

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  
SILVERROCK DEVELOPMENT COMPANY,  
LLC, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
Case No.: 24-11647 (MFW)  
(Jointly Administered)  
  
Ref. Docket Nos. 951, 952 & 955

**NOTICE OF FILING OF PLAN SUPPLEMENT IN CONNECTION WITH THE  
FIRST AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT  
CHAPTER 11 PLAN OF LIQUIDATION OF SILVERROCK  
DEVELOPMENT COMPANY, LLC AND ITS DEBTOR AFFILIATES**

**PLEASE TAKE NOTICE** that, on April 8, 2026, the above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) filed the *First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtors Affiliates* [Docket No. 952] (as the same may be amended, supplemented, revised, or otherwise modified from time to time, the “Combined Disclosure Statement and Plan”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, on April 8, 2026, the Court entered an order approving the Combined Disclosure Statement and Plan on an interim basis for solicitation purposes only and establishing procedures for the solicitation and tabulation of votes to accept or reject the Combined Disclosure Statement and Plan [Docket No. 951] (the “Interim Approval and Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Interim Approval and Procedures Order, the Debtors hereby submit this plan supplement (the “Plan Supplement”), consisting of the following documents, each as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Combined Disclosure Statement and Plan:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: SilverRock Development Company, LLC (5730), RGC PA 789, LLC (5996), SilverRock Lifestyle Residences, LLC (0721), SilverRock Lodging, LLC (4493), SilverRock Luxury Residences, LLC (6598) and SilverRock Phase I, LLC (2247). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 343 Fourth Avenue, San Diego, CA 92101.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Combined Disclosure Statement and Plan.

| Exhibit | Plan Supplement Document                                                 |
|---------|--------------------------------------------------------------------------|
| A       | Litigation Trust Agreement <sup>3</sup>                                  |
| B       | Schedule of Retained Causes of Action                                    |
| C       | EB-5 Settlement Agreement                                                |
| D       | Second Amendment to Credit Facility Loan and Security Agreement          |
| E       | Form of General Release (For Poppy Bank Backstop Indemnity Participants) |

**PLEASE TAKE FURTHER NOTICE** that, subject to the terms and conditions of the Combined Disclosure Statement and Plan, the Debtors reserve all rights to amend, revise, or supplement this Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Combined Disclosure Statement and Plan, or any such other date as may be provided for by the Combined Disclosure Statement and Plan or by order of the Court.

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “Combined Hearing”) to consider final approval of the disclosures contained in and confirmation of the Combined Disclosure Statement and Plan shall be held before the Honorable Mary F. Walrath, at the Court, 824 N. Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801 on May 20, 2026 at 10:30 a.m. (ET) and May 21, 2026 at 10:30 a.m. (ET). See Docket No. 955. The Combined Hearing may be adjourned from time to time by the Court or the Debtors without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Court and served on parties entitled to notice.

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<sup>3</sup> The identity of the initial Liquidating Trustee will be provided by the Debtors in a subsequent document.

Dated: April 30, 2026  
Wilmington, Delaware

**WILSON SONSINI GOODRICH & ROSATI, P.C.**

/s/ Erin R. Fay

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**EXHIBIT A**

**Litigation Trust Agreement**

## LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “**Litigation Trust Agreement**”) is made and entered into as of [ ], 2026, by and among SilverRock Development Company, LLC and its affiliated debtors (each, a “**Debtor**” and, collectively, the “**Debtors**”)<sup>1</sup>, as debtors and debtors in possession in the jointly administered Chapter 11 cases (Case No. 24-11647 (MFW)) (collectively, the “**Cases**”) pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and [*Litigation Trustee*]<sup>2</sup>, not in any individual capacity, but solely as trustee (the “**Litigation Trustee**”).

### RECITALS

**WHEREAS**, on August 5, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the Bankruptcy Court; and

**WHEREAS**, on [ ] 2026, the Debtors filed the *Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates* [Docket No. \_\_\_\_] (as amended, modified or supplemented, the “**Combined Disclosure Statement and Plan**”)<sup>3</sup>; and

**WHEREAS**, on [ ], 2026, the Bankruptcy Court entered the *Findings of Fact, Conclusions of Law, and Order Approving on a Final Basis and Confirming the Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates* [Docket No. \_\_\_\_] (the “**Confirmation Order**”) approving the Disclosure Statement on a final basis and confirming the Plan;

**WHEREAS**, the Effective Date of the Plan occurred on [ ], 2026;

**WHEREAS**, the Plan and the Confirmation Order provide for (i) the establishment of the Litigation Trust and the creation of beneficial interests in the Litigation Trust, solely for the benefit of the Litigation Trust Beneficiaries (referred to herein as the “**Beneficiaries**” and, each individually, a “**Beneficiary**”), and (ii) the vesting of the Litigation Trust Assets in the Litigation Trust, in each case upon the Effective Date of the Plan;

**WHEREAS**, the Litigation Trust is established pursuant to the Plan and this Litigation Trust Agreement as: (i) a “Liquidating Trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations, for the sole purpose of liquidating the Litigation Trust Assets and making

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: SilverRock Development Company, LLC (5730), RGC PA 789, LLC (5996), SilverRock Lifestyle Residences, LLC (0721), SilverRock Lodging, LLC (4493), SilverRock Luxury Residences, LLC (6598) and SilverRock Phase I, LLC (2247). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 343 Fourth Avenue, San Diego, CA 92101.

<sup>2</sup> To be provided.

<sup>3</sup> All capitalized terms used but not defined herein shall have the meanings given to such terms in the Combined Disclosure Statement and Plan. As the context requires, separate references herein to the “Disclosure Statement” or the “Plan” shall refer to the applicable sections of the Combined Disclosure Statement and Plan.

distributions in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust and the Plan; and (ii) a “grantor trust” pursuant to sections 671-677 of the Internal Revenue Code (the “**Tax Code**”) for United States federal income tax purposes, with the Beneficiaries treated as the grantors and owners of the Litigation Trust Assets, in each case of (i) or (ii) above, subject to the Litigation Trustee’s discretion to elect to treat the Litigation Trust or any of the Litigation Trust Assets (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 9.5; and

**WHEREAS**, in accordance with the Plan, and pursuant to section 1145 of the Bankruptcy Code, the Litigation Trust is further intended to be exempt from the requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and any applicable state and local laws requiring registration of securities; and

**NOW, THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

## **ARTICLE I DECLARATION OF TRUST**

Section 1.1 Creation and Purpose of the Litigation Trust. The Debtors and the Litigation Trustee hereby create the Litigation Trust for the sole purposes of liquidating the Litigation Trust Assets, satisfying the obligations set forth in the Plan to the extent required thereby, and making distributions to the Beneficiaries in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement, and in accordance with section 301.7701-4(d) of the Treasury Regulations, subject to the Litigation Trustee’s discretion to elect to treat the Litigation Trust or any of the Litigation Trust Assets (in either case, in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 9.5, with no objective to continue or engage in the conduct of a trade or business, except only if and to the extent necessary for, and consistent with, the liquidating purpose of the Litigation Trust. The Litigation Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Plan.

Section 1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors and the Litigation Trustee have executed this Litigation Trust Agreement and, effective on the Effective Date, all of the right, title, and interest of the Debtors and the Estates in and to the Litigation Trust Assets shall be absolutely and irrevocably assigned to and vested in the Litigation Trust and to its successors in trust and its successors and assigns, to have and to hold unto the Litigation Trustee and his or her successors and assigns, to be held by the Litigation Trust and applied on behalf of the Litigation Trust by the Litigation Trustee, on and subject to the terms and conditions of this Litigation Trust Agreement, the Plan and the Confirmation Order, solely for the benefit of the Beneficiaries and their successors and assigns as provided for in this Litigation Trust Agreement and in the Plan and Confirmation

Order, and for no other party, provided that the Litigation Trust shall be required to satisfy the obligations set forth in the Plan to the extent required thereby.

**Section 1.3 Vesting and Transfer of Assets to the Litigation Trust.** On the Effective Date, pursuant to sections 1141 and 1123(b)(3) of the Bankruptcy Code, the Litigation Trust Assets shall vest in the Litigation Trust, free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order; *provided*, that the Litigation Trust, with the consent of the Litigation Trustee and after giving notice to the Beneficiaries, may abandon or otherwise not accept any Litigation Trust Assets that the Litigation Trustee believes, in good faith, have no value to the Litigation Trust. Any Assets the Litigation Trust so abandons or does not accept shall not vest in the Litigation Trust. The Litigation Trustee shall have no duty to arrange for any of the transfers contemplated hereunder or by the Plan or to ensure their compliance with the terms of the Plan and the Confirmation Order and shall be conclusively entitled to rely on the legality and validity of such transfers. After the Effective Date, the Litigation Trust shall have the authority and right on behalf of the Debtors without the need for Bankruptcy Court approval (unless otherwise expressly indicated herein or if required by the Bankruptcy Code or the Bankruptcy Rules), to carry out and implement all provisions of the Plan.

On the Effective Date, the confidentiality obligations in favor of the Debtors and the Debtors' attorney-client privilege, work product protection, joint interest privilege or other privilege or immunity attaching to any documents or communications of the Debtors shall vest in the Litigation Trust and its representatives. The Debtors are authorized to take all actions they deem necessary to effectuate the transfer of such privileges and immunities, and any documents or communications of the Debtors that would otherwise be protected from discovery by virtue of any applicable privilege or immunity shall remain so protected. The Litigation Trustee's receipt of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Estates.

The Litigation Trust shall have the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and shall also be vested with the Debtors' rights, as such rights existed prior to the Effective Date, to conduct discovery and oral examinations of any party related to the Litigation Trust Assets under Bankruptcy Rule 2004, provided that all costs related to satisfying such discovery shall be funded exclusively from the Litigation Trust Assets.

The Litigation Trust shall be deemed to be substituted as the party-in-lieu of each of the Debtors in all matters, including, but not limited to: (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court; (ii) any and all tax or regulatory filings, including without limitation any state or federal returns or ERISA-related filings, and legacy accounts of the Debtors at the state or federal level (for the purpose of closing, reporting, or making payments related to the Estates) related thereto; and (iii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Litigation Trustee on behalf of the Litigation Trust to file motions or substitutions of parties or counsel in each such matter.

**Section 1.4 Funding of the Trust.** The Litigation Trust shall be funded on the Effective Date by the transfer of the Litigation Trust Assets, to the extent provided for in Section 1.2 and Section 1.3 of this Litigation Trust Agreement and in the Plan and Confirmation Order, and the

contribution of the Litigation Trust Funding (including the EB-5 Litigation Trust Funding) as set forth in the Plan.

Section 1.5 Acceptance by Litigation Trustee. The Litigation Trustee hereby accepts the trust imposed upon it by this Litigation Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Litigation Trust Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Litigation Trust, the Litigation Trustee hereby accepts the funding for the Litigation Trust, including the transfer of the Litigation Trust Assets and contribution of the Litigation Trust Funding.

Section 1.6 Name of the Litigation Trust. The Litigation Trust established hereby shall be known as the “SilverRock Litigation Trust.”

Section 1.7 Capacity of Trust. To the fullest extent permitted by applicable law and notwithstanding anything herein to the contrary, the Litigation Trust (as directed by the Litigation Trustee) shall itself have the capacity to act or refrain from acting on its own behalf, including the capacity to sue and be sued. The Litigation Trustee, solely in such capacity as Litigation Trustee, may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state and federal proceedings brought by or against it, and may settle and compromise all such matters in its own name or in the name of the Litigation Trust.

## ARTICLE II THE LITIGATION TRUSTEE

Section 2.1 Appointment. The Litigation Trustee shall be [***Litigation Trustee***], as designated by the Debtors’ Independent Manager, in consultation with the City and the EB-5 Lenders. The Litigation Trustee’s appointment shall continue until the earlier of (i) the termination of the Litigation Trust or (ii) the Litigation Trustee’s resignation, death, dissolution, removal, or liquidation. The Litigation Trustee shall be the exclusive trustee of the Estates under the Bankruptcy Code for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 601(b)(3).

Section 2.2 General Powers. Except as otherwise provided in this Litigation Trust Agreement, the Plan, or the Confirmation Order, the Litigation Trustee may control and exercise authority over the Litigation Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the affairs of the Litigation Trust. Nothing in this Litigation Trust Agreement shall be deemed to prevent the Litigation Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other professionals, it determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Litigation Trustee owes to the Beneficiaries. No person dealing with the Litigation Trust shall be obligated to inquire into the Litigation Trustee’s authority in connection with the acquisition, management, or disposition of Litigation Trust Assets. Without limiting the foregoing, and unless specifically limited, restricted, waived, or released by the Plan, the Confirmation Order, or other provisions of this Litigation Trust Agreement, the Litigation Trustee shall be expressly authorized to, with respect to the Litigation Trust and the Litigation Trust Assets, and may cause the Litigation Trust to:



(a) Act on behalf of the Litigation Trust and/or any Disputed Ownership Fund, including the right to take all actions and execute all agreements, instruments and other documents, and exercise all power and authority that may be exercised, to commence all proceedings (including the power to continue any actions and proceedings that may have been commenced by the Debtors prior to the Effective Date) that may be commenced, and to take all actions that may be taken by any officer, director, or manager of the Debtors with like effect as if authorized, exercised, and taken by unanimous action of such officers, directors, and managers, including consummating the Plan and all transfers thereunder on behalf of the Debtors;

(b) Hold any legal title to any and all of the Litigation Trust Assets, whether held by the Litigation Trust or by a Disputed Ownership Fund;

(c) If any Litigation Trust Asset is situated in any state or other jurisdiction (including any non-U.S. jurisdiction) in which the Litigation Trustee is or may not be qualified to act as trustee, the Litigation Trustee is authorized (i) to nominate and appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Litigation Trustee in its sole discretion; (ii) confer upon such trustee all the rights, powers, privileges and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Litigation Trust Agreement, except as modified or limited by the Litigation Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or jurisdiction in which the trustee is acting shall prevail to the extent necessary); (iii) require such trustee to be answerable to the Litigation Trustee for all monies, assets and other property that may be received in connection with the administration of all property; (iv) compensate such trustee for its services in reasonable and customary amounts and reimburse such trustee's reasonable and authorized out-of-pocket-expenses from the Litigation Trust Assets; and (v) at the Litigation Trustee's sole discretion, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Litigation Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(d) Collect, use, manage, sell, abandon, liquidate, convert to Cash and ultimately distribute all Litigation Trust Assets pursuant to the Plan, the Confirmation Order, and this Litigation Trust Agreement;

(e) Wind-up the affairs of the Debtors, to the extent necessary, as expeditiously as reasonably possible;

(f) Maintain all accounts, authorize and make distributions to holders of any Litigation Trust Beneficial Interest ultimately holding an Allowed Claim as provided for or contemplated under the Plan, the Confirmation Order, or this Litigation Trust Agreement; and take other actions required under or consistent with the Plan, the Confirmation Order, or this Litigation Trust Agreement, including but not limited to, the maintenance of appropriate reserves (as may reasonably be deemed necessary by the Litigation Trustee in its sole discretion), in the name of the Litigation Trust or any Disputed Ownership Fund;

(g) Abandon or dispose of, in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any Litigation Trust Asset in the reasonable business judgment of the Litigation Trustee;

(h) Take all steps necessary to terminate the corporate existence of the Debtors, including in accordance with Section 2.4, and to wind-up and close the Litigation Trust and any Disputed Ownership Fund;

(i) Establish, maintain, administer and, as appropriate, destroy documents and records, whether hard copy or electronic, of the Debtors and/or the Litigation Trust, as and when appropriate in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement;

