



PUBLIC NOTICE OF SPECIAL MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold a special board meeting via Zoom Webinar at **3:00 p.m.** on **Thursday, June 20, 2024.**

Anyone wishing to attend virtually may register as follows:

Register in advance for this webinar:

https://arvadaco-gov.zoom.us/webinar/register/WN_Ah7LI50HQFq5_THMzdJwFQ

After registering, you will receive a confirmation email containing information about joining the webinar.

If you need assistance with the virtual webinar process or have questions or comments for the AURA Board regarding the agenda items, please contact cbriscoe@arvada.org prior to noon on June 20, 2024. A recording of the meeting will be posted on AURA's website following the webinar.

Agenda information is attached.

Carrie Briscoe

Carrie Briscoe
Deputy Director/Recording Secretary

POSTED: June 19, 2024



SPECIAL MEETING OF THE AURA BOARD OF COMMISSIONERS

Via Zoom Webinar

3:00 p.m., Thursday, June 20, 2024

AGENDA

SPECIAL MEETING – 3:00 p.m.

1. Call to Order
2. Moment of Reflections and Pledge of Allegiance
3. Roll Call of Members
4. Old Business
 - A. Resolution AR-24-07 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE TENTH AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED AGREEMENTS REGARDING PHASE 4 OF THE PROPERTY IDENTIFIED IN THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT, AS AMENDED

 - B. Resolution AR-24-08 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (RALSTON CREEK NORTH) BETWEEN THE ARVADA URBAN RENEWAL AUTHORITY, AND ARVADA BEER GARDEN RE, LLC AND INCLUDING RALSTON CREEK NORTH, LLC AS A PARTY IN INTEREST
5. Adjournment

ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: Item 4A
Meeting Date: Special Meeting - June 20, 2024
Title: Tenth Amendment to the Amended and Restated Disposition and Development Agreement between Ralston Creek North and AURA

Tri-Party Agreement
Subordination of Loan Agreement

ACTION PROPOSED: Approve

BACKGROUND: AURA entered into a DDA with Ralston Creek North in 2015 to develop a mixed-use project on the 16-acre site referred to as Ralston Creek North. The site consists of the former Arvada Square, Independence Center, Safeway, Ralston Road Café and most recently the gas station. All of these structures have been abated and razed.

Phase 1, The Shops at Ralston Creek, is developed and open. Berkeley Homes is currently constructing 44 townhome on the former Safeway site, also known as Phase 2. Phase 3, the 27 townhomes is under contract with Royal Oak. Phase 4, 195 apartment units located at the former Arvada Square property and is being developed by Loftus. Phase 5, former gas station, will be redeveloped by City Street Investors into a beer hall/restaurant, large public plaza and another small retail building.

This amendment pertains to Phase 4 identified above.

INFORMATION ABOUT THE ITEM: Loftus' lender has reviewed our DDA and Amendments and is recommending changes to the documents to ensure that they are in first position in case of a default. The 10th Amendment and the exhibits are explained below.

Loftus – 10th Amendment to DDA

- Definitions and Clarification - identification of the Senior Lender, description of Tri-Party Agreement and confirmation that the Ninth and Tenth Amendments to the DDA only apply to Phase 4.
- Confirms that AURA's contribution goes towards eligible expenditures.
- Schedule of Performance - adds 45 days to close and begin construction from 6/15 to 8/1 and 7/15 to 9/1. Completion date moves from 11/15/26 to 4/1/27.
- Threshold Agreement - provides for subordination of the windfall to the repayment of the senior Loan.
- Completion Guaranty:
 - a. Per the 9th Amendment, Section 7.02(E) provides that the Redeveloper shall deliver construction loan documents which includes a form of completion guaranty.

- b. The 10th Amendment describes this requirement as the delivery of construction loan documents. Counsel to Senior Lender confirmed that this is just a change in description and not intended to prevent the delivery of the completion guaranty.

Exhibits:

Tri-Party Agreement

- Escrow Agreement - lender shall control the escrow account including AURA's Contribution
- Lender has the right to cure default before funds returned to AURA
- Right of Re-Entry
 - a. AURA cannot exercise our rights to re-entry until the construction loan is paid
 - b. Lender wants to make sure that a third party cannot take possession of the project while the loan is outstanding.
- Governing Law for anything related to urban renewal is in Colorado
- Extends the life of the agreement through repayment of the Senior Lender's loan.
- Adds detail to the draw process – requiring certain AIA forms, lien waivers, and other requirements before amounts are expended for the project.
- Shortens AURA's review period to five days from ten.

Subordination of Loan Agreement

\$3,500,000 loan from AURA to Loftus at 3.0% interest

\$5,000,000 loan from AURA to Loftus at 4.5% interest (forgivable)

\$56,900,000 loan from Strathcona (Senior Lender) to Loftus (Senior Loan)

Lender wants to ensure that there isn't a chance that AURA's loans could mature before their maturity date, so they are changing our loan payment dates to match theirs and for the existing 12-month extension option to automatically extend in the event the Senior Lender loan is also extended. AURA's loan is subordinate to the Senior Loan. Loftus is personally guaranteeing the Senior Loan.

FINANCIAL IMPACT: The changes to the DDA ensures that the Senior Lender is in first position in case of a default, AURA's money is subordinate to the senior debt and has a higher level of risk.

STAFF RECOMMENDATION: Staff recommends approval.

SUGGESTED MOTION: I move that Resolution AR-24-07, A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE TENTH AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED AGREEMENTS REGARDING PHASE 4 OF THE PROPERTY IDENTIFIED IN THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT, AS AMENDED be approved.

RESOLUTION AR-24-07

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE TENTH AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED AGREEMENTS REGARDING PHASE 4 OF THE PROPERTY IDENTIFIED IN THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT, AS AMENDED

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY, THAT:

Section 1. The Tenth Amendment to the Amended and Restated Disposition and Development Agreement between the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (the "Authority"), Residences at Ralston Creek, Inc., a Colorado corporation, RRC TIC LLC, a Delaware limited liability company, and CVI Ralston Creek LLC, a Delaware limited liability company, attached hereto as **Exhibit A**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority.

Section 2. The Tri-Party Agreement between the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado, WRPX XV Arvada JV, LLC, a Delaware limited partnership, RRC TIC LLC, a Delaware limited liability company, CVI Ralston Creek LLC, a Delaware limited liability company, and Residences at Ralston Creek, Inc., a Colorado corporation, attached hereto as **Exhibit B**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority.

Section 3. The Subordination of Loan [Agreement] between the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado and Residences at Ralston Creek, Inc., a Colorado corporation, attached hereto as **Exhibit C**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority.

DATED this ___ day of _____, 2024.

Paul Bunyard, Chair

Recording Secretary

APPROVED AS TO FORM

Corey Y. Hoffmann, Legal Counsel

**TENTH AMENDMENT TO AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS TENTH AMENDMENT TO AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Amendment**”) is made as of June ____, 2024 (the “**Effective Date**”), by and among **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (the “**Authority**”), **THE RESIDENCES AT RALSTON CREEK, INC.**, a Colorado corporation (“**RRC**”) and **RRC TIC LLC**, a Delaware limited liability company (“**RRC TIC**”), and **CVI RALSTON CREEK LLC**, a Delaware limited liability company (“**CVI Ralston**”).

RECITALS:

WHEREAS, the Authority and **RALSTON CREEK NORTH, LLC**, a Colorado limited liability company (“**RCN**”) entered into that certain Amended and Restated Disposition and Development Agreement dated as of April 7, 2021, amended by the First Amendment to the DDA dated as of March 2, 2022, as amended by that certain Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Third Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 7, 2022, as amended by that certain Fourth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Fifth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Sixth Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 21, 2023, as amended by that certain Seventh Amendment to Amended and Restated Disposition and Development Agreement, dated as of December 6, 2023, as amended by that certain Eighth Amendment to Amended and Restated Disposition and Development Agreement, dated as of January 3, 2024, as amended by that certain Ninth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 6, 2024 (collectively, the “**DDA**”). Such DDA was entered into for the redevelopment of certain property located within the Ralston Fields Urban Renewal Project Area for a mixed-use development;

WHEREAS, pursuant to that certain Assignment of Disposition and Development Agreement, dated as of December 28, 2023, RCN assigned all of its right, title, interest and obligations in, under and to the DDA as Redeveloper with respect to Phase 4 to RRC;

WHEREAS, pursuant to the Ninth Amendment to Amended and Restated Disposition and Development Agreement dated May 6, 2024 (the “**Ninth Amendment**”), RRC has assigned all of its right, title, interest and obligations in, under and to the DDA as Redeveloper with respect to Phase 4 to RRC TIC and CVI Ralston and the Authority recognized RRC TIC and CVI Ralston as Redeveloper for Phase 4;

WHEREAS, the Authority, RRC and RRC TIC are parties to (i) that certain Loan Agreement, dated as of May 6, 2024, pursuant to which the Authority made a loan to RRC in the principal amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100

DOLLARS (\$3,500,000.00), and (ii) that certain Amended and Restated Loan Agreement, dated as of May 6, 2024, pursuant to which the Authority made an additional loan to RRC in the principal amount of FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00);

WHEREAS, WRPV XV ARVADA JV, L.P., a Delaware limited partnership (“**Lender**”) is making a construction loan to RRC TIC and CVI Ralston, in the maximum principal amount of up to [FIFTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$56,900,000.00)] (the “**Senior Loan**”);

WHEREAS, in connection with the making of the Senior Loan, Lender requires that certain amendments be made to the DDA as more particularly set forth below; and

WHEREAS, nothing in this Tenth Amendment shall be construed as modifying the allocation of funds provided by the Authority under the DDA to eligible improvements within the meaning of the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

A G R E E M E N T:

1. **Defined Terms.** All capitalized terms used but not defined in this Amendment will have the meanings set forth for such terms in the DDA. All terms that are defined in this Amendment and used in any provisions that are added to the DDA pursuant to this Amendment will have the meanings set forth for such terms in this Amendment.

