keillor Capital – \$12.5 million of which is available as an initial installment with at least \$10 million available to pay off subcontractor mechanics liens.
- A \$79 million loan was secured and is awaiting closing through Silver Arch Capital, a placeholder loan to pay off the first bridge loan through Keillor Capital identified above, liens by general contractors Granite Construction and R.D. Olson Construction, and Poppy Bank, which holds the debt on the master site infrastructure.

SDC is near closing on recapitalization loans from two lenders: Lief loan for about \$170 million through C-PACE, a government sponsored program that provides clean energy loans to developers for using energy-efficient systems, and approximately \$95 million in bond sales through Ziegler. When escrow closes on the Ziegler funds (senior loan) it will trigger the closing of the Lief loan.

The Ziegler and Lief funds will be dedicated to the construction of the Core Project Components which are the commercial components, including the two hotels, conference center and shared facility, and new golf clubhouse.

Staff has concluded negotiations with SDC on the revised schedule that still includes project milestones, with financial consequences for failing to meet, updated start and completion dates of project components as well as new and revised terms and conditions as outlined below.

Prior to the closing of escrow for the recapitalization loans, SDC will be subject to the requirement, consistent with the PSDA, to deliver copies of the draft final loan documents to the City Attorney and City Manager for confirmation of financial feasibility to complete the Core Project Components.

Upon the closing of escrow with the recapitalization lenders and from the loan proceeds made available from the loans, SDC will pay all outstanding mechanic’s liens and encumbrances affecting the Core Project Components.

Updated Schedule of Performance

The chart below details Amendment No. 4 and proposed Amendment No. 5 schedule of performance dates. The Amendment No. 5 changes provide time extensions to complete major milestones:

Project Component	Amendment No. 4		Amendment No. 5	
	Start	Finish	Start	Finish
Luxury Hotel Vertical construction	8/30/21	9/30/23	8/30/2021	3/13/2025

Lifestyle Hotel Vertical construction	9/30/22	7/31/24	520 days after the closing of Recapitalization Loans but not later than 12/5/25	12/31/2026
Conference & Shared Services	8/30/21	9/30/23	8/30/2021	3/13/2025
Golf Clubhouse & Practice Range	8/30/21	11/1/22	8/30/2021	11/25/2024

Completion dates or timeframes listed in this table are the outside dates permissible under this Agreement. The developer must show good faith diligence in closing escrow on the recapitalization loans by no later than January 1, 2024. However, under Section 3 of Amendment No. 5, the developer has the right to extend outside date for the closing of the recapitalization loans to June 30, 2024. To the extent such outside date is extended, then the completion dates under items 8,9,11,13,15,16 and 22 are automatically extended to the same extent. This is permissible if the City Attorney and City Manager are satisfied that the developer has been acting in good faith in continuing to close on the recapitalization loans.

Approving Amendment No. 5 will enable SDC to close on recapitalization loans, pay off liens and recall the contractors to resume construction of the commercial components of the project which are the hotels, shared facility and conference center and golf clubhouse. SDC will continue to provide project updates at Council meetings that will include recent milestones achieved, scheduled updates and project highlights. Additionally, the City Manager will have oversight over payment of funds to contractors and subcontractors, ensuring they are being paid on time.

ALTERNATIVES

Council could direct staff to further modify the terms of Amendment No. 5, which would delay development and impact development financing.

Prepared by: Sherry Barkas, Specialist
 Approved by: Jon McMillen, City Manager

Attachment: 1. Amendment No. 5 to Purchase, Sale and Development Agreement

**AMENDMENT NO. 5 TO PURCHASE, SALE, AND
DEVELOPMENT AGREEMENT**

THIS AMENDMENT NO. 5 TO PURCHASE, SALE, AND DEVELOPMENT AGREEMENT (“**Amendment No. 5**” or “**Agreement**”) is dated as of October ____, 2023 (“**Agreement Date**”), by and between the CITY OF LA QUINTA, a California municipal corporation and charter city (the “**City**”), SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company (“**Developer**”), SILVERROCK PHASE I, LLC, a Delaware limited liability company (“**SRPI**”), and SILVERROCK LAND II, LLC, a Delaware limited liability company (“**SRL**”).

RECITALS:

A. *The SilverRock Resort Area and Original PSDA.* Except for portions of land transferred to Developer, SRPI, and SRL, as described in the Recitals F and G of this Amendment No. 5, City owns fee title to that certain real property of approximately 525 acres located at the southwest intersection of Jefferson Street and Avenue 52, in the City of La Quinta, California, a general depiction of which is the Site Map attached as Exhibit "A" to Amendment No. 3 (as defined below) and defined in the Original PSDA as the “**SilverRock Resort Area.**” City and Developer entered into that certain Purchase, Sale, and Development Agreement dated November 19, 2014 (the “**Original PSDA**”), pursuant to which City agreed to sell to Developer specified “**Planning Areas**” that are part of approximately 145 acres comprising what was then defined as the “**Phase 1 Property**” (approximately 125 acres) and the “**Phase 2 Property**” (approximately 20 acres) and collectively defined as the “**Property**” (as those terms are defined in the PSDA) in the SilverRock Resort Area, and Developer agreed to purchase from City specified “**Planning Areas (PAs)**” to thereafter construct, complete, and operate thereon a commercial project containing a luxury resort hotel and spa and associated branded luxury residential units, a lifestyle hotel and associated lifestyle branded residential units, a conference and shared service facility, a temporary and permanent clubhouse for the SilverRock Resort’s Arnold Palmer Classic Course, a mixed use village, a resort residential village, and associated amenities, all as further described in the Original PSDA as the “**Project Components.**” As provided in the Original PSDA, the Phase 1 Property included the Planning Areas (among other PAs) for the “**Luxury Hotel**” and “**Luxury Branded Residential Development,**” and the Phase 2 Property included the Planning Areas for the “**Lifestyle Hotel**” and “**Lifestyle Branded Residential Development**” (as defined in the Original PSDA). Additionally, pursuant to the Original PSDA, the “**Parcel Map**” was to be recorded (and has been recorded) against the Property, and applicable Parcel Map is attached as Exhibit “B” to Amendment No. 3 (as defined below). Additionally, the Original PSDA set forth a “**Schedule of Performance**” under which Developer was required to commence and complete the development of the Project Components on the Property, as more particularly described therein.

B. *Amendment No. 1.* City and Developer entered into that certain Amendment No. 1 to Purchase, Sale, and Development Agreement dated October 29, 2015 (“**Amendment No. 1**”) to, among other things, to update the Site Map and various timeframes within the Original PSDA, including certain timeframes within the Schedule of Performance.

C. *Amendment No. 2.* City and Developer entered into that certain Amendment No. 2 to Purchase, Sale, and Development Agreement dated April 18, 2017 (“**Amendment No. 2**”) to, among other things: (i) Modify the Phase 1 Property and Phase 2 Property in the Original PSDA and corresponding phased development obligations to the “**Phase 1A Property**” and “**Phase 1B Property**” (as defined in Amendment No. 2), with corresponding phased development obligations for the Project Components, Planning Areas (PAs), and “**Parcels**” (as defined in the Original PSDA and Amendment No. 2), including but not limited to the modification of the development phasing for the Luxury Hotel, Luxury Branded Residential Development, Lifestyle Hotel, and Lifestyle Branded Residential Development; (ii) Establish the “**Phase 1C (Golf Course) Property,**” “**Phase 1D**

(Ahmanson Ranch House) Property,” and **“Phase 1E (Perimeter Landscaping and Trails) Property”** (as defined in Amendment No. 2) with corresponding phased development obligations for certain Project Components, Planning Areas, and Parcels identified therein; (iii) Modify the Schedule of Performance; (iv) Specify the terms and conditions for the **“Golf Course Realignment”** (as defined in the Original PSDA); and (v) Grant to Developer a contingent option to purchase the **“Future Resort Property”** according to **“Developer’s Future Resort Option”** (as defined in Amendment No. 2) upon Developer meeting certain terms and conditions, as more particularly described therein.

D. *The Phase 1A Property.* Pursuant to the PSDA, Developer acquired from the City the Phase 1A Property (approximately 44.6 acres of the SilverRock Resort Area) by Grant Deed dated May 3, 2017 and recorded on November 6, 2017 as Instrument No. 2017-0463950 in the Official Records of the County of Riverside, California (**“Recorder’s Office”**), as amended by that certain Amendment to Grant Deed (Phase – 1A Property – PSDA Amendment No. 2), recorded on November 28, 2018 as Instrument No. 2018-0464670 in the Recorder’s Office. Thereafter, Developer assigned to SRPI (a Developer entity and permitted transferee pursuant to Section 603.1(d) of the Original PSDA), and SRPI assumed from Developer, all of Developer’s right, title, and interest in the Phase 1A Property and the “Project Agreements” (which include the PSDA) as they pertain to the Phase 1A Property by that certain Assignment and Assumption Agreement, recorded on November 28, 2018 as Instrument No. 2018-0465379 in the Recorder’s Office, and Developer transferred to SRPI the Phase 1A Property by Grant Deed recorded on November 28, 2018 as Instrument No. 2018-0464673 in the Recorder’s Office.

E. *Amendment No. 3.* City and Developer entered into that certain Amendment No. 3 to Purchase, Sale, and Development Agreement dated November 28, 2018 (**“Amendment No. 3”**) to, among other things: (i) Set forth amended and restated modifications for the development of the Phase 1A Property and set forth the terms and conditions for the purchase and sale of the Phase 1B Property; (ii) Modify the **“Master Site Infrastructure Improvements (MSII)”** (as defined in the Original PSDA) Phasing Plan; (iii) Modify the Schedule of Performance; (iv) Specify assignment and assumptions of interests from Developer; and (v) Incorporate provisions allowing for the closing of the construction loan for the Phase 1A Property and Phase 1B Property, as more particularly described therein.