(j) Review, reconcile, settle, seek to subordinate, prosecute objections to, and resolve all Claims, including but not limited to Administrative Expense Claims, and compromise or settle any Claims (disputed or otherwise) whether filed or scheduled (and regardless of whether they were scheduled as undisputed, noncontingent, or liquidated);

(k) Investigate and prosecute any and all Retained Causes of Action and compromise, settle or withdraw any Retained Causes of Action;

(l) Investigate, prosecute and/or settle any Avoidance Actions, with or without the approval of the Bankruptcy Court, and exercise, participate in, or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitral or other nonjudicial proceeding and pursue to settlement or judgment of such Avoidance Actions;

(m) Open and maintain bank and/or brokerage accounts on behalf of or in the name of the Litigation Trust and/or any Disputed Ownership Fund, calculate and make distributions, and take other actions consistent with the Plan, this Litigation Trust Agreement, and the Confirmation Order and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Litigation Trust and/or any Disputed Ownership Fund, provided that, the Litigation Trustee need not maintain the Litigation Trust's (or any Disputed Ownership Fund's) reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Litigation Trust (or any Disputed Ownership Fund); *provided, however*, that the Litigation Trustee shall treat all such reserved funds as being held in segregated accounts in the books and records of the Litigation Trust or Disputed Ownership Fund, as applicable; *provided further that*, notwithstanding the foregoing, as set forth in the Plan, separate reserve accounts shall be maintained for the Professional Fee Reserve Account, the Builders/Poppy/Granite Reserve Account, the Poppy/RDO Reserve Account, and the Poppy/RDO/Granite Reserve Account;

(n) Establish, maintain, and administer any reserves created on the Effective Date, including the Builders/Poppy/Granite Reserve Account, the Poppy/RDO Reserve Account, and the Poppy/RDO/Granite Reserve Account, and create any reserves as the Litigation Trustee may deem necessary for payments required to be made pursuant to the Plan, the Confirmation Order, or this

Litigation Trust Agreement, including on account of any Disputed Claims or any Disputed Ownership Fund;

(o) Prepare and file tax returns for the Debtors, the Litigation Trust, and any Disputed Ownership Fund to the extent required by applicable law;

(p) Retain and compensate any and all such professionals and agents as the Litigation Trustee, in their sole discretion, deems reasonably necessary to perform their duties under the Plan, the Confirmation Order, or this Litigation Trust Agreement without further order of the Bankruptcy Court;

(q) Satisfy and pay all reasonable legal and other fees and expenses incurred by the Litigation Trustee on account of administration of the Litigation Trust, including reasonable insurance costs, taxes, escrow expenses, and all other costs of administering the Litigation Trust out of the Litigation Trust Assets;

(r) Purchase or create and carry all insurance policies, including liability insurance for the Litigation Trustee, and pay all insurance premiums and costs the Litigation Trustee deems necessary or advisable out of the Litigation Trust Assets;

(s) Seek a final decree closing any or all of the Cases;

(t) Take all other actions not inconsistent with the provisions of the Plan, the Confirmation Order, and this Litigation Trust Agreement that the Litigation Trustee deems reasonably necessary or desirable in connection with the administration of the Plan, including filing all motions, pleadings, reports, and other documents in connection with the administration and closing of the Cases.

The above-enumerated powers of the Litigation Trustee (along with any other powers and responsibilities granted to the Litigation Trustee under this Litigation Trust Agreement) shall be broadly interpreted, and in any applicable instance shall be interpreted as taking any action or causing the Litigation Trust to take such action. Any actions authorized on behalf of the Litigation Trustee may be taken by the Litigation Trust at the direction of the Litigation Trustee.

Section 2.3 Wind-Down. In addition to the Litigation Trustee's rights and duties with respect to the Litigation Trust, on and after the Effective Date, the Litigation Trustee will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Litigation Trustee shall have the power and authority to take any action necessary to wind down and dissolve the Debtors and the Estates. As soon as practicable after the Effective Date, the Litigation Trustee shall: (1) in the Litigation Trustee's reasonable discretion, complete and file all final or otherwise required federal, state, and local tax returns for the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of each Debtor or its Estate for any tax incurred during the administration of such Debtor's Case, as determined under applicable tax laws; and (2) take such other actions as the Litigation Trustee may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, the Debtors (a) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and (b) shall not be liable in any

manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. In addition, (i) the Debtors shall be deemed to have canceled all Interests pursuant to this Plan, and (ii) the new fiscal year end of the Debtors shall be deemed to be the Effective Date. The dissolution of the Debtors shall not have any effect, in any manner, on the Retained Causes of Action that the Litigation Trustee may assert in accordance with the Plan and the Litigation Trust Agreement.

Section 2.4 Corporate Existence. Each of the Debtors will be subject to one or more Dissolution Transactions on or after the Effective Date, at the discretion of the Litigation Trustee as set forth in the Plan. Each Debtor shall continue to exist after the transfer of the property of the Estates to the Litigation Trust until dissolved by the Litigation Trustee, pursuant to a Dissolution Transaction. At any time on or after the Effective Date, the Litigation Trustee will enter into such Dissolution Transactions as may be necessary or appropriate on the Debtors' behalf to merge, dissolve or otherwise terminate the corporate existence of each of the Debtors in accordance with the Plan. The actions to effect the Dissolution Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation or dissolution containing terms that, among other things, are consistent with the terms of the Plan; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and that satisfy the requirements of applicable law; (iii) the filing of appropriate certificates or articles of merger, consolidation, continuance or dissolution or similar instruments with the applicable governmental authorities; and (iv) the taking of all other actions that these entities determine to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions.

Section 2.5 Safekeeping and Investment of Litigation Trust Assets. All monies and other assets received as part of the Litigation Trust Assets by the Litigation Trust shall, until distributed or paid over as provided herein and in the Plan, be held in trust for the benefit of the Beneficiaries, but need not be segregated in separate accounts from other Litigation Trust Assets, unless and to the extent required by law, the Plan, the Confirmation Order, or this Litigation Trust Agreement. The Litigation Trustee shall not be under any obligation to invest Litigation Trust Assets, nor responsible for any loss incurred by the Litigation Trust if any term investment or deposit permitted below is required to be sold, redeemed or withdrawn prior to maturity. Neither the Litigation Trust nor the Litigation Trustee shall have any liability for interest or producing income on any monies received by them and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Litigation Trust or Litigation Trustee, which shall be distributed as provided in the Plan, the Confirmation Order, and this Litigation Trust Agreement. The powers of the Litigation Trustee to invest any monies held by the Litigation Trust, other than those powers reasonably necessary to maintain the value of the Litigation Trust Assets and to further the Litigation Trust's liquidation purpose, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills; provided, however, that the scope of permissible investments shall be limited to include only those investments that a "Liquidating Trust," within the meaning of section 3.01.7701-4(d) of the Treasury Regulations, may be permitted to hold pursuant to the Treasury Regulations, subject to the Litigation Trustee's discretion to elect to treat the Litigation Trust or any of the Litigation Trust Assets (in whole or in

part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 9.5, or any modification of the IRS guidelines, whether set forth in IRS rulings, IRS pronouncements, any modifications of the IRS guidelines or otherwise.

Section 2.6 Retention of Professionals. The Litigation Trustee shall retain such legal counsel or other professionals as may be appropriate in accordance with the terms of the Plan, the Confirmation Order, and this Litigation Trust Agreement, whose fees and expenses shall be payable from the Litigation Trust Assets.

Section 2.7 Compensation of Litigation Trustee and its Agents and Professionals. The Litigation Trustee shall be entitled to receive reasonable compensation for the performance of its duties after the Effective Date as set forth on Exhibit A. Any successor to the Litigation Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein.

Section 2.8 Abandonment; Donation. If, in the Litigation Trustee's reasonable judgment, any Litigation Trust Asset cannot be sold or distributed in a commercially reasonable manner or the Litigation Trustee believes in good faith that such Litigation Trust Asset has inconsequential value to the Litigation Trust or its Beneficiaries or is insufficient to render a further distribution practicable, the Litigation Trustee shall have the right to cause the Litigation Trust to abandon or otherwise dispose of such Litigation Trust Asset, including by donation of any remaining funds to a charitable institution qualified as a not-for-profit corporation, under applicable federal and state laws without further order from the Bankruptcy Court.

Section 2.9 Responsibility for Administration of Claims. As of the Effective Date, the Litigation Trustee shall become responsible for administering and paying distributions to Beneficiaries of the Litigation Trust in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement, and other Allowed Claims to the extent set forth in the Plan and the Confirmation Order. The Litigation Trustee shall have the right to object to the allowance of any Claim on any ground and shall be entitled to assert all defenses of the Debtors and the Estates. The Litigation Trustee shall also be entitled to assert all of the Estates' rights under, without limitation, section 558 of the Bankruptcy Code. The Litigation Trustee may also seek estimation of any Disputed Claim under and subject to section 502(c) of the Bankruptcy Code.

Section 2.10 No Implied Obligations. No implied covenants or obligations shall be read into this Litigation Trust Agreement against the Litigation Trustee.

#### Section 2.11 Disputed Claims Reserve.

(a) The Litigation Trustee may, in its reasonable discretion, maintain a Disputed Claims Reserve. The Litigation Trustee may, in its reasonable discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Plan, as Disputed Claims are resolved, and such amounts may be distributed on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date.

(b) To the extent that the property placed in a Disputed Claims Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account. The property in the Disputed Claims Reserve shall be held in trust for the benefit of the Beneficiaries whose Claims are

ultimately determined to be Allowed. Any Disputed Claims Reserve shall be closed by the Litigation Trust when all Distributions required to be made under this Plan will have been made in accordance with the terms of the Plan. Upon closure of any Disputed Claims Reserve, all Cash (including any investment yield on the Cash) and other property held in such Disputed Claims Reserve shall be distributed in accordance with the Plan or the Litigation Trust Agreement, as applicable.

(c) To assist in making Distributions under the Plan, Trust Accounts may be held in the name of the Litigation Trust or in the name of one or more Third Party Disbursing Agents, in each case, for the benefit of Holders of Allowed Claims. The Litigation Trustee shall invest or shall direct the Third Party Disbursing Agents to invest, Cash in the Trust Accounts, subject to the limitations established herein; *provided, however*, that should the Litigation Trustee determine, in its sole discretion, that the administrative costs associated with such investment exceeds the return on such investment, it may determine not to, and may direct the Third Party Disbursing Agent not to, invest such Cash. Any interest or other proceeds, if any, from such investment of Cash, net of any taxes payable with respect thereto, shall be deposited into the applicable Trust Accounts and shall be available for Distribution to Holders of applicable Allowed Claims

Section 2.12 Replacement of the Litigation Trustee. The Litigation Trustee may resign at any time upon thirty (30) days' written notice filed with the Bankruptcy Court, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Litigation Trustee. The Bankruptcy Court may remove the Litigation Trustee for cause, upon motion and after notice and a hearing, which motion may be brought by any party in interest. In the event of the resignation or removal, death or incapacity of the Litigation Trustee, the City and EB-5 Lender shall jointly designate another person to serve as Litigation Trustee and thereupon the successor Litigation Trustee shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor; provided, however, that if at such time the DIP Senior Claims and the DIP Junior Claims have been paid in full and the EB-5 Lenders have received the \$2,101,142.23 priority distribution set forth in the Plan, the successor Litigation Trustee shall be designated by the Bankruptcy Court. The Litigation Trustee and its professionals shall be entitled to compensation payable from the Litigation Trust Assets as set forth in this Litigation Trust Agreement. Upon its appointment, the successor Litigation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as to amounts payable under Section 2.7, and all responsibilities of the predecessor Litigation Trustee relating to the Litigation Trust shall be terminated. The provisions of Article V shall survive the resignation or removal of any Litigation Trustee.

Section 2.13 Litigation Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the Litigation Trustee shall not terminate the Litigation Trust or revoke any existing agency created by the Litigation Trustee pursuant to this Litigation Trust Agreement or invalidate any action theretofore taken by the Litigation Trustee, and the provisions of this Litigation Trust Agreement shall be binding upon and inure to the benefit of the successor Litigation Trustee and all its successors or assigns.

### ARTICLE III

#### PROSECUTION AND RESOLUTION OF RETAINED CAUSES OF ACTION AND OBJECTIONS TO CLAIMS

Section 3.1 Authority to Prosecute and Settle Claims. Except as otherwise specifically provided in the Plan, after the Effective Date, the Litigation Trustee shall have the sole authority: (i) to File, withdraw, or litigate to judgment, objections to Claims; (ii) to settle or compromise any Disputed Claim (other than a Professional Fee Claim) without any further notice to or action, order or approval by the Bankruptcy Court; and (iii) to direct the Claims and Noticing Agent to adjust the Claims Register to reflect any such resolutions without any further notice to or action, order or approval by the Bankruptcy Court. From and after the Effective Date, the Litigation Trustee shall have the sole authority to prosecute, settle, or otherwise dispose of any Retained Causes of Action and no other parties shall be entitled to assert any Retained Causes of Action derivatively or otherwise on behalf of the Debtors, the Estates or the Litigation Trust.

Section 3.2 Court Approval. Nothing herein shall preclude the Litigation Trustee from seeking Bankruptcy Court approval of (i) any settlement or compromise of any Retained Cause of Action, Avoidance Action, or Disputed Claim; or (ii) the exercise or non-exercise of any power or duty of the Litigation Trustee under this Litigation Trust Agreement, nor shall any provision hereof be construed as limiting the jurisdiction of the Bankruptcy Court to hear and determine any such request for relief.

### ARTICLE IV

#### LIABILITY OF LITIGATION TRUSTEE

Section 4.1 Standard of Care; Exculpation. Neither the Litigation Trustee nor any director, officer, member, affiliate, employee, employer, professional, successor, assign, agent, advisor, or representative of the Litigation Trust (each, an “**Exculpated Party**” and collectively, the “**Exculpated Parties**”) shall be liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “**Losses**”), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Litigation Trust Agreement (including these exculpation provisions), as and when imposed on an Exculpated Party, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Litigation Trustee’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under this Litigation Trust Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission or error of an Exculpated Party; *provided, however*, that the foregoing limitation shall not apply to any Losses found in a final judgment by a court of competent jurisdiction (not subject to further appeal or review) to have resulted from the fraud, gross negligence, or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised or obligation assumed by the Litigation Trustee or any Exculpated Party pursuant to the provisions of this Litigation Trust Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Litigation Trustee or any Exculpated Party acting for and on behalf of the Litigation Trust and not otherwise; *provided, however*, that none of the foregoing Entities or persons are deemed to be responsible for any other such Entities’ or persons’ actions or inactions. Except as provided in the

first proviso of the first sentence of this Section 4.1, every person contracting or otherwise dealing with or having any relationship with the Litigation Trust or any Exculpated Party shall have recourse only to the Litigation Trust Assets (or any applicable insurance policies of the Litigation Trust) for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships, and the Litigation Trust and the Exculpated Parties shall not be individually liable therefore. In no event shall an Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including lost profits) whatsoever, even if the Exculpated Party had been informed of the likelihood of such loss or damages and regardless of the form of action. Except as provided in the first proviso of the first sentence of this Section 4.1, any liability of the Litigation Trustee under this Litigation Trust Agreement will be limited to the amount of fees paid annually to the Litigation Trustee.

#### Section 4.2 Indemnification.

(a) The Litigation Trust shall indemnify and hold harmless: (i) the Litigation Trustee (solely in their capacity as such) and (ii) the Litigation Trust's attorneys, financial advisors, consultants and other advisors (collectively, the **"Indemnified Parties"** and each, an **"Indemnified Party"**), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with the Plan, the Litigation Trust Agreement and the Confirmation Order, other than acts or omissions, or consequences of such post-Effective Date actions or omissions, resulting from such Indemnified Party's bad faith, willful misconduct (including actual fraud) or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Litigation Trust Assets and (ii) the legal fees and related costs incurred by counsel to the Litigation Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estates or any insurance. The indemnification provisions of the Litigation Trust Agreement shall remain available to and be binding upon any former Litigation Trustee or the estate of any decedent of the Litigation Trustee and shall survive the termination of the Litigation Trust Agreement.