2. **Amendments to the DDA.**

a. Section 1 of the DDA is hereby amended by adding the following defined terms:

i. ““Senior Loan” means that certain construction loan made to RRC TIC, LLC, a Delaware limited liability company (“RRC TIC”), and CVI RALSTON CREEK, LLC, a Delaware limited liability company (“CVI Ralston”) by WRPV XV ARVADA JV, L.P., a Delaware limited partnership (“Lender”), in the maximum principal amount of up to [FIFTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$56,900,000.00)]”;

ii. ““Senior Loan Agreement” means that certain Construction Loan Agreement dated as of [____], 2024 evidencing the Senior Loan”;

b. Section 3.03 of the DDA is hereby amended by deleting the penultimate sentence therein in its entirety.

c. Section 7.02(C) of the DDA is hereby deleted in its entirety and replaced with the following:

“C. Said Escrow Account shall require that any draws from said Escrow Account shall be subject to the provisions of that certain Tri-Party Agreement, by and among Authority, Lender, CVI Ralston, RRC TIC and THE RESIDENCES AT RALSTON CREEK, INC., a Colorado corporation, dated as of [_____, 2024] in the form attached hereto as Exhibit H;”

d. Section 7.02(E) of the DDA is hereby deleted in its entirety and replaced with the following:

“E. Redeveloper shall further provide the Authority with all loan documents from Redeveloper’s construction lender.”

e. Section 7.05 of the DDA is hereby amended by adding the following as the last sentence of the section:

“Any payments under this Section 7.05 shall be paid to the Authority only after the Senior Loan is repaid in full.”

f. Exhibit A attached hereto is hereby attached to the DDA as a new Exhibit H;

g. The table labeled “PATH A” in Exhibit C of the DDA is hereby deleted in its entirety and replaced with the table set forth on Exhibit B attached hereto. As of the date hereof, the Closing Date, Commencement of Construction, and Completion of Construction are as set forth on Exhibit B.

h. Exhibit F of the DDA, which sets forth the Amended and Restated Loan Agreement for the \$3,500,000 loan, is hereby amended by adding the First Amendment to Amended and Restated Loan Agreement attached hereto as Exhibit C.

i. Exhibit G of the DDA, which sets forth the Loan Agreement for the \$5,000,000 loan, is hereby amended by adding the First Amendment to Loan Agreement attached hereto as Exhibit D.

3. **Phase 4 Obligations.** Notwithstanding anything to the contrary set forth in the DDA, the parties agree that the obligations under the DDA relating to property other than Phase 4 will not be the responsibility of RRC, RRC TIC or CVI Ralston, nor will such obligations be binding on Phase 4. Likewise, the parties agree and confirm that the terms of the Ninth Amendment and this Tenth Amendment shall only apply to Phase 4 and govern the rights and obligations of RRC, RRC TIC, CVI Ralston and the Authority in connection with Phase 4.

4. **Ratification.** Except as amended hereby, the DDA remains unmodified and in full force and effect. In the event of any conflict between the DDA and this Amendment, the terms and provisions of this Amendment shall control.

5. **Counterparts; Electronic Delivery.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by email or other electronic means (including, without limitation, DocuSign) and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

6. **Miscellaneous.** If any of the provisions of this Amendment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Amendment or the circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. This Amendment may not be orally changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any changes, termination or waiver is sought. This Amendment shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. Each party hereto hereby represent and warrant that it has full right, power and authority to enter into this Amendment and that the person executing this Amendment on behalf of such party is duly authorized to do so.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Amendment as of the date above written.

ARVADA URBAN RENEWAL AUTHORITY, a
body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

CVI RALSTON CREEK LLC,
a Delaware limited liability company

By: _____

James R. Loftus, Manager

RRC TIC LLC,
a Delaware limited liability company

By: _____

James Drever, Manager

**THE RESIDENCES AT RALSTON CREEK,
INC.**,
a Colorado corporation

By: _____

James R. Loftus, President

[Signature Page to Tenth Amendment to Amended and Restated Disposition and Development Agreement]

EXHIBIT A

TRI-PARTY AGREEMENT

This Tri-Party Agreement (“**Agreement**”) is entered into this ____ day of June, 2024 (“**Effective Date**”) by and among **WRPV XV ARVADA JV, L.P.**, a Delaware limited partnership (together with its successors and/or assigns, “**Lender**”), **RRC TIC LLC**, a Delaware limited liability company (“**RRC TIC**”) and **CVI RALSTON CREEK LLC**, a Delaware limited liability company (“**CVI RALSTON**” and together with RRC TIC, collectively, jointly and severally, as tenants in common and individually, as the context may require, “**Borrower**”), **THE RESIDENCES OF RALSTON CREEK, INC.**, a Colorado corporation (“**RRC**”), and **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (“**AURA**”). Lender, Borrower, RRC and AURA may be collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Lender and Borrower have, as of the date hereof, entered into that certain Construction Loan Agreement dated as of the date hereof (the “**Loan Agreement**”), pursuant to which Lender has agreed to lend Borrower the sum of Fifty Six Million Nine Hundred Thousand and No/100 Dollars (\$56,900,000.00) (the “**Loan**”), as evidenced by a promissory note (including any extensions, replacements, modifications or renewals thereof), executed and delivered by Borrower and payable to the order of Lender (the “**Note**”), dated on or about the date of this Agreement. The repayment of the Note is secured by, among other things, that certain real property located in Jefferson County, Colorado, and more fully described on **Exhibit A** attached hereto (the “**Property**”). The Loan is evidenced by the Note, the Loan Agreement, a deed of trust and other documents between Borrower, Lender and such other parties required for the consummation of the Loan (collectively, the “**Loan Documents**”).

B. Borrower and RRC, as successors in interest to Ralston Creek North, LLC, are parties to that certain Amended and Restated Disposition and Development Agreement, dated April 7, 2021, as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Third Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 7, 2022, as amended by that certain Fourth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Fifth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Sixth Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 21, 2023, as amended by that certain Seventh Amendment to Amended and Restated Disposition and Development Agreement, dated as of December 6, 2023, as amended by that certain Eighth Amendment to Amended and Restated Disposition and Development Agreement, dated as of January 3, 2024, as amended by that certain Ninth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 6, 2024, as amended by that certain Tenth Amendment, dated as of the date hereof (together with all

amendments thereto, the “**DDA**”), pursuant to which AURA agreed to contribute to Borrower an amount of up to \$14,393,989 (the “**AURA Grant Proceeds**”) and make two loans to RRC in the amounts of \$5,000,000 and \$3,500,000 (the “**AURA Loan Proceeds**”, and together with the AURA Grant Proceeds, the “**AURA Funds**”).

C. As a condition precedent to making the Loan, Lender requires that Borrower provide Lender with evidence that certain amounts set forth in Section 2.10.5(1) of the Loan Agreement have been contributed by indirect investors of Borrower (“**Equity Funds**”). The Equity Funds and the AURA Funds (collectively, the “**Borrower Funds**”) shall be used by Borrower for the payment and reimbursement of Borrower’s reasonable out-of-pocket costs and expenses incurred in the course of the construction of infrastructure and improvements at the Property (the “**Work**”). A minimum of \$6,982,307.00 of the AURA Funds shall be used to fund the construction of eligible improvements within the meaning of the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.* The Borrower Funds will be set aside to be used for the Work according to the terms set out in this Agreement and the Loan Agreement.

D. Borrower, RRC and AURA agree that Lender shall retain the Borrower Funds in a separate account and that the release and disbursement of the Borrower Funds shall be in accordance with the terms and conditions of this Agreement and the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to make Loan, the Parties hereto agree as follows:

1. The foregoing recitals are true and by this reference are incorporated into the Agreement.

2. The Parties hereto represent and warrant to each other that they have the respective authority to sign this Agreement and that (a) the person signing on behalf of the Lender is duly authorized to bind the Lender, (b) the person signing on behalf of the Borrower is duly authorized to bind the Borrower, (c) the person signing on behalf of RRC is duly authorized to bind RRC, and (d) the person signing on behalf of AURA is duly authorized to bind AURA.

3. Borrower acknowledges and confirms that (i) the Equity Funds will be deposited by Borrower with Lender and (ii) the AURA Grant Proceeds will be deposited by AURA with Lender at the closing of the Loan. RRC acknowledges that the AURA Loan Proceeds will be deposited by AURA with Lender at the closing of the Loan. Lender, Borrower, RRC and AURA acknowledge and agree that the Borrower Funds will be held by Lender as provided in this Agreement and the Loan Agreement. AURA acknowledges and confirms its obligations to deposit the AURA Funds with Lender to be held pursuant to the terms and conditions of this Agreement and the Loan Agreement.

4. Lender shall establish, maintain and control a bank account with a financial institution designated by Lender in Borrower’s name (the “**Equity Account**”) in order to hold the Borrower Funds deposited with it as provided hereunder. In no event shall Borrower Funds be commingled with any other Lender funds. The Equity Account will be an interest-bearing

account for the benefit of Borrower. All fees and expenses related to the account imposed by the financial institution shall be borne by Borrower and will be deducted from the Borrower Funds.