F. *Amendment No. 4.* City and Developer entered into that certain Amendment No. 4 to Purchase, Sale, and Development Agreement dated October 12, 2021 (**“Amendment No. 4”**) to, among other things: (i) Set forth terms and conditions for the “Revised Capitalization” (as defined therein) to cover the then-projected remaining costs to develop the Phase 1A Property and Phase 1B Property and all Project Components thereon (excluding the Promenade Mixed-Use Village and Resort Residential Village); (ii) Modify the MSII Phasing Plan; (iii) Modify the Schedule of Performance; (iv) Specify the operation by a single hotel operator of short-term vacation rentals at the Luxury Branded Residential Development and Lifestyle Branded Residential Development, as set forth therein; (v) Modify the rebate reduction based on TOT receipts; (vi) Identify “Project Milestones” (as defined therein) of which failing to meet would result in increases to the purchase price for the “Future Resort Property Phase” if and when there is a valid exercise by Developer of the option to purchase the Future Resort Property (as set forth therein); (vii) If and when a valid exercise by Developer of the option to purchase the Future Resort Property occurs, clarify allowable uses on the Future Resort Property; and (viii) Incorporate provisions allowing for the closing of the construction loan for the Phase 1A Property and Phase 1B Property, as more particularly described therein. The Original PSDA, as modified by Amendment No. 1, Amendment No. 2 Amendment No. 3, and Amendment No. 4, is hereinafter referred to as the **“PSDA.”**

G. *The Phase 1B Property.* Pursuant to the PSDA, SRPI acquired from the City the Phase 1B Property (approximately 84 acres of the SilverRock Resort Area) by Grant Deed dated

November 7 and November 28, 2018 and recorded on November 28, 2018 as Instrument No. 2018-0464674 in the Recorder's Office. Thereafter, SRPI assigned to SilverRock Land, LLC (a Developer entity and permitted transferee pursuant to Section 603.1(f) as provided in Amendment No. 3), and Silver Rock Land, LLC assumed from SRPI, all of Developer's right, title, and interest in a portion of the Phase 1B Property—and specifically Parcels 10 and 11 identified in Amendment No. 3 for the Project Component known as the **"Promenade Mixed-Use Village"**—and the "Project Agreements" (which include the PSDA) as they pertain to Parcels 10 and 11/Promenade Mixed-Use Village by that certain Assignment and Assumption Agreement, recorded on April 10, 2019 as Instrument No. 2019-0120800 in the Recorder's Office, and SRPI transferred to SilverRock Land, LLC these Parcels 10 and 11/Promenade Mixed-Use Village by Quitclaim Deed recorded on April 10, 2019 as Instrument No. 2019-0120799 in the Recorder's Office. By quitclaim deed dated October 21, 2021 and recorded on October 25, 2021 as Instrument No. 2021-0628128 in the Recorder's Office, SilverRock Land, LLC quitclaimed Parcels 10 and 11 to Developer. By quitclaim deed dated April 12, 2023 and recorded on April 13, 2023 as Instrument No. 2023-0105886 in the Recorder's Office, Developer granted to SRL (a Developer entity and permitted transferee pursuant to Section 603.1(f) as provided in Amendment No. 3) a 42.8% undivided interest in Parcel 10.

H. *Hotel Operations and TOT Sharing Agreements.* Pursuant to the Original PSDA and Amendment No. 2, Developer as **"Participant"** and City executed that certain Agreement to Share Transient Occupancy Tax Revenue (Luxury Hotel) dated on or about November 19, 2014 (**"Luxury Hotel TOT Sharing Agreement"**) to, among other things, require the Participant to enter into a **"Hotel Management Agreement"** with a City-approved **"Hotel Manager"** (as defined in the Luxury Hotel TOT Sharing Agreement) for continuous operation as the Luxury Hotel, and in exchange the City would make periodic payments to the Participant in specified amounts based on amounts of transient occupancy tax (**"TOT"**) collected from the Luxury Hotel as set forth in that certain Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) dated May 3, 2017 and recorded on November 6, 2017 as Instrument No. 2017-0463952, as amended by that certain Amended and Restated Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) dated November 28, 2018 and recorded on even date as Instrument No. 2018-0464671 (collectively, the **"Luxury Hotel TOT Covenant Agreement"**) in the Recorder's Office. Similarly, pursuant to the Original PSDA and Amendment No. 2, Developer (as "Participant") and City executed that certain Agreement to Share Transient Occupancy Tax Revenue (Lifestyle Hotel) dated on or about November 28, 2018 (**"Lifestyle Hotel TOT Sharing Agreement"**) to, among other things, require the Participant to enter into a "Hotel Management Agreement" with a City-approved "Hotel Manager" (as defined in the Lifestyle Hotel TOT Sharing Agreement) for continuous operation as the Lifestyle Hotel, and in exchange the City would make periodic payments to the Participant in specified amounts based on amounts of TOT collected from the Lifestyle Hotel as set forth in that certain Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Lifestyle Hotel), dated November 28, 2018 and recorded on even date as Instrument No. 2018-0464678 (the **"Lifestyle Hotel TOT Covenant Agreement"**) in the Recorder's Office. Furthermore, and in consideration of City approving a revised schedule of performance, Section 8.2 of Amendment No. 4 reduced the percentage of the "amount available for Rebate" by five percentage points (*i.e.*, by subtracting 5%) from the total adjusted percentage to be applied pursuant to the Luxury Hotel TOT Covenant Agreement and the Lifestyle Hotel TOT Covenant Agreement, respectively, and to memorialize by recorded instrument the percentage reduction in rebate, Developer (as "Owner") and City executed (a) that certain Amendment No. 1 to Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) recorded on October 13, 2021, as Instrument No. 2021-0606108 (the **"Luxury Hotel TOT First Amendment"**), and (b) that certain Amendment No. 1 to Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Lifestyle Hotel) recorded on October 13, 2021, as Instrument No. 2021-0606083 (the **"Lifestyle Hotel TOT First Amendment"**). The Luxury Hotel TOT First Amendment and Lifestyle Hotel TOT First Amendment are collectively referred to as the **"TOT First**

Amendments.” The Luxury Hotel TOT Sharing Agreement and Lifestyle Hotel TOT Sharing Agreement are collectively referred to as the “**TOT Sharing Agreements**” (and track that definition in the Original PSDA), and the Luxury Hotel TOT Covenant Agreement, as amended by the Luxury Hotel TOT First Amendment, and Lifestyle Hotel TOT Covenant Agreement, as amended by the Lifestyle Hotel TOT First Amendment, are collectively referred to as the “**TOT Covenant Agreements**” (and generally track that definition in the Original PSDA).

I. *Covenants, Easements, and Reservations for the Benefit of City.* Pursuant to the PSDA, the City declared and retained for public utility purposes an easement in and over portions for the Phase 1B Property defined as the “Easement Area” in that certain Declaration of Conditions and Reservation of Easements recorded on November 28, 2018 as Instrument No. 2018-0464669 in the Recorder’s Office. Additionally pursuant to the PSDA, SRPI granted to City for public utility purposes an easement in and over portions of the Phase 1A Property defined as the “Easement Area” in that certain Grant of Easement and Agreement recorded on November 28, 2018 as Instrument No. 2018-0464680 in the Recorder’s Office. Additionally pursuant to the PSDA (and specifically Amendment No. 2), the City retains in perpetuity benefits for the public by requiring and designating specific uses for the Phase 1C (Golf Course) Property, Phase 1D (Ahmanson Ranch House) Property, and Phase 1E (Perimeter Landscaping and Trails) Property, pursuant to (respectively) that certain Covenant Affecting Real Property (Golf Course Use) by and between City and Developer, recorded May 11, 2017 as Instrument No. 2017-0189004 in the Recorder’s Office, that certain Covenant Affecting Real Property (Ahmanson Ranch House) by and between City and Developer, recorded May 11, 2017 as Instrument No. 2017-189769, and that certain Covenant Affecting Real Property (Perimeter Landscaping and Trails) by and between City and Developer, recorded May 11, 2017 as Instrument No. 2017-089266.

J. *Options for the City to Re-Purchase Phase 1A and Phase 1B Properties.* Pursuant to the PSDA, the City has an option to re-purchase and right of first refusal to re-purchase, all or portions of the Phase 1A Property and Phase 1B Property in the event Developer (or its assignees) are in default of the PSDA and fail to cure within the allowed cure period, pursuant to (respectively) that certain Option Agreement Phase 1A Property and Phase 1B Property (Excluding Planning Areas 7, 8, and 9) And Termination Of Prior Phase 1A Option Agreement dated November 28, 2018 and recorded on even date as Instrument No. 2018-0464676 in the Recorder’s Office (the “**Phases 1A and 1B Properties Repurchase Option Agreement**”), and that certain Option Agreement (Phase 1B Property – PA 7, 8, and 9) dated November 28, 2018 and recorded on even date as Instrument No. 2018-0464677 in the Recorder’s Office (the “**PA 7-9 Repurchase Option Agreement**”). The Phases 1A and 1B Properties Repurchase Option Agreement and PA 7-9 Repurchase Option Agreement are collectively referred to as the “**City’s Repurchase Option Agreements.**” As set forth in Amendment No. 3 and the City’s Repurchase Option Agreements, Planning Areas 7, 8, and 9 are Parcels 10, 11, and 12 on the Parcel Map constitute the Project Components identified as the Promenade Mixed-Use Village and “**Resort Residential Village.**” Among other terms and conditions, the City’s Repurchase Option Agreements set forth the calculation of a purchase price if the City decides to exercise an option or right of first refusal to repurchase all or any portions of the Phase 1A Property and/or Phase 1B Property for an uncured default and breach of the PSDA.