(b) The Litigation Trust shall, from Litigation Trust Assets, promptly pay to the Indemnified Party the expenses set forth in subparagraph (a) above upon submission of invoices therefore on a current basis. Each Indemnified Party hereby undertakes, and the Litigation Trust hereby accepts its undertaking, to repay any and all such amounts so paid by the Litigation Trust if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore under this Litigation Trust Agreement.

Section 4.3 No Liability for Acts of Successor/Predecessor Litigation Trustees. Upon the appointment of a successor Litigation Trustee and the delivery of the Litigation Trust Assets to the successor Litigation Trustee, the predecessor Litigation Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Litigation Trustee shall have no further liability or responsibility with respect to such Litigation Trust Assets or the Litigation Trust. A successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Litigation



Trustee shall be in any way liable for the acts or omissions of any predecessor Litigation Trustee unless a successor Litigation Trustee expressly assumes such responsibility. A predecessor Litigation Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Litigation Trustee for any events or occurrences subsequent to the cessation of its role as Litigation Trustee.

Section 4.4 Reliance by Litigation Trustee. Except as otherwise provided in this Litigation Trust Agreement, the Litigation Trustee, any director, officer, member, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Litigation Trustee to be genuine and to have been presented by an authorized party. The Litigation Trustee shall not be liable for any action taken or omitted or suffered by the Litigation Trustee in reasonable reliance upon the advice of counsel or other professionals engaged by the Litigation Trustee in accordance with this Litigation Trust Agreement. The Litigation Trustee shall be fully indemnified by the Litigation Trust for or in respect of any action taken, suffered, or omitted by it and in accordance with such advice or opinion.

Section 4.5 Conflicts of Interest. The Litigation Trustee will appoint a disinterested person to handle any matter where the Litigation Trustee has identified a conflict of interest or the Bankruptcy Court, on motion of a party in interest, determines one exists. If the Litigation Trustee is unwilling or unable to appoint a disinterested person to handle any such matter, the Bankruptcy Court, on notice and hearing, may do so.

Section 4.6 Insurance. The Litigation Trustee may purchase, on behalf of the Litigation Trust, using the Litigation Trust Assets, and carry all insurance policies and pay all insurance premiums and costs the Litigation Trustee deem reasonably necessary or advisable, including purchasing any errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of fraud or willful misconduct, with respect to the implementation and administration of the Plan, the Confirmation Order, or this Litigation Trust Agreement.

Section 4.7 No Liability for Good Faith Error of Judgment. The Litigation Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a final judgment of a court of competent jurisdiction (not subject to further appeal or review) that the Litigation Trustee was grossly negligent in ascertaining the pertinent facts.

Section 4.8 Survival. The provisions of this Article IV shall survive the termination of this Litigation Trust Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Litigation Trustee.

**ARTICLE V**  
**GENERAL PROVISIONS CONCERNING**  
**ADMINISTRATION OF THE LITIGATION TRUST**

Section 5.1 Responsibilities of the Litigation Trustee. Without limiting any of the duties and responsibilities of the Litigation Trustee otherwise set forth in this Litigation Trust Agreement or the Plan, the responsibilities of the Litigation Trustee under this Litigation Trust Agreement and the Plan shall include the following: (i) perform all actions and execute all agreements, instruments and other documents necessary to implement the Plan; (ii) establish, maintain and administer the Trust Accounts, which shall be segregated to the extent appropriate in accordance with the Plan; (iii) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, prosecute, settle and protect, as applicable, the Litigation Trust Assets, in accordance with the Plan; (iv) review, reconcile, settle or object to all Claims that are Disputed Claims as of the Effective Date pursuant to the procedures for allowing Claims prescribed in the Plan; (v) calculate and make Distributions of the proceeds of the Litigation Trust Assets to the Holders of Allowed Claims; (vi) investigate and pursue the Retained Causes of Action transferred to the Litigation Trust in accordance with this Litigation Trust Agreement; (vii) retain, compensate and employ professionals to represent the Litigation Trust; (viii) file appropriate tax returns and other reports on behalf of the Litigation Trust and pay taxes or other obligations owed by the Litigation Trust; (ix) file, to the extent reasonably feasible and subject to the Litigation Trust Agreement, appropriate tax returns on behalf of each Debtor and pay taxes or other obligations arising in connection therewith; (x) exercise such other powers as may be vested in the Litigation Trust under this Litigation Trust Agreement and the Plan, or as are deemed by the Litigation Trustee to be necessary and proper to implement the provisions of the Plan and this Litigation Trust Agreement; (xi) take such actions as are necessary or appropriate to close or dismiss the Cases; and (xii) dissolve the Litigation Trust in accordance with the terms of the Litigation Trust Agreement.

Section 5.2 Claims Register of Beneficiaries. The Litigation Trustee shall maintain, either directly or through an appointed agent such as the Claims and Noticing Agent, a record of the names and addresses of all Holders of Claims as of the Effective Date for purposes of mailing distributions to them (if any) (the “**Claims Register**”). The Litigation Trustee may rely on the name and address set forth in the Debtors’ Schedules and/or Proofs of Claim as being true and correct unless and until notified otherwise in writing.

Section 5.3 Books and Records.

(a) Upon the Effective Date, the Debtors’ books and records (or copies thereof) shall vest in the Litigation Trust. The Litigation Trustee also shall maintain in respect of the Litigation Trust and the Beneficiaries books and records relating to the Litigation Trust Assets and any income or proceeds realized therefrom and the payment of expenses of and claims against or assumed by the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Litigation Trust Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law, nothing in this Litigation Trust Agreement is intended to require the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for making any payment or distribution out of the Litigation Trust Assets. Beneficiaries shall have the right upon thirty (30) days’ prior written notice delivered

to the Litigation Trustee to inspect the Litigation Trust's books and records at a time and location as specified by the Litigation Trustee, provided such Beneficiary shall have (i) entered into a confidentiality agreement with the Litigation Trust in form and substance reasonably satisfactory to the Litigation Trustee and (ii) agreed in writing to pay all reasonable costs related to such inspection. Satisfaction of the foregoing condition notwithstanding, if (a) the Litigation Trustee determines in good faith that the inspection of the Litigation Trust's books and records by any Beneficiary would be detrimental to the Litigation Trust or any other Beneficiary, or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the Litigation Trust, including any Claim objection, the Litigation Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Litigation Trustee under this Section 5.3.

(b) The books and records of the Litigation Trust maintained by the Litigation Trustee may be disposed of by the Litigation Trustee upon the termination and completion of the winding down of the Litigation Trust; *provided, however*, the Litigation Trustee will maintain all books and records necessary for tax purposes in accordance with applicable tax laws.

Section 5.4 United States Trustee Quarterly Fees. After the Effective Date, the Debtors and the Litigation Trust shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall file with the Bankruptcy Court all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Litigation Trustee shall file with the Bankruptcy Court UST Form 11-PCR reports when they become due.

Section 5.5 Final Accounting of Litigation Trustee. The Litigation Trustee (or any such successor Litigation Trustee) shall, within thirty (30) days after the termination of the Litigation Trust or the death, dissolution, liquidation, resignation, or removal of the Litigation Trustee, render an accounting in accordance with the requirements of the Bankruptcy Code and including:

- (a) A description of the Litigation Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Litigation Trust and the Litigation Trust Assets during the Litigation Trustee's term of service, including their source and nature;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Litigation Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept;
- (e) All known liabilities of the Litigation Trust; and
- (f) All pending actions, if applicable.

Section 5.6 Filing of Accounting. The final accounting described in Section 5.5 shall be filed with the Bankruptcy Court.

## **ARTICLE VI INTERESTS AND BENEFICIARIES**

Section 6.1 Litigation Trust Beneficial Interests. Upon the Effective Date, the Litigation Trust Beneficial Interests shall be distributed as follows:

(a) In full and final satisfaction of and in exchange for any remaining DIP Senior Claims, the DIP Lender shall receive, on account of the DIP Senior Claims, the DIP Senior Beneficial Interests and payment of Cash in the amount of the DIP Amendment Reserve.

(b) After payment in full of the DIP Senior Claims, and to the extent that all Administrative Claims, Professional Fee Claims, Priority Tax Claims, Priority Non-Tax Claims, and Allowed Secured Claims have been satisfied in full in accordance with the terms of the Plan, and subject to the funding of any Trust Accounts and reserves under the Plan, the DIP Lender shall receive, on account of the DIP Junior Claims, the DIP Junior Beneficial Interests, which shall entitle the DIP Lender to payment of Cash up to the amount of the DIP Junior Claims from the proceeds available for distribution from the Litigation Trust before any Distributions are made to Holders of Allowed General Unsecured Claims (but subject to payments to be made to the EB-5 Lenders on account of the EB-5 Settlement, as set forth in Article III.B.10 of the Plan).

(c) In accordance with the EB-5 Settlement, as set forth in the Plan and Confirmation Order, the EB-5 Lenders shall receive the EB-5 Beneficial Interests, which shall entitle the EB-5 Lenders to receive 55% of the first \$3,820,258.60 in proceeds distributed by the Litigation Trust on account of their Allowed EB-5 Secured Claim. Upon the distribution of \$2,101,142.23 to the EB-5 Lenders from Litigation Trust proceeds and repayment of the DIP Senior Claims and DIP Junior Claims, the EB-5 Lenders shall share *pro rata* with other Holders of Allowed General Unsecured Claims with respect to any further distributions from the Litigation Trust.

(d) Except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtors or the Litigation Trust, as applicable, agree to less favorable treatment for such Holder, each Holder of an Allowed General Unsecured Claim shall, in full and final satisfaction of such Claim, receive its Pro Rata Share of the GUC Beneficial Interests in the Litigation Trust.

(e) No other Person or Entity shall have any interest, legal, beneficial, or otherwise, in the Litigation Trust Assets upon the assignment and transfer of such assets to the Litigation Trust.

Section 6.2 Litigation Trust Operating and Administrative Expense. Distributions from the Litigation Trust shall be made from the Litigation Trust Assets after paying, reserving against, or satisfying, among other things, the operating and administrative expenses of the Litigation Trust, including all costs, expenses, and obligations incurred by the Litigation Trustee (or professionals who may be employed by the Litigation Trustee in administering the Litigation Trust) in carrying out their responsibilities to the Litigation Trust under the Litigation Trust Agreement, or in any manner connected, incidental, or related thereto. The Litigation Trustee shall provide regular reports to the City and EB-5 Lender, no less than once per quarter, inclusive of cash on hand, income, expenses, and general Trust activities and status. Such reports may be made in writing or by virtual or telephonic update.

Section 6.3 Interest Beneficial Only. Ownership of a Litigation Trust Beneficial Interest shall not entitle any Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

Section 6.4 Evidence of Interest. Ownership of a Litigation Trust Beneficial Interest shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever.

Section 6.5 Exemption from Registration. The Litigation Trust Beneficial Interests and the entitlements hereunder, if any, of the Beneficiaries are not intended to, and shall not, constitute “securities.” If, notwithstanding the foregoing, the Litigation Trust Beneficial Interests or any entitlements of the Beneficiaries hereunder or under the Plan are deemed to be “securities,” the issuance of Litigation Trust Beneficial Interests to Beneficiaries or any entitlements hereunder or under the Plan (and any redistribution of any of the foregoing pursuant to the Plan or otherwise) shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act and any applicable state and local laws requiring registration of securities. If the Litigation Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), or the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), then the Litigation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file reports with the Securities and Exchange Commission to the extent required by applicable law. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Litigation Trustee from amending this Litigation Trust Agreement to make such changes as are deemed necessary or appropriate by the Litigation Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act, except that no amendment to this Litigation Trust Agreement may be made which would not be permitted by Section 11.1.

Section 6.6 Transfers of Interests. Litigation Trust Beneficial Interests shall be uncertificated and nontransferable, and shall not be assigned, pledged, or hypothecated, in whole or in part, except upon death of the interest Holder or by operation of law. Any purported transfer, assignment, pledge or hypothecation of a Litigation Trust Beneficial Interest or any part thereof not permitted by this Section 6.6 shall constitute a violation of this Litigation Trust Agreement and shall be void *ab initio*. The Litigation Trust shall not have any obligation to recognize any transfer of Claims occurring after the Effective Date. Only those Holders of Claims of record stated on the transfer ledgers as of the close of business on the Effective Date, to the extent applicable, shall be recognized for all purposes hereunder.

Section 6.7 Absolute Owners. The Litigation Trustee may deem and treat the Beneficiary reflected as the owner of a Litigation Trust Beneficial Interest on the Claims Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever. In no event shall the Debtors be deemed to have any ownership interest in the Litigation Trust for federal or state income tax purposes.

Section 6.8 Change of Address. A Beneficiary may, after the Effective Date, select an alternative distribution address by filing a notice with the Bankruptcy Court (with a copy served on the Litigation Trustee) identifying such alternative distribution address. Absent such notice, the Litigation Trustee shall not recognize any such change of distribution address. Such notification shall be effective only upon receipt by the Litigation Trustee.

Section 6.9 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Litigation Trust shall not operate to terminate the Litigation Trust during the term of the Litigation Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Litigation Trust Agreement or in the Litigation Trust.

Section 6.10 Standing. Except as expressly provided in this Litigation Trust Agreement, the Plan or the Confirmation Order, a Beneficiary does not have standing to direct the Litigation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Litigation Trust Assets.

## **ARTICLE VII PROCEDURES FOR RESOLVING AND TREATING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

Section 7.1 Incorporation of Plan Provisions. As set forth in Article X of the Plan, as of the Effective Date, the Litigation Trustee shall have the right and authority to, among other things, (i) make, file and prosecute objections to all Claims, and (ii) litigate to judgment, propose settlements of, compromise or otherwise resolve or withdraw any objections to, all pending or filed Disputed Claims and settle or compromise any Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court, and (iii) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court.

Section 7.2 Request for Extension of Claims Objection Deadline. The Litigation Trustee shall have until the date that is six (6) months after the Effective Date to file objections to Claims and serve such objections upon the Holders of the affected Claims; *provided, however*, the Litigation Trustee shall have the right to seek relief from the Bankruptcy Court to extend the dates for filing and serving objections to Claims in accordance with the Bankruptcy Code and applicable Bankruptcy Rules.

Section 7.3 Estimation of Claims. After the Effective Date, the Litigation Trustee may (but shall not be required to) at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection.

Section 7.4 Claims Subject to Pending Actions. Except as otherwise provided in the Plan, any Claims held by Entities against which a Debtor, the Litigation Trustee or another party

in interest Files or has Filed a complaint seeking to recover property under sections 542, 543, 550 or 553 of the Bankruptcy Code to avoid a transfer under sections 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, shall be deemed a Disputed Claim pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any Distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due as a result, if any, have been turned over by that Entity to the Litigation Trust.

Section 7.5 Offer of Judgment. After the Effective Date, the Litigation Trustee shall be authorized to serve upon a Holder of a Disputed Claim an offer to allow judgment to be taken on account of such Disputed Claim, and, pursuant to Bankruptcy Rules 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Disputed Claim must pay the costs incurred by the Debtors or the Litigation Trust, as applicable, after the making of such offer, the Litigation Trust shall be entitled to set off such amounts against the amount of any Distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.6 No Distributions Pending Allowance. Notwithstanding anything to the contrary in the Plan, if any portion of a Claim is a Disputed Claim, no payment or distribution shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim; *provided* that if only the Allowed amount of an otherwise valid Claim is Disputed, such Claim shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account of such undisputed amount.

