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# CITY COUNCIL AGENDA

CITY HALL COUNCIL CHAMBER  
78495 Calle Tampico, La Quinta

**SPECIAL MEETING**  
**MONDAY, SEPTEMBER 9, 2024, AT 3:45 P.M.**

Members of the public may listen to this meeting by tuning-in live via [www.laquintaca.gov/livemeetings](http://www.laquintaca.gov/livemeetings).

## **CALL TO ORDER**

ROLL CALL: Councilmembers: Fitzpatrick, McGarrey, Peña, Sanchez, and Mayor Evans

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA**

At this time, members of the public may address the City Council on any matter not listed on the agenda pursuant to the "Public Comments – Instructions" listed at the end of the agenda. The City Council values your comments; however, in accordance with State law, no action shall be taken on any item not appearing on the agenda unless it is an emergency item authorized by the Brown Act [Government Code § 54954.2(b)].

## **CONFIRMATION OF AGENDA**

## **CONSENT CALENDAR**

1. RATIFY AND APPROVE PROFESSIONAL SERVICES AGREEMENT WITH WHITEFORD, TAYLOR & PRESTON, LLP TO REPRESENT THE CITY AS SPECIAL COUNSEL AND LOCAL DELAWARE COUNSEL IN CONNECTION WITH THE SILVERROCK DEVELOPMENT COMPANY BANKRUPTCY CASES

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**CLOSED SESSION**

- 1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION;  
PURSUANT TO PARAGRAPH (1) OF SUBDIVISION (d) OF GOVERNMENT CODE SECTION 54956.9;  
CASES NAMES AND NUMBERS – MULTIPLE (listed below, all in U.S. Bankruptcy Court, District of Delaware)

CASE NAME:	CASE NUMBER
SilverRock Development Company, LLC	24-11647
SilverRock Lifestyle Residences, LLC	24-11648
SilverRock Lodging, LLC	24-11650
SilverRock Luxury Residences, LLC	24-11652
SilverRock Phase I, LLC	24-11654
RGC PA 789, LLC	24-11657

*RECESS TO CLOSED SESSION*

RECONVENE AT 4:00 P.M.

**REPORT ON ACTION(S) TAKEN IN CLOSED SESSION**

**ADJOURNMENT**

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The next regular meeting of the City Council will be held on September 17, 2024, with open session starting at 4:00 p.m. at the City Hall Council Chamber, 78495 Calle Tampico, La Quinta, CA 92253.

**DECLARATION OF POSTING**

I, Monika Radeva, City Clerk of the City of La Quinta, do hereby declare that the foregoing Agenda for the La Quinta City Council Special meeting was posted on the City’s website, near the entrance to the Council Chamber at 78495 Calle Tampico, and the bulletin board at the La Quinta Cove Post Office at 51321 Avenida Bermudas, on September 6, 2024.

DATED: September 6, 2024

MONIKA RADEVA, City Clerk  
City of La Quinta, California

## **Public Notices**

- Agenda packet materials are available for public inspection: 1) at the Clerk's Office at La Quinta City Hall, located at 78495 Calle Tampico, La Quinta, California 92253; and 2) on the City's website at [www.laquintaca.gov/councilagendas](http://www.laquintaca.gov/councilagendas), in accordance with the Brown Act [Government Code § 54957.5; AB 2647 (Stats. 2022, Ch. 971)].
- The La Quinta City Council Chamber is handicapped accessible. If special equipment is needed for the hearing impaired, please call the City Clerk's office at (760) 777-7123, 24-hours in advance of the meeting and accommodations will be made.
- If background material is to be presented to the City Council during a City Council meeting, please be advised that 15 copies of all documents, exhibits, etc., must be supplied to the City Clerk for distribution. It is requested that this takes place prior to the beginning of the meeting.