K. *Summary of Reasons for Amendment.* Subsequent to the approval of Amendment No 4, and during the construction of the Project Components on the Phase 1A Property and Phase 1B Property (specifically the construction of the “**Luxury Hotel,**” “**Lifestyle Hotel,**” “**Permanent Golf Clubhouse,**” and “**Conference and Shared Services Facility**” Project Components (as defined in the PSDA, and, collectively, herein after referred to as the “**Core Project Components**”), and related MSII appurtenant to these Project Components), Developer informed the City that that the Revised Capitalization for the Core Project Components would no longer include the Lender (as defined in Section 17.8 of Amendment No. 3 but would consist of three integrated components: C-Pace financing in the approximate amount of up to \$170 million secured by property taxes (the “**C-Pace**

Loan”), a real property secured construction loan to Developer in the approximate amount of up to \$95 million funded by bonds backed by credit enhancement (the “**Bond Funded Construction Loan**”) and EB-5 financing in an amount up to \$90 million (with a right to obtain up to an approximately additional \$18 million) secured by preferred membership interests in SRPI (the “**EB-5 Financing**”). The EB-5 Financing was arranged by First Pathway Partners (“**First Pathway**”) and closed on or about December 9, 2022. Thereafter, Developer informed City that cost increases and other delays relating to the provision of materials and delays in the process of obtaining the Bond Backed Construction Loan led to a work stoppage, which has delayed the construction of the Core Project Components. Additionally, Developer informed the City that it has negotiated through Keillor Capital, with funds to be provided by RAF Pacifica Loan Opportunity Fund I, LLC, a Delaware limited liability company, and Arnold Fishman, as Trustee of The Arnold Fishman Revocable Trust dated July 15, 1999 (collectively, the “**Keillor Funding Lenders**”), an up to \$25 million loan secured by Parcels 10, 11, and 12 that constitute Planning Areas 7, 8, and 9, with said funds to be used (among other specific project development purposes) to pay for costs to complete the planning, application, and City-processing for approval of the development plan and site development permit(s) for Planning Areas 7, 8, and 9, and to pay off and remove the majority of the subcontractor mechanic’s liens (not including those of the two general contractors) recorded against portions of the Phase 1A Property and the Phase 1B Property (generally referred to herein as the “**Keillor Financing**”). Additionally, Developer informed the City that it has negotiated through Silver Arch Capital (“**Silver Arch**”) and is working on a closing for a \$79,000,000 million loan to be secured by a financing deed of trust on Parcels 10, 11, and 12 that constitute Planning Areas 7, 8, and 9 (the Parcels that have the Promenade Mixed-Use Village and Resort Residential Village Project Components) and the Parcels that have the Core Project Components, with said funds to be used (among other specified project development purposes) to refinance the Keillor Financing and to pay off and remove any and all remaining mechanic’s liens of the two general contractors and subcontractors and pay off the existing loan made by Poppy Bank secured by the Lodging Project Component (generally referred to herein as the “**Silver Arch Financing**”) and, collectively, the Keillor Financing and Silver Arch Financing are referred to periodically as the “**Bridge Loans**”).

L. To avoid a default under the PSDA as modified by Amendment No. 4, to memorialize the specifics of the Revised Capitalization and allow City to monitor the status thereof and require Developer to adhere to such financing plan, to further the continuing coordination of the development of the various phases with the financing obtained by Developer, and to reflect the current status of the Project, City and Developer now wish to amend the PSDA to, among other things: (i) Update the Schedule of Performance and phasing of development; (ii) Amend various terms of the PSDA required to facilitate the Core Project Components Capitalization (as defined below); (iii) Memorialize missed Project Milestones; and (iv) Make other clarifications to the PSDA, all as more particularly set forth herein.

M. *Same Capitalized Words and Terms.* Unless otherwise specifically defined herein, all capitalized words and terms used in this Amendment No. 5 shall have the meanings ascribed to such words and terms in the PSDA, and all Section references below refer to Sections of the PSDA (or, if applicable, Amendment to the PSDA).

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference and a substantive part of this Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Effectiveness. This Agreement shall be effective as of the Agreement Date.

2. Core Project Component Capitalization. In furtherance and implementation of the Revised Capitalization referred to in Section 2 in Amendment No. 4 in Developer, SRPI, and SRL (for purposes of this Section 2.2 and the remainder of this Amendment No. 5, collectively referred to as “**Developer**”) are in the process of negotiating and closing with Recapitalization Lender #1 and Recapitalization Lender #2 (collectively, the “**Amendment No. 5 Recapitalization Lenders**” or “**Recapitalization Lenders**”) for the C-Pace Loan and Bond Funded Construction Loan described below (collectively referred to as the “**Amendment No. 5 Recapitalization Loans**” or “**Recapitalization Loans**”) to complete the construction, in accordance with the Schedule of Performance (as revised by this Amendment No. 5), of the Core Project Components, and, as specified, other Project Components on the Phase 1A Property and Phase 1B Property.

(a) Lief Real Estate Energy Partners, with contact information in Section 7.8 below (“**Recapitalization Lender #1**”)

Total Amount of funding from Recapitalization Lender #1: Approximately \$170 million. Upon closing, C-Pace proceeds net of all fees and costs due at closing shall be deposited into an escrow account (the “**C-Pace Escrow Account**”) maintained by a qualified trustee selected by Recapitalization Lender #1. Such funds shall only be disbursed and used for payment for completion of construction of the Project Components as further provided below in this Section 2 of this Amendment No. 5.

(b) Ziegler with contact information in Section 7.8 below (“**Recapitalization Lender #2**”)

Total Amount of funding from Recapitalization Lender #2: \$95 million. Recapitalization Lender #2 shall be responsible for providing sufficient funds to complete Core Project Components. Such funds shall only be disbursed and used for payment for completion of construction of the Core Project Components as further provided below in this Section 2 of this Amendment No. 5.

Closing on the Recapitalization Loans shall be serviced through the same escrow and shall occur concurrently so that all funds from the Recapitalization Loans will be available to Developer together and on or about the same day after the close of escrow. Upon the closing of the escrow with the Recapitalization Lenders and from the loan proceeds made available from the Recapitalization Loans, Developer shall pay any and all outstanding mechanic’s liens and encumbrances affecting the Core Project Components (collectively, the “**Unauthorized Liens and Encumbrances**”).

Prior to the closing of escrow for the Recapitalization Loans, Developer shall have delivered to the City Attorney and City Manager for review a copy of the draft loan documents relating to both Recapitalization Loans. Developer shall cause each Recapitalization Lender to provide to the City a copy of any notices of default sent to Developer and shall cause the Lenders to respond to inquiries from the City Manager (and, if authorized by the City Manager, the City Attorney and City Finance Director) regarding the status of the Recapitalization Loans, including but not limited to the use of funds from said loans and payments made or not made for construction relating to the Core Project Components.

No other funding sources for the Core Project Components are contemplated as a part of the Developer’s financing plan other than those set forth in Recital K of this Amendment No. 5. Developer shall not modify the use of the funding sources, nor shall Developer take any action preventing the use of the funding sources, set forth in Recital K, so that said funding sources shall

be used for solely for the purpose of the continuation and completion of construction of, first, the Core Project Components, and secondly, other Project Components on the Phase 1A Property and Phase 1B Property. Developer shall not use or withdraw, or authorize the use or withdrawal of, the funds from the sources identified in Recital K in the identified accounts for said funds for any purpose other than payment for completion of construction of the Project Components, as identified above, on the Phase 1A Property and Phase 1B Property or to pay for costs to complete the planning, application, and City-processing for approval of the development plan and site development permit(s) for Planning Areas 7, 8, and 9. An unauthorized use or withdrawal of funds in violation of this Amendment No. 5 and/or not in furtherance of the completion of construction for the Project Components on the Phase 1A Property and Phase 1B Property shall be a default under the PSDA, and the City shall have the ability to pursue any and all rights and remedies under the PSDA (including under this Amendment No. 5).

Developer shall update the City Manager, no later than seven (7) days after the City Manager's written request, on the status of construction and distribution of any funds from any funding sources set forth in Recital K for the Project Components on the Phase 1A Property and Phase 1B Property. Developer shall have the obligation and shall cause the respective sources of funding identified in Recital K (*i.e.*, Recapitalization Lender #1 for the C-PACE Loan, Recapitalization Lender #2 for the Bond Funded Construction Loan, First Pathway for the EB-5 Financing, the Keillor Funding Lenders for the Keillor Financing, and Silver Arch for the Silver Arch Financing) to respond to inquiries from the City Manager (and, if authorized by the City Manager, the City Attorney and City Finance Director) regarding the status of payment/repayment on the funding sources, including but not limited to the use of funds from said loans for construction of respective Project Components and payments made or not made for construction relating to the respective Project Components.

3. Schedule of Performance. The PSDA is amended by replacing the Schedule of Performance with the schedule attached hereto as Exhibit "A" and incorporated herein, which shall then be deemed the "**Schedule of Performance**" for purposes of the PSDA and referred to in this Agreement as the "**Revised Schedule of Performance**". Reference is made to footnote 1 in the Revised Schedule of Performance. By notice to the City on or before the outside date for the closing of the Recapitalization Loans as set forth in item 7 of the Revised Schedule of Performance, Developer may extend such outside date on one or more occasions up to but not beyond June 30, 2024, upon demonstrating to the reasonable satisfaction of the City Manager that Developer has been and is continuing to use good faith commercially reasonable diligent efforts to obtain a closing of the Recapitalization Loans. For the purpose of this Agreement and Revised Schedule of Performance, the commencement of slab/foundation work (which shall include under slab utility work) constitutes "**commencement of vertical construction.**"

4. Master Site Infrastructure Improvements Phasing Plan. The Master Site Infrastructure Improvements, and requirements relating thereto, referred to in the PSDA, including Sections 205.1 and 304.2, shall be interpreted and, to the extent necessary, shall be deemed amended to give effect to and be consistent with the revised "**Master Site Infrastructure Improvements Phasing Plan**" attached to this Amendment No. 5 as Exhibit "B" and incorporated herein.

