

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92330  
Attention: City Clerk

Space Above This Line for Recorder's Use  
(Exempt from Recording Fees per Gov't Code, § 6103)

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF LAKE ELSINORE AND RIALTO  
DEVELOPMENT CORPORATION, WHICH DOES BUSINESS AS LD  
JOHNSON COMPANIES, FOR RAMSGATE**

This First Amendment ("**First Amendment**") to the Development Agreement between the City of Lake Elsinore ("**City**") and Rialto Development Corporation ("**Rialto**"), which does business as LD Johnson Companies, for Ramsgate ("**Development Agreement**"), is entered into by and between the City and SPT-Lake Elsinore Holding Company, LLC ("**SPT**"), as of the Effective Date (defined below). The City and SPT are referred to individually as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

The City and SPT enter into this First Amendment with reference to the following facts, each of which are acknowledged as true and correct:

A. On June 20, 1990, the City approved and adopted the Development Agreement, which was recorded on June 27, 1990 in the Official Records of Riverside County, California as Instrument No. 237507.

B. The original subject of the Development Agreement concerned approximately 1,190 acres of the 1,291-acre "Ramsgate Specific Plan" ("**SP**"), a planned development community located within the City, principally within Township 5 South, Range 4 West, San Bernardino Baseline and Meridian, which has increased in acreage since the 1990s.

C. As amended in 2006, the SP includes eleven tentative tract maps ("**TTMs**"): Nos. 25472 through 25479, 30698, 34231, and 33725. Of these TTMs, Nos. 30698 and 33725 (each approximately 50 acres in size) were never made subject to the Development Agreement. This First Amendment is intended to make TTM No. 33725 subject to the Development Agreement.

D. White Rock Acquisition Company, L.P. ("**White Rock**") became the successor in interest to Rialto with respect to the SP, and White Rock also became the assignee of all of Rialto's rights, title, and interests in the Development Agreement.

E. SPT became the successor in interest to White Rock with respect to TTM Nos. 25473 and 25475, and SPT also became the assignee of all of White Rock's rights, title, interests, and obligations in the Development Agreement to the extent such rights, title, interests, and obligations relate to TTM Nos. 25473 and 25475. In May 2011, SPT conveyed all interests in TTM No. 25473 to Hill Country S.A., LTD and American Superior Land, LLC.

F. On September 26, 2006, the City approved TTM No. 33725, which is held by SPT. On or about the same time, the City approved (1) General Plan Amendment No. 2006-05, (2) Specific Plan Amendment No. 89-1 (Fifth Revision), (3) Zone Change No. 2006-05, and (4) Zone Change No. 2006-07, which, among other things, incorporated TTM No. 33725 into the SP as Planning Area 10 (collectively, the "2006 Development Approvals").

G. Between 2003 and 2022, the City and various successors in interest to Rialto, including SPT, executed nine operating memoranda of understanding (collectively, the "**OMOU**s"), consistent with Section 7.3 of the Development Agreement ("Operating Memoranda and Amendments"). The OMOUs are summarized hereinbelow and incorporated herein by reference. Among other things, these OMOUs tolled the Development Agreement's 15-year effective period, consistent with Section 10 ("Permitted Delays"), extending the effective period for TTM No. 25475 to not later than December 31, 2027. The following summarizes the specific extensions provided by the OMOUs:

- a. The First OMOU between the City and White Rock (2003), extending the effective period for all TTMs until June 27, 2007.
- b. The Second OMOU between the City and White Rock (2006), extending the effective period for TTM Nos. 25473, 25475, and 34231 until June 27, 2010.
- c. The Third OMOU between the City and Centex Homes (2006), extending the effective period for TTM Nos. 25476 through 25479 until June 27, 2010.
- d. The Fourth OMOU among the City, Centex Homes, and Richmond American Homes of Maryland, Inc. ("**RAH**") (2010), extending the effective period for TTM Nos. 25476 through 25479 until June 27, 2012.
- e. The Fifth OMOU among the City, SPT, and MBK Homes Ltd. ("**MBK**") (2010), extending the effective period for TTM Nos. 25473, 25475, and 34231 until June 27, 2012.
- f. The Sixth OMOU between the City and SPT (2011), extending the effective period for TTM Nos. 25473 and 25475 until December 31, 2022.
- g. The Seventh OMOU between the City and RAH (2012), extending the effective period for TTM Nos. 25476 through 25479 until June 27, 2016.
- h. The Eighth OMOU between the City and MBK (2012), extending the effective period for TTM No. 34231 until June 27, 2016.

