

BOCC

RESOLUTION NO. 24 - 437

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO APPROVE THE FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT FOR STERLING RANCH**

WHEREAS, the Board of County Commissioners of El Paso County, Colorado ("Board") has previously entered into a development agreement with SR Commercial, LLC, Classic SRJ, LLC, Morley-Bentley Investments, LLC as well as Sterling Ranch Metropolitan District Nos. 1 and 3 regarding the development of land known as Sterling Ranch, the most recent being the Development Agreement approved by the Board on July 19, 2022 and recorded in the records of the El Paso County Clerk and Recorder at Reception No. 222097613; and

WHEREAS, the previous development agreement required the Developer to complete the Sand Creek Channel Improvements by July 2025. To complete the improvements, additional time is requested because it will take longer than anticipated to procure a Letter of Map Revision from the Federal Emergency Management Agency; and

WHEREAS, County staff acknowledges the progress the Developer has made toward compliance with other provisions of the original Development Agreement, such as building improvements to Vollmer Road and Briargate Parkway; and

WHEREAS, the Board wishes to grant this request and to memorialize this in a First Amended and Restated Development Agreement, attached hereto as Exhibit A and incorporated herein by reference.

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of El Paso County, Colorado that the First Amended and Restated Development Agreement for Sterling Ranch attached hereto as Exhibit A is hereby approved.

DONE THIS 12th day of November, 2024 at Colorado Springs, Colorado.

ATTEST:

By: _____
Steve Schleiker
County Clerk & Recorder



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Carrie J. Geitner
Carrie Geitner, Chair

Steve Schleiker
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**FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
FOR STERLING RANCH**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR STERLING RANCH ("First Amendment"), amends certain provisions of the DEVELOPMENT AGREEMENT FOR STERLING RANCH originally executed on July 22, 2022 and recorded at Reception No. 222098865 ("Original Development Agreement") by and between SR COMMERCIAL, LLC ("SR Commercial"), SR LAND, LLC ("SR Land"), CLASSIC SRJ, LLC ("Classic") and MORLEY-BENTLEY INVESTMENTS, LLC ("MBI") (collectively, the "Subdivider"), STERLING RANCH METROPOLITAN DISTRICT NO. 1 ("District 1") and STERLING RANCH METROPOLITAN DISTRICT NO. 3 ("District 3"), and EL PASO COUNTY, by and through the Board of County Commissioners of El Paso County, Colorado ("County").

WITNESSETH:

WHEREAS, SR Land, SR Commercial, MBI, District 1, and the County entered into that certain Subdivision Improvements Agreement Sterling Ranch Filing No. 1, recorded in the public records of the County on May 13, 2018, under reception number 218061175 ("Sterling Filing 1 SIA");

WHEREAS, SR Land, District 1, and the County entered into that certain Subdivision Improvements Agreement Homestead at Sterling Ranch Filing No. 1, a Replat of Tract G, Sterling Ranch Filing No. 1, recorded in the public records of the County on February 25, 2019, under reception number 219019374 ("HS1 SIA");

WHEREAS, SR Land, District 1, Elite Properties of America, Inc., and the County entered into that certain Subdivision Improvements Agreement Homestead at Sterling Ranch Filing No. 2, a Replat of Tract E, Sterling Ranch Filing No. 1, recorded in the public records of the County on November 12, 2020 under reception number 220183295 ("HS2 SIA");

WHEREAS, SR Land, District 1, and the County entered into that certain Subdivision Improvements Agreement Branding Iron at Sterling Ranch Filing No. 1, a Replat of Tract BB, Sterling Ranch Filing No. 1, recorded in the public records of the County on December 20, 2018, under reception number 218145998 ("BI1 SIA"); and into that certain Subdivision Improvements Agreement Branding Iron at Sterling Ranch Filing No. 2, a Replat of Tract K, Sterling Ranch Filing No. 1, recorded in the public records of the County on December 23, 2020, under reception number 220211188 ("BI2 SIA");

WHEREAS, SR Land, District 1, Rhetoric, LLC, and the County entered into that certain Subdivision Improvements Agreement Sterling Ranch Filing No. 2, recorded in the public records of the County on January 12, 2022, under reception number 222005656 ("Sterling Filing 2 SIA");

WHEREAS, the HS1 SIA, HS2 SIA, BI1 SIA, BI2 SIA, and the Sterling Filing 2 SIA shall be collectively known as the "SR SIAs";

WHEREAS, the parties hereto acknowledge that District 3 is now the Coordinating District of Sterling Ranch Metropolitan Districts 1, 2 and 3 and that District 1 is no longer the Coordinating District; and

WHEREAS, the parties entered into the Original Development Agreement to amend and restate certain terms and conditions set forth in the Sterling Filing 1 SIA and the SR SIAs, as further set forth therein; and

WHEREAS, the parties desire to enter into this First Amendment to amend and restate the Original Development Agreement.