5. Lender will hold the Borrower Funds in the Equity Account until the Borrower Funds are disbursed as set forth below.

a. Borrower may, no more frequently than once each calendar month, submit a written request to Lender, with a copy thereof to AURA, to the notice addresses set forth in Paragraph 12 below, for a release of Borrower Funds for that portion of the Work completed by Borrower (each a “**Draw Request**”) in accordance with the terms of the Loan Agreement. Each such Draw Request shall include the items set forth in Section 2.10.10(a) of the Loan Agreement including (i) a completed and itemized Application and Certificate for Payment (AIA Document No. G702 and No. G703) or similar form approved by Lender, (ii) a certificate or report of Borrower’s Architect to Lender based upon a site observation of the Property made by Borrower’s Architect not more than thirty (30) days prior to the date of such draw, (iii) an anticipated cost report in form and substance reasonably acceptable to Lender, (iv) an affirmation of payment (AIA Form No. G706), (v) duly executed lien waivers, (vi) copies of all executed change orders, and (vii) such other information as Lender may reasonably request or as may be required pursuant to the Loan Documents. Lender shall process and fund all properly submitted Draw Requests as set forth in the Loan Agreement.

b. In addition to the foregoing documentation requirements, prior to approving a requested disbursement, Lender and AURA each have the right to inspect the completed improvements or work in connection with which Draw Request being sought by Borrower. Lender’s inspections shall be completed, if at all, pursuant to the terms set forth in the Loan Agreement. AURA agrees to perform any desired inspection as soon as reasonably possible following receipt of the applicable Draw Request.

c. AURA may review and comment to Lender on any properly submitted Draw Request within five (5) days of its receipt of the Draw Request. The failure of AURA to provide any written comment or response to a Draw Request during such five-day period shall be deemed an approval by AURA, and shall not require any further notice or action by Borrower or Lender.

d. In the event of any disagreement between the Borrower and AURA regarding a Draw Request resulting in conflicting instructions to Lender or adverse claims or demands upon Lender with respect to the release of the Borrower Funds (a “**Draw Dispute**”), Lender will be entitled to refuse to comply with such conflicting instructions, claims, or demands so long as such Draw Dispute shall continue without any liability to Borrower or AURA hereunder or under the Loan Documents. In the event of a Draw Dispute, Lender shall not be liable for any loss or damage for its failure to release the Borrower Funds, and Borrower and AURA release Lender from any claims arising out of Lender’s failure to release the Borrower Funds, which release shall survive the expiration or termination of this Agreement and the Loan Documents. In the event of a Draw Dispute, Lender shall be entitled to continue to refrain from releasing the Borrower Funds until such time as the Draw Dispute (a) has been resolved by agreement of Borrower and AURA, and Lender has been notified in writing of the agreement

and joint instructions of Borrower and AURA with respect to the disputed Draw Request(s) or (b) has been finally adjudicated in a court of competent jurisdiction. In the event of any litigation arising out of a disputed Draw Request(s), Lender shall be entitled to interplead and deposit all or a portion of the Borrower Funds into the Court registry, and Lender shall be entitled to compensate itself for any attorneys' fees and all costs and expenses Lender has incurred as a result of such Draw Dispute directly from the Borrower Funds.

e. Borrower shall be responsible for any cost or expense incurred in completing the Work in excess of the Borrower Funds and the Loan.

6. All Borrower Funds deposited with Lender hereunder are hereby assigned to Lender as additional security for the Loan secured by the Property. AURA hereby acknowledges and agrees that Lender is Redeveloper's construction lender with respect to Phase 4, as referenced in the DDA. Borrower, RRC and AURA hereby grant to Lender a continuing security interest in the Equity Account and the Borrower Funds. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the Uniform Commercial Code in the State where the Equity Account is located. Upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement) prior to Borrower's completion of the Work, all Borrower Funds then in the Equity Account may, at the option of Lender, be applied to the payment of principal, interest and/or other sums under the Note, the Loan Agreement or any of the other Loan Documents in lieu of being applied to any of the purposes described in this Agreement. Upon any assignment of the Note, the Loan Agreement and the Loan Documents by Lender, this Agreement shall remain in full force and effect among AURA, Borrower, RRC and such assignee as Lender's successor-in-interest and any responsibility of the assigning Lender with respect hereto shall terminate.

7. AURA and Lender hereby agree that upon the occurrence of any default by the Borrower or RRC under the DDA (beyond any applicable notice, grace or cure period set forth therein) during the term of this Agreement or upon the occurrence of any event which would entitle AURA to terminate, or cause the termination of, the DDA, AURA shall not exercise its rights and remedies unless it has given written notice of such act or omission to Lender, and until fourteen (14) days in the event of a monetary default, or thirty (30) days for any non-monetary default (or, if thirty (30) days is not a sufficient amount of time to cure such default, and provided that Lender has commenced curing such non-monetary default, such longer period of time that Lender requires to cure such default (provided that Lender continues to pursue such cure)) shall have elapsed following the later of (y) the giving of such notice or (z) the applicable cure period available to the Borrower or RRC under the DDA, during which period Lender may cure any such default, and AURA and Borrower and RRC shall accept such action by Lender as a cure of such default. Nothing contained herein shall require Lender to cure any such default by the Borrower or RRC under the DDA. A default by any other party to the DDA shall not constitute a default by Borrower or RRC under the DDA. Notwithstanding anything herein or in the DDA to the contrary, AURA hereby acknowledges and agrees that, so long as this Agreement is in effect, AURA shall not be permitted to exercise its remedies of re-entry and resale of the Phase 4 property. Notwithstanding anything to the contrary set forth in Section 15.06 of the DDA, the covenants to be recorded contemporaneously with the Deed shall specify that any reversion rights or rights of re-entry shall not be exercised until all amounts due and owing in

connection with the Note and Loan Agreement have been paid in full in accordance with the terms of the Loan Documents and this Agreement has been terminated.

8. This Agreement shall terminate on the date that all amounts due and owing in connection with the Note and Loan Agreement have been paid in full in accordance with the terms of the Loan Documents and any amounts remaining in the Equity Account on such date shall be promptly disbursed to Borrower.

9. In all events, upon Lender's final delivery of the Borrower Funds whether to Borrower or taken by Lender in accordance with the terms and conditions of this Agreement, the obligations of the Parties hereto shall be deemed fully satisfied and completed, except those obligations hereunder that expressly survive the expiration or termination of this Agreement.

10. Borrower and RRC agree to indemnify and hold Lender harmless from and against any and all claim, loss, expense, or other liability of any nature including, without limitation, attorneys' fees and costs, arising out of, related to, or resulting from this Agreement or the Work, except for claims arising out of the gross negligence or willful misconduct of Lender. Borrower and RRC agree to indemnify and hold AURA harmless from and against any and all claim, loss, expense, or other liability of any nature including, without limitation, attorneys' fees and costs, arising out of, related to, or resulting from this Agreement or the Work, except for claims arising out of the gross negligence or willful misconduct of AURA. Borrower's and RRC's indemnification obligations in this Paragraph 9 shall survive the expiration or termination of this Agreement.

11. Lender may rely upon, and shall not be liable to Borrower, RRC or AURA for acting or refraining from acting upon, any written notice, document, instruction, or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties.

6.

12. This Agreement cannot be changed except by an agreement in writing signed by all Parties hereto, and no provision of Agreement may be waived except by an agreement in writing signed by all Parties hereto.

13. Whenever notice is required or permitted hereunder, such notices shall be in writing and shall be deemed effectively given and received upon personal delivery, confirmed electronic mail or receipt of overnight courier or three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid to the addresses set out below or at such other addresses as are specified by written notification in accordance herewith:

BORROWER:	THE RESIDENCES AT RALSTON CREEK, INC. 2595 Canyon Blvd., Suite 200 Boulder, CO 80302 Attn: James R. Loftus/J Drever Email: jrl@loftusdevelopments.com jdrever@mapletonam.com
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[Exhibit A to Tenth Amendment – Tri-Party Agreement]

With a copy to: PACKARD AND DIERKING, LLC
2595 Canyon Blvd., Suite 200
Boulder, CO 80302
Attn: Brigitte M. Paige
Email: brigitte@packarddierking.com

LENDER: WRPV XV ARVADA JV, L.P.
c/o Strathcona Capital Inc.
100-556 Herald St. Victoria,
BC V8W 1S6
Attention: Reid Turner
Email: reid.turner@strathcona-capital.com

With a copy to: MCDERMOTT WILL & EMERY LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Brian R. Donnelly, Esq.
Email: bdonnelly@mwe.com

And a copy to: WATERTON
222 S. Riverside Plaza, 20th Floor
Chicago, IL 60606
Attention:
Email:

And to: STRATHCONA CAPITAL
100-556 Herald St.
Victoria, BC V8W 1S6
Attention: Reid Turner
Email: reid.turner@strathcona-capital.com

AURA: ARVADA URBAN RENEWAL AUTHORITY
5601 Olde Wadsworth Boulevard, Suite 210
Arvada, Colorado 80002
Attn: Maureen Phair
Email: mphair@arvada.org

With a copy to: HOFFMANN, PARKER, WILSON & CARBERRY, P.C.
511 Sixteenth Street, Suite 610
Denver, Colorado 80202
Attn: Corey Hoffmann
Email: cyh@hpwclaw.com

14. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

[Exhibit A to Tenth Amendment – Tri-Party Agreement]

15. This Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Colorado (excluding conflicts of law rules), and applicable federal law, and any legal requirements of the United States of America, the law of the State of Colorado shall govern the construction, validity and enforceability of this Agreement and all of the obligations arising hereunder. To the fullest extent permitted by law, each of the parties hereto, hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this agreement, and this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any legal suit, action or proceeding against Borrower, RRC or AURA arising out of or relating to this Agreement shall be instituted in federal district court of Colorado or the District Court in Jefferson County, Colorado, and, in either instance, each of Borrower, RRC and AURA waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and each of Borrower, RRC and AURA hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

16. In the event that Borrower, RRC or AURA shall breach any provisions of this Agreement, Borrower shall, promptly (but in no event more than ten (10) Business Days) following written demand by Lender, pay Lender all reasonable out-of-pocket costs and expenses (including court costs and attorneys' fees) incurred by Lender in the enforcement hereof or the preservation of Lenders' rights hereunder, together with interest thereon at the Default Rate (as defined in the Loan Documents) from the date requested by Lender until the date of payment to Lender. The covenant contained in this Section shall survive the repayment of the Loan.

17. This Agreement is intended solely for the benefit of the Lender, Borrower, RRC and AURA and their respective successors and assigns, and no third party shall have any rights or interest in any provision of this Agreement.

18. Nothing contained in Agreement shall constitute Lender or AURA as a joint venture, partner or agent of Borrower or RRC, or render Lender or AURA liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower or RRC.

19. The invalidity, illegality or unenforceability of any provision of this Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of Agreement, all of which shall remain in full force and effect.

20. Time is of the essence of this Agreement. In the event that an effective date or the time for performance shall fall on a Saturday, Sunday or holiday, then such effective date or time for performance shall be extended to the first business day thereafter.

21. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same document. Facsimile and electronic PDF or DocuSign signatures shall be considered originals for all purposes.