## **PUBLIC COMMENTS - INSTRUCTIONS**

Members of the public may address the City Council on any matter listed or not listed on the agenda as follows:

WRITTEN PUBLIC COMMENTS can be provided either in-person during the meeting by submitting 15 copies to the City Clerk, it is requested that this takes place prior to the beginning of the meeting; or can be emailed in advance to [CityClerkMail@LaQuintaCA.gov](mailto:CityClerkMail@LaQuintaCA.gov), no later than 9:00 a.m., on the day of the meeting. Written public comments will be distributed to Council, made public, and will be incorporated into the public record of the meeting, but will not be read during the meeting unless, upon the request of the Mayor, a brief summary of public comments is asked to be reported.

If written public comments are emailed, the email subject line must clearly state **“Written Comments”** and should include: **1) full name, 2) city of residence, and 3) subject matter.**

VERBAL PUBLIC COMMENTS can be provided in-person during the meeting by completing a “Request to Speak” form and submitting it to the City Clerk; it is requested that this takes place prior to the beginning of the meeting. Please limit your comments to three (3) minutes (or approximately 350 words). Members of the public shall be called upon to speak by the Mayor.

In accordance with City Council Resolution No. 2022-027, a one-time additional speaker time donation of three (3) minutes per individual is permitted; please note that the member of the public donating time must: 1) submit this in writing to the City Clerk by completing a “Request to Speak” form noting the name of the person to whom time is being donated to, and 2) be present at the time the speaker provides verbal comments.

Verbal public comments are defined as comments provided in the speakers' own voice and may not include video or sound recordings of the speaker or of other individuals or entities, unless permitted by the Mayor.

Public speakers may elect to use printed presentation materials to aid their comments; 15 copies of such printed materials shall be provided to the City Clerk to be disseminated to the City Council, made public, and incorporated into the public record of the meeting; it is requested that the printed materials are provided prior to the beginning of the meeting. There shall be no use of Chamber resources and technology to display visual or audible presentations during public comments, unless permitted by the Mayor.

All writings or documents, including but not limited to emails and attachments to emails, submitted to the City regarding any item(s) listed or not listed on this agenda are public records. All information in such writings and documents is subject to disclosure as being in the public domain and subject to search and review by electronic means, including but not limited to the City's Internet Web site and any other Internet Web-based platform or other Web-based form of communication. All information in such writings and documents similarly is subject to disclosure pursuant to the California Public Records Act [Government Code § 7920.000 *et seq.*].

# City of La Quinta

CITY COUNCIL SPECIAL MEETING: September 9, 2024

## STAFF REPORT

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**AGENDA TITLE:** RATIFY AND APPROVE PROFESSIONAL SERVICES AGREEMENT WITH WHITEFORD, TAYLOR & PRESTON, LLP TO REPRESENT THE CITY AS SPECIAL COUNSEL AND LOCAL DELAWARE COUNSEL IN CONNECTION WITH THE SILVERROCK DEVELOPMENT COMPANY BANKRUPTCY CASES

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### RECOMMENDATION

Ratify and approve the professional services agreement with Whiteford, Taylor & Preston, LLP to represent the City as special counsel / local Delaware counsel in connection with the SilverRock Development Company bankruptcy cases.

### EXECUTIVE SUMMARY

- The City and SilverRock Development Company, LLC (SDC) entered into, among other agreements, a Purchase, Sale, and Development Agreement on November 19, 2014, which has been amended via Amendments 1, 2, 3, 4, and 5, collectively referred to as the PSDA, for the Talus project (formerly SilverRock Resort).
- On August 5, 2024, multiple bankruptcy petitions were filed by SDC and its affiliated entities in the United States Bankruptcy Court for the District of Delaware.
- Pursuant to Council direction to defend and protect the City's interests, the City Attorney's Office coordinated with the City Manager and multiple other creditors' counsel to obtain special local bankruptcy counsel, as required for appearing before the Delaware Bankruptcy Court and as recommended by the City Attorney.
- Bankruptcy proceedings move quickly, so immediate action was required to retain special local counsel through the City Manager's contracting authority.