5. Missed Project Milestones and Applicable Financial Incentive Reductions.

5.1 List of Missed Project Milestones. Article 9 in Amendment No. 4 sets forth the terms and conditions for meeting Project Milestones and Financial Incentive Reductions that apply, and continue to apply, to the Purchase Price to the Future Resort Property if, and only if, Developer may validly exercise Developer's Future Resort Option and exercises that Developer's Future Resort

Option. Developer failed to perform pursuant to the Schedule of Performance from Amendment No. 4, the following Project Milestones:

- Completion of Luxury Hotel guest room framing (Amend. No. 4, § 9.1(b));
- Substantial completion of the Luxury Hotel vertical construction (Amend. No. 4, § 9.1(c))
- Completion of Lifestyle Hotel guest room framing (Amend. No. 4, § 9.1(e));
- Substantial completion of the Lifestyle Hotel vertical construction (Amend. No. 4, § 9.1(f))

5.2 Increase in Purchase Price for Future Resort Property for Past Missed Project Milestones. Notwithstanding any terms and conditions to the contrary in Amendment No. 4, as the sole remedy for not meeting the Project Milestones set forth in Amendment No. 4 as identified in Section 5.1 above, the Purchase Price for the Future Resort Property shall be increased by Two Million Dollars (\$2,000,000), and the Purchase Price for the Future Resort Property shall be no less than Four Million Five Hundred Thousand Dollars (\$4,500,000) (original Purchase Price from Amendment No. 4 at \$2,500,000 + \$2,000,000 (\$500,000 x 4 missed Project Milestones).

5.3 New Project Milestones. The Revised Schedule of Performance sets forth the following new Project Milestones:

- Completion of Luxury Hotel guest room framing;
- Substantial completion of the Luxury Hotel vertical construction;
- Completion of Lifestyle Hotel guest room framing;
- Substantial completion of the Lifestyle Hotel vertical construction.

5.4 Remainder of Article 9 in Amendment No. 4. Except for the modifications expressly provided in Sections 5.2 and 5.3 of this Amendment No. 5, all of the terms and conditions that may apply for Project Milestones and Financial Incentive Reductions (and all other terms and conditions relating to the Future Resort Property, Progress Reports, and other provisions in Article 9 of Amend. No. 4) shall continue to be operative (and shall be interpreted to apply equally to the new Project Milestones set forth in Section 5.3), including any and all requirements that must be met by Developer prior to having the ability to effectively exercise Developer's Future Resort Option and ultimate determination of the Purchase Price for the Future Resort Property.

5.5 Updated Schedule of Performance and Continued Applicability of Financial Incentive Reductions. In furtherance of Sections 5.3 and 5.4 above, and it being the expressed intent of the Parties, if any of the new Project Milestone is not timely completed pursuant to the Revised Schedule of Performance set forth in Exhibit A attached to this Amendment No. 5, then, in addition to the increase referred to in Section 5.2 above and subject to the terms of Section 5.4 above, the Purchase Price for the Future Resort Property shall be increased by Five Hundred Thousand Dollars (\$500,000) for each missed new Project Milestone under the Revised Schedule of Performance; for example, and in explanation of the foregoing and to avoid any doubt, the Revised Schedule of Performance updated the date of completion of Luxury Hotel guest room framing, and, as reflected in Section 5.2 above, even though Developer is subject to the increase in the Purchase Price for the Future Resort Property for missing the same earlier Project Milestone under

Amendment No. 4, the failure by Developer to meet the updated dates for Project Milestones set forth in the Revised Schedule of Performance attached to this Amendment No. 5 shall be cause for an additional Five Hundred Thousand Dollars (\$500,000) to be added to the Purchase Price of the Future Resort Property. This explanation applies to all four Project Milestones identified in Section 5.3 of this Amendment No. 5 and with updated dates of performance set forth in Exhibit A attached to this Amendment No. 5. Similarly, and in furtherance of Sections 5.3 and 5.4 above, all four Project Milestones identified in Section 5.3 above are subject to the terms of Article 9 of Amendment No. 4 related to the non-applicability of a Financial Incentive Reduction generally described in Section 9.2(ii)(B) and (C) in Amendment No. 4, such that: (i) For the Luxury Hotel, if Developer misses the completion date for the Luxury Hotel guest room framing but meets the completion date for the substantial completion of the Luxury Hotel vertical construction pursuant to the Revised Schedule of Performance in this Amendment No. 5, then the Financial Incentive Reduction for missing the first Project Milestone will not be applied, and (ii) For the Lifestyle Hotel, if Developer misses the completion date for the Lifestyle Hotel guest room framing but meets the completion date for the substantial completion of the Lifestyle Hotel vertical construction pursuant to the Revised Schedule of Performance in this Amendment No. 5, then the Financial Incentive Reduction for missing the first Project Milestone will not be applied. Likewise, all four Project Milestones identified in Section 5.3 above are potentially subject to Approved General Contractor Extensions as described in Section 9.2(ii)(D)(1) and (2) in Amendment No. 4, and Developer shall be subject to the provisions in Section 9.2(ii)(E) and (F) in Amendment No. 4.

6. Daily Reduction in Rebate Based on TOT Receipts for Delayed Completion of Luxury Hotel and Lifestyle Hotel. In consideration of City's agreeing to this Amendment No. 5 and the Revised Schedule of Performance set forth herein, and in addition to the percentage reductions to rebate based on TOT receipts set forth in Section 8.2 of Amendment No. 4 and the Luxury Hotel TOT First Amendment and Lifestyle Hotel TOT First Amendment, Developer shall be subject to a reduction in Developer's eligibility to receive a rebate based on TOT receipts (referred to the Luxury Hotel TOT Covenant Agreement as "TOT paid to City") for each day that Developer fails to complete the vertical construction of either the Luxury Hotel by the completion date for the same under the Revised Schedule of Performance or the Lifestyle Hotel by the completion date for the same under the Revised Schedule of Performance (as such dates may be extended by Force Majeure) (the "**Luxury Hotel TOT Rebate Reduction Date**" and the "**Lifestyle Hotel TOT Rebate Reduction Date**", or both, according to the following:

6.1 Luxury Hotel Vertical Construction. For each day Developer fails to complete the Luxury Hotel Vertical Construction by the completion date for the same under the Revised Schedule of Performance, Developer shall *not* be eligible to receive a "Covenant Payment" (as defined the Luxury Hotel TOT Covenant Agreement and calculated pursuant to the Luxury Hotel TOT First Amendment) that otherwise would have been available to Developer pursuant to the Luxury Hotel TOT Covenant Agreement, as amended by the Luxury Hotel TOT First Amendment (referred to as the "**Luxury Hotel Daily Rebate Reduction**"). If applicable, the Luxury Hotel Daily Rebate Reduction shall be applied by: (a) counting the number of days between the completion date for the Luxury Hotel under the Revised Schedule of Performance and, if later, the date upon which Developer receives a temporary or permanent certificate of occupancy for the Luxury Hotel allowing the Luxury Hotel to be opened for business; then (b) subtracting the number of days calculated in clause (a) from the date of the last day of the "Term" (as defined in the Luxury Hotel TOT Covenant Agreement). The "number of days" as provided in this Section shall include any portion of a day. In explanation of the foregoing, if the Completion Date for Luxury Hotel Vertical Construction is March 13, 2025, and on June 11, 2025, Developer received a certificate of occupancy allowing the Luxury Hotel to be opened (*i.e.*, 90 days after the scheduled Completion Date), then 90 days would be subtracted from the last day of the "Term" (as defined and determined pursuant to the Luxury Hotel TOT Covenant Agreement) (*e.g.*, 90 days subtracted from the last day the 15-year "Term" that would

be the full rebate period based on TOT); the “Luxury Hotel Daily Rebate Reduction” would be 90 days, and Developer would not be eligible to receive from the City a “Covenant Payment” (as defined the Luxury Hotel TOT Covenant Agreement and calculated pursuant to the Luxury Hotel TOT First Amendment) for those last 90 days of what would otherwise have been included in the Term. Developer and City shall execute (concurrently with this Amendment No. 5) in a recordable form the Second Amendment to the Luxury Hotel TOT Covenant Agreement substantially the form attached hereto as Exhibit “C” and incorporated herein by this reference (the “**Luxury Hotel TOT Second Amendment**”). Developer shall record or cause to be recorded in the Recorder’s Office the Luxury Hotel TOT Second Amendment prior to or concurrently with the closing of the Recapitalization Loans as set forth in this Amendment No. 5. Developer and City shall cooperate to execute (and record, if applicable) any other documents or amendments (including but not limited to amendments to the Luxury Hotel TOT Sharing Agreement) if necessary or convenient to memorialize the terms and conditions of this Section and this Amendment No. 5 relating to the Luxury Hotel Daily Rebate Reduction.