NOW, THEREFORE, in consideration of the following mutual covenants and agreements, the parties hereto agree as follows:

1. Drainage Improvements and Channel Improvements. The Subdivider, jointly and severally, agrees to construct and install, at their sole expense, all of the Sand Creek Channel Improvements set forth in the 404 Permit conditionally approved by the Army Corps of Engineers on April 5, 2022, as the same may be hereafter amended or superseded by the Army Corps of Engineers, and the Construction Drawings to be hereafter permitted by the Federal Emergency Management Agency ("FEMA") and approved by the County, as further detailed below in this Section 1 (collectively, the "Sand Creek Channel Improvements"). The County acknowledges and agrees that the Sand Creek Channel Improvements in the County-approved Construction Drawings described in this paragraph are synonymous with the channel improvements required under the SR SIAs and Sterling Filing 1 SIA.

(a) The County and Subdivider acknowledge that the Sand Creek Channel Improvements will require Subdivider to process a Conditional Letter of Map Revision ("CLOMR") with FEMA and perform all of the obligations contained therein in order for Subdivider to obtain a Letter of Map Revision ("LOMR"). Thus, collectively, the terms, conditions and obligations contained in both the CLOMR and LOMR shall be referred to as the "LOMR".

(b) The County and Subdivider acknowledge that performing the obligations contained in the Sand Creek Channel Improvements and obtaining approval of the LOMR will take longer than originally anticipated in the Original Development Agreement. Thus, the County and Subdivider expressly agree that the terms and conditions of this First Amendment shall control and prevail over any terms and conditions of the Original Development Agreement, SR SIAs and the Sterling Filing 1 SIA, including but not limited to Section 6 (b)(ii) of the Sterling Filing 1 SIA, pertaining to the Sand Creek Channel Improvements.

(i) The County agrees that so long as Subdivider provides any and all storm water management required by the County in connection with the filing of any final plat in Sterling Ranch, temporary or otherwise, and is making good faith efforts to perform its obligations in this Section 1 of the Development Agreement, Subdivider and any homebuilder operating within Sterling Ranch shall be allowed to continue to obtain building permits and certificates of occupancy for any residences to be constructed within Sterling Ranch. Notwithstanding the foregoing, Subdivider and its successors and assigns, including homebuilders, shall not be permitted to obtain a building permit for, sell or convey any lot or lots located within one hundred fifty (150) feet of the east side of the existing Sand Creek floodplain between Briargate Parkway and Sterling Ranch Road prior to completion of the Sand Creek Channel Improvements (such lots lying within 150 feet being referred to as an "Impacted Lot"), except as expressly permitted herein. The limitation on obtaining a building permit for, selling or conveying any Impacted Lot shall not apply to any subsequently platted lots where the necessary Sand Creek Channel Improvements have been completed adjacent to the Impacted Lot. By way of example, lot numbers 37 and 38 in the proposed Sterling Ranch East Filing 2, as currently submitted to the County, are located within 150 feet of the existing Sand Creek floodplain but would not be considered an Impacted Lot as the Sand Creek Channel Improvements adjacent to these lots have been completed with the installation of the Briargate Parkway bridge.

(ii) Subdivider shall complete and obtain preliminary acceptance by the County of all Sand Creek Channel Improvements and obtain approval of the LOMR within thirty (30) months from final approval of the CLOMR, but in no event later than December 31, 2029.