### FISCAL IMPACT

Legal counsel representation fees will be billed as needed and expended from account number 101-1003-60154.

### BACKGROUND/ANALYSIS

The City and SDC entered into, among other agreements, a Purchase, Sale, and Development Agreement on November 19, 2014, which has been amended via

Amendments 1, 2, 3, 4, and 5, collectively referred to as the PSDA, for the Talus project (formerly SilverRock Resort).

On August 5, 2024, multiple voluntary bankruptcy petitions were filed by SDC and its affiliated entities in the United States Bankruptcy Court for the District of Delaware, with the following Debtor Petitioners and case numbers:

CASE NAME:	CASE NUMBER
SilverRock Development Company, LLC	24-11647
SilverRock Lifestyle Residences, LLC	24-11648
SilverRock Lodging, LLC	24-11650
SilverRock Luxury Residences, LLC	24-11652
SilverRock Phase I, LLC	24-11654
RGC PA 789, LLC	24-11657

Under the PSDA, among multiple other agreements with the City, as well as under the SilverRock Specific Plan, the City has significant interests in ensuring the currently lapsed construction commences as quickly as possible with an approved developer that has the financial resources available to complete the project. To this end, at the August 6, 2024, meeting, Council added a closed session item pursuant to the Ralph M. Brown Act in response to the SDC bankruptcy cases being filed the night before. Pursuant to the Council's direction to defend and protect the City's interests, the City Attorney's Office coordinated with the City Manager and multiple other creditors' counsel representing parties in the bankruptcy cases to obtain special local bankruptcy counsel, not only as required by federal court rules for appearing before the Delaware court, but also as recommended by the City Attorney.

Thus, on August 17, 2024, the City Manager in accordance with his contracting authority executed an agreement with Whiteford, Taylor & Preston, LLP, included as Attachment 1, to represent the City as special counsel / local Delaware counsel for the SDC bankruptcy cases.

Pursuant to state law, the Council may, and here is recommended to, ratify the City Manager's entering into the agreement, and the Council may concurrently approve the same agreement so that, as legal representation fees are billed, they may be paid as they become due from account number 101-1003-60154, as noted above.

### ALTERNATIVES

Staff does not recommend an alternative.

Prepared by: William H. Ihrke, City Attorney

Approved by: Jon McMillen, City Manager

Attachment: 1. Agreement with Whiteford, Taylor & Preston, LLP

WHITEFORD, TAYLOR & PRESTON L.L.P.

3190 FAIRVIEW PARK DRIVE, SUITE 800  
FALLS CHURCH, VIRGINIA 22042-4510

MAIN TELEPHONE (703) 280-9260  
FACSIMILE (703) 280-9139

BRADFORD F. ENGLANDER  
PARTNER  
DIRECT LINE (703) 280-9081  
DIRECT FAX (703) 280-3370  
BEnglander@whitefordlaw.com

DELAWARE\*  
DISTRICT OF COLUMBIA  
KENTUCKY  
MARYLAND  
NEW YORK  
PENNSYLVANIA  
VIRGINIA

[WWW.WHITEFORDLAW.COM](http://WWW.WHITEFORDLAW.COM)  
(800) 987-8705

August 16, 2024

By e-mail: [jmcmillen@laquintaca.gov](mailto:jmcmillen@laquintaca.gov)

Jon McMillen  
City Manager  
City of La Quinta  
78495 Calle Tampico  
La Quinta, California 92253

**Re: *In re SilverRock Development Company, LLC, et al., chapter 11 case no. 24-11647 (as jointly administered, the "Bankruptcy Case")***

Dear Mr. McMillen:

As an initial matter, let me thank you for the opportunity to have Whiteford, Taylor & Preston L.L.P. ("Whiteford" or the "Firm") work with you on behalf of the City of La Quinta (the "Client"). This letter will confirm the terms and conditions under which Whiteford will undertake to represent the Client in connection with various creditor rights and bankruptcy issues arising from and in connection with the above-referenced administratively consolidated Bankruptcy Case of SilverRock Development Company, LLC, SilverRock Luxury Residences, LLC, SilverRock Lodging, LLC, SilverRock Lifestyle Residences, LLC, SilverRock Phase I, LLC, and RGC PA 7,8,9 LLC (collectively, the "Debtors"). Enclosed with this letter are Whiteford's Standard Terms of Engagement, which are incorporated herein. In the case of conflict between this letter and the Standard Terms of Engagement, the terms of this letter shall govern.

1. Nature of the Engagement: The Client is engaging Whiteford to provide legal services. The Firm does not provide accounting services, valuation services, financial services, investment banking services, or brokerage services.

2. Scope of Services to be Provided in this Engagement. This engagement will be for the purpose of appearing in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on behalf of Client with respect to the

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City of La Quinta  
August 16, 2024  
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Bankruptcy Case and any adversary proceeding or contested matter arising in the Bankruptcy Case; evaluating bankruptcy issues and matters arising in connection with the Bankruptcy Case and advising Client regarding such matters; and, in conjunction with Client and its counsel, negotiating with the Debtors, creditors and parties in interest in connection with the Bankruptcy Case.

The scope of this engagement excludes: (a) the appearance in any litigation, case, proceeding or matter in any court or tribunal, other than the Bankruptcy Court (or any court presiding over an appeal from decisions of the Bankruptcy Court); (b) matters concerning municipal law, zoning or land use; and (c) tax strategy, obligations, liabilities and related tax advice. We understand that Client has engaged William H. Ihrke and the firm of Rutan & Tucker, whose services encompass municipal, land use and zoning law (among other things). We will coordinate with Rutan & Tucker to minimize duplication of efforts. Work relating to matters outside the scope of this engagement will require further mutual agreement of the Client and the Firm, and the execution of a separate agreement among the parties.

3. Other Representations and Conflicts: As set forth in greater detail in Standard Terms and Conditions, Whiteford will represent only the Client and not any Affiliated Persons (as defined in the Standard Terms and Conditions).

A financial restructuring or workout may involve numerous creditors or potential creditors and parties in interest. We prepared a list of parties appearing of record in the Bankruptcy Case, who appear to have a material role in the case. Such list is attached as Exhibit A hereto. The listed parties are referred to as the "Conflicts Parties." Based on our review of the listed Conflicts Parties, the Firm does not believe that it has any disqualifying conflicts. Please advise us if any other entities or individuals exist who have, or may have, interests that are adverse to Client.

Client agrees that Whiteford may represent the Conflicts Parties, and other persons, in matters unrelated to this engagement. In no event will Whiteford represent any of these parties in a matter that is directly adverse to Client, or that is substantially related to the scope of this engagement.

4. Fees and Expenses: I will be the attorney primarily responsible for this representation. Other attorneys and paralegals may assist as appropriate. My standard hourly rate presently is \$835. Rich Riley, who is counsel resident in the Firm's Wilmington Delaware office, has a standard hourly rate of \$850. We will bill for my time, and the time of other attorneys and paralegals, at our standard rates in effect from



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City of La Quinta  
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time to time, less a 20% discount. In addition to legal fees, our invoices include any out-of-pocket expenses we have advanced, or may advance, on behalf of the Client. We will not charge fees for time incurred in travel (except to the extent billable work is performed during such travel).

Whiteford generally bills its clients monthly and our invoices are due upon receipt. We reserve the right to bill more or less often than monthly in our discretion.

Please acknowledge the Client’s receipt of this letter and agreement to the terms of our engagement letter set forth herein, including the enclosed Standard Terms of Engagement, by signing below and returning a copy to my attention. We want to thank you again for selecting our firm. We look forward to a mutually satisfying and rewarding relationship.