- i. The Ninth OMOU between the City and SPT (2022), extending the effective period for TTM No. 25475 to the earlier of either (1) 48 months after SCE is able to provide necessary power to serve TTM No. 25475 or (2) December 31, 2027.

H. As approved in 2006, TTM No. 33725 had a 2-year effective period. It subsequently received 8.5 years of state-law legislative extensions and 6 years of discretionary, City-approved extension, which have extended its effective period until March 26, 2023.

I. The Parties now desire to amend the Development Agreement pursuant to Section 7.3 and Government Code section 65868 in order to include the 2006 Development Approvals, including TTM 33725 as part of the Project as defined in the Development Agreement subject to all conditions of approval and such future discretionary approvals of the City required in order to complete the Project.

J. Nearly all of the SP has been developed, except for TTM 25473 (164 units) and SPT's TTM Nos. 25475 (131 homes) and 33725 (204 homes). SPT has diligently attempted to complete development of TTM Nos. 25475 and 33725. However, neither TTM can be developed at present because Southern California Edison's ("SCE") existing power grid has insufficient capacity to serve these TTMs. SCE has stated that design and construction of the necessary infrastructure to provide sufficient power will take 3 to 5 years (2025-2027).

K. In recognition that SCE's delayed ability to provide power constitutes a condition beyond the City and SPT's control, the Parties executed the Ninth OMOU to extend the effective period of the Development Agreement as to TTM No. 25475 until the earlier of either (1) 48 months after SCE is able to provide necessary power to serve TTM Nos. 25475 or (2) an additional 5 years, which would result in the Development Agreement remaining effective until December 31, 2027.

L. Because SCE's inability to provide power equally affects TTM No. 33725 as TTM No. 25475, the Parties agree that TTM No. 33725 should be made subject to the Development Agreement, including the provisions of Section 8.5 that "the term of any subdivision map or parcel map" subject to the Development Agreement "will be extended for the term of this agreement." The Parties intend for the effective period of TTM No. 33725 to be extended together with TTM 25475 consistent with Section 8.5 of the Development Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Section 2.1 – Definition of "Agreement"**. Section 2.1 of the Development Agreement is deleted in its entirety and replaced with the following:

"Agreement" means this Development Agreement, the First Amendment and the OMOUs together with any future amendments

or OMOU as may be entered into in writing by the Parties in accordance with the terms hereof and applicable laws.”

2. **Section 2.18 – Definition of “Project”.** Section 2.18 of the Development Agreement is deleted in its entirety and replaced with the following:

“Project” means the Development described in this Agreement and the Specific Plan, including, without limitation, Development of Tentative Tract Maps No. 33725.

3. **Section 8.5 – Life of Subdivision or Parcel Maps.** Section 8.5 of the Development Agreement is deleted in its entirety and replaced with the following:

Pursuant to Government Code section 66452.6 subdivision (a), the term of any subdivision map or parcel map approved with respect to the Project, including, without limitation, Tentative Tract Maps No. 33725, will be extended for the term of this Agreement.

4. **Section 17 – Addresses for Notices.** The addresses printed below the subheading “Developer” (beginning at line 13) are deleted in their entirety and replaced with the following:

SPT-AREP III Tuscany Associates LLC  
c/o Shopoff Realty Investments  
18565 Jamboree Road, Suite 200  
Irvine, CA 92612  
Attn: Brian Rupp

With Copy To:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
2010 Main Street, 8th Floor  
Irvine, CA 92614  
Attn: Andrew Lee, Esq.