[signatures on next pages]

[Exhibit A to Tenth Amendment – Tri-Party Agreement]

This Agreement is executed to be effective as of the Effective Date.

LENDER:

WRPV XV ARVADA JV, L.P., a
Delaware limited partnership

By: **WRPV XV ARVADA JV GP, L.L.C.**, a
Delaware limited liability company, its general partner

By: _____
Name: _____
Title: _____

BORROWER:

CVI RALSTON CREEK LLC,
a Delaware limited liability company

RRC TIC LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

RRC:

THE RESIDENCES OF RALSTON CREEK, INC.,
a Colorado corporation

By: _____
Name: _____
Its: _____

AURA:

ARVADA URBAN RENEWAL AUTHORITY,
a body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: Chairman

ATTEST:

Maureen C. Phair
Secretary/Executive Director

EXHIBIT A
To Tri-Party Agreement
Legal Description of Property

Lot 2,
Ralston Creek Minor Subdivision
County of Jefferson
State of Colorado

EXHIBIT B

PATH A:

Permit Final Approval, Selection of General Contractor and Financing Commitment	[4/15/24]
Closing (Finalize Loan)	[8/01/24]
Commence Construction	[9/01/24]
Completion of Construction	[4/01/27]
AURA Certificate of Construction	6 Months after Completion

EXHIBIT C

FIRST AMENDMENT TO AMENDED AND RESTATED LOAN AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LOAN AGREEMENT (this “**Amendment**”) is made as of [____], 2024 (the “**Effective Date**”), by and among **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (the “**Authority**”), and **THE RESIDENCES AT RALSTON CREEK, INC.**, a Colorado corporation (“**RRC**”) and **RRC TIC, LLC**, a Delaware limited liability company (“**Redeveloper**”); each of RRC, Redeveloper and the Authority, individually a “**Party**”, and collectively the “**Parties**”).

RECITALS:

WHEREAS, the Parties entered into that certain Amended and Restated Loan Agreement dated as of May 6, 2024 (the “**A&R Loan Agreement**”), between the Authority, RRC and Redeveloper, wherein, the Authority made or will make a loan to RRC in the amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) (the “**Loan**”). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the A&R Loan Agreement (as amended pursuant to this Amendment);

WHEREAS, **WRPV XV ARVADA JV, L.P.**, a Delaware limited partnership (“**Lender**”) is making a loan to Redeveloper and **CVI RALSTON CREEK, LLC**, a Delaware limited liability company (“**CVI Ralston**”, and together with Redeveloper, “**Senior Borrower**”), in the maximum principal amount of up to [FIFTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$56,900,000.00)] (the “**Senior Loan**”) which will be evidenced by, among other things, a construction loan agreement between Lender and Senior Borrower (the “**Senior Loan Agreement**”); and

WHEREAS, in connection with the making of the Senior Loan, Lender requires that certain amendments be made to the A&R Loan Agreement as more particularly set forth below.

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

A G R E E M E N T:

1. **Amendment to the A&R Loan Agreement.**

a. The second Section B of the A&R Loan Agreement is hereby deleted in its entirety and amended and restated as follows:

[Exhibit C to Tenth Amendment – First Amendment to Loan]

“**B. Loan Amount; Term.** Subject to the performance of Redeveloper and CVI RALSTON CREEK, LLC, a Delaware limited liability company (“**CVI Ralston**” together with Redeveloper, collectively, “**Successor Redeveloper**”) under the DDA and the terms and conditions set forth herein, the Authority loans RRC the amount of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) at an interest rate of 3.00% per annum (the “**Loan**”). The maturity date of the Loan shall be [_____] 1, 2028, as the same may be extended to [_____] 1, 2029 by the Successor Redeveloper under the Senior Loan Agreement (the “**Extension Option**”). If Successor Redeveloper exercises such Extension Option under the Senior Loan Agreement, the maturity date of this Loan shall be automatically extended such that the term of this Loan shall not expire prior to the term of the Senior Loan.”

b. The second sentence of Section D of the A&R Loan Agreement is hereby deleted in its entirety and restated as follows:

“The Authority acknowledges its position as an unsecured creditor claiming behind creditors holding deeds of trust secured by portions of the Project and all other creditors providing loans or preferred equity for the construction of the Project.”

2. **Ratification.** Except as amended hereby, the A&R Loan Agreement remains unmodified and in full force and effect. In the event of any conflict between the A&R Loan Agreement and this Amendment, the terms and provisions of this Amendment shall control.

3. **Counterparts; Electronic Delivery.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by email or other electronic means (including, without limitation, DocuSign) and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

4. **Miscellaneous.** If any of the provisions of this Amendment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Amendment or the circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. This Amendment may not be orally changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any changes, termination or waiver is sought. This Amendment shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. Each party hereto hereby represents and warrants that it has full right, power and authority to enter into this Amendment and that the person executing this Amendment on behalf of such party is duly authorized to do so.

[Signatures on the following page]

[Exhibit C to Tenth Amendment – First Amendment to Loan]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Amendment as of the date above written.

ARVADA URBAN RENEWAL AUTHORITY, a
body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

RRC TIC LLC,
a Delaware limited liability company

By: _____

James Drever, Manager

**THE RESIDENCES AT RALSTON CREEK,
INC.**,
a Colorado corporation

By: _____

James R. Loftus, President

EXHIBIT D
FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this “**Amendment**”) is made as of [____], 2024 (the “**Effective Date**”), by and among **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (the “**Authority**”), and **THE RESIDENCES AT RALSTON CREEK, INC.**, a Colorado corporation (“**RRC**”), and **RRC TIC, LLC**, a Delaware limited liability company (“**Redeveloper**”); each of RRC, Redeveloper and the Authority, individually a “**Party**” and collectively the “**Parties**”).

R E C I T A L S:

WHEREAS, the Parties entered into that certain Loan Agreement dated as of May 6, 2024 (the “**Original Loan Agreement**”), between the Authority and Redeveloper, wherein, the Authority made a loan to RRC in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) (the “**Loan**”). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Original Loan Agreement (as amended pursuant to this Amendment);

WHEREAS, **WRPV XV ARVADA JV, L.P.**, a Delaware limited partnership (“**Lender**”) is making a loan to Redeveloper and **CVI RALSTON CREEK, LLC**, a Delaware limited liability company (“**CVI Ralston**” together with Redeveloper, collectively, “**Senior Borrower**”) in the maximum principal amount of up to [FIFTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$56,900,000.00)] (the “**Senior Loan**”) which will be evidenced by, among other things, a construction loan agreement between Lender and Senior Borrower (the “**Senior Loan Agreement**”); and

WHEREAS, in connection with the making of the Senior Loan, Lender requires that certain amendments be made to the Original Loan Agreement as more particularly set forth below.

NOW, THEREFORE, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

A G R E E M E N T:

1. Amendment to the Original Loan Agreement.

a. Section B of the Original Loan Agreement is hereby deleted in its entirety and replaced with the following:

“**B. Loan Amount; Term.** Subject to the performance of the Redeveloper and CVI Ralston Creek LLC, a Delaware limited liability company, (“**CVI Ralston**”

[Exhibit D to Tenth Amendment – First Amendment to Loan Agreement]

together with Redeveloper, collectively, “**Successor Redeveloper**”) under the DDA and the terms and conditions set forth herein, the Authority loans RRC the amount of Five Million and No/100 Dollars (\$5,000,000.00) at an interest rate of 4.5% per annum (the “**Loan**”). The maturity date of the Loan shall be [_____] 1, 2028, as the same may be extended to [_____] 1, 2029 by the Successor Redeveloper under the Senior Loan Agreement, (the “**Extension Option**”). If the Successor Redeveloper exercises such Extension Option under the Senior Loan Agreement, the maturity date of this Loan shall be automatically extended such that the term of this Loan shall not expire prior to the term of the Senior Loan.”

b. The second sentence of Section D of the Original Loan Agreement is hereby deleted in its entirety and restated as follows:

“The Authority acknowledges its position as an unsecured creditor claiming behind creditors holding deeds of trust secured by portions of the Project and all other creditors providing loans or preferred equity for the construction of the Project.”

2. **Ratification**. Except as amended hereby, the Original Loan Agreement remains unmodified and in full force and effect. In the event of any conflict between the Original Loan Agreement and this Amendment, the terms and provisions of this Amendment shall control.

3. **Counterparts; Electronic Delivery**. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by email or other electronic means (including, without limitation, DocuSign) and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

4. **Miscellaneous**. If any of the provisions of this Amendment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Amendment or the circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. This Amendment may not be orally changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any changes, termination or waiver is sought. This Amendment shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. Each party hereto hereby represent and warrant that it has full right, power and authority to enter into this Amendment and that the person executing this Amendment on behalf of such party is duly authorized to do so.

[Signatures on the following page]

[Exhibit D to Tenth Amendment – First Amendment to Loan Agreement]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Amendment as of the date above written.

ARVADA URBAN RENEWAL AUTHORITY, a
body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

RRC TIC LLC,
a Delaware limited liability company

By: _____

James Drever, Manager

**THE RESIDENCES AT RALSTON CREEK,
INC.**, a Colorado corporation

By: _____

James R. Loftus, President

[Exhibit D to Tenth Amendment – First Amendment to Loan Agreement]

TRI-PARTY AGREEMENT

This Tri-Party Agreement (“**Agreement**”) is entered into this ____ day of June, 2024 (“**Effective Date**”) by and among **WRPV XV ARVADA JV, L.P.**, a Delaware limited partnership (together with its successors and/or assigns, “**Lender**”), **RRC TIC LLC**, a Delaware limited liability company (“**RRC TIC**”) and **CVI RALSTON CREEK LLC**, a Delaware limited liability company (“**CVI RALSTON**” and together with RRC TIC, collectively, jointly and severally, as tenants in common and individually, as the context may require, “**Borrower**”), **THE RESIDENCES OF RALSTON CREEK, INC.**, a Colorado corporation (“**RRC**”), and **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (“**AURA**”). Lender, Borrower, RRC and AURA may be collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Lender and Borrower have, as of the date hereof, entered into that certain Construction Loan Agreement dated as of the date hereof (the “**Loan Agreement**”), pursuant to which Lender has agreed to lend Borrower the sum of Fifty Six Million Nine Hundred Thousand and No/100 Dollars (\$56,900,000.00) (the “**Loan**”), as evidenced by a promissory note (including any extensions, replacements, modifications or renewals thereof), executed and delivered by Borrower and payable to the order of Lender (the “**Note**”), dated on or about the date of this Agreement. The repayment of the Note is secured by, among other things, that certain real property located in Jefferson County, Colorado, and more fully described on **Exhibit A** attached hereto (the “**Property**”). The Loan is evidenced by the Note, the Loan Agreement, a deed of trust and other documents between Borrower, Lender and such other parties required for the consummation of the Loan (collectively, the “**Loan Documents**”).