6.2 Lifestyle Hotel Vertical Construction. For each day Developer fails to complete the Lifestyle Hotel Vertical Construction by the completion date set forth in the Revised Schedule of Performance, Developer shall *not* be eligible to receive a “Covenant Payment” (as defined the Lifestyle Hotel TOT Covenant Agreement and calculated pursuant to the Lifestyle Hotel TOT First Amendment) that otherwise would have been available to Developer pursuant to the Lifestyle Hotel TOT Covenant Agreement, as amended by the Lifestyle Hotel TOT First Amendment (referred to as the “**Lifestyle Hotel Daily Rebate Reduction**”). If applicable, the Lifestyle Hotel Daily Rebate Reduction shall be applied by: (a) counting the number of days between the completion date for the Lifestyle Hotel under the Revised Schedule of Performance and, if later, the date upon which Developer receives a temporary or permanent certificate of occupancy for the Lifestyle Hotel allowing the Lifestyle Hotel to be opened for business; then (b) subtracting the number of days calculated in clause (a) from the date of the last day of the “Term” (as defined in the Lifestyle Hotel TOT Covenant Agreement). The “number of days” as provided in this Section shall include any portion of a day. In explanation of the foregoing, if the Completion Date for Lifestyle Hotel Vertical Construction is December 31, 2026, and on March 31, 2026, Developer received a certificate of occupancy allowing the Lifestyle Hotel to be opened (*i.e.*, 90 days after the scheduled Completion Date), then 90 days would be subtracted from the last day of the “Term” (as defined and determined pursuant to the Lifestyle Hotel TOT Covenant Agreement) (*e.g.*, 90 days subtracted from the last day the 15-year “Term” that would be the full rebate period based on TOT); the “Lifestyle Hotel Daily Rebate Reduction” would be 90 days, and Developer would not be eligible to receive from the City a “Covenant Payment” (as defined the Lifestyle Hotel TOT Covenant Agreement and calculated pursuant to the Lifestyle Hotel TOT First Amendment) for those last 90 days of what would otherwise have been included in the Term. Developer and City shall execute (concurrently with this Amendment No. 5) in a recordable form the Second Amendment to the Lifestyle Hotel TOT Covenant Agreement substantially the form attached hereto as Exhibit “D” and incorporated herein by this reference (the “**Lifestyle Hotel TOT Second Amendment**”). Developer shall record or cause to be recorded in the Recorder’s Office the Lifestyle Hotel TOT Second Amendment prior to or concurrently with the closing of the Recapitalization Loans as set forth in this Amendment No. 5. Developer and City shall cooperate to execute (and record, if applicable) any other documents or amendments (including but not limited to amendments to the Lifestyle Hotel TOT Sharing Agreement) if necessary or convenient to memorialize the terms and conditions of this Section and this Amendment No. 5 relating to the Lifestyle Hotel Daily Rebate Reduction.

7. Miscellaneous.

7.1 PSDA in Full Force and Effect. Except as otherwise expressly provided in this Amendment No. 5, all of the covenants, terms and conditions of the PSDA (including the GENERAL PROVISIONS in Article 600, as modified in Amendment No. 1) shall remain in full force and effect.

7.2 Governing Law. This Amendment No. 5 and the PSDA shall be governed by the internal laws of the State of California, without regard to conflict of law principles, and any question arising hereunder shall be construed or determined according to such law. The Superior Court of the State of California in and for the County of Riverside, or such other appropriate court in such county, shall have exclusive jurisdiction of any litigation between the parties concerning this Amendment No. 5 or PSDA. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California.

7.3 Interpretation. The PSDA, as amended by this Amendment No. 5, shall be read and interpreted in a comprehensive, integrated manner, and in a manner that best implements the provisions of this Amendment No. 5. However, in the event the terms of this Amendment No. 5 result in ambiguity, the parties will meet and confer to attempt to resolve the ambiguity, each in their reasonable discretion. But if the terms of this Amendment No. 5 directly conflict with the terms of the PSDA, then the terms of this Amendment No. 5 will be controlling and the PSDA, as amended, shall be interpreted to implement the intent of this Amendment No. 5.

7.4 Time is of Essence. Time is of the essence of this Amendment No. 5 and of each and every term and provision hereof.

7.5 City Approvals and Actions. City shall maintain authority over and implementation of this Amendment No. 5 pursuant to Section 605 of the Original PSDA.

7.6 Representations. The person(s) executing this Amendment No. 5 on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 5 on behalf of said party, (iii) by so executing this Amendment No. 5 such party is formally bound to the provisions of this Amendment No. 5, and (iv) the entering into this Amendment No. 5 does not violate any provision of any other agreement to which such party is bound.

7.7 Progress Reports. Developer's obligations to provide the City Manager with the reports described in Section 9.4 of Amendment No. 4 remains in full force and effect. In addition, if requested by the City Manager in writing, the report required to be provided to the City Manager by the Developer shall include the following information: (a) The names and contact information (including principal contact person and regular mailing and e-mailing addresses) for any contractor performing work on any Project Components (including the Core Project Components); (b) Any writings from any contractor notifying Developer of any delinquent payment for any work completed or alleged to be completed for any Project Components (including the Core Project Components); (c) Any writings from any contractor notifying Developer of any work stoppage or threatened work stoppage on any Project Components (including the Core Project Components); and (d) Any writings from any contractor notifying Developer of any mechanic's lien or threat to file and record any mechanic's lien against any Parcel on the Phase 1A Property and/or Phase 1B Property (including Parcels 10, 11, and 12 covering Planning Areas 7, 8, and 9)).

7.8 Estoppel Statement. City and Developer certify to one another and the Keillor Lenders, Silver Arch and the Recapitalization Lenders (as express third party beneficiaries of this

Section 7.8), that as of the Agreement Date: (i) except as modified by this Amendment No. 5, the PSDA and the "PSDA Covenant Documents" (as defined in Section 7.2 of Amendment No. 3) are unmodified and in full force and effect; and (ii) there is no Developer default under the PSDA as modified by this Amendment No. 5, or the PSDA Covenant Documents and there is no condition or circumstances which with the giving of notice and/or the passage of time would become a default hereunder. City (i) agrees that any future default or demand notice to Developer with respect to the PSDA or PSDA Covenant Documents will be sent to the Keillor Lenders, Silver Arch and the Recapitalization Lenders at the below addresses at the same time the notice is sent to Developer, (ii) City consents to the collateral assignment by Developer to the Keillor Lenders, Silver Arch and Recapitalization Lender #2 of Developer's rights under the PSDA, as amended, and (iii) the Keillor Lenders, Silver Arch and the Recapitalization Lenders may rely on the terms of this Section 7.8.

- 1) First Pathway Partners
Attn: Dan Wycklendt
311 E. Chicago Street, Suite 510
Milwaukee, WI 53202

- 2) Keillor Capital
Attn: Eric Keillor
2429 W. Coast Hwy, suite 210
Newport Beach, CA 92663

- 3) Silver Arch Capital
Attn: Jeff Wolfer
411 Hackensack ave, suite 803
Hackensack, NJ 07601

- 4) Ziegler Investment Banking
Attn: Aaron Gadouas
One North Wacker Drive, suite 2000
Chicago, Illinois 60606

- 5) Lief Real Estate Energy Partners LLC
Attn: Caleb Stokes
5 Union Square West FRNT 1, #1265
New York, NY 10003

7.9 Sections 311.1 and 311.2 of the PSDA. In furtherance of the intention of Section 311.1 of the PSDA, upon the City Manager's written request, Developer shall deliver to the City Manager and City Attorney any and all loan documents in a sufficiently final draft form to confirm the evidence of financing for the Bridge Loans and Recapitalization Loans. Additionally, and in furtherance of the intention of Section 311.2 of the PSDA, in the event the lenders providing the Bridge Loans, C-Pace Loan, Bond Funded Construction Loan, or EB-5 Financing described in Recital K and Section 2 of this Amendment No. 5 request acknowledgement, clarification and/or supplemental mortgagee protection terms and, in the City Manager's judgment the items requested are consistent with and/or reasonable extensions of the mortgagee protection provisions set forth in the PSDA and/or the PSDA Covenant Documents, the City Manager has the authorization, in accordance with Section 311.2 of the PSDA, to provide such acknowledgement, clarification and/or supplemental mortgagee protection terms on behalf of the City.

7.10 Counterparts. This Amendment No. 5 may be executed in counterparts, each of which, when this Amendment No. 5 has been signed by all of the parties hereto, shall be deemed an original, and each such counterpart shall constitute one and the same instrument.

[End of Amendment No. 5 – Signature page follows]

IN WITNESS WHEREOF, City, Developer, SLR and SRPI have executed this Amendment No. 5 as of the date set forth above.