Very truly yours,

*/s/ Bradford F. Englander*


Bradford F. Englander

**Agreed and accepted:**

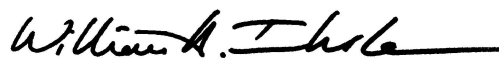
**City of La Quinta**

By:   
Jon McMillen, City Manager

**Attest:**

By:  8/17/2024  
Monika Radeva, City Clerk

**Approved as to Form:**

By:   
William H. Ihrke, City Attorney

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August 16, 2024  
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## Exhibit A

### Conflict Parties

#### Client

City of La Quinta, California

#### Adverse Parties (Debtor and affiliates)

Robert S. Green  
Robert Green Company  
SilverRock Development Company, LLC  
SilverRock Luxury Residences, LLC  
SilverRock Lodging, LLC  
SilverRock Lifestyle Residences, LLC  
SilverRock Phase I, LLC  
RGC PA 789 LLC  
Green Family Trust  
RGC La Quinta, LLC  
Cassidy Jahn Traub  
Priscilla Suzan Traub  
Traub Family Revocable Trust dated June 22, 2015  
SilverRock Land II, LLC  
Ed Himmelberg  
Arush Patel  
Lance Moore

#### Adverse Parties (creditors and parties in interest)

First Pathway Partners  
Poppy Bank  
Cypress Point Holdings, LLC  
Christopher George  
CMG Capital  
Montage Hotel  
Pendry Hotel  
Mosaic Real Estate Investors  
RAF Pacifica (Keillor)  
Axia Talus  
George Heuser  
SVR Capital Trust

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BJ Delzer  
Jon Kurtin  
Linda Kurtin  
Ken Green Family Trust  
Larry Duclos  
Bryan Holker  
Diane Cimarusti  
Claire Fruhwirth 2014 Trustee  
Jason Parr  
Jon Fredricks  
David Mack  
Kevin Welk  
Lindy Welk  
Larry Welk  
Eric Leitstein  
Susan Hoehn  
Ritch Goetz  
Parekh Family Trustee  
Jeff Mcoy  
Naveen Yalamanchi  
Eric Beranek  
Young Holdings  
Dan Kloiber  
RD Olson Construction, Inc.  
Granite Construction Company

**WHITEFORD, TAYLOR & PRESTON L.L.P./LLC<sup>1</sup>**  
**STANDARD TERMS OF ENGAGEMENT**  
**(Revised 2024)**

We appreciate your retaining Whiteford, Taylor & Preston L.L.P./LLC (“Whiteford”) as your legal counsel. The following describes the terms that will apply to our representation unless otherwise expressly specified in the accompanying engagement letter (the “Engagement Letter”).

**Our Client**

Our client is the person or entity expressly identified as such in the Engagement Letter and is the sole counterparty to and intended beneficiary of the representation. Our client relationship is with, and our professional responsibilities are solely owed to, the person or entity alone, not with any person addressed in or signing the Engagement Letter and not with any relation of the person or of the entity, including the entity’s corporate parents, subsidiaries, or affiliates or with individual investors, members, shareholders, officers, directors, partners, employees, agents, customers, or service providers (“Affiliated Persons”) unless expressly agreed in writing. The client is responsible for payment of all fees, costs and expenses invoiced by Whiteford unless otherwise agreed in writing. When the Engagement Letter expressly identifies multiple parties as the client, each party identified shall be personally, jointly, and severally responsible for payment of Whiteford’s invoices absent written agreement to the contrary between all parties. By signing the Engagement Letter, all signatories and the entity for whom they are signing represent that they reviewed the Engagement Letter and these Standard Terms of Engagement and have the authority to bind the person or entity, including any Affiliated Persons, identified as the client(s) therein.

**Scope of Services**

The services we will provide are limited to only those matters expressly set forth in the Engagement Letter and to those specifically requested and confirmed by us in writing. Whiteford’s representation and advice will not extend to any other matter. In no case shall our services include accounting services, valuation services, investment banking services, or brokerage services.