Section 7.7 Distributions After Allowance. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, without interest.

Section 7.8 No Postpetition Interest on Claims. Unless otherwise specifically provided for in the Plan or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a Final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

## **ARTICLE VIII DISTRIBUTIONS**

Section 8.1 Distributions on Account of Claims Allowed on the Effective Date. Except as otherwise provided in Article IX of the Plan, Distributions to be made on the Effective Date to



Holders of Allowed Claims shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable by the Debtors or the Litigation Trustee.

Section 8.2 Method of Distributions to Holders of Allowed Claims. All Distributions to be made under the Plan shall be made by the Disbursing Agent or such Third-Party Disbursing Agent as the Litigation Trustee may employ in its sole discretion. Each Disbursing Agent may serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the Distributions required by the Plan, if approved by the Litigation Trustee.

Section 8.3 Rights and Powers of Disbursing Agent.

(a) The Disbursing Agent shall be empowered to: (i) make all Distributions contemplated by the Plan; (ii) effectuate all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan; and (iii) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the terms of the Plan.

(b) Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation to the Disbursing Agent for services rendered shall be paid in Cash by the Litigation Trustee from the Litigation Trust Assets pursuant to the terms of the Litigation Trust Agreement.

(c) Except on account of actual fraud, gross negligence, or willful misconduct, the Disbursing Agent shall have no (i) liability to any party of actions taken in accordance with the Plan or in reliance upon information provided to it in accordance with the Plan or (ii) obligation or liability to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a Distribution is made or who does not otherwise comply with the terms of the Plan

Section 8.4 Delivery of Distributions; Undeliverable Distributions.

(a) Except as otherwise provided in the Plan, Distributions under the Plan shall be made to the Holders of record of Allowed Claims as of the Distribution Record Date by the applicable Disbursing Agent at the latest known address, as identified in: (i) the most recently filed Proof of Claim; (ii) at the address set forth in any written notices of address change delivered to the Debtors after the date of the most recently filed Proof of Claim or where no Proof of Claim was filed; (iii) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Debtors have not received written notice of a change of address; (iv) on any counsel that has appeared in the Cases on such Holder's behalf; or (v) if clauses (i) – (iv) are not applicable, at the last address directed by such Holder after such Claim becomes an Allowed Claim.

(b) The Disbursing Agent shall not be obligated to make any effort to determine the correct address of any Holders entitled to receive a Distribution. In the event any Distribution to any Holder is returned as undeliverable, no further Distribution to such Holder shall be made unless and until the Disbursing Agent is notified in writing of such Holder's then-current address, at which time the Distribution shall be made to such Holder without interest; *provided, however*, that



if a Holder fails to claim and undeliverable Distribution in writing within six (6) months after such Distribution is returned as undeliverable, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and the Claims of the Beneficiaries that may have been entitled to such Distribution shall be discharged and forever barred. In the event any check sent to a Beneficiary in respect of a Distribution to such Beneficiary has not been cashed within six months of the date of the respective Distribution, such check shall be cancelled and no additional Distribution shall be made to such Beneficiary, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and the Claims of the Holders that may have been entitled to such Distribution shall be discharged and forever barred from receiving distributions under the Plan. After such date, all undeliverable Distributions shall revert to the Litigation Trust and shall be redistributed in accordance with this Litigation Trust Agreement.

Section 8.5 Minimum Distributions. No Distribution of less than one hundred dollars (\$100.00) shall be made by the Disbursing Agent. Each such Distribution shall be revested in the Litigation Trust for distribution to Holders of Allowed Claims in the applicable Class in accordance with the Plan. Whenever a payment of a fraction of a dollar would otherwise be called for, the actual payment may reflect a rounding down to the nearest whole dollar.

Section 8.6 Compliance With Tax Requirements. The Litigation Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit (as defined in the Bankruptcy Code), and all Distributions shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distribution to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions or establishing any other mechanisms the Disbursing Agent believes are reasonable and appropriate. The Disbursing Agent shall have the right to allocate all Distributions in compliance with applicable wage garnishments, alimony, child support and other spousal awards, liens and encumbrances. The Disbursing Agent shall be authorized to require each Holder of a Claim to provide it with an executed Form W-9, Form W-8 or other appropriate tax form or documentation as a condition precedent to being sent a Distribution. If a Holder of an Allowed Claim does not provide the Disbursing Agent with an executed Form W-9, Form W-8 or other tax form or documentation within the time period specified in such notice, or such later time period agreed to by the Disbursing Agent in writing in its discretion, then the Disbursing Agent, in its sole discretion, may (a) make a Distribution net of any applicable withholding or (b) determine that such Holder shall be deemed to have forfeited the right to receive any Distribution, in which case, any such Distribution shall revert to the Debtors or the Litigation Trust, as applicable, for Distribution on account of other Allowed Claims and the Claim of the Holder originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court.

Section 8.7 Manner of Payment Under the Plan. Unless a Holder of an Allowed Claim and the Disbursing Agent otherwise agree, any Distribution to be made in Cash shall be made, at the election of the Disbursing Agent, by check drawn on a domestic bank or by wire transfer from a domestic bank. Cash payments to foreign creditors may, in addition to the foregoing, be made

at the option of the Disbursing Agent in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

Section 8.8 Time Bar to Cash Payments. Checks issued in respect of Allowed Claims shall be null and void if not negotiated within 180 days after the date of issuance thereof. Requests for reissuance of any voided check shall be made directly to the Disbursing Agent by the entity to whom such check was originally issued. Any claims in respect of such voided check shall be discharged and forever barred and such unclaimed distribution shall be re-allocated as set forth in Article IX.F(2) of the Plan, notwithstanding any Federal or state escheat laws to the contrary.

Section 8.9 Setoffs. Except with respect to Claims expressly released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disbursing Agent may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Claim (and the Distributions to be made on account of such Claims), counterclaims, rights and Causes of Action of any nature that the Debtors may hold against the Holder of such Claim; *provided, however*, that the failure to effectuate such a setoff shall not constitute a waiver or release of any Causes of Action.

Section 8.10 Allocation Between Principal and Accrued Interest. Interest shall not accrue on any Allowed Claim in respect of the period from the Petition Date to the date a final Distribution is made on such Allowed Claim. To the extent any Allowed Claim consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such Distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

Section 8.11 Distributions to Holders of Disputed Claims. Notwithstanding any provision of the Plan: (1) no Distributions will be made on account of a Disputed Claim until such claim becomes an Allowed Claim, if ever; and (2) except as otherwise agreed to by the relevant parties, no partial Distributions shall be made with respect to a Disputed Claim until all disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, any Distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. On the Distribution Date that is at least 30 days after a Disputed Claim becomes an Allowed Claim (or such lesser period as the Disbursing Agent may determine), the Holder of such Allowed Claim shall receive any Distribution to which such Holder would have been entitled under the Plan as of the Effective Date, if such claim had been allowed as of the Effective Date, without any interest to be paid on account of such Allowed Claim.

Section 8.12 Claims Paid or Payable by Third Parties.

(a) To the extent that the Holder of an Allowed Claim receives a Third-Party Payment, the Litigation Trustee shall be authorized to reduce, for the purposes of Distribution, the Allowed amount of such Claim by the amount of the Third-Party Payment, and such Claim shall be Disallowed or deemed satisfied, as applicable, to the extent of the Third-Party Payment without an objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

(b) No Distributions shall be made on account of any Allowed Claim that is payable pursuant to an Insurance Contract until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Contract. To the extent that any of the Debtors' insurers agrees to satisfy in full or in part an Allowed Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Contract. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any other Person or Entity may hold against any other Person or Entity, including insurers under any Insurance Contract, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## ARTICLE IX TAXES

Section 9.1 Income Tax Status. For federal income tax purposes, it is intended that the Litigation Trust be classified as a Liquidation Trust that is treated as a "grantor trust" for federal income tax purposes under section 301.7701-4(d) of the Treasury Regulations and Revenue Procedure 94-45, 1994-2 C.B. 684 and that such trust be owned by its beneficiaries, subject to the Litigation Trustee's discretion to elect to treat the Litigation Trust or any of the Litigation Trust Assets (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 9.5. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution from the Debtors' Estates of an undivided interest in each Litigation Trust Asset (to the extent of the value of their share in the Litigation Trust Assets) and then contributed such interests to the Litigation Trust, and the Litigation Trust's Beneficiaries will be treated as the grantors and owners thereof.

Section 9.2 Payment of Taxes. The Litigation Trust shall be responsible for payment of all taxes imposed on the Litigation Trust or Litigation Trust Assets. In the event, and to the extent, any Cash retained on account of any Disputed Claims associated with the Litigation Trust is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, the Litigation Trustee may, in its discretion, (a) sell any non-Cash assets relating to such Disputed Claims (including any assets otherwise distributable as a result of disallowance of such Claim) to pay such taxes or (b) reimburse the Litigation Trust for the payment of such taxes from any subsequent Cash amounts allocable to, or retained on account of, such taxes from any subsequent Cash amounts allocable to, or retained on account of, such Disputed Claims (including any Cash otherwise distributable as a result of disallowance of such Claims).

Section 9.3 Tax Returns. The Litigation Trustee shall file tax returns for the Litigation Trust as a grantor trust pursuant to section 1.671-4(a) of the Treasury Regulations and in accordance with the Plan, subject to the Litigation Trustee's election seeking treatment of the Litigation Trust as a Disputed Ownership Fund (as described more fully in Section 9.5). The Litigation Trust's items of taxable income, gain, loss, deduction, and/or credit (other than such items in respect of any assets allocable to, or retained on account of, Disputed Claims or in

connection with a Disputed Ownership Fund) to be allocated among Holders of the Litigation Trust Beneficial Interests shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its assets (valued at their tax book value, other than assets allocable to Disputed Claims or to a Disputed Ownership Fund) to the Holders of Litigation Trust Beneficial Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical Liquidation and distribution of the remaining Litigation Trust Assets, subject to the Litigation Trustee's election seeking treatment of the Litigation Trust as a Disputed Ownership Fund (as described more fully in Section 9.5). The tax book value of Litigation Trust Assets for purposes of this Section 9.3 shall equal their fair market value as of the date such Litigation Trust Asset is transferred to the Litigation Trust, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

**Section 9.4 Litigation Trust Asset Valuations.** As soon as reasonably practicable after the Effective Date, but in any event no later than 180 days thereafter, the Litigation Trustee, with the assistance of both legal and tax accounting professionals retained by the Litigation Trust, shall make a good faith valuation of the Litigation Trust Assets, and such valuation shall be used consistently by all parties (including the Debtors, the Litigation Trust, and the Beneficiaries) for all U.S. federal, state and local income tax purposes, subject to the Litigation Trustee's discretion to elect to treat the Litigation Trust or any of the Litigation Trust Assets (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 9.5. The Litigation Trust shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust or Disputed Ownership Fund, as applicable, that are required by any Governmental Unit for taxing purposes.

**Section 9.5 Treatment of Disputed Claims Reserves and Disputed Ownership Fund Election.** The Litigation Trustee shall use its best efforts to operate and maintain the Litigation Trust in compliance with all applicable guidelines regarding "grantor trusts" under the Tax Code; *provided, however*, that the Litigation Trustee may, in its sole discretion, (a) timely elect to treat any portion or all of the Litigation Trust and/or any Litigation Trust Assets (in either case, in whole or in part) as a "disputed ownership fund" within the meaning of Treasury Regulations Section 1.468B-9 for federal income tax purposes (the "**Disputed Ownership Fund**"); or (b) timely elect to report as a separate trust or sub-trust or other entity (based, in part, on the advice of professionals retained by the Litigation Trust or Litigation Trustee). If an election is made to report the Litigation Trust and/or any Litigation Trust Assets (in either case, in whole or in part) as a Disputed Ownership Fund, the Litigation Trust shall comply with all federal and state reporting and tax compliance requirements of a Disputed Ownership Fund, including but not limited to the filing (under a specially established tax identification number distinct from that established for the Litigation Trust) of a separate income tax return for the Disputed Ownership Fund or any other taxable entity and the payment of any federal, state or local income taxes that may come due related to such Disputed Ownership Fund.

Section 9.6 Expedited Determination of Taxes. The Litigation Trustee may request an expedited determination of taxes or tax refund rights of the Litigation Trust under section 505(b) of the Bankruptcy Code for all returns or claims filed for the Litigation Trust for all taxable periods through the termination of the Litigation Trust.

Section 9.7 Filing of Tax Returns. The Litigation Trustee shall be responsible for filing (and for paying all costs, expenses, and taxes with respect to the preparation and filing of) all federal, state, local, and foreign tax returns for the Debtors, and the Litigation Trust. Notwithstanding any rule, law, statute, or organizational document of the Debtors to the contrary, the Litigation Trustee or his or her designee shall be deemed the attorney-in-fact for any party required to execute any federal, state, local, and foreign tax returns on behalf of the Debtors or the Litigation Trust. The Litigation Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Litigation Trust shall be subject to any such withholding and reporting requirements.

## **ARTICLE X DISSOLUTION OF LITIGATION TRUST**

Section 10.1 Dissolution of Litigation Trust. The Litigation Trustee shall be discharged and the Litigation Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Litigation Trust Assets have been liquidated, (3) all duties and obligations of the Litigation Trustee hereunder have been fulfilled, (4) all Distributions required to be made by the Litigation Trust under the Plan and the Litigation Trust Agreement have been made, and (5) the Cases have been closed, but in no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Litigation Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Litigation Trustee that any further extension would not adversely affect the status of the Litigation Trust as a Litigation Trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and Distribution of the Litigation Trust Assets. The duties, responsibilities, and powers of the Litigation Trustee will terminate in accordance with the terms of this Litigation Trust Agreement.

Section 10.2 Events Upon Termination. At the conclusion of the term of the Litigation Trust, the Litigation Trustee shall distribute the remaining Litigation Trust Assets (subject to a reserve for expenses incurred in winding up the affairs of the Litigation Trust), if any, to the Beneficiaries or other parties entitled thereto, in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement.

Section 10.3 Winding Up, Discharge, and Release of the Litigation Trustee. For the purposes of winding up the affairs of the Litigation Trust at the conclusion of its term, the Litigation Trustee shall continue to act as Litigation Trustee until its duties under this Litigation Trust Agreement have been fully discharged or its role as Litigation Trustee is otherwise terminated under this Litigation Trust Agreement and the Plan. Upon a motion by the Litigation Trustee, the Bankruptcy Court may enter an order relieving the Litigation Trustee, its agents, and

employees of any further duties, discharging, and releasing the Litigation Trustee and its bond (if any).

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

Section 11.1 Amendments. The Litigation Trustee may modify, supplement, or amend this Litigation Trust Agreement, in its sole discretion, in any way that is not inconsistent with the Plan or the Confirmation Order without order of the Bankruptcy Court so long as such amendment, modification or alteration of the Agreement is consistent with the Litigation Trust's purpose and the Litigation Trustee's duties under the Agreement. Any modified or amended Litigation Trust Agreement shall be filed with the Bankruptcy Court, other than as provided in Section 6.5.

Section 11.2 Waiver. No failure by the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

Section 11.3 Cumulative Rights and Remedies. The rights and remedies provided in this Litigation Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

Section 11.4 No Bond Required. Notwithstanding any state law to the contrary, the Litigation Trustee (including any successor Litigation Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

Section 11.5 Irrevocability. This Litigation Trust Agreement and the Litigation Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Litigation Trust Agreement.

Section 11.6 Tax Identification Numbers. Amounts paid to Beneficiaries are subject to generally applicable withholding, information, and backup withholding rules. The Litigation Trustee may require any Beneficiary to furnish to the Litigation Trustee its Employer or Taxpayer Identification Number as assigned by the IRS or certify to the Litigation Trustee's satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Litigation Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If after reasonable inquiry, any Beneficiary fails to provide such identification number to the Litigation Trustee, the Litigation Trustee shall deem such Beneficiary's Claim as Disallowed and no Distribution shall be made on account of such Beneficiary's Claim.