“DEVELOPER”

SILVERROCK DEVELOPMENT COMPANY,
LLC, a Delaware limited liability company

By: The Robert Green Company,
a California corporation

Its: Manager

By: _____
Name: Robert S. Green, Jr.
Its: President and Chief
Executive Officer

“SRPI”

SILVERROCK PHASE I, LLC, a Delaware
limited liability company

By: The Robert Green Company,
a California corporation

Its: Manager

By: _____
Name: Robert S. Green, Jr.
Its: President and Chief
Executive Officer

“SRL”

SILVERROCK LAND II, LLC, a Delaware
limited liability company

By: The Robert Green Company,
a California corporation

Its: Manager

By: _____
Name: Robert S. Green, Jr.
Its: President and Chief
Executive Officer

Date: _____, 2023

[Signatures continued to next page]

“CITY”

CITY OF LA QUINTA, a California municipal corporation and charter city

Date: _____, 2023

By: _____

Jon McMillen

Its: City Manager

ATTEST:

Monika Radeva, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: _____
William H. Ihrke, City Attorney

EXHIBIT "A"

SCHEDULE OF PERFORMANCE

[See following pages]

SCHEDULE OF PERFORMANCE

	Item of Performance	Start	Completion¹
	TRANSACTIONAL AGREEMENTS		
	Execution of PSDA, TOT Sharing Agreements, and TOT Covenant Agreements	N/A	COMPLETE
	Open Phase 1 Escrow and Phase 2 Escrow	N/A	COMPLETE
	PRE-DEVELOPMENT		
	Land & Site Planning		
	- Prepare, submit to City for approval, and obtain City's approval of, plans for Golf Course Realignment	N/A	COMPLETE
	- Master site design	N/A	COMPLETE
	Planning & Entitlements		
	- Preliminary Engineering & Mapping	N/A	COMPLETE
	- Site development plans	N/A	PA (2, 3, 4, 5, 6, and 10A): COMPLETE. PA (7, 8 and 9): within six months of Luxury Hotel opening.
	- Prepare, submit to City for approval, and obtain City's approval of, Master Site Infrastructure Improvements Design/Construction Development Drawings (relevant to particular phase)	N/A	COMPLETE
	Conditions to Closing		

¹Completion dates or timeframes listed in this table are the outside dates permissible under this Agreement and are subject to the terms of the Agreement which includes Section 602 of the Agreement. The completion outside dates of items 8, 9, 11, 13,15, 16 and 22 are a function the closing of the Recapitalization Loans. Developer shall use its diligent efforts to accomplish the closing of the Recapitalization Loans by no later than January 1, 2024, but under Section 3 of this Amendment No. 5 has the right to extend the outside date for the closing of the Recapitalization Loans to June 30, 2024. To the extent such outside date is extended, then the completion dates under items 8, 9, 11, 13,15, 16 and 22 are automatically extended to the same extent.

	Item of Performance	Start	Completion¹
	- All of Developer's Conditions Precedent to the Closing and City's Conditions Precedent to the Closing have been satisfied, or waived by the appropriate party	N/A	COMPLETE
Item #			
	CONSTRUCTION AND INSTALLATION OF MASTER SITE IMPROVEMENTS		
1.	Construct Golf Course Realignment	5/1/17	COMPLETE
2.	Install construction fencing around Luxury Hotel site as required to separate golf play	N/A	COMPLETE
3.	All other MSII	N/A	Prior to issuance of any certificate of occupancy for the vertical improvements served by those Master Site Infrastructure Improvements necessary for the subject phase of development. <i>See MSII Phasing Plan as well.</i>
	CONSTRUCTION OF PROJECT COMPONENTS		
4.	Prepare and submit to City for approval, and obtain City's approval of, Project Component (or portion thereof) Design/Construction Development Drawings	3 months prior to anticipated start of construction of applicable Project Component or portion thereof.	Prior to start of construction of applicable Project Component or portion thereof.
5.	Developer satisfies all conditions to develop set forth in Section 304 of Agreement	N/A	Prior to start of construction of applicable Project Component

EXHIBIT "A"

	Item of Performance	Start	Completion¹
6.	Luxury Hotel Site Preparation ² (PA 2)	6/30/21	COMPLETE
7.	Closing Date of Recapitalization Loans	n/a	1-1-24
8.	Completion of Luxury Hotel Guest Room Framing	n/a	6-30-24 (new Project Milestone in Amend. No.5 § 5.3)
9.	Luxury Hotel Vertical Construction ³ (PA 2)	Done	3-13-25 (new Project Milestone in Amend. No.5 § 5.3)
10.	Luxury Branded Residential Development Site Preparation (PA 3)	6/31/21	COMPLETE
11.	Luxury Branded Residential Development Vertical Construction (PA 3)	8/30/21	8/30/2026 Project Component** considered complete when 70% of units are complete.
12.	Conference and Shared Services Facility Site Preparation (PA 4)	6/30/21	COMPLETE
13.	Conference and Shared Services Facility Vertical Construction (PA 4)	8/30/21	3-13-25
14.	Lifestyle Hotel Site Preparation (PA 5)	6/30/21	COMPLETE
15.	Completion of Lifestyle Hotel Framing of Guest Rooms	n/a	8-12-26 (new Project Milestone in) Amend. No.5 § 5.3

² For all purposes of this Schedule, site preparation work consists of pre-watering, underground utilities and precise grading.

³ For all purposes of this Schedule, “commencement of vertical construction” refers to the construction of foundations/slabs (including the under slab utility work) and “vertical improvements” means such work and all improvements that follow. Completion of Luxury and Lifestyle Hotel vertical construction is completion to a point at which a temporary or permanent certificate of occupancy (allowing for opening for business) can be issued for the Luxury Hotel and Lifestyle Hotel, respectively.

EXHIBIT “A”

	Item of Performance	Start	Completion¹
16.	Lifestyle Hotel Vertical Construction (PA 5)	520 days after the closing of Recapitalization Loans but not later than 12/5/25 (new Project Milestone in Amend. No.5 § 5.3)	12-31-26 (new Project Milestone in Amend. No.5 § 5.3)
17.	Lifestyle Branded Residential Development Site Preparation (PA 6)	7/30/2021	COMPLETE
18.	Lifestyle Branded Residential Development Vertical Construction (PA 6)	4/3/25	4 years after start. Project Component** considered complete when 70% of units are complete.
19.	Promenade Mixed-Use Village (PA 7 and PA 9)	6/30/27	5 years after start. Project Component** considered complete when 70% of units are complete.
20.	Resort Residential Village (PA 8)	6/30/27	5 years after start. Project Component** considered complete when 70% of units are complete.
21.	Permanent Golf Clubhouse Site Preparation (PA 10A)	5/30/21	COMPLETE
22.	Permanent Golf Clubhouse Vertical Construction (PA 10A)	8/30/21 [done]	11/25/24
23.	Golf Bungalows Site Preparation (PA 10A)	5/30/21	COMPLETE
24.	Golf Bungalows Vertical Construction (PA 10A)	2/1/27	2/1/29

*

****However, if Developer provides evidence reasonably satisfactory to the City that then existing market conditions do not allow for the development on economically feasible terms and orderly absorption of such product type to the point of completion within said initial 5-year period, then such period shall be extended for 3 years.**

EXHIBIT B

MASTER SITE INFRASTRUCTURE PHASING PLAN

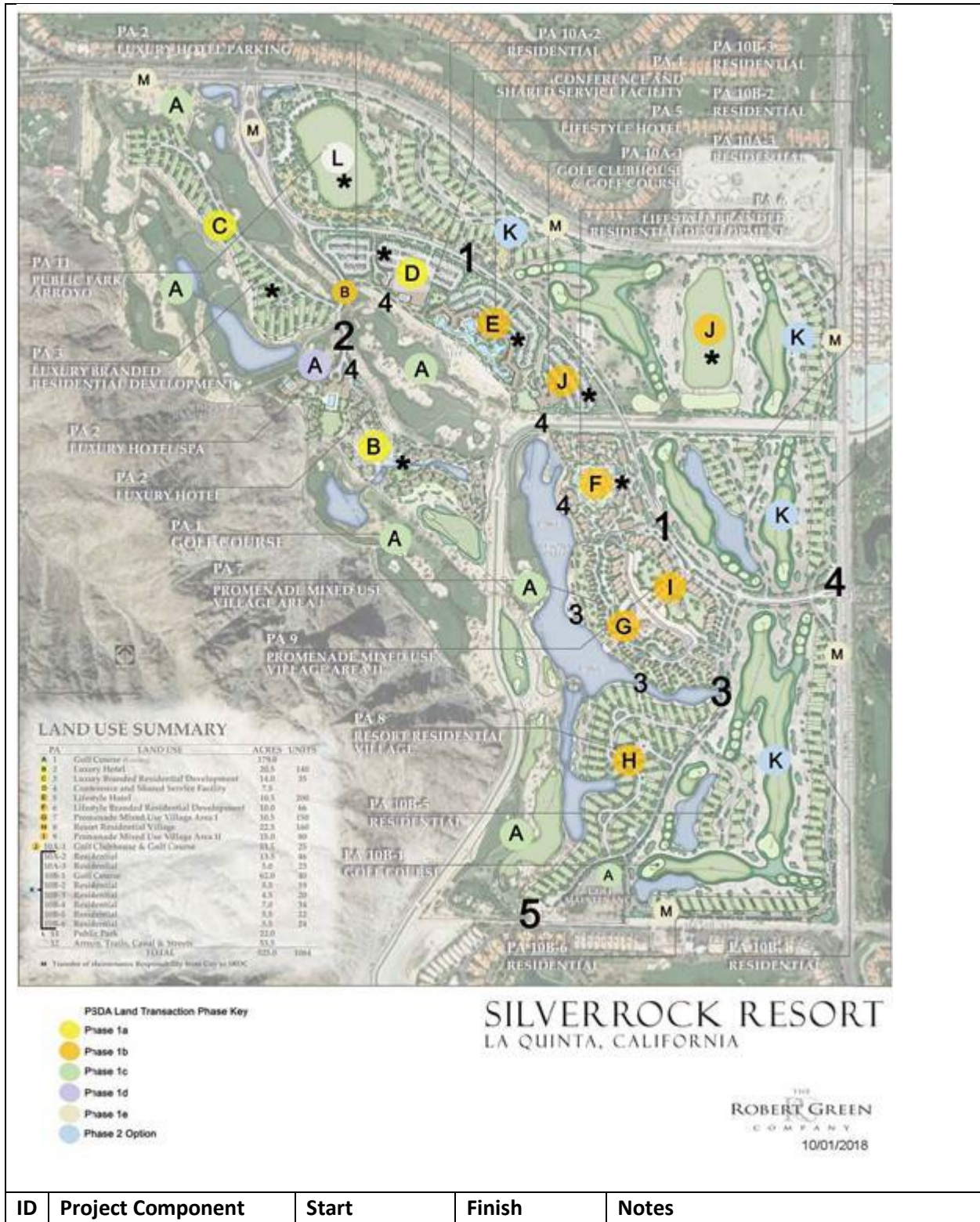


EXHIBIT "B"