B. Borrower and RRC, as successors in interest to Ralston Creek North, LLC, are parties to that certain Amended and Restated Disposition and Development Agreement, dated April 7, 2021, as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Third Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 7, 2022, as amended by that certain Fourth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Fifth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Sixth Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 21, 2023, as amended by that certain Seventh Amendment to Amended and Restated Disposition and Development Agreement, dated as of December 6, 2023, as amended by that certain Eighth Amendment to Amended and Restated Disposition and Development Agreement, dated as of January 3, 2024, as amended by that certain Ninth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 6, 2024, as amended by that certain Tenth Amendment, dated as of the date hereof (together with all amendments thereto, the “**DDA**”), pursuant to which AURA agreed to contribute to Borrower an amount of up to \$14,393,989 (the “**AURA Grant Proceeds**”) and make two loans to RRC in the amounts of \$5,000,000 and \$3,500,000 (the “**AURA Loan Proceeds**”, and together with the AURA Grant Proceeds, the “**AURA Funds**”).

C. As a condition precedent to making the Loan, Lender requires that Borrower provide Lender with evidence that certain amounts set forth in Section 2.10.5(l) of the Loan Agreement have been contributed by indirect investors of Borrower (“**Equity Funds**”). The Equity Funds and the AURA Funds (collectively, the “**Borrower Funds**”) shall be used by Borrower for the payment and reimbursement of Borrower’s reasonable out-of-pocket costs and expenses incurred in the course of the construction of infrastructure and improvements at the Property (the “**Work**”). A minimum of \$6,982,307.00 of the AURA Funds shall be used to fund the construction of eligible improvements within the meaning of the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.* The Borrower Funds will be set aside to be used for the Work according to the terms set out in this Agreement and the Loan Agreement.

D. Borrower, RRC and AURA agree that Lender shall retain the Borrower Funds in a separate account and that the release and disbursement of the Borrower Funds shall be in accordance with the terms and conditions of this Agreement and the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to make Loan, the Parties hereto agree as follows:

1. The foregoing recitals are true and by this reference are incorporated into the Agreement.

2. The Parties hereto represent and warrant to each other that they have the respective authority to sign this Agreement and that (a) the person signing on behalf of the Lender is duly authorized to bind the Lender, (b) the person signing on behalf of the Borrower is duly authorized to bind the Borrower, (c) the person signing on behalf of RRC is duly authorized to bind RRC, and (d) the person signing on behalf of AURA is duly authorized to bind AURA.

3. Borrower acknowledges and confirms that (i) the Equity Funds will be deposited by Borrower with Lender and (ii) the AURA Grant Proceeds will be deposited by AURA with Lender at the closing of the Loan. RRC acknowledges that the AURA Loan Proceeds will be deposited by AURA with Lender at the closing of the Loan. Lender, Borrower, RRC and AURA acknowledge and agree that the Borrower Funds will be held by Lender as provided in this Agreement and the Loan Agreement. AURA acknowledges and confirms its obligations to deposit the AURA Funds with Lender to be held pursuant to the terms and conditions of this Agreement and the Loan Agreement.

4. Lender shall establish, maintain and control a bank account with a financial institution designated by Lender in Borrower’s name (the “**Equity Account**”) in order to hold the Borrower Funds deposited with it as provided hereunder. In no event shall Borrower Funds be commingled with any other Lender funds. The Equity Account will be an interest-bearing account for the benefit of Borrower. All fees and expenses related to the account imposed by the financial institution shall be borne by Borrower and will be deducted from the Borrower Funds.

5. Lender will hold the Borrower Funds in the Equity Account until the Borrower Funds are disbursed as set forth below.

a. Borrower may, no more frequently than once each calendar month, submit a written request to Lender, with a copy thereof to AURA, to the notice addresses set forth in Paragraph 12 below, for a release of Borrower Funds for that portion of the Work completed by Borrower (each a “**Draw Request**”) in accordance with the terms of the Loan Agreement. Each such Draw Request shall include the items set forth in Section 2.10.10(a) of the Loan Agreement including (i) a completed and itemized Application and Certificate for Payment (AIA Document No. G702 and No. G703) or similar form approved by Lender, (ii) a certificate or report of Borrower’s Architect to Lender based upon a site observation of the Property made by Borrower’s Architect not more than thirty (30) days prior to the date of such draw, (iii) an anticipated cost report in form and substance reasonably acceptable to Lender, (iv) an affirmation of payment (AIA Form No. G706), (v) duly executed lien waivers, (vi) copies of all executed change orders, and (vii) such other information as Lender may reasonably request or as may be required pursuant to the Loan Documents. Lender shall process and fund all properly submitted Draw Requests as set forth in the Loan Agreement.

b. In addition to the foregoing documentation requirements, prior to approving a requested disbursement, Lender and AURA each have the right to inspect the completed improvements or work in connection with which Draw Request being sought by Borrower. Lender’s inspections shall be completed, if at all, pursuant to the terms set forth in the Loan Agreement. AURA agrees to perform any desired inspection as soon as reasonably possible following receipt of the applicable Draw Request.

c. AURA may review and comment to Lender on any properly submitted Draw Request within five (5) days of its receipt of the Draw Request. The failure of AURA to provide any written comment or response to a Draw Request during such five-day period shall be deemed an approval by AURA, and shall not require any further notice or action by Borrower or Lender.

d. In the event of any disagreement between the Borrower and AURA regarding a Draw Request resulting in conflicting instructions to Lender or adverse claims or demands upon Lender with respect to the release of the Borrower Funds (a “**Draw Dispute**”), Lender will be entitled to refuse to comply with such conflicting instructions, claims, or demands so long as such Draw Dispute shall continue without any liability to Borrower or AURA hereunder or under the Loan Documents. In the event of a Draw Dispute, Lender shall not be liable for any loss or damage for its failure to release the Borrower Funds, and Borrower and AURA release Lender from any claims arising out of Lender’s failure to release the Borrower Funds, which release shall survive the expiration or termination of this Agreement and the Loan Documents. In the event of a Draw Dispute, Lender shall be entitled to continue to refrain from releasing the Borrower Funds until such time as the Draw Dispute (a) has been resolved by agreement of Borrower and AURA, and Lender has been notified in writing of the agreement and joint instructions of Borrower and AURA with respect to the disputed Draw Request(s) or (b) has been finally adjudicated in a court of competent jurisdiction. In the event of any litigation arising out of a disputed Draw Request(s), Lender shall be entitled to interplead and deposit all or a portion of the Borrower Funds into the Court registry, and Lender shall be entitled to compensate itself for

any attorneys' fees and all costs and expenses Lender has incurred as a result of such Draw Dispute directly from the Borrower Funds.

e. Borrower shall be responsible for any cost or expense incurred in completing the Work in excess of the Borrower Funds and the Loan.

6. All Borrower Funds deposited with Lender hereunder are hereby assigned to Lender as additional security for the Loan secured by the Property. AURA hereby acknowledges and agrees that Lender is Redeveloper's construction lender with respect to Phase 4, as referenced in the DDA. Borrower, RRC and AURA hereby grant to Lender a continuing security interest in the Equity Account and the Borrower Funds. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the Uniform Commercial Code in the State where the Equity Account is located. Upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement) prior to Borrower's completion of the Work, all Borrower Funds then in the Equity Account may, at the option of Lender, be applied to the payment of principal, interest and/or other sums under the Note, the Loan Agreement or any of the other Loan Documents in lieu of being applied to any of the purposes described in this Agreement. Upon any assignment of the Note, the Loan Agreement and the Loan Documents by Lender, this Agreement shall remain in full force and effect among AURA, Borrower, RRC and such assignee as Lender's successor-in-interest and any responsibility of the assigning Lender with respect hereto shall terminate.

7. AURA and Lender hereby agree that upon the occurrence of any default by the Borrower or RRC under the DDA (beyond any applicable notice, grace or cure period set forth therein) during the term of this Agreement or upon the occurrence of any event which would entitle AURA to terminate, or cause the termination of, the DDA, AURA shall not exercise its rights and remedies unless it has given written notice of such act or omission to Lender, and until fourteen (14) days in the event of a monetary default, or thirty (30) days for any non-monetary default (or, if thirty (30) days is not a sufficient amount of time to cure such default, and provided that Lender has commenced curing such non-monetary default, such longer period of time that Lender requires to cure such default (provided that Lender continues to pursue such cure)) shall have elapsed following the later of (y) the giving of such notice or (z) the applicable cure period available to the Borrower or RRC under the DDA, during which period Lender may cure any such default, and AURA and Borrower and RRC shall accept such action by Lender as a cure of such default. Nothing contained herein shall require Lender to cure any such default by the Borrower or RRC under the DDA. A default by any other party to the DDA shall not constitute a default by Borrower or RRC under the DDA. Notwithstanding anything herein or in the DDA to the contrary, AURA hereby acknowledges and agrees that, so long as this Agreement is in effect, AURA shall not be permitted to exercise its remedies of re-entry and resale of the Phase 4 property. Notwithstanding anything to the contrary set forth in Section 15.06 of the DDA, the covenants to be recorded contemporaneously with the Deed shall specify that any reversion rights or rights of re-entry shall not be exercised until all amounts due and owing in connection with the Note and Loan Agreement have been paid in full in accordance with the terms of the Loan Documents and this Agreement has been terminated.