(iii) To secure and guarantee performance of its obligations as set forth herein, and in consideration of the County agreeing to the terms and conditions of this First Amendment, Subdivider agrees, upon the County approving the Construction Drawings for the Sand Creek Channel Improvements,

to provide collateral for the Sand Creek Channel Improvements in an amount to be determined by the County, in its reasonable discretion, for all of the work and obligations set forth in the Sand Creek Channel Improvements, to remain in effect at all times until the Sand Creek Channel Improvements are completed and accepted in accordance with Chapter 5 of the County's Engineering Criteria Manual (ECM). Security and collateral shall be posted in the form of a performance bond issued by Philadelphia Indemnity Insurance Company. Should the County approve the Construction Drawings and a Financial Assurance Estimate ("FAE") for the Sand Creek Channel Improvements prior to the effective date of this First Amendment, the Subdivider may provide and the County will accept a bond in the amount of the approved FAE upon FAE approval, and the FAE will be incorporated by reference into this First Amendment upon its subsequent approval.

(iv) Subdivider is responsible for providing any renewals of collateral for the Sand Creek Channel Improvements to ensure that there is never a lapse in security coverage. Subdivider shall procure renewal/extension/replacement collateral at least fifteen (15) days prior to the expiration of the original or renewal/extension/replacement collateral then in effect. Failure to procure renewal/extension/replacement collateral within this time limit shall be a default under this First Amendment and shall allow the County to execute on the collateral. In addition, if Subdivider allows collateral to lapse at any time, no lots in the Sterling Ranch subdivision may be sold, conveyed or transferred, whether by Deed or Contract, after the expiration date of such collateral until the Sand Creek Channel Improvements have been completed and final acceptance is received from the County. If replacement collateral is used for renewal, approval by the County is required.

2. **Vollmer Road.** In conjunction with Sterling Ranch Filing No.2 and Sterling Ranch Phase 2, LSC Transportation Consultants, Inc. submitted the *Sterling Ranch Filing No. 2 and Sterling Ranch Phase 2 Traffic Impact Study*, dated June 23, 2021 ("2021 TIS"). Concurrent with the submittal of the Sterling Ranch Sketch Plan Second Amendment, SM Rocha, LLC, will submit the *Sterling Ranch Sketch Plan Amendment/Traffic Generation Analysis El Paso County, Colorado*, dated April 25, 2022 ("2022 TIS"). The 2021 TIS and the 2022 TIS, each consistent with the other, recommend certain improvements to Vollmer Road, as set forth therein, and based upon 2021 TIS and 2022 TIS, the County and Subdivider acknowledge and agree as follows:

(a) Subdivider has substantially completed the improvements to Vollmer Road recommended in the County-approved 2021 TIS and 2022 TIS ("Vollmer Road Improvements"). Subdivider shall complete any remaining improvements no later than May 1, 2026. In the event that Subdivider has not completed the remaining Vollmer Road Improvements on or before May 1, 2026, collateral sufficient in the opinion of the County to assure completion of the Vollmer Road Improvements must be posted by Subdivider and a deadline by which such improvements shall be completed shall be established by written agreement.

(b) While the County acknowledges that Subdivider does not currently own or control any of the properties adjacent to the east or west side of Vollmer Road where Sterling Ranch does not abut Vollmer Road, Subdivider acknowledges its obligation to construct road improvements for which the need is triggered by traffic generated by a particular subdivision plat. To the extent that a proposed future plat triggers the need for improvements to Vollmer Road in addition to the Vollmer Road Improvements, the parties agree to work together in good faith toward acquisition of the right-of-way for such additional improvements. In the event the necessary right-of-way is not acquired and the required road improvements are not constructed, Subdivider understands that pursuant to County regulations, the particular final plat might not be approved by the County. Notwithstanding the foregoing, the County acknowledges and agrees that no future final plat in Sterling Ranch shall be denied solely based on the failure to construct additional improvements to Vollmer Road if the need for such improvements is driven by increased background traffic rather than traffic generated by Sterling Ranch.