B	PA 2 - Montage Hotel and Spa	8/30/2021	3/13/2025*	The completion date is a function the closing of the Recapitalization Loans. Developer shall use its diligent efforts to accomplish the closing of the Recapitalization Loans by no later than January 1, 2024 but under Section 3 of this Amendment No. 5 Developer has the right to extend the outside date for the closing of the Recapitalization Loans to June 30, 2024.
B	PA 2 - Montage Guestroom Building	8/30/2021	3/13/2025*	The completion date is a function the closing of the Recapitalization Loans. Developer shall use its diligent efforts to accomplish the closing of the Recapitalization Loans by no later than January 1, 2024 but under Section 3 of this Amendment No. 5 Developer has the right to extend the outside date for the closing of the Recapitalization Loans to June 30, 2024
C	PA 3 -Montage Branded Residences	8/30/2021	8/30/2026	**Project Component considered complete when 70% of units are complete.
D	PA 4 - Conference & Shared Services	8/30/2021	3/13/2025*	Completion tied to coincide with Montage Hotel opening
E	PA 5 - Pendry Hotel	12/5/2025	12/31/2026*	
F	PA 6 - Pendry Branded Residences	4/3/2025	+ 4 Years	4 years after start. Project Component** considered complete when 70% of units are complete.
G	PA 7 - Mixed Use Village I	6/30/2027	+ 5 Years	5 years after start. Project Component** considered complete when 70% of units are complete.
H	PA 8 - Resort Residential Village	6/30/2027	+ 5 Years	5 years after start. Project Component** considered complete when 70% of units are complete.
I	PA 9 -Mixed Use Village II	6/30/2027	+ 5 Years	5 years after start. Project Component** considered complete when 70% of units are complete.
J	PA 10 - Golf Clubhouse & Practice Range Re-Model	8/30/2021	11/25/2024	
J	PA 10 - Golf Bungalows	2/1/2027	2/1/2029	
ID	MSI	Start	Finish	
*	Mass Grade(Excl. PA 7/9, & 8)	Complete	Complete	Mixed-Use and Resort Residential Village pads to be graded after Site Development Plan approval in a second mass grade mobilization along with SR Way interim x-sec demo

EXHIBIT "B"

1	SilverRock Way (City)	10/1/2020	10/29/2024*	Street work is complete; landscape and sidewalk remain to be completed by SRDC (to be substantially complete with the opening of the Golf Clubhouse)
2	"Painted Peak" (former Ahmanson Ln)	11/1/2024	3/13/2025*	Commencement is tied to opening of Golf Clubhouse and decommissioning of Temporary Cart Barn, completion tied to coincide with Montage Hotel opening
3	Fut. Ahmanson Lane, Trails(pathway), Signage	4/26/2022	3/13/2025*	
4	Jefferson Entry, Trails(pathway), Signage	6/1/2024	12/31/2026*	Completion is linked to completion of Pendry Hotel (landscape trails/walkways).
5	CVWD Water & Sewer Improvements	8/13/2020	12/31/2026*	Per Special Agreement with CVWD; timing of improvements per Appendix 'A' (components tied to water/sewer design of PA 7, 8 &9).
<p>* The completion date is a function the closing of the Recapitalization Loans. Developer shall use its diligent efforts to accomplish the closing of the Recapitalization Loans by no later than January 1, 2024 but under Section 3 of this Amendment No. 5 Developer has the right to extend the outside date for the closing of the Recapitalization Loans to June 30, 2024</p> <p>Note: "MSI" is considered to be those improvements in a table dated 10-11-2018 provided to the City of La Quinta, and consistent with Purchase, Sale, and Development Agreement Amendment #3</p>				

EXHIBIT C

LUXURY HOTEL TOT SECOND AMENDMENT

[attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of La Quinta
78-495 Calle Tampico
La Quinta, CA 92253
Attn: City Clerk

[SPACE ABOVE FOR RECORDER.]
EXEMPT FROM RECORDER'S FEE PER GOV. CODE §27383

AMENDMENT NO. 2 to
AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS,
CONDITIONS, AND RESTRICTIONS AFFECTING REAL PROPERTY
(Luxury Hotel)

This AMENDMENT NO. 2 to AMENDED AND RESTATED AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS AFFECTING REAL PROPERTY (Luxury Hotel) (referred to herein as the “**Luxury Hotel TOT Covenant Second Amendment**” or “**Covenant Second Amendment**”) is entered into as of this ____ day of _____, 2023 (“**Covenant Second Amendment Effective Date**”), by and between the CITY OF LA QUINTA, a California municipal corporation and charter city (“**City**”), and SILVERROCK PHASE I, LLC, a Delaware limited liability company (“**Owner**”) (individually a “**Party**” and collectively the “**Parties**”).

RECITALS

A. Pursuant to that certain Agreement to Share Transient Occupancy Tax Revenue (Luxury Hotel) dated on or about November 19, 2014 (“**Luxury Hotel TOT Sharing Agreement**”) by and between City and Owner (defined therein as “Participant”), Owner, among other things, was required to enter into a “Hotel Management Agreement” with a City-approved “Hotel Manager” (as defined in the Luxury Hotel TOT Sharing Agreement) for continuous operation as the Luxury Hotel, and in exchange the City would make periodic payments to the Owner (as Participant) in specified amounts based on amounts of TOT collected from the “**Luxury Hotel,**” as set forth in that certain Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) dated May 3, 2017 and recorded on November 6, 2017 as Instrument No. 2017-0463952, as amended by that certain Amended and Restated Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) dated November 28, 2018 and recorded on even date as Instrument No. 2018-0464671, as amended by that certain Amendment No. 1 to Amended and Restated Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Luxury Hotel) recorded on October 13, 2021, as Instrument No. 2021-0606108 (collectively, the “**Luxury Hotel TOT Covenant Agreement**”). That certain real property subject to the Luxury Hotel TOT Covenant Agreement is located in the City of La Quinta, County of Riverside, State of California, which is more particularly described in the legal description attached hereto as Exhibit No. 1 and incorporated herein by this reference (the “**Site**”).

B. City agreed to sell to Owner (or Owner's affiliated predecessor-in-interest) the Site pursuant to that certain Purchase, Sale, and Development Agreement dated November 19, 2014 ("**Original PSDA**"), as amended by Amendment No. 1 to Purchase, Sale, and Development Agreement dated October 29, 2015 ("**Amendment No. 1**"), Amendment No. 2 to Purchase, Sale, and Development Agreement dated April 18, 2017 ("**Amendment No. 2**"), Amendment No. 3 to Purchase, Sale, and Development Agreement dated November, 28, 2018 ("**Amendment No. 3**"), Amendment No. 4 to Purchase, Sale and Development Agreement dated October 12, 2021 ("**Amendment No. 4**") and Amendment No. 5 to Purchase, Sale and Development Agreement dated October __, 2023 ("**Amendment No. 5**") and collectively and as may be further amended, the "**PSDA**". The PSDA sets forth the terms and conditions for City to sell to Owner the Site and certain adjacent real property (collectively, the "**Development Property**"), and for Owner to thereafter develop and operate on the Development Property a commercial project containing hotels and associated amenities, branded residential units, a mixed use village, and a resort residential village (the "**Development Project**").

C. Pursuant to the PSDA, Owner has agreed to develop on the Site a portion of the Development Project consisting of the hotel defined in the PSDA as the Luxury Hotel (the "**Hotel**").

D. Pursuant to the PSDA, Participant is required to enter into a hotel management agreement and all ancillary agreements, including, without limitation, a technical services agreement, hotel brand licensing agreement, and use and access development agreement (collectively, a "**Hotel Management Agreement**"), with a City-approved hotel operator (the "**Hotel Operator**"), who shall be responsible for the management and operation of the Hotel pursuant to the terms of the Hotel Management Agreement.

E. Owner is required to enter into and authorize for recording this Luxury Hotel TOT Covenant Second Amendment as part of the City's consideration for entering into Amendment No. 5, which, among other terms and conditions, modified the term during which rebate payments by City to Owner would be made if Owner fails to complete the Hotel by the outside completion date for the same set forth in Amendment No. 5.

COVENANTS

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, City and Owner hereby agree as follows:

1. **DEFINED TERMS.** Except as expressly defined in this Covenant Second Amendment, all capitalized words and terms shall have the same meaning ascribed to them in the Luxury Hotel TOT Covenant Agreement.
2. **MODIFICATION TO TERMINATION DATE.** The definition of Termination Date set forth in Section 1 of the Luxury Hotel TOT Covenant Agreement is hereby deleted and replaced with the following:

EXHIBIT "C"

“The term “**Termination Date**” shall mean the date that is the earlier of (i) the fifteenth (15th) anniversary of the Commencement Date less, if applicable, the number of days between the outside completion date for the Luxury Hotel under the Amendment No. 5 Revised Schedule of Performance and, if later, the date upon which Developer receives a temporary or permanent certificate of occupancy for the Luxury Hotel allowing the Luxury Hotel to be opened for business; or (ii) the date upon which this Covenant Agreement is terminated pursuant to Section 5.2 or Section 5.3.”

3. RECORDING OF THIS COVENANT SECOND AMENDMENT. Developer shall record or cause to be recorded in the Recorder’s Office this Covenant Second Amendment prior to or concurrently with the closing of the Revised Capitalization (as defined and as set forth in Amendment No. 4 to the PSDA).