Unless otherwise expressly limited in the Engagement Letter, the representation may be provided by any Whiteford attorney or non-attorney, as appropriate, and as determined by Whiteford in its professional judgment. You are not relying on any statement about the identity, experience or skill of a particular attorney or non-attorney in choosing to retain Whiteford.

**Client Responsibilities**

Because our representation depends on the quality and timeliness of information we receive, you agree to provide complete and accurate information relating to your matter, to keep us informed

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<sup>1</sup> Whiteford’s Delaware offices operate as a Delaware limited liability company, while Whiteford’s offices in all other states operate as a Maryland limited liability partnership. Engagement Letters that list a Delaware office address in the letterhead are for agreements between the client and Whiteford, Taylor & Preston LLC.

of any developments that occur and new information that is learned relating to your matter, and to provide us with all facts, documents, electronically stored information, and other data and communications relating to the subject of our representation that we request. As the success of the representation depends upon your cooperation, you agree to cooperate fully with us, including by taking all appropriate steps to make your members, shareholders, officers, directors, partners, employees, agents, customers, or service providers (as applicable) available whenever appropriate, to timely respond to requests for information or decisions necessary to our representation, and to attend and participate in meetings, preparation sessions, court proceedings and other activities.

### **Fees, Estimates and Budgets**

When establishing rates, we are guided primarily by the time and labor required, although we also consider other factors, such as the novelty and difficulty of the legal issues involved, the legal skill required, the fee customarily charged by comparable firms for similar legal services, the amount of money involved or at risk, the time constraints imposed by either the client or the circumstances, and any unforeseen circumstances arising during the representation. It is often impracticable to predict the amount of effort that will be needed to complete a matter or the total amount of fees and costs that may be incurred. Accordingly, we often cannot precisely estimate our total fees for a particular matter.

However, we will provide an estimate or budget for a particular matter or stage thereof upon request. These estimates and budgets are not binding, are often subject to circumstances beyond our control, and are imprecise by their nature. It shall be your responsibility, if you wish to do so, to track the actual fees and charges against the estimate or budget and to bring promptly to our attention any concerns or questions about any variance between the actual billings and the estimate or budget. In all cases, you are responsible for paying the actual fees and expenses incurred even if they exceed any estimate or budget. We invite our clients to raise any questions they have concerning a fee charged, as we want our clients to be satisfied with both the quality of services provided and the reasonableness of fees charged, and will attempt to provide all fee information reasonably requested in the form desired.

### **Disbursements**

In addition to legal fees, our invoices include any out-of-pocket expenses we have incurred in representing the client. These often include: costs for such items as travel and lodging; conference call services; messenger and delivery service; computer research; postage, filing, recording, certification, and registration fees; transcripts; and photocopying and printing for client, third parties or our use. The client must pay all such amounts even if in excess of any estimate or budget provided unless otherwise agreed in writing.

### **Experts and Consultants**

If we utilize any third-party expert, consultant, vendor, or other professional (each, a “vendor”) on your behalf, you may be expected to sign an engagement letter with that vendor and make direct payment of all fees, costs, and expenses to the vendor. In no circumstances will we assume or accept ultimate responsibility for paying any vendor engaged on your behalf. Rather,

you are responsible to timely pay any such vendor's fees, costs and expenses, regardless of whether you signed an engagement letter with that vendor and regardless of whether such vendor was engaged by you or by Whiteford on your behalf. Failure to do so may prejudice the representation. You will indemnify and hold Whiteford harmless against any vendor's claim for payment. If Whiteford elects to advance payment, it will be billed and subject to a late charge on any amount unpaid as in the "Billing" section below.