3. **Briargate Parkway and Sterling Ranch Road.**

(a) The County acknowledges Subdivider has substantially completed those certain roadway improvements to Wheatland Drive (from Briargate Parkway to Dines Boulevard) as described in Section 5(e)(ii) of the HS2 SIA and Section 6(e)(ii) of the BI 2 SIA, and that such roadway improvements are awaiting inspection for preliminary acceptance by the County. The County acknowledges that Subdivider has obtained County approval of construction drawings for roadway improvements to Briargate Parkway, which include improvements to Briargate Parkway in addition to those certain improvements as described in Section 5(e)(i) of the HS2 SIA and Section 6(e)(i) of the BI 2 SIA (collectively, the "Briargate Improvements"). Subdivider has included the Briargate Improvements in the subdivision improvements agreement and financial assurance estimate for the final plat of Homestead North at Sterling Ranch Filing No. 1. The County agrees that the provisions of Section 5 (e)(i) of the HS2 SIA and Section 6 (e)(i) of the BI 2 SIA do not apply and are no longer of any force or effect.

(b) Subdivider has previously submitted a Plat for Homestead North at Sterling Ranch Filing No. 1, which includes the platting of Briargate Parkway from the intersection of Wheatland Drive through the intersection with Sterling Ranch Road, and includes the platting of Sterling Ranch Road from the west side of Sand Creek through and to the north of the intersection with Briargate Parkway. The parties agree that the following conditions of approval of the plats for Homestead North at Sterling Ranch Filing No. 1 and Sterling Ranch Filing 3 shall be adopted and incorporated into the respective subdivision improvements agreements, provided that such conditions are consistent with County regulations and are supported by the traffic impact studies approved for each plat:

(i) Subdivider has posted collateral sufficient in the opinion of the County to assure completion of that certain section of Briargate Parkway that begins at Wheatland Drive and extends east to the western boundary of Sand Creek. Except for any required grading and erosion control collateral, Subdivider shall not be required to post collateral sufficient in the opinion of the County to assure completion of that certain section of Briargate Parkway that begins at the western boundary of Sand Creek and ends at the intersection with Sterling Ranch Road, until such time as Subdivider has platted a subdivision abutting such section of Briargate Parkway.

(ii) Subdivider has constructed Sterling Ranch Road and the crossing over Sand Creek through the intersection with Briargate Parkway.

4. **Sketch Plan Depicted Access Points.** The parties agree that approval by the County of the Sterling Ranch Sketch Plan Fourth Amendment, if it is approved, does not create in Subdivider any vested or other legally protected interest in access points to Briargate Parkway and Sterling Ranch Road depicted thereon. Nonetheless, the parties agree to work together in good faith to review such access points in accordance with the County's thoroughfare and access plans and the ECM.

5. **Wastewater Treatment.** Wastewater for all previously approved plats within Sterling Ranch is being treated by Colorado Springs Utilities pursuant to that certain Wastewater Service Agreement executed by and between Colorado Springs Utilities and Falcon Area Water and Wastewater Authority dated May 31, 2024 ("CSU Wastewater Contract").

Additionally, pursuant to the Original Development Agreement, SR Land was required to have completed all of the Meridian System Connection, as such term is defined in the BS2 SIA, and was required to have obtained final approval by Meridian Service Metropolitan District of the Meridian System Connection. These improvements have been completed, as evidenced by Meridian Service Metropolitan District acceptance letter dated May 16, 2023.

6. **Design Standards.** The Subdivider agrees that all of the public improvements referenced in this First Amendment, or under any of the SIA's, shall be constructed in compliance with the following:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year below written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
EL PASO COUNTY, COLORADO

Steve Schleiker
County Clerk & Recorder

By: _____
Carrie Geitner, Chair

Approved as to form:

County Attorney's Office

STERLING RANCH METROPOLITAN DISTRICT NO. 1

By: _____
[Signature]

Name: Douglas Strang

Its: Authorized Board Member

STERLING RANCH METROPOLITAN DISTRICT NO. 3

By: _____
[Signature]

Name: Douglas Strang

Its: Authorized Board Member

SR COMMERCIAL, LLC

By: _____
[Signature]

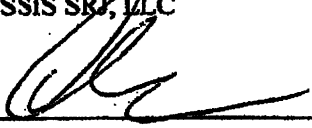
Name: Margaret E Libbey

Its: Attorney in fact

SR LAND, LLC

By: Margaret E. Libbey
Name: Margaret E. Libbey
Its: Attorney in fact

CLASSIS SRJ, LLC

By: 
Name: Douglas Strayle
Its: CEO & Manager

MORLEY-BENTLEY INVESTMENTS, LLC

By: Margaret E. Libbey
Name: Margaret E. Libbey
Its: Attorney in fact