Section 11.7 Relationship to the Plan. The principal purpose of this Litigation Trust Agreement is to aid in the implementation of the Plan and Confirmation Order and, therefore, this Litigation Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In accordance with Article I.E of the Plan, if any provision of this Litigation Trust Agreement is found to be inconsistent with the Plan or the Confirmation Order, the provisions of the Plan and Confirmation Order, as applicable, shall control.



Section 11.8 Applicable Law. This Litigation Trust shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

Section 11.9 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain jurisdiction over the Litigation Trust after the Effective Date, including jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, as set forth in Article XV of the Plan. Each party to this Litigation Trust Agreement or Beneficiary of the Litigation Trust hereby irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement or of any other agreement or document delivered in connection with this Litigation Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Litigation Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement.

Section 11.10 Severability. If any term, provision, covenant, or restriction contained in this Litigation Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Litigation Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 11.11 Limitation of Benefits. Except as otherwise specifically provided in this Litigation Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement.

Section 11.12 Notices. Except as may otherwise be specifically provided in this Litigation Trust Agreement, all notices, requests and demands to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Litigation Trustee:

[ ]

Attn.: [ ]

with a copy to:

[ ]

Attn: [ ]

If to a Beneficiary:

To the name and distribution address set forth in the Claims Register with respect to such Beneficiary.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

Section 11.13 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Litigation Trust Agreement, and to consummate the transactions contemplated hereby.

Section 11.14 Integration. This Litigation Trust Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by and among the parties hereto, with respect to the subject matter hereof. This Litigation Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Litigation Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement. To the extent of any conflict between the terms of the Plan or the Confirmation Order and this Litigation Trust Agreement, the Plan or Confirmation Order shall govern.

Section 11.15 Interpretation. The enumeration and Section headings contained in this Litigation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Litigation Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Litigation Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing persons shall include partnerships, associations, limited liability companies, and corporations. The words “herein,” “hereby,” and “hereunder” and words with similar import, refer to this Litigation Trust Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise. Any reference to the “Litigation Trustee” shall be deemed to include a reference to the “Litigation Trust” and any reference to the “Litigation Trust” shall be deemed to include a reference to the “Litigation Trustee” except for any provisions in which the context otherwise requires. Any provision of this Litigation Trust Agreement that refers to the words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.” Unless otherwise specified, references to Articles or Sections are to Articles or Sections of this Litigation Trust Agreement.

Section 11.16 Counterparts. This Litigation Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Litigation Trust Agreement by facsimile or electronic mail (portable document format or otherwise) shall be equally effective as delivery of a manually executed counterpart.



*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Litigation Trust Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

**THE DEBTORS:**

By: \_\_\_\_\_

Name: Christopher Sontchi  
Title: Independent Manager

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Litigation Trust Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

**LITIGATION TRUSTEE:**

By: \_\_\_\_\_  
Name:

## **EXHIBIT A**

### **LITIGATION TRUSTEE COMPENSATION**

Pursuant to Section 2.7, this Exhibit sets forth the terms of the Litigation Trustee's compensation.

**1. Compensation.** In consideration for the services of the Litigation Trustee under this agreement, the Litigation Trustee shall receive the following compensation from the Litigation Trust Assets: [To be added].

**EXHIBIT B**

**Schedule of Retained Causes of Action**

### **Schedule of Additional Retained Causes of Action<sup>1</sup>**

In accordance with Articles IV.E, VII.A, VII.D, and VII.I of the Combined Disclosure Statement and Plan, nothing contained in the Combined Disclosure Statement and Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Causes of Action, including but not limited to any rights, claims, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or themselves in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including any affirmative Causes of Action against any parties other than the Causes of Action released under the Plan as to Released Parties. On or after the Effective Date, the Litigation Trust shall retain and be vested with the Causes of Action and shall be vested with and be authorized (but not required) to take any such actions to (as applicable) prosecute, pursue, compromise, settle, or otherwise dispose of the Retained Causes of Action, subject to applicable law. **No entity may rely on the absence of a specific reference in the Combined Disclosure Statement and Plan or the Confirmation Order, in each case including any supplement, amendment, or modification thereto, to any Cause of Action against it as any indication that the Litigation Trust shall not pursue any and all available Retained Causes of Action against it. The Debtors and the Litigation Trust expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Combined Disclosure Statement and Plan.**

For the avoidance of doubt, the following specific types of Causes of Action are indicative of, but in no way limit, the Causes of Action retained in connection with the Combined Disclosure Statement and Plan, which include, but are not limited to, the following Causes of Action of the Debtors:

#### **1. Claims Related to the Robert Green Parties**

The Debtors expressly reserve all Causes of Action arising from, related to, or otherwise involving (a) Robert S. Green Jr.; (b) the Green Family Trust, an irrevocable trust created UAD September 25, 2003; (c) RGC La Quinta, LLC; (d) RGC PA 24510 LLC; (e) RGC Financial, LLC; (f) RGC Preferred, LLC; (g) the Robert Green Parties; (h) Robert Green Residential, Inc. (“RGRI”); (i) any other non-Debtor Persons affiliated with, managed or controlled by any Person in the preceding (a)-(h); (j) any trust related to any Person related to the Persons in the preceding (a)-(i); and (k) any family member of the Persons in preceding (a)-(j) (collectively, the “Robert Green Parties”).

#### **2. Claims Against Cypress Point Holdings, LLC**

The Debtors expressly reserve all Causes of Action arising from, related to, or otherwise involving Cypress Point Holdings, LLC and any Person or entity related to, affiliated with, managed or controlled by Cypress or its related parties (collectively, “Cypress”), including, but not limited to, any action taken or not taken by Cypress, Williams Tzros, Kenneth Manqueros, the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Combined Disclosure Statement and Plan.

MOU, the Cypress Note, and any amounts that were due, paid, or otherwise provided to Cypress prior to the Petition Date.

### **3. Claims Related to Contracts**

Unless otherwise released by the Combined Disclosure Statement and Plan, the Debtors, as applicable, expressly reserve all Causes of Actions based in whole or in part upon any contracts and leases to which any Debtor is a party or pursuant to which any Debtor has any rights whatsoever, including, without limitation, all Executory Contracts and Unexpired Leases that are assumed pursuant to the Combined Disclosure Statement and Plan or were previously assumed by the Debtors. The Causes of Actions reserved include, without limitation, Causes of Action against vendors, suppliers of goods or services, customers, or any other parties for: (a) overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) breach of contract, wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor, or other party; (e) any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (f) counterclaims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; and (h) unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims.

### **4. Claims, Defenses, Cross-Claims, and Counter-Claims Related to Litigation and Possible Litigation**

Unless otherwise released by the Combined Disclosure Statement and Plan, the Debtors expressly reserve all Causes of Action against or related to all Persons, Entities and Governmental Units, that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal or judicial or non-judicial, regardless of whether such Person, Entity or Governmental Unit is specifically identified in the Combined Disclosure Statement and Plan, this Plan Supplement, or any amendments thereto.

### **5. Claims Related to Accounts Receivable and Accounts Payable**

Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all Entities that owe or that may in the future owe money to the Debtors, regardless of whether such Person or Entity is expressly identified in the Combined Disclosure Statement and Plan, this Plan Supplement, or any amendments thereto. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Persons and Entities who assert or may assert that the Debtors owe money to them. The Causes of Action reserved hereby include Causes of Action against vendors, suppliers of goods and services, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff;

(b) for suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (e) for any liens, including mechanics', artisans', materialmen's, possessory or statutory liens held by any one or more of the Debtors; (f) arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies or suppliers of environmental services or goods; (g) for counter-claims and defenses related to any contractual obligations; (h) for any turnover actions arising under section 542 or 543 of the Bankruptcy Code; and (i) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, any business or tort claims and any other civil Causes of Action.

#### **6. Claims Related to Deposits, Adequate Assurance, and Other Collateral Postings**

Unless otherwise released by the Combined Disclosure Statement and Plan, the Debtors expressly reserve all Causes of Action based in whole or in part upon any posting of a security deposit, adequate assurance payment, or any other type of deposit, prepayment, or collateral.

#### **7. Claims Related to Avoidance Actions**

Unless otherwise released by the Combined Disclosure Statement and Plan, the Debtors expressly reserve any and all Avoidance Actions.

#### **8. Claims Related to Liens**

Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action based in whole or in part upon any Liens regardless of whether such Lien is specifically identified herein or the Lien Priority Analysis attached as **Exhibit C** to the *First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates* [Solicitation Version] [Docket No. 952].



**EXHIBIT C**

**EB-5 Settlement Agreement**

### **SETTLEMENT TERM SHEET**

SilverRock Development Company, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby propose this settlement term sheet to SilverRock Resort Investment, LLC and SilverRock Resort Investment M, LLC (the “EB-5 Lenders” and, together with the Debtors and the City of La Quinta, California (the “City”), the “Parties”), setting forth terms and conditions regarding a proposed settlement of matters between them as described below (the “Settlement”). The terms of the Settlement shall be reflected in the *Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates* (as the same may be amended or supplemented from time to time, the “Combined Disclosure Statement and Plan”).<sup>1</sup>

**THIS SETTLEMENT TERM SHEET IS NOT, AND SHALL NOT BE DEEMED, A SOLICITATION OF ACCEPTANCE OF THE PLAN. ANY SUCH SOLICITATION WILL COMPLY WITH ALL PROVISIONS OF THE BANKRUPTCY CODE. VOTES ON THE PLAN SHALL NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN CONDITIONALLY APPROVED BY THE COURT.**

**NOTHING CONTAINED HEREIN IS AN ADMISSION OF FACT OR LIABILITY OR SHALL BE DEEMED BINDING ON THE PARTIES HERETO. THIS SETTLEMENT TERM SHEET CONSTITUTES A CONFIDENTIAL SETTLEMENT COMMUNICATION PROTECTED BY RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ALL APPLICABLE STATE LAW EQUIVALENTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY SETTLEMENT OR OTHER AGREEMENT THAT PURPORTS TO BIND THE CITY SHALL BE SUBJECT TO APPROVAL OF THE CITY COUNCIL IN ACCORDANCE WITH CALIFORNIA LAW.**

**THIS TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS AND CONDITIONS OF THE SETTLEMENT DESCRIBED HEREIN, WHICH IS SUBJECT TO NEGOTIATION AND DEFINITIVE DOCUMENTATION (WHICH, FOR THE AVOIDANCE OF DOUBT, MAY BE THROUGH THE TERMS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN), THE PARTIES’ RESPECTIVE APPROVAL RIGHTS, AND APPROVAL BY THE BANKRUPTCY COURT.**

The below chart summarizes the material terms of the proposed settlement:

|         |                                                                                                                 |
|---------|-----------------------------------------------------------------------------------------------------------------|
| Parties | <ul style="list-style-type: none"> <li>• The Debtors</li> <li>• The EB-5 Lenders</li> <li>• The City</li> </ul> |
|---------|-----------------------------------------------------------------------------------------------------------------|

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<sup>1</sup> All capitalized undefined terms used herein shall have the meaning set forth in the Combined Disclosure Statement and Plan.

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Allowance of EB-5 Secured Claim           | In full and final satisfaction of all Secured Claims which they may hold against the Debtors and their estates, the EB-5 Lenders shall receive an Allowed Secured Claim under the Combined Disclosure Statement and Plan (the “ <u>Allowed EB-5 Secured Claim</u> ”) in the amount of \$3,301,142.23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Treatment of Allowed EB-5 Secured Claim   | <p>The Allowed EB-5 Secured Claim will receive the following treatment under the Combined Disclosure Statement and Plan:</p> <ul style="list-style-type: none"> <li>• \$1,200,000 payment in cash on the Effective Date of the Plan or as soon as reasonably practicable thereafter.</li> <li>• \$2,101,142.23 of the EB-5 Lenders’ recovery on account of the Allowed EB-5 Secured Claim shall be initially utilized as funding for the Litigation Trust and/or utilized to pay Allowed Administrative Claims under the terms of the Plan, and/or as may otherwise be agreed among the Debtors, the EB-5 Lenders, and the City; <i>provided that</i>, following the payment in full of all Allowed Administrative Claims under the Plan, any excess amount remaining from such \$2,101,142.23 shall constitute funding for the Litigation Trust (except as may otherwise be agreed among the Debtors, the EB-5 Lenders, and the City).</li> </ul> |
| Allowance of EB-5 Lender Deficiency Claim | The EB-5 Lenders’ remaining claim, over and above the Allowed EB-5 Secured Claim, shall be deemed an Allowed General Unsecured Claim under the Combined Disclosure Statement and Plan in the amount of \$17,503,867.04.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Right to Recovery From Litigation Trust   | The EB-5 Lenders shall be entitled to receive 55% of the first \$3,820,258.60 in proceeds distributed by the Litigation Trust on account of its Allowed EB-5 Secured Claim. The remaining 45% of the first \$3,820,258.60 in proceeds distributed by the Litigation Trust shall be paid to the City on account of its outstanding secured and priority claims. Upon the distribution of \$2,101,142.23 to the EB-5 Lenders and repayment of the City’s outstanding secured and priority claims, the EB-Lenders will share <i>pro rata</i> with other Holders of Allowed General Unsecured Claims with respect to any further distributions from the Litigation Trust.                                                                                                                                                                                                                                                                              |
| Selection of Litigation Trustee           | The EB-5 Lenders shall have a consultation right with regards to the selection of the Litigation Trustee.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Releases                  | <p>The Debtors and the EB-5 Lenders shall grant full mutual releases for all matters related to the Project, the Debtors, the Chapter 11 Cases, the Sale, the Combined Disclosure Statement and Plan, and the Claims of the EB-5 Lenders, except, for the avoidance of doubt, for any rights under the EB-5 Settlement and the Combined Disclosure Statement and Plan; <i>provided, however</i>, that the EB-5 Lenders' release of the Debtors shall not impact the EB-5 Lenders' ability to pursue personal guaranty claims against Robert Green.</p> <p>The EB-5 Lenders and the City shall grant full mutual releases for all matters related to the Project, the Debtors, the Chapter 11 Cases, the Sale, the Combined Disclosure Statement and Plan, and the Claims of the EB-5 Lenders, except, for the avoidance of doubt, for any rights under the EB-5 Settlement and the Combined Disclosure Statement and Plan.</p> |
| Bankruptcy Court Approval | The proposed settlement shall be subject to Bankruptcy Court approval, which may be obtained via the Confirmation Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

**EXHIBIT D**

**Second Amendment to Credit Facility Loan and Security Agreement**

**SECOND AMENDMENT TO CREDIT FACILITY  
LOAN AND SECURITY AGREEMENT**

dated as of \_\_\_\_\_, 2026

between

**SILVERROCK DEVELOPMENT COMPANY, LLC, RGC PA 789, LLC, SILVERROCK  
LIFESTYLE RESIDENCES, LLC, SILVERROCK LODGING, LLC, SILVERROCK  
LUXURY RESIDENCES, LLC, SILVERROCK PHASE I, LLC, and  
\_\_\_\_\_ solely in [his/her] capacity as Litigation  
Trustee as Borrowers,**

and

**CITY OF LA QUINTA, as Lender**

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SECOND AMENDMENT TO  
CREDIT FACILITY LOAN AGREEMENT

This SECOND AMENDMENT TO CREDIT FACILITY LOAN AGREEMENT (as further amended, amended and restated, supplemented or otherwise modified from time to time, this “Second Amendment”), dated as of \_\_\_\_\_, 2026, between SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company, SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company, RGC PA 789, LLC, a Delaware limited liability company, SILVERROCK LIFESTYLE RESIDENCES, LLC, a Delaware limited liability company, SILVERROCK LODGING, LLC, a Delaware limited liability company, SILVERROCK LUXURY RESIDENCES, LLC a Delaware limited liability company, SILVERROCK PHASE I, LLC, a Delaware limited liability company (each, a “Debtor” and collectively, the “Debtors”), and \_\_\_\_\_<sup>1</sup> solely in [his/her] capacity as Litigation Trustee appointed pursuant to the First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates (the “Litigation Trustee”) (the Debtors and the Litigation Trustee are each a “Borrower” and collectively, the “Borrowers”), and CITY OF LA QUINTA, a California municipal corporation, as Lender (the “City” or the “Lender”), with reference to the following recitals:

RECITALS

WHEREAS, on August 5, 2024 (the “Petition Date”), the Debtors commenced chapter 11 cases, which have been administratively consolidated for procedural purposes only under Chapter 11 Case No. 24-11647 MFW (each case, a “Chapter 11 Case” and collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, on September 20, 2024, Debtors filed their *Motion of Debtors Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2, for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing from the City of La Quinta; (II) Granting Non-Priming DIP Lender Liens and Super-Priority Claims; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* [Docket No. 125] (the “Original DIP Financing Motion”), which included the Term Sheet, proposed order, and other terms and conditions for the proposed alternative DIP Financing to be provided by the Lender;

WHEREAS, on October 1, 2024, the Bankruptcy Court entered the *Interim Order (I) Authorizing the Debtors to Obtain Interim Postpetition Secured Financing, (II) Granting Non-Priming Liens and Superpriority Administrative Expense Status, and (III) Scheduling a Final Hearing* [Docket No. 162] the (“First Interim DIP Order”) granting the Original DIP Financing Motion, on an interim basis;

WHEREAS, on October 18, 2024, the Bankruptcy Court entered the *Second Interim Order (I) Authorizing the Debtors to Obtain Additional Interim Postpetition Secured Financing, (II)*

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<sup>1</sup> To be provided.