### **Payment of Fees, Costs and Expenses by Insurers or other Third Parties**

An insurer or other third party may offer to provide a client legal representation, to advance the costs of litigation, or to reimburse the client for some or all of the legal fees and expenses incurred in a legal representation or has a contractual obligation to do so. Whiteford will consider accepting such third-party payments on your behalf provided that you consent and the arrangement does not interfere with our professional judgment, our attorney-client relationship, or the confidentiality of information related to our representation. The decision whether or not to accept one or more payments made on your behalf by an insurer or other third party rests solely in our discretion. However, we cannot guarantee that an insurer or other third party will determine that you are entitled to coverage for our fees and expenses in this representation or will in fact satisfy the same. To maximize your chance of obtaining the benefits of any contractual defense, indemnity, or insurance coverage benefits you are owed, you should give prompt notice of the claim and your demand for a defense, indemnification, and coverage benefits to all third parties you have contracted with that may owe you these obligations. This includes notice to any insurance companies that have issued any kind of insurance policy to you, including an excess policy or an umbrella policy, or that may owe you coverage as an additional insured. The failure to provide prompt notice as required by the applicable contracts and insurance policies could result in a loss of your contractual or insurance coverage rights. Whether or not Whiteford agrees to accept one or more payments made on your behalf by an insurer or other third party, you remain responsible for all fees, costs, expenses, and other disbursements that we incur on your behalf that are not actually paid to Whiteford by an insurer or other third party, including any amounts you must cover to satisfy a self-insured retention or deductible. Should Whiteford and the client agree that it is advisable to obtain a loan, line of credit or other financing from a third party to advance costs or other expenses of the representation, the client shall be responsible, unless Whiteford otherwise agrees in writing, for repaying all amounts obtained and all costs associated with obtaining such loan, line of credit, or financing, including all interest charges incurred on the costs and expenses advanced, to the full extent permitted by law and applicable rules of professional conduct.

### **Billing**

We generally bill monthly. Unless otherwise agreed in the Engagement Letter, payment in full of our invoices is due within thirty (30) days of the date on the invoice. Any payments made may be applied first to the oldest outstanding invoice or applied to replenish a retainer, if applicable. We accept payment by check, e-check for transactions subject to the payment limits established by our firm, ACH, wire transfers, and credit cards. A surcharge of 2.95% will be added to all credit card payments. This amount may be revised in Whiteford's sole discretion with written notice.

Twelve percent (12%) annualized simple interest shall begin to accrue on unpaid account balances more than thirty (30) days overdue and shall be reflected on the next invoice sent. Such interest will be computed in the manner stated under the “Termination of Services and Collection” section below. Whiteford may waive, but only in writing and at its sole discretion, any accrued interest. All objections, questions or concerns about any invoice or any charge on the invoice shall be communicated promptly to Whiteford, but no later than thirty (30) days after the date on the invoice. Whiteford shall deem all objections, questions and concerns not so timely communicated to have been waived.

### **Advanced Fees/Retainers**

Even if not required in the Engagement Letter, Whiteford may require an advance fee and/or cost deposit (“Retainer”) with respect to matters we undertake. Upon receipt of said Retainer, Whiteford shall have a security interest therein in the amount of our agreed fees for time expended and for costs incurred. Unless otherwise stated in the Engagement Letter, any Retainer or other advance deposit will be held in a non-interest bearing trust account, will be applied to the last monthly billing for the matter and any excess will be refunded at the conclusion of our representation. We may use any part of said funds to satisfy a delinquent payment, and may discontinue representation until the full Retainer amount is restored. Whiteford may require one or more additional Retainers be paid during the representation and may discontinue representation until each such Retainer has been paid.

### **Wire Transfers and Other Electronic Payments**

While it is common for service providers, including attorneys, and their clients to send and receive payments electronically, there is an inherent risk in doing so. Malicious actors have been known to use phishing, email compromise, deep fakes and other methods to misdirect electronic payments. Subject to the exception in the next sentence, you bear the loss if (a) you choose to pay Whiteford electronically and the funds are not received by Whiteford or (b) you direct Whiteford to make a payment electronically and the intended recipient does not receive the funds. However, Whiteford will be responsible, but only up to the amount of the misdirected funds, if funds transmitted electronically are received by a party other than the intended recipient as a result of the intentional misconduct or gross negligence of Whiteford. If funds transferred electronically by you or Whiteford are received by a party other than the intended recipient, both of us agree to cooperate fully with attempts to recover the funds and any related law enforcement investigation.

