

**THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF
SPECIAL LAND USE RESTRICTIONS, OPTION TO PURCHASE AND
INFRASTRUCTURE AGREEMENT**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DECLARATION OF SPECIAL LAND USE RESTRICTIONS, OPTION TO PURCHASE AND INFRASTRUCTURE AGREEMENT ("*Amendment*") is made as of this ____ day of November, 2024, by and between CITY PARKWAY V, INC. a Nevada non-profit corporation ("*CPV*"), and PQ HOLDINGS, LLC, a Nevada limited liability company ("*PQ*"). CPV and PQ are herein individually and collectively referred to as the "*Parties*" or singularly as a "*Party*".

WHEREAS:

A. The Parties entered into that certain Amended and Restated Declaration of Special Land Use Restrictions, Option to Purchase and Infrastructure Agreement, dated May 3, 2017, as amended by that certain Amended and Restated Declaration of Special Land Use Restrictions, Option to Purchase and Infrastructure Agreement, dated December 5, 2018, as amended by that certain Second Amendment and Restated Declaration of Special Land Use Restrictions, Option to Purchase and Infrastructure Agreement dated December 16, 2020 (collectively, including this Amendment, the "*Declaration*").

B. The Parties have agreed to enter into this Third Amendment to modify the Declaration to provide among other matters the extension of time deadlines for the design, commencement and construction of the Project and revised option to purchase as set forth in Section 3.4(a) of the Amended and Restated Declaration of Special Land Use Restrictions, Option to Purchase and Infrastructure Agreement dated May 3, 2017.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

1. Definitions. The Parties agree that all capitalized terms contained herein that are not defined herein shall have the same meaning as set forth in the Declaration.

2. Feasibility Date; Entitlements Submission Date. The Parties agree that Section 2.2(a) of the Declaration is hereby deleted in its entirety and the following substituted in lieu thereof:

(a) On or before December 1, 2026 (the "*Feasibility Date*"), Developer will have submitted (i) to CPV, a project narrative for CPV approval, and (ii) to Chicago Title of Nevada, Inc. ("*CTT*"), a quitclaim deed, in a form reasonably acceptable to CPV (the "*Escrowed Deed*"), to be held by CTT in escrow pursuant to this Amendment and an escrow agreement by and among Developer, CPV and CTT, in a form reasonably acceptable to the parties thereto (the "*Escrow Agreement*"). The grantee of the Escrowed Deed shall be in blank in order to allow CPV to assign the

Escrowed Deed pursuant to this Declaration upon the occurrence of certain conditions. Following CPV approval as described above, Developer shall submit for Project entitlements no later than August 1, 2028 ("*Entitlements Submission Milestone*"). If the Entitlement Submission Milestone is not met, CPV shall have the option to purchase the Site, and record the Escrowed Deed, in accordance with Section 3.4 of the Declaration (as amended herein) and the Escrow Agreement.

3. Commencement. The Parties hereby agree that the Construction Commencement Date is hereby extended to August 1, 2029 (the "*Construction Date Milestone*"). If the Construction Date Milestone is not met, CPV shall have the option to purchase the Site, and record the Escrowed Deed, in accordance with Section 3.4 of the Declaration (as amended herein) and the Escrow Agreement.

4. Option to Purchase the Site. The Parties agree that Section 3.4 of the Declaration is hereby deleted in its entirety and the following substituted in lieu thereof:

3.4 Option to Purchase the Site. In recognition of CPV's interest in the expeditious development of the Site, Developer hereby grants to CPV, as CPV's sole and exclusive remedy, the irrevocable, exclusive right and option to purchase fee simple interest of the Site in its entirety (and not portions thereof) (the "*Purchase Option*") in the event of the failure of the Developer to meet the (i) Entitlements Submission Milestone, or (ii) Construction Date Milestone. The Purchase Option shall be in lieu of any other remedies herein or at law or equity for the failure of Developer to meet the Entitlements Submission Milestone or the Construction Date Milestone. The Purchase Option shall only be exercised as provided below.

5. Exercise of Purchase Option. The Parties agree that Section 3.4(a) of the Declaration is hereby deleted in its entirety and the following substituted in lieu thereof:

(a) Exercise of Purchase Option. Except as provided in Section 3.4(i), CPV may exercise the Purchase Option by giving written notice to Developer thereof no later than ninety (90) days after the failure of Developer to either meet the (i) Entitlements Submission Milestone, or (ii) Construction Date Milestone. CPV agrees that in the event CPV does not exercise the Purchase Option within such ninety (90) day period, the Purchase Option shall automatically lapse and be null and void. Upon exercise of the Purchase Option by CPV, the Parties shall promptly proceed to determine the Fair Market Value of the Site, unless the Parties agree in writing that the Fair Market Value of the Site is in excess of \$16,000,000.00, in which case the Purchase Price for the Site shall be \$16,000,000.00.

6. Purchase Escrow Terms; Closing. The Parties agree that Section 3.4(f) of the Declaration is hereby deleted in its entirety and the following substituted in lieu thereof:

(f) Purchase Escrow Terms; Closing. Within five (5) days after CPV's exercise of the Purchase Option as provided above or as soon thereafter as possible, an escrow shall be created at CTT. Said escrow shall be subject only to approval by CPV of a then current preliminary title report. Any exceptions shown thereon created after the date hereof, and disapproved by written notice to Developer through escrow (subject to Section 3.4(b) above), shall be removed or insured over by Developer at its sole expense at or prior to closing of escrow. Developer and CPV shall each pay one-half of the escrow fees; developer shall pay for documentary tax stamps, for recording the Deed, and for a standard form of owner's coverage policy of title insurance in the amount of the Purchase Price showing title to the Site vested in CPV or its assigns free and clear of all liens, encumbrances or other title exceptions other than those permitted by this Declaration. Any other costs or expenses shall be allocated between the Parties in the manner customary in Clark County, Nevada. Closing shall occur on a date mutually agreeable to the Parties, but not later than one hundred eighty (180) days after CPV's exercise of the Purchase Option. At closing of the Purchase Option, CPV shall pay the Purchase Price to Developer in immediately available funds and the Parties shall instruct CTT to record the Escrowed Deed pursuant to this Amendment and the Escrow Agreement. Developer shall instruct CTT on how to disburse the proceeds with respect to Developer and any Recognized Mortgagee, to the extent applicable.

7. Purchase Option Assignment. The Parties agree that Section 3.4(h) of the Declaration is hereby deleted in its entirety and the following substituted in lieu thereof

(h) Purchase Option Assignment. CPV shall have the right to assign to a Person the Purchase Option and the Escrowed Deed, as determined by CPV at its sole discretion.

8. Effect. The Parties agree that except as set forth in this Amendment, (i) the Declaration remains in full force and effect and (ii) in the event of any conflict between the terms of the Declaration and this Amendment, this Amendment shall govern and control.

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9. Counterpart Signatures. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. Delivery of this Amendment may be accomplished by facsimile or electronic transmission of this Amendment. In such event, the Parties hereto shall promptly thereafter deliver to each other executed counterpart originals of this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the date set forth next to their respective signatures below.

CITY PARKWAY V, INC., a Nevada corporation

By: _____

Date: _____

Printed Name: Michael Janssen

Title: President

Approved as to Form:

By: John S. Ridilla 10/28/24

Printed Name: John S. Ridilla



Title: Assistant City Attorney

PQ HOLDINGS, LLC, a Nevada limited liability company

Signed by:
By: Derek J. Stevens
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Date: 10/23/2024

Printed Name: Derek J. Stevens

Title: Manager

City Council Meeting Date: _____

City Council Item No.: _____