8. This Agreement shall terminate on the date that all amounts due and owing in connection with the Note and Loan Agreement have been paid in full in accordance with the terms

of the Loan Documents and any amounts remaining in the Equity Account on such date shall be promptly disbursed to Borrower.

9. In all events, upon Lender's final delivery of the Borrower Funds whether to Borrower or taken by Lender in accordance with the terms and conditions of this Agreement, the obligations of the Parties hereto shall be deemed fully satisfied and completed, except those obligations hereunder that expressly survive the expiration or termination of this Agreement.

10. Borrower and RRC agree to indemnify and hold Lender harmless from and against any and all claim, loss, expense, or other liability of any nature including, without limitation, attorneys' fees and costs, arising out of, related to, or resulting from this Agreement or the Work, except for claims arising out of the gross negligence or willful misconduct of Lender. Borrower and RRC agree to indemnify and hold AURA harmless from and against any and all claim, loss, expense, or other liability of any nature including, without limitation, attorneys' fees and costs, arising out of, related to, or resulting from this Agreement or the Work, except for claims arising out of the gross negligence or willful misconduct of AURA. Borrower's and RRC's indemnification obligations in this Paragraph 9 shall survive the expiration or termination of this Agreement.

11. Lender may rely upon, and shall not be liable to Borrower, RRC or AURA for acting or refraining from acting upon, any written notice, document, instruction, or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties.

12. This Agreement cannot be changed except by an agreement in writing signed by all Parties hereto, and no provision of Agreement may be waived except by an agreement in writing signed by all Parties hereto.

13. Whenever notice is required or permitted hereunder, such notices shall be in writing and shall be deemed effectively given and received upon personal delivery, confirmed electronic mail or receipt of overnight courier or three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid to the addresses set out below or at such other addresses as are specified by written notification in accordance herewith:

BORROWER: THE RESIDENCES AT RALSTON CREEK, INC.
2595 Canyon Blvd., Suite 200
Boulder, CO 80302
Attn: James R. Loftus/J Drever
Email: jrl@loftusdevelopments.com
jdrever@mapletonam.com

With a copy to: PACKARD AND DIERKING, LLC
2595 Canyon Blvd., Suite 200
Boulder, CO 80302
Attn: Brigitte M. Paige
Email: brigitte@packarddierking.com

LENDER: WRPV XV ARVADA JV, L.P.
c/o Strathcona Capital Inc.
100-556 Herald St. Victoria,
BC V8W 1S6
Attention: Reid Turner
Email: reid.turner@strathcona-capital.com

With a copy to: MCDERMOTT WILL & EMERY LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Brian R. Donnelly, Esq.
Email: bdonnelly@mwe.com

And a copy to: WATERTON
222 S. Riverside Plaza, 20th Floor
Chicago, IL 60606
Attention:
Email:

And to: STRATHCONA CAPITAL
100-556 Herald St.
Victoria, BC V8W 1S6
Attention: Reid Turner
Email: reid.turner@strathcona-capital.com

AURA: ARVADA URBAN RENEWAL AUTHORITY
5601 Olde Wadsworth Boulevard, Suite 210
Arvada, Colorado 80002
Attn: Maureen Phair
Email: mphair@arvada.org

With a copy to: HOFFMANN, PARKER, WILSON & CARBERRY, P.C.
511 Sixteenth Street, Suite 610
Denver, Colorado 80202
Attn: Corey Hoffmann
Email: cyh@hpwclaw.com

14. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

15. This Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Colorado (excluding conflicts of law rules), and applicable federal law, and any legal requirements of the United States of America, the law of the State of Colorado shall govern the construction, validity and enforceability of this Agreement and all of the obligations arising hereunder. To the fullest extent permitted by law, each of the parties hereto, hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this agreement, and this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any legal suit, action or

proceeding against Borrower, RRC or AURA arising out of or relating to this Agreement shall be instituted in federal district court of Colorado or the District Court in Jefferson County, Colorado, and, in either instance, each of Borrower, RRC and AURA waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and each of Borrower, RRC and AURA hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

16. In the event that Borrower, RRC or AURA shall breach any provisions of this Agreement, Borrower shall, promptly (but in no event more than ten (10) Business Days) following written demand by Lender, pay Lender all reasonable out-of-pocket costs and expenses (including court costs and attorneys' fees) incurred by Lender in the enforcement hereof or the preservation of Lenders' rights hereunder, together with interest thereon at the Default Rate (as defined in the Loan Documents) from the date requested by Lender until the date of payment to Lender. The covenant contained in this Section shall survive the repayment of the Loan.

17. This Agreement is intended solely for the benefit of the Lender, Borrower, RRC and AURA and their respective successors and assigns, and no third party shall have any rights or interest in any provision of this Agreement.

18. Nothing contained in Agreement shall constitute Lender or AURA as a joint venture, partner or agent of Borrower or RRC, or render Lender or AURA liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower or RRC.

19. The invalidity, illegality or unenforceability of any provision of this Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of Agreement, all of which shall remain in full force and effect.

20. Time is of the essence of this Agreement. In the event that an effective date or the time for performance shall fall on a Saturday, Sunday or holiday, then such effective date or time for performance shall be extended to the first business day thereafter.

21. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same document. Facsimile and electronic PDF or DocuSign signatures shall be considered originals for all purposes.

[signatures on next pages]

This Agreement is executed to be effective as of the Effective Date.

LENDER:

WRPV XV ARVADA JV, L.P., a
Delaware limited partnership

By: **WRPV XV ARVADA JV GP, L.L.C.**, a
Delaware limited liability company, its general partner

By: _____

Name: _____

Title: _____

BORROWER:

CVI RALSTON CREEK LLC,
a Delaware limited liability company

RRC TIC LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

RRC:

THE RESIDENCES OF RALSTON CREEK, INC.,
a Colorado corporation

By: _____
Name: _____
Its: _____

AURA:

ARVADA URBAN RENEWAL AUTHORITY,
a body corporate and politic of the State of Colorado

By: _____
Name: _____
Title: Chairman

ATTEST:

Maureen C. Phair
Secretary/Executive Director

EXHIBIT A
To Tri-Party Agreement
Legal Description of Property

Lot 2,
Ralston Creek Minor Subdivision
County of Jefferson
State of Colorado

SUBORDINATION OF LOAN

This SUBORDINATION OF LOAN (this “Agreement”) made as of the [] day of [], 2024, by **THE RESIDENCES AT RALSTON CREEK, INC.**, a Colorado corporation (“Debtor”) and **ARVADA URBAN RENEWAL AUTHORITY**, a body corporate and politic of the State of Colorado (“Subordinate Lender”), to and in favor of WRPV XV ARVADA JV, L.P., a Delaware limited partnership (together with its successors and/or assigns, “Senior Lender”).

WITNESSETH:

WHEREAS, the Debtor and Subordinate Lender are party to that certain Amended and Restated Disposition and Development Agreement, dated as of April 7, 2021, as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Second Amendment to Amended and Restated Disposition and Development Agreement, dated as of March 2, 2022, as amended by that certain Third Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 7, 2022, as amended by that certain Fourth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Fifth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 3, 2023, as amended by that certain Sixth Amendment to Amended and Restated Disposition and Development Agreement, dated as of September 21, 2023, as amended by that certain Seventh Amendment to Amended and Restated Disposition and Development Agreement, dated as of December 6, 2023, as amended by that certain Eighth Amendment to Amended and Restated Disposition and Development Agreement, dated as of January 3, 2024, as amended by that certain Ninth Amendment to Amended and Restated Disposition and Development Agreement, dated as of May 6, 2024 (together with all amendments thereto, the “DDA”);

WHEREAS, in connection with the entering into of the DDA, Debtor entered into (i) that certain Loan Agreement, dated as of September 21, 2023 (the “Initial Loan Agreement”), pursuant to which Subordinate Lender made a loan to Debtor in the principal amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00), and (ii) that certain Loan Agreement, dated as of May 6, 2024 (the “Second Loan Agreement”, and together with the Initial Loan Agreement, the “Subordinate Loan Agreement”), pursuant to which Subordinate Lender made an additional loan to Debtor in the principal amount of FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00) (collectively, the “Subordinate Loan”);

WHEREAS, James R. Loftus, an individual (“Loftus”), delivered to Subordinate Lender that certain Personal Guaranty, dated as of [] (the “Subordinate Guaranty”), pursuant to which Loftus guaranteed to Subordinate Lender the repayment in full of the Subordinate Loan. The Subordinate Loan Agreement, the Subordinate Guaranty and each and every other document or instrument delivered to Subordinate Lender by Debtor, Loftus or any affiliate thereof being hereinafter defined as the “Subordinate Loan Documents”;

WHEREAS, the Senior Lender is making a loan to RRC TIC, LLC, a Delaware limited liability company ("Borrower 1"), and CVI RALSTON CREEK, LLC, a Delaware limited liability company ("Borrower 2") and together with Borrower 1, collectively, jointly and severally, as tenants in common and individually, as the context may require, ("Borrower"), in the maximum principal amount of up to [FIFTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$56,900,000.00)] (the "Senior Loan"). The Senior Loan is evidenced by, among other things, (a) a certain Promissory Note dated as of the date hereof made by Borrower in favor of Senior Lender (the "Senior Note"), and (b) a certain Loan Agreement, dated as of the date hereof (the "Senior Loan Agreement"), made by and between Borrower and Senior Lender. The Senior Loan is secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof (the "Senior Security Instrument"; together with the Senior Note, the Senior Loan Agreement and all other documents and instruments evidencing, securing or relating to the Senior Loan, and all extensions, modifications, consolidations, supplements, amendments, replacements, restatements and increases thereof, collectively, the "Senior Debt Instruments"), encumbering the Property as a first mortgage lien. Capitalized terms used herein but not defined shall have the meanings given to such terms in the Senior Loan Agreement;

WHEREAS, Debtor is the sole member of Borrower 1 and Loftus is an indirect owner of Debtor;

WHEREAS, as a material inducement to Senior Lender making the Senior Loan, (a) Debtor has delivered to Lender: (i) that certain Pledge and Security Agreement, dated as of the date hereof, pursuant to which, among other things, Debtor has pledged its one hundred percent (100%) limited liability company membership interest in Borrower 1 to Lender, and (ii) Guaranty of Pledgor, dated as of the date hereof, which, among other things, obligates Debtor to repay the Debt in full upon any default of Borrower under the Senior Loan Documents; and (b) Loftus has delivered to Senior Lender the Guaranties; and

WHEREAS, it is an express condition precedent, among others, to Senior Lender's agreeing to make the Senior Loan, that the Subordinate Lender executes and delivers this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor, Subordinate Lender and Senior Lender hereby agree as follows:

1. The principal and interest and all other sums due or to become due under the Subordinate Loan and any and all other indebtedness of Debtor to Subordinate Lender under the Subordinate Loan Agreement or any other Subordinate Loan Document (including, without limitation, any guaranteed obligations under the Subordinate Guaranty) now existing or hereafter existing, together with any and all other indebtedness, liabilities and obligations of Debtor to Subordinate Lender, including all interest thereon, whether now existing or hereafter arising, and whether direct or indirect, joint or several, absolute or contingent, or consensual or created by law, and including costs, expenses and attorneys' fees, shall hereinafter be collectively referred to as the "Subordinate Debt".