5. **Exhibit “A” – Property.** Exhibit “A” of the Development Agreement is deleted in its entirety and replaced with a new Exhibit “A,” which is attached as Exhibit A to this First Amendment.

6. **Exhibit “B” – Development Fees.** In connection with the Ninth OMOU, SPT and the City agreed to a revised schedule of Development Impact Fees and Development Agreement Fees to be paid by SPT or its successors and assigns upon issuance of building permits for each residential unit in TTM 25475. The revised schedule is further amended as set forth in Exhibit “B” attached hereto and incorporated herein by reference to include the Development Impact Fees and Development Agreement Fees applicable to TTM 33725.

## 7. Miscellaneous

(a) Full Force and Effect. This First Amendment together with the Development Agreement and the OMOUs constitute the entire agreement between the City and SPT regarding the matters set forth herein or therein and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements, or understandings. Except as otherwise specifically provided herein, the Development Agreement shall remain unmodified and shall continue in full force and effect.

(b) Defined Terms. Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Development Agreement.

(c) Vested Right. For purposes of the 2006 Development Approvals, including TTM 33725, the vested rights conferred by this First Amendment shall be effective as to the City's land use regulations, General Plan, RSP, ordinances and official policies in effect of the Effective Date. By entering into this First Amendment, SPT is obtaining a vested right to proceed with the development of TTM 33725 subject to all conditions of approval and such future discretionary approvals of the City required in order to compete the Project.

(d) Execution in Counterparts. This First Amendment may be signed by the Parties in one or more counterparts, which taken together shall constitute one and the same instrument. This First Amendment may also be delivered by e-mail transmission with the same force and effect as if the originally executed copies of this First Amendment were delivered to all Parties.

(e) Effective Date. This First Amendment shall become effective ("**Effective Date**") upon the later of either: (1) the date that is thirty (30) days after the date the ordinance that approves this First Amendment is adopted; or (2) in the event that this First Amendment is challenged by one or more judicial actions or a referendum petition, the date that all such judicial actions and/or referendum petitions have been fully adjudicated, with no further rights of appeal, to the satisfaction of the Parties.

(f) Authority. Each of the signatories to this First Amendment represents and warrants, each to the other, that he/she has full power and authority to execute this First Amendment and to bind the respective Parties to the provisions of this First Amendment.

[signatures on following page]

IN WITNESS WHEREOF, the City and SPT have executed this First Amendment as of the dates set forth below.

**CITY OF LAKE ELSINORE,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jason Simpson, City Manager

ATTESTED:

\_\_\_\_\_  
Candice Alvarez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Barbara Zeid Leibold  
City Attorney

**SPT-AREP III TUSCANY ASSOCIATES LLC,**  
a Delaware limited liability company

By: Shopoff Partners, L.P.,  
a Delaware limited partnership,  
sole member

By: Shopoff General Partner, LLC,  
a Delaware limited liability company,  
general partner

By: Shopoff Properties Trust, Inc.,  
a Maryland corporation,  
manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
William A. Shopoff, President  
and CEO