*Granting Non-Priming Liens and Superpriority Administrative Expense Status, and (III) Scheduling a Final Hearing* [Docket No. 188] (the “Second Interim DIP Order”) granting the Original DIP Financing Motion, on an interim basis;

WHEREAS, on October 31, 2024, the Bankruptcy Court entered the *Third Interim Order (I) Authorizing the Debtors to Obtain Additional Interim Postpetition Secured Financing, (II) Granting Non-Priming Liens and Superpriority Administrative Expense Status, and (III) Scheduling a Final Hearing* [Docket No. 208] (the “Third Interim DIP Order”), granting the Original DIP Financing Motion, on an interim basis;

WHEREAS, on December 6, 2024, the Bankruptcy Court entered the *Fourth Interim Order (I) Authorizing the Debtors to Obtain Additional Interim Postpetition Secured Financing, (II) Granting Non-Priming Liens and Superpriority Administrative Expense Status, and (III) Scheduling a Final Hearing* [Docket No. 243] (the “Fourth Interim DIP Order” and, together with the First Interim DIP Order, the Second Interim DIP Order, and the Third Interim DIP Order, the “Interim DIP Orders”), granting the Original DIP Financing Motion, on an interim basis;

WHEREAS, pursuant to the Interim DIP Orders, the Debtors obtained interim funding from the City on a non-priming basis in the aggregate principal amount of \$2,690,965.00 pursuant to the Original Term Sheet (the “Interim DIP Financing”);

WHEREAS, the Interim DIP Financing did not provide the necessary funding to complete a fulsome sale process for the Project (as defined herein), and the Debtors then requested DIP Financing in the estimated principal amount of \$11 million, inclusive of the Interim DIP Financing, to fund their intended sale process and propose a chapter 11 plan;

WHEREAS, the Debtors and Lender then negotiated a multiple draw secured superpriority debtor-in-possession term loan facility (the “DIP Facility”), in the maximum principal amount of \$11,000,000.00, including principal amounts previously funded by the City on an interim basis in connection with the Interim DIP Financing;

WHEREAS, on or about December 10, 2024, the Debtors and the City negotiated and agreed to that certain Term Sheet for Debtor-In-Possession Financing Facility (the “Term Sheet”) and Memorandum of Understanding (the “MOU”);

WHEREAS, on December 12, 2024, the Debtors filed their *Motion of Debtors Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2 for an Order (I) Authorizing Debtors to Obtain Postpetition Financing; (II) Granting DIP Lender Priming Liens and Super-Priority Claims; and (III) Granting Related Relief* [Docket No. 246] (the “Final DIP Financing Motion”);

WHEREAS, on January 23, 2025, the Bankruptcy Court entered the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Priming Liens and Superpriority Administrative Expense Status, and (III) Granting Related Relief* [Docket No. 330] (the “Priming DIP Order”);



WHEREAS, effective as of January 23, 2025, the Lender and the Debtors executed and entered into that certain *Debtor-In-Possession Credit Facility Loan Agreement* (the “Initial DIP Credit Agreement”);

WHEREAS, on April 15, 2025, the Bankruptcy Court entered the *Amended Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Priming Liens and Superpriority Administrative Expense Status, and (III) Granting Related Relief* [Docket No. 437] (the “Amended Priming DIP Order”);

WHEREAS, on May 14, 2025, the *Deed of Trust and Assignment of Rents Securing Debtor-In-Possession Credit Facility Loan and Security Agreement*, executed by Debtor SilverRock Development Company LLC (the “SilverRock DIP Deed of Trust”) was recorded in the Official Records of the County of Riverside, California as document #2025-0144695;

WHEREAS, on May 15, 2025, the *Deed of Trust and Assignment of Rents Securing Debtor-In-Possession Credit Facility Loan and Security Agreement*, executed by Debtor RGC PA 789, LLC (the “RGC 789 DIP Deed of Trust” and together with the SilverRock DIP Deed of Trust, the “DIP Deeds of Trust”) was recorded in the Official Records of the County of Riverside, California as document #2025-0146770;

WHEREAS, subsequent to the execution and recordation of the DIP Deeds of Trust, the Parties identified certain parcels of real property owned by the Debtors that secure the DIP Facility pursuant to the Amended Priming DIP Order, but which were not identified or included in the SilverRock DIP Deed of Trust, such parcels being identified and described in the Supplemental Deed of Trust (the “Additional Parcels”);

WHEREAS, Lender conditionally agreed to provide an additional tranche of financing to the Debtors and to waive certain indebtedness of the Borrowers under the DIP Facility on the terms, and subject to the conditions, set forth herein;

WHEREAS, pursuant to the DIP Amendment Order and the further assurances clause of the Agreement, the Lender and the Debtors desired to confirm and clarify of record the existence and efficacy of the Liens of the Lender with respect to the Additional Parcels;

WHEREAS, on October 23, 2025, the Bankruptcy Court entered the *Order (I) Authorizing the Debtors to Amend the DIP Credit Agreement; (II) Authorizing the Debtors to Executed, Deliver and Record a Supplemental Deed of Trust in Favor of the DIP Lender; and (III) Granting Related Relief* [Docket No. 760] (the “DIP Amendment Order”), which, among other things, authorized the Debtors to execute and enter into an amended credit agreement;

WHEREAS, effective as of October 23, 2025, the Debtors and the Lender entered into the First Amendment to Debtor-In-Possession Credit Facility Loan and Security Agreement (the “First Amended DIP Credit Agreement”);

WHEREAS, on April 8, 2026, the Debtors filed their First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates [Docket No. 952] (the “Plan”);

WHEREAS, the Debtors are not able to pay in full their outstanding indebtedness to Lender under the Initial DIP Credit Agreement, as amended by the First Amended DIP Credit Agreement on the Effective Date of the Plan, and Lender is willing to extend the maturity date and permit the use of its collateral for purposes of funding the activities of the Litigation Trust, as set forth in the Plan and in this Agreement, below;

WHEREAS, as of the Effective Date of the Plan, the Debtors were and remain indebted to Lender under the DIP Facility in the principal amount of \$\_\_\_\_\_, plus contingent obligations, including without limitation with respect to the Poppy Bank Backstop Indemnity;

WHEREAS, on \_\_\_\_\_, 2026, the Court entered its [confirmation order] (the “Confirmation Order”);

WHEREAS, pursuant to the Plan and Confirmation Order, \_\_\_\_\_ has been appointed as the Litigation Trustee with respect to the Litigation Trust;

WHEREAS, this Agreement modifies, amends and ratifies the Initial DIP Credit Agreement, as amended by the First Amended DIP Credit Agreement, and adds the Litigation Trustee as a co-borrower on the terms set forth below. The Initial DIP Credit Agreement, as amended by the First Amended DIP Credit Agreement, remains in full force and effect except to the extent expressly modified herein.

#### AMENDED TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing, and the conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

**Section 1. Definitions.** Except as set forth in this Agreement, the capitalized words and phrases used in the Agreement shall have the meanings given such terms in the Agreement, the DIP Orders and the Plan. The following terms shall have the meanings set forth below for all purposes in the Agreement and this Amendment:

“Carve Out” means , (a) with respect to the Debtors and their professionals, the Carve Out as defined in section 3(f) of the Debtor-In-Possession Credit Facility Loan and Security Agreement dated as of January 23, 2025; and (b) with respect to the Litigation Trust: (i) fees of the Litigation Trustee and professionals engaged by the Litigation Trust, in amounts and on terms set forth in the Plan, Confirmation Order or Litigation Trust Agreement; (ii) out-of-pocket litigation expenses incurred by the Litigation Trust (including without limitation expert fees, court costs, deposition costs and similar items); and (iii) premiums for insurance in favor of the Litigation Trust and the Litigation Trustee.

“DIP Orders” means the Interim DIP Orders, the Priming DIP Order, the Amended Priming DIP Order and the DIP Amendment Order.

“EB-5 Distribution Rights” means the right of the EB-5 Lenders to receive 55% of the first \$3,820,258.60 in proceeds distributed by the Litigation Trust on account of its Allowed EB-5 Secured Claim, subject to the terms of the Settlement Term Sheet by and among the Debtors, the EB-5 Lenders and the City, which was filed as part of the Plan Supplement.

“EB-5 Lenders” means SilverRock Resort Investment, LLC and SilverRock Resort Investment M, LLC.

“Effective Date” means the effective date of the Debtors’ Plan.

“Loan” means the loans and advances made by the Lender to the Debtors and/or the Litigation Trust.

“Obligations” means all obligations of every nature of the Borrowers to Lender under the Loan Documents, now existing or hereafter arising, including, without limitation, any liability of the Borrowers on any claim of Lender, whether or not the right to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed or contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy, insolvency, reorganization or other similar proceeding. Without limiting the generality of the foregoing, the obligations of the Borrowers to Lender under this the Loan Documents include: (a) the obligation to pay principal, interest, charges, expenses, fees, attorneys’ fees and disbursements, indemnities and other amounts payable by the Borrowers under any Loan Document; (b) the obligation to reimburse any amount in respect of any of the foregoing that the Lender, in its sole discretion, may elect to pay or advance on behalf of the Borrowers; and (c) obligations of the Borrowers to indemnify Lender with respect to the Poppy Bank Backstop Indemnity, as set forth in Section 10(l) of the Priming DIP Order and the Amended Priming DIP Order.

“Poppy Bank Backstop Indemnity” means (a) Lender’s indemnity obligations under Section 10(l) of the Priming DIP Order and Amended Priming DIP Order; and (b) any payment or obligations to parties other than Poppy Bank pursuant to the Plan with respect to the backstop indemnity under the Priming DIP Order and Amended Priming DIP Order.

“Proceeds” means “proceeds” as such term is defined in section 9-102 of the Uniform Commercial Code and, in any event, shall include, without limitation, all dividends, distributions or other income from the DIP Collateral, collections thereon or distributions with respect thereto.

“Supplemental Deed of Trust” means that that certain *First Amendment to Deed of Trust and Assignment of Rents Securing Debtor-in-Possession Credit Facility Loan and Security Agreement* approved by the DIP Amendment Order.

“Wind Down Maturity Date” means the first to occur of:

- a. The date of termination of the Litigation Trust;
- b. The occurrence of an Event of Default with respect to the DIP Facility;
- c. The dismissal or conversion of the Chapter 11 Cases (or the case of any of the Borrowers), or appointment of a trustee with respect to any of the Borrowers;
- d. The resignation or termination of \_\_\_\_\_ as the Litigation Trustee without the advance written consent of the City.

e. December 31, 2030; provided, however, that such date shall be extended for up to five additional one-year periods in the event that the Litigation Trust and its professionals are continuing to pursue recoveries and administer distributions for the benefit of the Debtors' creditors at such time(s).

**Section 2. The Commitment and Credit Extension.**

(a) Commitment, Borrowing and Assumption of Liability for Indebtedness. From and after the Effective Date, Lender shall have no obligation to make any advance or provide any funding to Borrowers, or any of them. On the Effective Date, the Litigation Trust shall assume and be jointly and severally liable with the Borrowers for all Obligations and indebtedness of the Debtors under or with respect to the DIP Facility.

(b) Maturity Dates. The aggregate principal amount of the Loans, together with all accrued and unpaid interest and fees thereon, shall become due and payable in full on the Wind Down Maturity Date.

(c) Interest. Interest shall accrue on the outstanding principal advanced under the DIP Facility at the rate of 4.71% per annum. From and after an Event of Default, default interest shall accrue and be payable on the outstanding principal under the DIP Facility at the rate of 5.0% (which shall be in addition to the foregoing rate, or the maximum allowable interest rate pursuant to California law, whichever is less).

**Section 3. Creation of Liens and Security Interests.**

(a) Grant of Security Interest in Personal Property. To secure the prompt payment and performance of all Obligations, the Borrowers hereby pledge and grant to the Lender, and hereby create, a continuing lien and security interest in favor of the Lender in and to, all of their right, title and interest in and to their respective right, title and interest of each such Borrower wherever located, whether now existing or hereafter from time to time arising or acquired in all of the following tangible and intangible personal property, including without limitation all of the following (collectively, the "Collateral"):

- (i) All Accounts;
- (ii) All Receivables;
- (iii) All Equipment, Goods, Inventory Furniture and Fixtures;
- (iv) All Documents, Instruments and Chattel Paper;
- (v) All Contracts;

(vi) All Commercial Tort Claims and other claims and causes of action; provided, however, that Lender's security interest in connection with Avoidance Actions shall extend only to the Proceeds of Avoidance Actions, and not to the Avoidance Actions themselves;

(vii) All Letters of Credit and Letter-of-Credit Rights;

(viii) All Securities Collateral;

(ix) All Investment Property;

(x) All Intellectual Property Collateral;

(xi) All General Intangibles;

(xii) All Money and all Deposit Accounts;

(xiii) all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records relating to the Collateral and any General Intangibles at any time evidencing or relating to any of the foregoing; and

(xiv) to the extent not covered by clauses (i) through (xi) of this Section 3(b), all other assets, personal property and rights of such Borrower, whether tangible or intangible, all Proceeds and products of each of the foregoing and all accessions of and to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Borrower from time to time with respect to any of the foregoing.

(b) Priority of the DIP Liens and Security Interests. The liens and security interests of the Lender in the Collateral are, and shall at all times continue to be, first-priority liens in all of the Borrowers' personal property, senior to all other liens and security interests in the Borrowers' personal property, subject only to (a) the Carve-Out (as defined herein); and (b) the EB-5 Distribution Rights.

**Section 4. Representations and Warranties.** Each Borrower represents and warrants that:

(a) The Borrowers are duly organized and validly existing and in good standing under the laws of the jurisdiction(s) in which they are organized.