2. Subordinate Lender hereby unconditionally and irrevocably subordinates the Subordinate Debt and any payments thereon to the full and indefeasible payment of the Senior Loan, and all advances thereunder, without regard to the application of such proceeds, together with all interest and all other sums due under the Senior Debt Instruments and to any renewals, extensions, modifications, increases, assignments, replacements, consolidations or refinancing thereof and the rights, privileges and powers of Senior Lender thereunder (collectively, the “Senior Debt”). The Subordinate Debt shall continue to be so subordinate until indefeasible repayment or satisfaction in full of the Senior Debt. Upon the indefeasible repayment or satisfaction in full of the Senior Debt, this Agreement shall automatically terminate and be of no further force or effect.

3. Subordinate Lender hereby acknowledges, agrees, represents and warrants that none of the Subordinated Loan is, as of the date hereof, or at any time in the future shall be, secured by any security interest or other lien in the Property or any other collateral given by Borrower under the Senior Loan. Until the indefeasible repayment or satisfaction in full of the Senior Debt, Subordinate Lender shall not accelerate all or any part of the Subordinate Debt, exercise any remedies or enforcement actions (including, without limitation, its rights pursuant to Sections 3.03, 15.04 or 15.06 of the DDA), exercise any banker’s lien or rights of set-off or recoupment, commence any bankruptcy, reorganization or insolvency proceedings against Borrower, Debtor and/or Loftus under any federal or state law, or take any other enforcement action against Borrower, Debtor and/or Loftus. Subordinate Lender hereby agrees that following a Default or Event of Default, pursuant to Section 15.01 of the DDA, Subordinate Lender shall allow Senior Lender to draw from the Escrow Account in accordance with Section 7.02(C) of the DDA. Subordinate Lender hereby agrees that it will not exercise any of its remedies under the Subordinate Loan Agreement or any other Subordinate Loan Document or otherwise attempt to enforce its rights under the Subordinate Loan Agreement or any other Subordinate Loan Document for a period of ninety-one (91) days after the indefeasible repayment or satisfaction in full of the Senior Debt. In the event that any security interest or other lien arises in favor of Subordinate Lender in any of the Property securing the Senior Loan, then promptly upon Senior Lender’s request, Subordinate Lender shall execute and/or deliver to Senior Lender such termination statements and releases as Senior Lender shall request to effect the release of the liens and security interests of Subordinate Lender in such Property.

4. All interest on the Subordinate Loan shall accrue and not be payable currently and Subordinate Lender shall not be entitled to payments of principal or interest under the Subordinate Loan Agreement so long as the Senior Loan is outstanding and if any payments are made to Subordinate Lender on account of the Subordinate Debt contrary to the terms of this Agreement, then each and every amount so paid shall be delivered to Senior Lender in the form received, endorsed or assigned as may be appropriate for application on account of, or as security for the Senior Debt and until so delivered, shall be held in trust for Senior Lender as security for the Senior Debt.

5. As long as the Senior Loan is outstanding, upon any distribution of the assets or readjustment of the indebtedness of Borrower, Debtor and/or Loftus, whether by reason of reorganization, liquidation, dissolution, bankruptcy, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any

portion of the Subordinate Debt, or the application of assets of Borrower, Debtor and/or Loftus to the payment or liquidation thereof, either in whole or in part, Senior Lender shall be entitled to receive payment in full of all or any portion of the Senior Debt prior to the payment of all or any portion of the Subordinate Debt, and in order to enable Senior Lender to assert and enforce its rights hereunder in any such action or proceeding, or upon the happening of any such event, Senior Lender is hereby irrevocably authorized and empowered, in Senior Lender's sole discretion, to make and present, for and on behalf of Subordinate Lender, such proofs or claims against Borrower, Debtor and/or Loftus on account of all or any part of the Subordinate Debt as Senior Lender deems advisable, and to receive and collect any and all payments or disbursements made thereon, and to apply the same, first, on account of all or any portion of the Senior Debt in such amounts and in such priority as Senior Lender may, in its sole discretion, deem appropriate, with the balance (if any) to Subordinate Lender.

6. This Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case by or against Borrower, Debtor and/or Loftus under Title 11, United States Code, as amended from time to time, any successor statute thereto, and any rules promulgated pursuant thereto (the "Bankruptcy Code") and all references herein to Borrower, Debtor and/or Loftus, as applicable, as a debtor-in-possession and to any trustee in bankruptcy for the estate of such party. Subordinate Lender hereby agrees that it shall not make any election, give any consent, file any motion or take any other action in any case by or against Borrower, Debtor and/or Loftus under the Bankruptcy Code without the prior written consent of Senior Lender. Subordinate Lender shall promptly upon demand by Senior Lender take all actions and exercise any rights designated by Senior Lender and available to Subordinate Lender in connection with any case by or against Borrower, Debtor and/or Loftus under the Bankruptcy Code, including without limitation, the right to vote to accept or reject a plan, to file a claim, to make any election under section 1111(b) of the Bankruptcy Code with respect to the Subordinate Loan and to file a motion to modify the automatic stay with respect to the Subordinate Loan; provided, however, to the extent Subordinate Lender should fail to promptly take any such action or exercise any such right as may be designated by Senior Lender, Subordinate Lender hereby appoints Senior Lender as Subordinate Lender's agent, and grants Senior Lender an irrevocable power of attorney coupled with an interest and its proxy, for the purpose of taking such action or exercising such rights. Subordinate Lender hereby agrees that, upon the request of Senior Lender, the Subordinate Lender shall do, execute, acknowledge and deliver to Senior Lender all and every such further acts, deeds, conveyances and instruments as Senior Lender may reasonably request for the better assuring and evidencing of the foregoing appointment and grant.

7. In the event Senior Lender is required under any bankruptcy or other law to return to Borrower, Debtor and/or Loftus in the estate in bankruptcy thereof, any third party or any trustee, receiver or other similar representative of any such party any payment or distribution of assets, whether in cash, property or securities, including without limitation, any payment previously made on any part or all of the any Property or any proceeds of or from the Property previously received by Senior Lender on account of the Senior Debt Instruments (a "Reinstatement Distribution"), then to the maximum extent permitted by law, this Agreement and the waiver, release and discharge of all rights of Subordinate Lender in and to any such payments by Borrower, Debtor and/or Loftus or the proceeds therefrom (including, to the

extent applicable, any and all subordination provisions in this Agreement) shall be reinstated with respect to any such Reinstatement Distribution. Senior Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

8. Senior Lender may, at any time and in its sole discretion, have the unconditional right to renew or extend the time of payment, increase the principal amount of the Senior Loan or otherwise modify the terms of all or any portion of the Senior Debt and/or waive any rights or release any collateral relative thereto at any time, and in reference thereto make and enter into such agreements as Senior Lender may deem proper or desirable, without notice to or further assent of Subordinate Lender, all without impairing or affecting in any manner this Agreement or any of Senior Lender's rights hereunder.

9. Without the prior written consent of Senior Lender, which may be given or withheld in its sole discretion, Subordinate Lender shall not modify, waive, or amend any of the terms or provisions of the Subordinate Loan Agreement, the Subordinate Loan Documents or any other documents or instruments delivered by Debtor or Loftus in connection with the Subordinate Loan. The scheduled maturity date(s) of any Subordinate Debt shall not be earlier than the maturity date of the Senior Debt, provided, however, the scheduled maturity date(s) of the Subordinate Debt can be the same date as the maturity date of the Senior Debt as long as the payment of the Subordinate Debt shall be subject to the terms of this Agreement. Senior Lender may at any time and from time to time without the consent of or notice to Subordinate Lender, without incurring liability to Subordinate Lender and without impairing or releasing the obligations of Subordinate Lender under this Agreement, change the manner or place of payment or extend the time of payment or renew, increase the principal amounts of or alter any of the terms of the Debt or amend in any manner any agreement, note, guaranty or other instrument evidencing or securing or otherwise relating to any Borrower or the Senior Loan Documents.

10. It is hereby expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the terms, conditions and provisions of the Subordinate Loan Agreement and/or the Subordinate Loan Documents.

11. This is a continuing Agreement and shall remain in full force and effect and be binding upon Subordinate Lender, and the heirs, legal representatives, successors or assigns of Subordinate Lender, until the indefeasible repayment in full of the Senior Debt. Subordinate Lender shall not pledge, assign, hypothecate, transfer, convey or sell the Subordinate Loan or any interest therein, without the prior written consent of Senior Lender.

12. Senior Lender may pledge, assign, hypothecate, transfer, convey or sell the Senior Loan or any interest therein. This Agreement is binding upon and shall inure to the benefit of Senior Lender and Senior Lender's successors and assigns. Senior Lender will endeavor to notify Subordinate Lender of any sale, assignment, or transfer of Senior Lender's interests in and to the Senior Loan, Senior Debt Instruments, and this Agreement.