**EXHIBIT A**  
**Legal Description**

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**EXHIBIT “B”**

**DEVELOPMENT AGREEMENT AND DEVELOPMENT IMPACT FEES<sup>1</sup>**

<b>Fee</b>	<b>TTM 25475</b>	<b>TTM 33725</b>
<b>Development Agreement Fees</b>	2022 = \$5,500/unit 2023 = \$5,500/unit 2024 = \$5,500/unit 2025 = \$5,500/unit 2026 = \$5,500/unit 2027 = \$5,500/unit	2022 = \$5,500/unit 2023 = \$5,500/unit 2024 = \$5,500/unit 2025 = \$5,500/unit 2026 = \$5,500/unit 2027 = \$5,500/unit
<b>MSHCP*</b>  <b>*subject to citywide increases</b>	<b>none</b>	<b>Residential</b> < 8 DUs/acre = \$3,947/unit 8.1 - 14 DUs/acre = \$1,645/unit > 14.1 DUs/acre = \$728/unit <b>Commercial = \$17,764/acre</b> <b>Industrial = \$17,764/acre</b>
<b>TUMF*</b>  <b>*subject to citywide increases</b>	<b>SFR = \$10,104/unit</b> <b>MFR = \$6,580/unit</b> <b>Retail = \$7.72/sq. ft.</b> <b>Service = \$4.89/sq. ft.</b> <b>Industrial = \$1.86/sq. ft.</b> <b>Class A/B Office = \$2.45/sq. ft.</b>	<b>SFR = \$10,104/unit</b> <b>MFR = \$6,580/unit</b> <b>Retail = \$7.72/sq. ft.</b> <b>Service = \$4.89/sq. ft.</b> <b>Industrial = \$1.86/sq. ft.</b> <b>Class A/B Office = \$2.45/sq. ft.</b>
<b>Traffic Impact Fee*</b>  <b>*subject to citywide increases</b>	<b>SFR = \$1,369.00/unit</b> <b>MFR = \$959.00/unit</b> <b>Commercial = \$3.84/sq. ft.</b> <b>Office = \$1.45/sq. ft.</b> <b>Industrial = \$0.81/sq. ft.</b>	<b>SFR = \$1,369.00/unit</b> <b>MFR = \$959.00/unit</b> <b>Commercial = \$3.84/sq. ft.</b> <b>Office = \$1.45/sq. ft.</b> <b>Industrial = \$0.81/sq. ft.</b>
<b>Park Capital Improvement Fund (Quimby) *</b>  <b>*subject to citywide increases</b>	<b>SFR = \$1,600/unit</b> <b>Duplexes = \$1,500/unit</b> <b>Triplexes = \$1,500/unit</b> <b>Fourplexes = \$1,450/unit</b> <b>Apartments = \$1,400/unit</b>	<b>SFR = \$1,600/unit</b> <b>Duplexes = \$1,500/unit</b> <b>Triplexes = \$1,500/unit</b> <b>Fourplexes = \$1,450/unit</b> <b>Apartments = \$1,400/unit</b>

<sup>1</sup> All applicable Development Impact Fees are subject to citywide increases and shall be paid at the rate in effect at the time such fees are paid.



<b>Library Capital Improvement Fund Fee*</b>  *subject to citywide increases	<b>\$150/residential unit</b>	<b>\$150/residential unit</b>
<b>Fire Facility Impact Fee*</b>  *subject to citywide increases	<b>None</b>  Fully satisfied by dedication of Fire Station in TTM 25479	<b>SFR = \$751/unit</b> <b>MFR = \$612/unit</b> <b>Office = \$337/ 1000 sq. ft.</b> <b>Retail = \$489/1000 sq. ft.</b> <b>Industrial = \$159/1000 sq. ft.</b>
<b>Public Building Impact Fee*</b>  *subject to citywide increases	<b>SFR = \$2,481/unit</b> <b>MFR 2-4 units = \$2,135/unit</b> <b>MFR 5+ = \$1,239/unit</b> <b>Office = \$337/1000 sq. ft.</b> <b>Retail = \$108/1000 sq. ft.</b> <b>Industrial = \$36/1000 sq. ft.</b>	<b>SFR = \$2,481/unit</b> <b>MFR 2-4 units = \$2,135/unit</b> <b>MFR 5+ = \$1,239/unit</b> <b>Office = \$337/1000 sq. ft.</b> <b>Retail = \$108/1000 sq. ft.</b> <b>Industrial = \$36/1000 sq. ft.</b>
<b>Storm Drain Fee/Acre</b>	<b>Subject to district-wide increases pursuant to Citywide Ordinance</b>  \$7,155/acre (Third Street Dist) \$7,120/acre (Arroyo Del Toro)	<b>Subject to district-wide increases pursuant to Citywide Ordinance</b>
<b>Kangaroo Rat Fee</b>	<b>none</b>	<b>none</b>
<b>Affordable Housing Fees</b>	<b>none</b>	<b>none</b>