(b) The Borrowers' execution and delivery of this Second Amendment and all other Loan Documents, and their performance of their obligations under this Second Amendment and all other Loan Documents (i) are within the power of the Borrowers, (ii) have been duly authorized by all necessary organizational approval by the Borrowers, and (iii) constitute legal, valid, and binding obligations of the Borrowers.

(c) This Second Amendment and the other Loan Documents have been duly executed and delivered by or on behalf of the Borrowers.

(d) This Second Amendment constitutes, and each other Loan Document when delivered hereunder will constitute, a legal, valid and binding obligation of the Borrowers, enforceable against each such Borrower in accordance with its terms.

(e) The Independent Manager has been duly appointed and elected as sole manager of the Borrowers in accordance with the relevant operating agreements and order of the Bankruptcy Court and is authorized to enter and perform this Second Amendment; the execution and performance of this Second Amendment do not violate any applicable laws or court orders to the best of Borrowers', Independent Manager's or Litigation Trustee's actual knowledge.

(f) The Independent Manager and the Litigation Trustee are signing this Second Amendment solely in his or her representative capacity and shall not have any personal liability for any obligations or liabilities of the Borrowers' estates.

(g) The Borrowers have the authority to enter into this Second Amendment pursuant to the Plan and the Confirmation Order.

(h) Neither the Borrowers, the Independent Manager nor the Litigation Trustee make any representation or warranty, actual or implied, regarding the condition, quality, or otherwise of the Collateral.

(i) The business operations of the Borrowers, however limited, have been and will continue to be conducted in compliance with all laws of each jurisdiction in which each business has been or is being carried on.

(j) All proceeds of the Loans, and the Collateral and proceeds thereof, shall be used solely in accordance with the Budget.

(k) No part of any Loan or the proceeds thereof will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(l) To the best of the Borrowers' actual knowledge, after their reasonable due diligence, neither the execution, delivery, nor performance by the Borrowers of this Agreement or any other Loan Document, nor compliance by it with the terms and provisions hereof or thereof, (i) will contravene any provision of any Requirement of Law or any order, writ, injunction or decree of any court or Governmental Authority, or (ii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of the Borrowers or any of their Subsidiaries.

(m) To the best of the Borrowers' actual knowledge, the Borrowers are not, nor are they, or any of them, required to be registered as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(n) The Confirmation Order was entered on \_\_\_\_\_, 2026, and has not been reversed, vacated or modified.

(o) The Effective Date of the Plan occurred on \_\_\_\_\_, 2026.

(p) The Litigation Trustee has been duly appointed in accordance with the Plan and Confirmation Order and is authorized to enter and perform this Second Amendment; the execution and performance under this Second Amendment and other Loan Documents do not violate any applicable laws or court orders to the best of Borrowers', the Independent Manager's or the Litigation Trustee's actual knowledge.

**Section 5. Conditions Precedent.** The Borrowers' use of the Collateral and proceeds thereof, shall be subject to the satisfaction of the following conditions precedent (except to the extent that Lender, in its sole and absolute discretion, may agree in writing):

(a) The Confirmation Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Lender.

(b) The Lender shall have received a Budget, in form and substance reasonably satisfactory to the Lender.

(c) No Default or Event of Default shall exist.

(d) The representations and warranties of the Borrowers set forth in each Loan Document shall be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) as of each use of Collateral or proceeds thereof, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were true and correct in all material respects (or, to the extent qualified by materiality, in all respects) as of such earlier date).

(e) The Lender shall have received all such agreements, instruments, approvals, and other documents, each reasonably satisfactory to the Lender in form and substance, as the Lender may reasonably request.

(f) The Borrowers shall be in compliance with the terms of the Plan and the Confirmation Order.

(g) The Litigation Trustee shall not have been terminated, removed, replaced, or had [his/her] powers and authority materially limited without the prior written consent of the Lender.

**Section 6. Affirmative Covenants.**

(a) The following terms, conditions and covenants shall govern the Borrowers:

(i) Borrowers shall comply in all material respects with the Plan and the Confirmation Order.

(ii) Funds provided to, or received by, the Litigation Trust shall be used solely for the purposes set forth in the Budget subject to permitted variances at a 10% level determined on the basis of aggregate cash disbursements (the “Permitted Variances”). The Litigation Trustee shall inform the City promptly of any disbursement made based on Permitted Variances. Any adjustments to the Budget (other than the Permitted Variances) shall be approved by the City, which approval shall not be unreasonably withheld.

(iii) The Litigation Trustee shall provide to the Lender, all documents and written (which may be in electronic form) information in his or her possession, custody or control that the Lender from time to time may request regarding: the condition or value of the assets of the Litigation Trust; status of litigation pending by or against the Litigation Trust.

(iv) The above notwithstanding, the Litigation Trustee is not required to provide to the Lender any documents or information protected by attorney-client privilege or attorney-client confidentiality. The Litigation Trustee may request that the Lender execute one or more NDAs with respect to any documents or information designated by Litigation Trustee as confidential.

(v) Prior to entering into any binding contract, agreement or term sheet (other than contracts for ordinary course goods or services), the Litigation Trustee shall consult with the Lender.

(vi) The Litigation Trustee shall promptly notify the Lender of (and, in any event, no later than 5 Business Days after) the occurrence of any Default or Event of Default.

(vii) The Litigation Trustee shall comply in all material respects with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of the business of the Litigation Trust.

(viii) Borrowers shall promptly execute and deliver all further instruments and documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and take all further action that the Lender may require, to give effect to this Second Amendment, perfect and protect the Liens or to enable the Lender to exercise and enforce its rights and remedies with respect to the Collateral, subject to the terms and conditions set forth in the Plan and the Confirmation Order.

(ix) Borrowers shall maintain detailed and materially accurate accounting and records of proceeds of the Loans.

(x) Upon written request of the Lender, the Litigation Trustee shall enter into, and cause any bank in which the Litigation Trust maintains any deposit



account to enter into, a deposit account control agreement perfecting the Lender's security interest in such account.

(xi) The Litigation Trustee shall make distributions to the Lender (and EB-5 Lenders) when and as required under the Plan or Confirmation Order. Absent the written agreement of Lender and the EB-5 Lenders, all distributions from the Litigation Trust shall be made solely to the Lender and the EB-5 Lenders. Such distributions shall be split among the Lender and the EB-5 Lenders 55% to the EB-5 Lenders on account of their Allowed Secured Claims (until they have been paid the aggregate amount of the EB-5 Distribution Rights, and 45% to Lender (until all Obligations and indebtedness have been satisfied in full). To the extent that contingent Obligations (including without limitation in connection with the Poppy Bank Backstop Indemnity), distributions sufficient to cover all potential contingent obligations to the Lender shall be reserved in a segregated account pending final determination of such Obligations.

(b) Negative Covenants. The Borrowers hereby covenant and agree, that they will not, and will not permit any of their Subsidiaries to, subject to the Plan and Confirmation Order:

(i) make any payment or transfer any asset to any prepetition Creditor of the Debtors, other than payments to the Lender and the EB-5 Lenders, until all Obligations to Lender have been paid and satisfied in full.

(ii) create, assume, incur or suffer to exist any Indebtedness without the prior written consent of the Lender and, as may be required by the Bankruptcy Code, or an order of the Bankruptcy Court;

(iii) create, incur, assume or suffer to exist any Liens on any of their properties or assets other than Permitted Liens without the prior written consent of the Lender and, as may be required by the Bankruptcy Code, an order of the Bankruptcy Court;

(iv) change their names, fiscal years, amalgamate, consolidate with or merge into, dispose of all or substantially all of their assets, divide into two or more Persons pursuant to a "plan of division" or similar method, create, or reorganize into, one or more Persons or enter into any similar transaction with any other entity without the prior written consent of the Lender;

(v) engage in any business other than the businesses engaged in by the Borrowers on the date hereof, or as permitted by the Plan or Confirmation Order, without the written consent of the Lender;

(vi) enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate on terms that are less favorable to the Borrowers or their Subsidiaries, as the case may be, without the prior written consent of the Lender;

(vii) at any time, seek or consent to any reversal, modification, amendments, stay or vacation of the Final DIP Order or the Confirmation Order, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed); at any time, seek or consent to a priority for any administrative expense against any of the Debtors (now existing or hereafter arising) of any kind or nature whatsoever (including, without limitation, any administrative expenses of the kind specified in, or ordered under, Bankruptcy Code Sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code) equal to or superior to the priority of the Liens and claims in respect of the Obligations except as expressly permitted in the Plan or the Confirmation Order; or

(viii) use the proceeds of Loans or the Collateral, other than for purposes set forth in, and the amounts stated in, the Budget, without the prior written consent of the Lender.

**Section 7. Events of Default.** Notwithstanding the provisions of Sections 362 and 1141 of the Bankruptcy Code, and except to the extent expressly limited in the Plan or the Confirmation Order, and without application or motion to, or order from, the Bankruptcy Court, the occurrence of any one or more of the following events, regardless of the reason therefore, shall constitute an “Event of Default” hereunder:

(a) any Borrower’s failure to comply in any material respects with the Loan Documents, this Amendment, the Term Sheet, the MOU, any DIP Order, the Confirmation Order, or any other order of the Bankruptcy Court;

(b) entry of an order (i) granting relief from the automatic stay on any portion of Borrowers’ real estate; (ii) granting relief from the automatic stay on any other Borrower asset with a value in excess of \$500,000; or (iii) converting or dismissing the Chapter 11 Cases, or appointing a trustee;

(c) the failure of the Borrowers to pay any principal when due, whether at stated maturity, by acceleration, by required prepayment or otherwise, or shall fail to pay any installment of interest or other amount payable hereunder when due;

(d) any representation, warranty or statement made or deemed made by the Borrowers herein or in any other Loan Document or other document related hereto or thereto or in any certificate delivered to the Lender pursuant hereto or thereto shall prove to be untrue in any material respect (or, in the case of any representation, warranty or statement qualified by materiality, in any respect) on the date as of which made or deemed made;

(e) the Borrowers or any of their Subsidiaries fail to perform or observe any term, covenant or agreement contained in this Agreement in any material respect.

(f) entry of any order by the Bankruptcy Court reversing, amending, supplementing, staying for a period of fifteen (15) days or more, vacating or modifying the Final DIP Order, the Disclosure Statement Order or the Confirmation Order without the prior written consent of the Lender;

(g) payment by the Borrowers of prepetition debt (other than as approved by the Bankruptcy Court and as otherwise contemplated by the DIP Budget, the Agreement, this Second Amendment, the DIP Amendment Order, or with the prior written consent of the Lender);

(h) other than as a result of action or inaction of Lender, the Final DIP Order shall cease to provide valid, enforceable, and perfected Liens on the DIP Collateral in favor of the Lender with the priority set forth therein or otherwise cease to be valid and binding and in full force and effect;

(i) Any Lien on the Collateral shall have priority that either is pari passu with, or senior to, the Lender's Liens, except to the extent expressly provided in the Final DIP Order;

(j) the filing of any motion by the Borrowers seeking relief from the automatic stay which could reasonably be expected to result in a material impairment of the rights or interests of the Lender without the prior written consent of the Lender;

(k) one or more judgments, orders or decrees for the payment of money required to be satisfied as an administrative expense claim in the Chapter 11 Cases shall be allowed by the Bankruptcy Court in an aggregate amount (to the extent not paid or covered by insurance) in excess of \$100,000.00;

(l) actual or asserted (by the Borrowers or any Affiliate thereof) invalidity or impairment of this Amendment, the Agreement or any related Loan Document (including the failure of any Lien to remain perfected);

(m) non-compliance by the Borrowers in any material respect with the terms of the Final DIP Order, the Confirmation Order or any other order entered in the Chapter 11 Cases;

(n) the Bankruptcy Court enters an order or orders (i) avoiding or requiring disgorgement by the Lender of any amounts received in respect of the DIP Obligations or (ii) permitting the grant of a Lien on the Collateral other than the Permitted Liens;

(o) the filing of any motion, pleading or proceeding by the Borrowers which could reasonably be expected to result in a material nonconsensual impairment of the rights or interests of the Lender or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in such a material impairment.

**Section 9. Application of Proceeds.** Except to the extent that Lender, in its sole discretion and in writing otherwise directs or as otherwise provide for herein and in the Final DIP Order with respect to the Carve-Out or the agreement with the EB-5 Lenders, all or any part of proceeds, profits or other receipts or payments from or constituting Collateral and made in payment of the DIP Obligations shall be applied in the following order:

First, to pay the incurred and unpaid fees, costs and expenses, indemnities and other obligations to the Lender required under the Loan Documents;

Second, to pay accrued and unpaid interest on the Loans; and

Third, to pay all outstanding principal amounts in respect of the Loans.

**Section 10. Miscellaneous.**

(a) Communications.

- a. The parties shall maintain open and transparent communications regarding the sale process, the preparation of a plan and disclosure statement, the commencement of litigation, the Debtors' and the Litigation Trust's operations, and other material matters as may arise from time to time with respect to the Chapter 11 Cases. To the extent necessary or appropriate, the provision of information by one party to another may be subject to a customary non-disclosure agreement ("NDA"). All disputes pertaining to the designation of confidential material or to the enforceability of relevant NDA's shall be resolved by the Bankruptcy Court. To facilitate the orderly provision of information, the parties shall meet routinely with each other.
- b. Correspondence Regarding Pleadings. The Borrowers shall make a good faith effort (but are not required) to provide to the Lender a draft of all material motions and applications at least three (3) days prior to serving or filing such motion or application. In the event that the Lender raises a concern regarding any proposed motion or application, the Borrowers shall attempt to address such concerns in good faith.
- c. Information Sharing. Upon a request by the Lender in writing (which may be by email), the Borrowers, and the Litigation Trustee shall provide to the City all documents and information in their possession, custody or control that the Lender from time to time may request in writing regarding: the condition or value of the Debtors' assets; claims against Borrowers; negotiations and communications with financiers of the Borrowers or their businesses; contracts between Borrowers and third parties; transfers and payments made by Borrowers; and dealings between Borrowers and their insiders. Any request by the Lender shall be reasonable in scope, and shall describe the type of documents or information requested. Notwithstanding the foregoing, Borrowers are not required to provide to the Lender any documents or information protected by the attorney-client privilege.

(b) Indemnity. Whether or not the transactions contemplated hereby shall be consummated, the Borrowers shall indemnify, pay and hold the Lender and its respective affiliated boards, commissions, and committees, and the officials (elected and appointed), members, advisors, officers, directors, employees and agents thereof, and each of their lawyers, accountants and other professionals (each, an "Indemnified Party"), harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (whether or not any of the foregoing Persons is a party to any litigation), including, without limitation, attorneys' fees and costs (limited in the case of legal fees and expenses to reasonable and documented legal fees of counsel for any or all Indemnified Parties, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnified Parties taken as a whole (and, in the case of an actual or perceived

conflict of interest, where the Indemnified Parties affected by such conflict informs the Borrowers of such conflict and thereafter retains their own counsel, of an additional counsel for each group of affected Indemnified Parties similarly situated, taken as a whole)) and costs of investigation, document production, attendance at a deposition, or other discovery, with respect to or arising out of the Amendment, this Agreement or the other Loan Documents, or any use of proceeds hereunder or the Chapter 11 Cases or any transactions contemplated hereby or thereby, or any claim, demand, action or cause of action being asserted against the Borrowers (collectively, the “Indemnified Liabilities”); provided, that the Borrowers shall have no obligation hereunder with respect to Indemnified Liabilities with respect to a particular Indemnified Party to the extent arising from the gross negligence or intentional or willful misconduct of any such Indemnified Party.