(a) Except as expressly provided otherwise, all notices, demands, consents, approvals and statements required or permitted hereunder shall be in writing and either delivered personally, by overnight courier or sent by e-mail, addressed as follows, or at

such other address of which a party shall have notified the party giving such notice in writing in accordance with the requirements hereof:

If to Senior Lender: WRPX XV Arvada JV, L.P.
c/o Strathcona Capital Inc.
100-556 Herald St.
Victoria, BC V8W 1S6
Attention: Reid Turner
Email: reid.turner@strathcona-capital.com

With a copy to: McDermott Will & Emery LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Brian R. Donnelly, Esq.
Email: bdonnelly@mwe.com

If to Subordinate Lender: Arvada Urban Renewal Authority
5601 Olde Wadsworth Blvd, Suite 210
Arvada, Colorado 80002
Attention: Maureen C. Phair, Executive Director
Email: mphair@arvada.org

With a copy to: Hoffmann, Parker, Wilson & Carberry, P.C.
511 Sixteenth Street, Suite 610
Denver, Colorado 80202
Attention: Corey Y. Hoffman, Esq.
Email: cyh@hpwclaw.com

A notice delivered personally or by overnight courier will be deemed given only when acknowledged in writing or rejected by the person to whom it is delivered. Any party may designate, by notice to all others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitutes addresses or addressees. A notice sent by e-mail is deemed to have been received on the date of sending if sent during business hours on a business day (otherwise on the next business day).

13. This Agreement may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Subordinate Lender or Senior Lender, but only by an agreement in writing signed by the party against whom the enforcement of any such modification, amendment, waiver, extension, change, discharge or termination is sought.

14. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute

a single agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

15. In the event any term or provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but rather shall be enforceable to the fullest extent permitted by law.

16. Subordinate Lender shall not be subrogated to, or be entitled to any assignment of any Senior Debt or of any collateral or guarantees or evidence of any thereof until payment in full of the Senior Debt. Subordinate Lender hereby waives any and all rights to have any collateral or any part thereof marshalled upon any foreclosure or other disposition of such collateral by Senior Lender.

17. Subordinate Lender hereby assumes responsibility for keeping itself informed of the financial condition of Borrower, Debtor and/or Loftus and their subsidiaries and any guarantors of the debt owed to Subordinate Lender and of all other circumstances bearing upon the risk of nonpayment of the Subordinate Debt owed to Subordinate Lender that inquiry would reveal and Subordinate Lender hereby agrees that Senior Lender shall not have any duty to advise Subordinate Lender of any information regarding such condition or any such circumstances.

18. The parties hereto hereby agree to execute and deliver in recordable form any and all further documents and instruments reasonably requested by any party hereto or any title insurance company to give effect to the terms and provisions of this Agreement.

19. **Submissions to Jurisdiction; Waiver of Right to Trial by Jury.**

(a) THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO, AND ANY LEGAL REQUIREMENTS OF THE UNITED STATES OF AMERICA, THE LAW OF THE STATE OF COLORADO SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS AGREEMENT AND ALL OF THE OBLIGATIONS ARISING HEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO, HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST DEBTOR OR SUBORDINATE LENDER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN FEDERAL DISTRICT COURT OF COLORADO OR THE DISTRICT COURT IN JEFFERSON COUNTY, COLORADO, AND, IN EITHER INSTANCE, EACH OF DEBTOR AND SUBORDINATE LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR

PROCEEDING, AND EACH OF DEBTOR AND SUBORDINATE LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

(c) EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF, OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND THE PARTIES HEREBY AGREE AND CONSENT THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

20. **Representations and Warranties.** Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

(c) The execution, delivery and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any material indenture, material agreement or other material instrument binding upon such party.

[signatures appear on following pages]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date above written.

DEBTOR:

THE RESIDENCES AT RALSTON CREEK, INC., a Colorado corporation

By _____
James R. Loftus, President

SUBORDINATE LENDER:

ARVADA URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By _____
Name:
Title:

SENIOR LENDER:

WRPX XV Arvada JV, L.P.,
a Delaware limited partnership

By: _____
Name:
Title:

ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: Item 4B
Meeting Date: Special Meeting - June 20, 2024
Title: First Amendment to the Purchase and Sales Agreement between Ralston Creek North, Arvada Beer Garden and AURA

ACTION PROPOSED: Approve

BACKGROUND: AURA entered into a DDA with Ralston Creek North in 2015 to develop a mixed-use project on the 16-acre site referred to as Ralston Creek North. The site consists of the former Arvada Square, Independence Center, Safeway, Ralston Road Café and most recently the gas station. All of these structures have been abated and razed.

Phase 1, The Shops at Ralston Creek, is developed and open. Berkeley Homes is currently constructing 44 townhome on the former Safeway site, also known as Phase 2. Phase 3, the 27 townhomes is under contract with Royal Oak. Phase 4, 195 apartment units located at the former Arvada Square property and is being developed by Loftus. Phase 5, former gas station, will be redeveloped by City Street Investors into a beer garden/restaurant, large public plaza and another small retail building.

This amendment pertains to Phase 5 identified above. AURA, Loftus and Arvada Beer Garden signed a Purchase and Sales Agreement for the former the gas station on May 3, 2023.

INFORMATION ABOUT THE ITEM: The Purchase and Sale Agreement contains a milestone date of June 2024 for Arvada Beer Garden to close on the property. This amendment gives them until August 2024 to close.

The PSA contains a paragraph regarding the petroleum contamination from the prior gas station on the site. The agreement states:

9.9 Petroleum Contamination. If, within two (2) years after Closing, Purchaser's excavation work on the Property encounters soil or groundwater contaminated with petroleum or petroleum constituents (collectively "**Petroleum**") that requires special handling or disposal

pursuant to law due to the Petroleum, AURA shall pay the incremental additional cost of such special handling or disposal. The terms hereof shall survive Closing.

Arvada Beer Garden's bank is requiring vapor barriers to be installed under the two buildings as a precautionary measure, the estimated cost is \$30,000. AURA's environmental attorney interprets this paragraph to mean that vapor barriers do not qualify as special handling or disposal. Arvada

Beer Garden disagrees. To move this item forward, the Beer Garden and AURA agreed to split the cost of the vapor barrier 50/50 with a not to exceed amount of \$15,000.

FINANCIAL IMPACT: This amendment will cost AURA up to an additional \$15,000.

STAFF RECOMMENDATION: Staff recommends approval.

SUGGESTED MOTION: I move that Resolution AR-24-08. A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (RALSTON CREEK NORTH) BETWEEN THE ARVADA URBAN RENEWAL AUTHORITY, AND ARVADA BEER GARDEN RE, LLC AND INCLUDING RALSTON CREEK NORTH, LLC AS A PARTY IN INTEREST be approved.

RESOLUTION AR-24-08

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (RALSTON CREEK NORTH) BETWEEN THE ARVADA URBAN RENEWAL AUTHORITY, AND ARVADA BEER GARDEN RE, LLC AND INCLUDING RALSTON CREEK NORTH, LLC AS A PARTY IN INTEREST

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY, THAT:

Section 1. The First Amendment to Purchase and Sale Agreement between the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado (the "Authority") and Arvada Beer Garden RE, LLC ("Purchaser"), and including Ralson Creek North, LLC as a party in interest, attached hereto as **Exhibit A**, is hereby approved, and the Chair is authorized to execute the same on behalf of the Authority

DATED this ___ of _____, 2024.

Paul Bunyard, Chair

Recording Secretary

APPROVED AS TO FORM

Corey Y. Hoffmann, Legal Counsel

FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

(Ralston Creek North)

between

ARVADA URBAN RENEWAL AUTHORITY,
A body corporate and politic of the State of Colorado

AND

ARVADA BEER GARDEN RE LLC,
a Colorado limited liability company

AND INCLUDING

RALSTON CREEK NORTH, LLC,
A Colorado limited liability company as a party in interest

June 20, 2024

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

(Ralston Creek North)

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “First Amendment”) is entered into this 20th day of June, 2024 (the “**Effective Date**”), by and among ARVADA URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado and ARVADA BEER GARDEN RE LLC, a Colorado limited liability company (“Purchaser”), and including RALSTON CREEK NORTH, LLC, a Colorado limited liability company.

WHEREAS, the Parties set forth above entered into that Purchase and Sale Agreement (Ralston Creek North) effective as of May 3, 2023 (the “**Original Agreement**”); and

WHEREAS, the Parties desire to enter into this First Amendment to extend the closing date as set forth in Exhibit A-1 to the Original Agreement, and clarify the responsibility for the payment of a vapor barrier necessary for the construction of certain structures on the Property as defined in the Original Agreement.

Agreement

NOW, THEREFORE, for the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Exhibit A-1 to the Original Agreement is amended to extend the Land Closing date to on or before **August 30, 2024**.

2. Section 9.9 of the Original Agreement is amended to read as follows:

9.9 Petroleum Contamination. If, within two (2) years after Closing, Purchaser’s excavation work on the Property encounters soil or groundwater contaminated with petroleum or petroleum constituents (collectively “**Petroleum**”) that requires special handling or disposal pursuant to law due to the Petroleum, AURA shall pay the incremental additional cost of such special handling or disposal. **Notwithstanding this language regarding Petroleum contamination, AURA and Purchaser each agree to pay one-half (½) of the total out of pocket costs of the installation of a vapor barrier under two (2) buildings to be constructed on the Property in a total amount not to exceed Thirty Thousand Dollars (\$30,000.00), with each Party’s responsibility not to exceed Fifteen Thousand Dollars (\$15,000.00).** The terms hereof shall survive Closing.

3. **Ratification.** Except as amended hereby, the Original Agreement remains unmodified and in full force and effect. In the event of any conflict between the Original Agreement and this First Amendment, the terms and provisions of this First Amendment shall control.

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

AURA:

ARVADA URBAN RENEWAL AUTHORITY, a
body corporate and politic of the State of Colorado

By: _____

Name: _____

Title: _____

Date of Execution: _____

RCN:

RALSTON CREEK NORTH, LLC, a Colorado
limited liability company

By: _____

Name: _____

Title: _____

Date of Execution: _____

PURCHASER

ARVADA BEER GARDEN RE LLC, a Colorado
limited liability company

By: _____

Name: _____

Title: _____

Date of Execution: _____