4. COOPERATION OF THE PARTIES. Developer and City shall cooperate to execute (and record, if applicable) any other documents or amendments (including but not limited to amendments to the Luxury Hotel TOT Sharing Agreement) if necessary or convenient to memorialize the terms and conditions in Section 8.2 of Amendment No. 4 to the PSDA relating to the adjusted percentages to be applied to the Luxury Hotel TOT Covenant Agreement.

5. REMAINING PROVISIONS IN FULL FORCE AND EFFECT. Except as modified by this Covenant Second Amendment, the terms and conditions set forth in the Luxury Hotel TOT Covenant Agreement shall remain in full force and effect.

6. COUNTERPARTS. This Covenant Second Amendment may be executed in counterparts, each of which, when this Covenant Second Amendment has been signed by all of the parties hereto, shall be deemed an original, and each such counterpart shall constitute one and the same instrument.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Covenant Second Amendment to be effective as of the Covenant Second Amendment Effective Date.

“CITY”

CITY OF LA QUINTA, a California municipal corporation and charter city

Date: _____, 2023

By: _____
Jon McMillen, City Manager

ATTEST:

By: _____
Monika Radeva, City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

William H. Ihrke, City Attorney

[continued on next page]

“Owner”

SILVERROCK PHASE I, LLC,
a Delaware limited liability company

By: The Robert Green Company,
a California corporation
Its: Manager

Date: _____, 2023

By: _____
Name: Robert S. Green, Jr.
Its: President and Chief Executive Officer

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

(Seal)

EXHIBIT NO. 1

LEGAL DESCRIPTION OF SITE

Those portions of Sections 5, 6 and 8 Township 6 South, Range 7 East, San Bernardino Meridian, in the City of La Quinta, County of Riverside, State of California, described as follows:

Parcels 3 and 4 of Parcel Map 37207 per map filed in Book 242, Pages 72 through 87 inclusive, of Parcel Maps, in the office of the County Recorder of Riverside County, State of California.

EXHIBIT D

LIFESTYLE HOTEL TOT SECOND AMENDMENT

[attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of La Quinta
78-495 Calle Tampico
La Quinta, CA 92253
Attn: City Clerk

[SPACE ABOVE FOR RECORDER.]
EXEMPT FROM RECORDER'S FEE PER GOV. CODE §27383

AMENDMENT NO. 2 to
AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS
AFFECTING REAL PROPERTY
(Lifestyle Hotel)

This AMENDMENT NO. 2 to AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS AFFECTING REAL PROPERTY (Lifestyle Hotel) (referred to herein as the “**Lifestyle Hotel TOT Covenant Second Amendment**” or “**Covenant Second Amendment**”) is entered into as of this ____ day of _____, 2023 (“**Covenant Second Amendment Effective Date**”), by and between the CITY OF LA QUINTA, a California municipal corporation and charter city (“**City**”), and SILVERROCK PHASE I, LLC, a Delaware limited liability company (“**Owner**”) (individually a “**Party**” and collectively the “**Parties**”).

RECITALS

A. Pursuant to that certain Agreement to Share Transient Occupancy Tax Revenue (Lifestyle Hotel) dated on or about November 28, 2018 (“**Lifestyle Hotel TOT Sharing Agreement**”) by and between City and Owner (defined therein as “Participant”), Owner, among other things, was required to enter into a “Hotel Management Agreement” with a City-approved “Hotel Manager” (as defined in the Lifestyle Hotel TOT Sharing Agreement) for continuous operation as the Lifestyle Hotel, and in exchange the City would make periodic payments to the Owner (as Participant) in specified amounts based on amounts of TOT collected from the “**Lifestyle Hotel**,” as set forth in that certain Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Lifestyle Hotel), dated November 28, 2018 and recorded in on even date as Instrument No. 2018-0464678, as amended by that certain Amendment No. 1 to Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (Lifestyle Hotel) recorded on October 13, 2021, as Instrument No. 2021-0606083 (collectively, the “**Lifestyle Hotel TOT Covenant Agreement**”). That certain real property subject to the Lifestyle Hotel TOT Covenant Agreement is located in the City of La Quinta, County of Riverside, State of California, which is more particularly described in the legal description attached hereto as Exhibit No. 1 and incorporated herein by this reference (the “**Site**”).

B. City agreed to sell to Owner (or Owner’s affiliated predecessor-in-interest) the Site pursuant to that certain Purchase, Sale, and Development Agreement dated November 19, 2014 (“**Original PSDA**”), as amended by Amendment No. 1 to Purchase, Sale, and Development Agreement dated October 29, 2015 (“**Amendment No. 1**”),

EXHIBIT “D”

Amendment No. 2 to Purchase, Sale, and Development Agreement dated April 18, 2017 (“**Amendment No. 2**”), Amendment No. 3 to Purchase, Sale, and Development Agreement dated November, 28, 2018 (“**Amendment No. 3**”), Amendment No. 4 to Purchase, Sale and Development Agreement dated October 12, 2021 (“**Amendment No. 4**”) and Amendment No. 5 to Purchase, Sale and Development Agreement dated October __, 2023 (“**Amendment No. 5**”) and collectively and as may be further amended, the “**PSDA**”). The PSDA sets forth the terms and conditions for City to sell to Owner the Site and certain adjacent real property (collectively, the “**Development Property**”), and for Owner to thereafter develop and operate on the Development Property a commercial project containing hotels and associated amenities, branded residential units, a mixed use village, and a resort residential village (the “**Development Project**”).

C. Pursuant to the PSDA, Owner has agreed to develop on the Site a portion of the Development Project consisting of the hotel defined in the PSDA as the Lifestyle Hotel (the “**Hotel**”).

D. Pursuant to the PSDA, Participant is required to enter into a hotel management agreement and all ancillary agreements, including, without limitation, a technical services agreement, hotel brand licensing agreement, and use and access development agreement (collectively, a “**Hotel Management Agreement**”), with a City-approved hotel operator (the “**Hotel Operator**”), who shall be responsible for the management and operation of the Hotel pursuant to the terms of the Hotel Management Agreement.

E. Owner is required to enter into and authorize for recording this Lifestyle Hotel TOT Covenant Second Amendment as part of the City’s consideration for entering into Amendment No. 5, which, among other terms and conditions, modified the term during which rebate payments by City to Owner would be made if Owner fails to complete the Hotel by the outside completion date for the same set forth in Amendment No. 5.

COVENANTS

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, City and Owner hereby agree as follows:

7. **DEFINED TERMS.** Except as expressly defined in this Covenant Second Amendment, all capitalized words and terms shall have the same meaning ascribed to them in the Lifestyle Hotel TOT Covenant Agreement.

8. **MODIFICATION TO TERMINATION DATE.** The definition of Termination Date set forth in Section 1 of the Lifestyle Hotel TOT Covenant Agreement is hereby deleted and replaced with the following:

“The term “**Termination Date**” shall mean the date that is the earlier of (i) the fifteenth (15th) anniversary of the Commencement Date less, if applicable, the number of days between the outside completion date for the Lifestyle Hotel under the Amendment No. 5 Revised Schedule of Performance and, if later, the date upon which Developer

EXHIBIT “D”

receives a temporary or permanent certificate of occupancy for the Lifestyle Hotel allowing the Lifestyle Hotel to be opened for business; or (ii) the date upon which this Covenant Agreement is terminated pursuant to Section 5.2 or Section 5.3.”

9. RECORDING OF THIS COVENANT SECOND AMENDMENT. Developer shall record or cause to be recorded in the Recorder’s Office this Covenant Second Amendment prior to or concurrently with the closing of the Revised Capitalization (as defined and as set forth in Amendment No. 4 to the PSDA).

10. COOPERATION OF THE PARTIES. Developer and City shall cooperate to execute (and record, if applicable) any other documents or amendments (including but not limited to amendments to the Lifestyle Hotel TOT Sharing Agreement) if necessary or convenient to memorialize the terms and conditions in Section 8.2 of Amendment No. 4 to the PSDA relating to the adjusted percentages to be applied to the Lifestyle Hotel TOT Covenant Agreement.

11. REMAINING PROVISIONS IN FULL FORCE AND EFFECT. Except as modified by this Covenant Second Amendment, the terms and conditions set forth the Lifestyle Hotel TOT Covenant Agreement shall remain in full force and effect.

12. COUNTERPARTS. This Covenant Second Amendment may be executed in counterparts, each of which, when this Covenant Second Amendment has been signed by all of the parties hereto, shall be deemed an original, and each such counterpart shall constitute one and the same instrument.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Covenant Second Amendment to be effective as of the Covenant Second Amendment Effective Date.

“CITY”

CITY OF LA QUINTA, a California municipal corporation and charter city

Date: _____, 2023

By: _____
Jon McMillen, City Manager

ATTEST:

By: _____
Monika Radeva, City Clerk

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

William H. Ihrke, City Attorney

[continued on next page]

“Owner”

SILVERROCK PHASE I, LLC,
a Delaware limited liability company

By: The Robert Green Company,
a California corporation
Its: Manager

Date: _____, 2023

By: _____
Name: Robert S. Green, Jr.
Its: President and Chief Executive Officer

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

(Seal)

EXHIBIT NO. 1

LEGAL DESCRIPTION OF SITE

Those portions of Sections 5, 6 and 8 Township 6 South, Range 7 East, San Bernardino Meridian, in the City of La Quinta, County of Riverside, State of California, described as follows:

Parcel 7 of Parcel Map 37207 per map filed in Book 242, Pages 72 through 87 inclusive, of Parcel Maps, in the office of the County Recorder of Riverside County, State of California.

[CLICK HERE to Return to Agenda](#)