

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 among the City, SPT-AREP III Tuscany Associates, LLC ("**SPT**") and Hill Country S.A., Ltd., a Texas limited partnership (doing business in California as Hill Country S.A., L.P.) and American Superior Land, LLC, a Delaware limited liability company (collectively "**Richland**"), as of the Effective Date (defined below). The City, SPT and Richland are referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

The City, SPT and Richland 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 of its interests in TTM No. 25473 to Richland.

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"**), 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:

- i The First OMOU between the City and White Rock (2003), extending the effective period for all TTMs until June 27, 2007.
- ii 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.
- iii The Third OMOU between the City and Centex Homes (2006), extending the effective period for TTM Nos. 25476 through 25479 until June 27, 2010.
- iv 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.
- v 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.
- vi The Sixth OMOU between the City and SPT (2011), extending the effective period for TTM Nos. 25473 and 25475 until December 31, 2022.
- vii The Seventh OMOU between the City and RAH (2012), extending the effective period for TTM Nos. 25476 through 25479 until June 27, 2016.
- viii The Eighth OMOU between the City and MBK (2012), extending the effective period for TTM No. 34231 until June 27, 2016.

- ix 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 (as defined below) is able to provide necessary power to serve TTM No. 25475 or (2) December 31, 2027.
- x The Tenth OMOU between the City and Richland (2022), extending the effective period for TTM No. 25473 to the earlier of either (1) 48 months after SCE (as defined below) is able to provide necessary power to serve TTM No. 25473 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. SPT now desires 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 of TTM 33725 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 Richland's TTM 25473 (164 units) and SPT's TTM Nos. 25475 (131 homes) and 33725 (204 homes). Richland has diligently attempted to complete development of TTM No. 25473 and SPT has diligently attempted to complete development of TTM Nos. 25475 and 33725. However, TTM Nos. 25473, 25475 and 33725 cannot 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 Parties' control, SPT and the City executed the Ninth OMOU and Richland and the City executed the Tenth OMOU to extend the effective period of the Development Agreement until the earlier of either (1) 48 months after SCE is able to provide necessary power to serve SPT's TTM Nos. 25475 or Richland's TTM 25473, respectively, or (2) December 31, 2027.

L. Because SCE's inability to provide power equally affects TTM No. 33725, SPT requested that TTM No. 33725 be made subject to the Development Agreement, including the provisions of Section 8.5, which provide that "the term of any subdivision map or parcel map" subject to the Development Agreement "will be extended for the term of this agreement." This First Amendment expands the geographical boundary of the Development Agreement to include TTM 33725 and extends the effective period of TTM No. 33725 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 to this Agreement, and the operating memoranda of understanding (“**OMOU**s”) that have been executed pursuant to Section 7.3 of this Agreement and which are incorporated herein by reference together with any future amendments or **OMOU**s 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 Nos. 25473, 25475 and 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 Nos. 25473, 25475 and 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: 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: John Condas, Esq.

Richland: Hill Country S.A., Ltd. and
American Superior Land, LLC
c/o Richland Communities
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attention: Mike Byer

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 and Tenth OMOUs, the Parties agreed to a revised schedule of Development Impact Fees and Development Agreement Fees to be paid by Richland r its successors and assigns upon issuance of building permits for each residential unit in TTM 25473 and 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, SP, ordinances, and official policies in effect as 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 of TTM 33725 and such future discretionary approvals of the City required in order to complete 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.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates set forth above.

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

[Signatures Continued on Next Page]

SPT

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

By: _____
Brian G. Rupp, Executive Vice
President, Real Estate

RICHLAND

HILL COUNTRY S.A., LTD,
a Texas limited partnership

By: Richland Properties, Inc., a Texas
corporation

By: _____
Name: John C. Troutman
Title: Vice President

AMERICAN SUPERIOR LAND, LLC,
a Delaware limited liability company

By: _____
Name: John C. Troutman
Title: Vice President

EXHIBIT A
Legal Description

[To Be Inserted]

EXHIBIT “B”

DEVELOPMENT AGREEMENT AND DEVELOPMENT IMPACT FEES¹

| Fee | TTM 25473 and 25475 | TTM 33725 |
|--|--|---|
| Development Agreement Fees | 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 |
| MSHCP* *subject to citywide increases | none | Residential < 8 DUs/acre = \$3,947/unit 8.1 - 14 DUs/acre = \$1,645/unit > 14.1 DUs/acre = \$728/unit Commercial = \$17,764/acre Industrial = \$17,764/acre |
| TUMF* *subject to citywide increases | SFR = \$10,104/unit MFR = \$6,580/unit Retail = \$7.72/sq. ft. Service = \$4.89/sq. ft. Industrial = \$1.86/sq. ft. Class A/B Office = \$2.45/sq. ft. | SFR = \$10,104/unit MFR = \$6,580/unit Retail = \$7.72/sq. ft. Service = \$4.89/sq. ft. Industrial = \$1.86/sq. ft. Class A/B Office = \$2.45/sq. ft. |
| Traffic Impact Fee* *subject to citywide increases | SFR = \$1,369.00/unit MFR = \$959.00/unit Commercial = \$3.84/sq. ft. Office = \$1.45/sq. ft. Industrial = \$0.81/sq. ft. | SFR = \$1,369.00/unit MFR = \$959.00/unit Commercial = \$3.84/sq. ft. Office = \$1.45/sq. ft. Industrial = \$0.81/sq. ft. |
| Park Capital Improvement Fund (Quimby) * *subject to citywide increases | SFR = \$1,600/unit Duplexes = \$1,500/unit Triplexes = \$1,500/unit Fourplexes = \$1,450/unit Apartments = \$1,400/unit | SFR = \$1,600/unit Duplexes = \$1,500/unit Triplexes = \$1,500/unit Fourplexes = \$1,450/unit Apartments = \$1,400/unit |

¹ 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.

EXHIBIT “B” continued

| Fee | TTM 25473 and 25475 | TTM 33725 |
|---|---|---|
| Library Capital Improvement Fund Fee* *subject to citywide increases | \$150/residential unit | \$150/residential unit |
| Fire Facility Impact Fee* *subject to citywide increases | None Fully satisfied by dedication of Fire Station in TTM 25479 | SFR = \$751/unit MFR = \$612/unit Office = \$337/ 1000 sq. ft. Retail = \$489/1000 sq. ft. Industrial = \$159/1000 sq. ft. |
| Public Building Impact Fee* *subject to citywide increases | SFR = \$2,481/unit MFR 2-4 units = \$2,135/unit MFR 5+ = \$1,239/unit Office = \$337/1000 sq. ft. Retail = \$108/1000 sq. ft. Industrial = \$36/1000 sq. ft. | SFR = \$2,481/unit MFR 2-4 units = \$2,135/unit MFR 5+ = \$1,239/unit Office = \$337/1000 sq. ft. Retail = \$108/1000 sq. ft. Industrial = \$36/1000 sq. ft. |
| Storm Drain Fee/Acre* *subject to citywide increases | TTM 25473 \$2,975.00/acre (Railroad Dist. #1) TTM 25475 \$3,710/acre (Railroad Dist. #2) | \$3,710/acre (Railroad Dist. #2) |
| Kangaroo Rat Fee* *subject to citywide increases | \$500/gross acre | \$500/gross acre |
| Affordable Housing Fees | none | none |