(c) Taxes and Other Deductions. Unless an applicable exemption applies, Borrowers shall pay all applicable transfer taxes, recording fees and similar taxes, costs and charges that are required in connection with the DIP Facility and the recordation of instruments in connection with securing the DIP Facility. Payments by the Borrowers hereunder or under any other related Loan Documents shall be made free and clear of and without reduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or political subdivision of a country (collectively, “Taxes”); provided, however, that if any Taxes are required by applicable law to be withheld (“Withholding Taxes”) from any amount payable to the Lender, the amounts so payable to the Lender shall be increased to the extent necessary to yield to the Lender on a net basis after the payment of all Withholding Taxes the amount payable under this Amendment, the Agreement or any other related Loan Documents at the rate provided herein or therein and if requested by the Lender, the Borrowers shall provide evidence reasonably satisfactory to the Lender that the applicable Taxes have been withheld and remitted.

(d) Lender’s Legal Fees and Costs. In the event that Borrowers, or any of them, default under the Loan Documents, the Lender shall be entitled to recover reasonable and documented professional fees and costs, including without limitation attorneys’ fees and costs, incurred in connection with any action or proceeding to enforce or construe the Loan Documents, and/or to defend against any claims asserted by any person against the Lender in connection with the DIP Facility or the Borrowers’ Chapter 11 Cases. The Lender’s rights to recovery of its professional fees as set forth in this paragraph shall survive the repayment of Borrowers’ indebtedness and Obligations under the DIP Facility.

(e) Amendments. Neither this Amendment nor any terms hereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Borrowers and the Lender (or, to the extent that any of the Debtors have been dissolved, the Litigation Trustee and the Lender).

(f) Conflict. To the extent that there is any inconsistency between this Second Amendment and any of the other related Loan Documents once executed, this Second Amendment shall govern unless such other document specifically states otherwise; provided that, for the avoidance of doubt, to the extent that there is any inconsistency between this Second Amendment and the Confirmation Order, the Confirmation Order shall govern.

(g) Effectiveness; Binding Effect; Governing Law. This Amendment shall become effective when it shall have been executed by the Borrowers and the Lender and thereafter shall be binding upon and inure to the benefit of the Borrowers, the Lender and their respective permitted successors and assigns. THIS AMENDMENT, THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICTS OF LAW RULES.

(h) Waiver of Jury Trial; Judicial Reference. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES TO THIS AMENDMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AMENDMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR RELATIONSHIP THAT IS BEING ESTABLISHED HEREBY. TO THE EXTENT ANY DISPUTE HEREUNDER IS BROUGHT IN A JURISDICTION WHERE THE FOREGOING PREDISPUTE WAIVER IS INEFFECTIVE, THEN SUCH DISPUTE SHALL BE HEARD BY A REFEREE AND RESOLVED BY JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 ET SEQ.

(i) Consent to Jurisdiction; Venue. All judicial proceedings brought against any party hereto with respect to this Amendment and the Loan Documents shall be brought in the Bankruptcy Court or, upon the dismissal, abstention, or other resolution of the Chapter 11 Cases, in any state or federal court of competent jurisdiction in Riverside County, California, and by execution and delivery of this Amendment or the Agreement, each party hereto accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction and venue of the Bankruptcy Court, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Amendment. Each party hereto irrevocably waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this clause (l).

(j) Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Electronic delivery of an executed counterpart of this Amendment by email shall be as effective as delivery of an original counterpart of this Amendment.

(k) Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Amendment or the Agreement.

(l) Interpretive Provisions. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Amendment shall refer to this Amendment as a whole and not to any particular provision of this Amendment, and section, subsection, paragraph, schedule, and exhibit references are sections, subsections, paragraphs, schedules, and exhibits to this Amendment unless otherwise specified.

(m) Limitation on Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AMENDMENT OR THE OTHER LOAN DOCUMENTS: (I) NONE OF THE LENDER NOR ANY INDEMNIFIED PARTY SHALL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THEIR RESPECTIVE ACTIVITIES RELATED TO THIS AMENDMENT, THE OTHER LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, THE LOANS, OR OTHERWISE IN CONNECTION WITH THE FOREGOING; (II) WITHOUT LIMITING THE FOREGOING, EXCEPT IN CONNECTION WITH A BREACH OR THREATENED BRACH OF THE NDAS OR OTHER CONFIDENTIALITY OBLIGATIONS, NONE OF THE LENDER NOR ANY INDEMNIFIED PARTY SHALL BE SUBJECT TO ANY EQUITABLE REMEDY OR RELIEF, INCLUDING SPECIFIC PERFORMANCE OR INJUNCTION ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY; AND (III) NONE OF THE LENDER NOR ANY INDEMNIFIED PARTY SHALL HAVE ANY LIABILITY TO THE BORROWERS, FOR DAMAGES OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY FOR ANY ACT OR OMISSION.

(n) Notice. All notices, demands, and other communications to be given or delivered under or by reason of the provisions of the Agreement or this Amendment shall be in writing and shall be deemed to have been given (a) if personally delivered, when personally delivered, (b) when transmitted via electronic mail to the e-mail address (provided no error message or other message stating that such email was undeliverable), (c) when sent reputable national overnight courier service, when delivery is confirmed by such reputable national overnight courier service's online tracking tool, (d) when sent by certified or registered mail, postage prepaid, when delivery is confirmed to have occurred by the United States Postal Service's online tracking tool or return receipt. Unless another address has been previously, or hereafter is, specified in writing, notices, demands, and communications:

To the Lender shall be sent to:

Jon McMillen, City Manager  
City of La Quinta  
78495 Calle Tampico  
La Quinta, California 92253  
[jmcmillen@laquintaca.gov](mailto:jmcmillen@laquintaca.gov)

with a required copy to

William Ihrke, City Attorney  
Rutan & Tucker, LLP  
18575 Jamboree Road 9<sup>th</sup> Floor  
Irvine, California 92612  
[bihrke@rutan.com](mailto:bihrke@rutan.com)

and to

Bradford F. Englander  
Whiteford Taylor & Preston LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
[benglander@whitefordlaw.com](mailto:benglander@whitefordlaw.com)

To the Borrowers shall be sent to:

Christopher Sontchi, Independent Manager  
Sontchi, LLC  
[sontchi@sontchillc.com](mailto:sontchi@sontchillc.com)

and to

Douglas Wilson, Chief Restructuring Officer  
Douglas Wilson Companies  
1620 Fifth Ave, Suite 400  
San Diego, CA 92101  
[dwilson@douglaswilson.com](mailto:dwilson@douglaswilson.com)

with a required copy to:

Erin Fay  
Wilson Sonsini Goodrich & Rosati  
222 Delaware Avenue, Suite 800  
Wilmington, Delaware 19801  
[efay@wsgr.com](mailto:efay@wsgr.com)

To the Litigation Trustee:

[to be inserted]

(o) Preservation of Lenders' Rights. Except as expressly stated in this Amendment, nothing in this Amendment, the Agreement or any other Loan Document supersedes, waives, releases or otherwise alters the Debtors' covenants, obligations or waivers, or the Lender's rights and remedies, as set forth in the DIP Orders or the MOU, all of which shall remain in full force and effect in accordance with their terms, despite payment and satisfaction of Borrowers' obligations and indebtedness under the Agreement, this Amendment and other Loan Documents.

*[Signature page follows]*



IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed and delivered as of the date and year first written above.

**BORROWERS:**

**SilverRock Development Company, LLC,  
RGC PA 789, LLC,  
SilverRock Lifestyle Residences, LLC,  
SilverRock Lodging, LLC,  
SilverRock Luxury Residences, LLC, and  
SilverRock Phase 1, LLC**

By: \_\_\_\_\_  
Name: Douglas Wilson  
Chief Restructuring Officer

By: \_\_\_\_\_  
Name: Christopher Sontchi  
Independent Manager

**LITIGATION TRUSTEE:**

[to be inserted]

**LENDER:**

**City of La Quinta**

By: \_\_\_\_\_  
Jon McMillen, City Manager

Attest:

By: \_\_\_\_\_  
Monika Radeva, City Clerk

Approved as to Form:

By: \_\_\_\_\_  
William H. Ihrke, City Attorney

**EXHIBIT E**

**Form of General Release (For Poppy Backstop Indemnity Participants)**

## **General Release**

(For Poppy Bank Backstop Indemnity Participants)

This general release (the “Release”) is entered into and delivered by \_\_\_\_\_ (the “Releasing Party”) as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_. [*To be dated effective as of the date of distribution of proceeds of the City Settlement Contribution to the Releasing Party*]

## **Recitals**

A SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company, SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company, RGC PA 789, LLC, a Delaware limited liability company, SILVERROCK LIFESTYLE RESIDENCES, LLC, a Delaware limited liability company, SILVERROCK LODGING, LLC, a Delaware limited liability company, SILVERROCK LUXURY RESIDENCES, LLC a Delaware limited liability company, SILVERROCK PHASE I, LLC, a Delaware limited liability company (each, a “Debtor” and collectively, the “Debtors”) filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on August 5, 2024 (the “Petition Date”) in the United States Bankruptcy for the District of Delaware Court (the “Bankruptcy Court”). The Debtors’ chapter 11 cases were administratively consolidated for procedural purposes only under Chapter 11 Case No. 24-11647 MFW (each case, a “Chapter 11 Case” and collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

B. On April 8, 2026, the Debtors filed their First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of SilverRock Development Company, LLC and its Debtor Affiliates [Docket No. 952] (the “Plan”).

C. As set forth in Article XII(E) of the Plan, the City of La Quinta, California (the “City”) offered a settlement contribution (defined in the Plan as the “City Settlement Contribution”) to creditors who were identified in the Plan as “City Settlement Offerees” and who met the eligibility criteria set forth in Article XII(E) of the Plan. Subject to the execution and delivery of this Release, the Releasing Party has satisfied such eligibility criteria and has elected to accept the benefits of Article XII(E) of the Plan.

D. The benefits provided to the Releasing Party under Article XII(E) of the Plan constitute good and valuable consideration.

E. As required by Article XII(E) of the Plan, the Releasing party hereby absolutely, irrevocably and unconditionally executes and delivers this Release in favor of the City’s current and former directors, managers, officers, committee members, City Council members, members of any governing body, advisory board members, predecessors, successors, assigns, representatives, employees, agents, trustees, financial advisors, attorneys, accountants, advisors, consultants, and representatives (collectively, the “City Related Parties”) and the City. For purposes of clarification, the scope of the release set forth herein is not limited to matters arising from or in connection with the Debtors’ Chapter 11 Cases, but extends to and encompasses all

claims and causes of action that the Releasing Party has, may have or asserts against the City and/or the City Related Parties.

**Release**

1. **Release.** In return for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Releasing Party hereby absolutely, irrevocably and unconditionally releases, acquits and forever discharges the City and the City Related Parties (individually a “City Released Party” and collectively, the “City Released Parties”) from any and all liabilities, claims, suits, debts, liens, losses, causes of action, demands, rights, damages, costs and expenses, liens, or security interests of any kind, character or nature whatsoever, known or unknown, fixed or contingent, legal or equitable, liquidated or unliquidated, disputed or undisputed, or based in contract or tort (“Claims”), that the Releasing Party has, may have, or claims to have, against any or all of the City Released Parties, arising out of any act, omission or circumstance occurring or existing from the beginning of time through the date of this Release, including without limiting the generality of the foregoing: Claims arising prepetition; Claims arising following the petition date; Claims arising before or after the occurrence of the Effective Date of the Debtors’ Plan; Claims related to the City’s provision of debtor-in-possession financing to the Debtors; Claims related to the conduct of the Chapter 11 Case; Claims related to the sale of the Debtors’ property; Claims related to the negotiation or confirmation of the Plan; and all rights of subrogation, indemnification and contribution, or any other matter or thing whatsoever (together “Released Claims”).

2. **Section 1542 Waiver.** Section 1542 of the Civil Code of the State of California provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

**The Releasing Party hereby voluntarily waives and relinquishes any rights and benefits that it has or may have under Section 1542 of the Civil Code of the State of California.**

Releasing Party’s Authorized Initials: \_\_\_\_\_

The Releasing Party has performed a full and complete investigation of the facts pertaining to this Release, and the Releasing Party acknowledges and agrees that it is aware that it may hereafter discover facts in addition to or different from those which the Releasing Party now knows or believes to be true with respect to the subject matter of the Released Claims, but it is the Releasing Party’s expressed intention hereby to fully and finally forever settle and release any and all matters, disputes and differences, known or unknown, suspected and unsuspected, which now exist, may exist or heretofore have existed, as against the City Released Parties arising out of the Released Claims.

3. No Prosecution or Transfer of Released Claims. The Releasing Party hereby represents, warrants and covenants that it: (a) has not assigned, sold, encumbered or otherwise transferred or disposed of, any interest in any of the Released Claims, (b) shall not hereafter sell, encumber or otherwise transfer or dispose of any interest in the Released Claims; (c) shall not sue, make demand, commence any action or otherwise prosecute or pursue (together, "Actions") any Released Claims; or (d) directly or indirectly cause, permit or encourage any person to take any Action or Actions against the City Released Parties, or any of them.

4. Indemnification. The Releasing Party hereby indemnifies and holds harmless each and every City Released Party for and against all losses, claims, damages or liabilities arising from any breach of this Agreement by the Releasing Party.

5. **WAIVER OF JURY TRIAL. THE RELEASING PARTY, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS RELEASE.**

6. Further Assurances. The Releasing Party, without expense to any City Released Party, shall execute, acknowledge and deliver all further acts, deeds, estoppels and other similar instruments as any City Released Party may from time to time request to: (a) correct any defect, error, or omission that may be discovered in the contents of this Release; or (b) that are necessary or appropriate to carry out, facilitate or effectuate the provisions of this Release.

7. City Manager Authorization. The La Quinta City Manager, on behalf of the City or any other City Related Party, shall have the authority to enter into any implementing document or supplement, and to take any actions necessary or property to effectuate the implementation of this Release and its terms.

8. General Construction. Defined terms used in this Release may be used interchangeably in singular or plural form, and pronouns are to be construed to cover all genders. All references to this Release or any agreement or instrument referred to in this Release means such agreement or instrument as originally executed and as amended, restated, replaced, supplemented or otherwise modified from time to time. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Release as a whole and not to any particular subdivision; and the words "include" or "including" are intended to be words of clarification and not limitation, and therefore mean "include without limitation" or "including without limitation" or "including, but not limited to", as applicable. Releasing Party hereby agrees and acknowledges that this Release is the product of negotiations, has been reviewed by Releasing Party's legal counsel, and that the terms hereof shall not be construed against any Released Party.

9. Attorneys' Fees and Expenses. In the event of any breach of this Release by the Releasing Party, the Releasing Party shall be liable to any and all of the City Released Parties for their respective actual and reasonable attorneys' fees and costs incurred, including but not limited to expert witness fees, costs of investigation and preparation, fees and costs of any appeals, and other fees, costs and expenses related thereto, in connection with or resulting from such breach.

10. Notices. All notices to the Releasing Party under this Release shall be given in writing and shall be deemed given upon the first to occur of (a) delivery by e-mail or confirmation of actual receipt by fax; (b) actual delivery if given by hand, Federal Express or UPS; and (c) three days following mailing if delivered by the U.S. Mail, to the individuals identified below, at the addresses specified below (or such other individuals or addresses as may be provided in writing hereafter):

[insert names and addresses of Releasing Party and counsel]

11. City as Expressed Beneficiary of Release. The City, and each and every City Released Party, is and are expressed beneficiaries of this Release, and shall have the right to enforce and seek enforcement of any and all terms and conditions set forth herein.

12. Severability. If any provision or part of this Release is held, determined, or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of this Release and shall not affect the validity and enforceability of such remaining provisions.

WHEREFORE, the Releasing Party, intending to be legally bound, hereby executes this Release as of the date first referenced above

[insert signature block and notarial jurat]