### **Professional Ethics/Confidentiality**

It is our professional responsibility to preserve the confidences and secrets of our clients. This professional obligation and the legal privilege covering attorney-client communications exist to encourage candid and complete communication between a client and lawyer. To maximize the benefit of our services, we must be aware of all information that might be relevant. Consequently, we trust that our attorney-client relationship with you will be based on mutual confidence and unrestrained communication. The confidentiality of our discussions is, however, not without exceptions. For example, if you share our confidential communications with individuals or entities outside our attorney-client relationship, such disclosure may result in a waiver of the attorney-client

privilege as to those communications or others of a similar nature. Moreover, if you use an employer's or other third party's email system, device or network to communicate with us about a personal matter, even through your private email (such as Gmail, Yahoo, Hotmail), a court may determine that you had no expectation of privacy when using the employer's or other third party's email system, device, or network. We will further explain these and other exceptions to the confidentiality of attorney-client communications to you if you request us to do so.

Although information we receive from you is generally immune from compelled disclosure, we may have an ethical duty to reveal privileged information if, for instance, it involves the commission of illegal or fraudulent acts that are committed in the course of this engagement, reveals the intent to commit a future crime, or if disclosure is otherwise required by law, ethical rules or court order.

Like most businesses, our firm customarily arranges for financing with one or more lending institutions. Our lenders may require us to collateralize our obligations with our accounts receivable or otherwise disclose financial arrangements with our clients. You agree that the fact of our attorney-client relationship, but not the details of the representation, may be disclosed to our lenders.

### **Other Representations and Potential Conflicts**

As noted above, our client is the person or entity expressly identified as such in the Engagement Letter. However, it is not uncommon for Whiteford to be asked to represent Affiliated Persons or other third parties. In such cases, we may also agree, either in the Engagement Letter or otherwise, to represent such Affiliated Persons or third parties in matters that do not conflict with the interests of the entity where the various parties appropriately agree and consent to such joint representation and where otherwise consistent with law and ethical rules. Once consent is given, it continues until any party to the joint representation specifically notifies Whiteford in writing that the party is withdrawing consent, at which point the joint representation is terminated solely with respect to the withdrawing party.

Clients of Whiteford will, from time to time, have business dealings, negotiations, and sometimes disputes (including litigation) with other clients. In consideration of Whiteford's acceptance of the representation, you agree that Whiteford may represent existing or new clients in any matter involving or related to you, and/or Affiliated Persons, including, without limitation, litigation against you, and/or any Affiliated Persons, and all other matters directly or indirectly adverse to the interests of you and/or Affiliated Persons, provided that those matters are not substantially related to this representation or to any other matter on which you engage Whiteford. You agree that services performed by Whiteford for you will not be considered, for conflict-of-interest purposes, services on behalf of Affiliated Persons for whom no work has been performed. For example, you agree that we may represent debtors, trustees, examiners, or official committees in bankruptcy cases in which you are a creditor or a party in interest and in regard to which you may have an adverse interest to those debtors, trustees, examiners, or official committees so long as such representation is not substantially related to Whiteford's representation of you. Unless otherwise agreed, no attorneys or other professionals working on the representation will work on the conflicting matter. An ethics wall will be created to keep any sensitive, proprietary, or other confidential information Whiteford acquires as a result of our



representation of you from other Whiteford attorneys or professionals who may work on such conflicting matter(s). **In connection with this advance waiver, you understand that you have the right to seek separate counsel and Whiteford encourages you to do so.**

### **Document Retention and Destruction**

During the course of our representation we may generate or come into possession of various paper and electronic documents and other items pertaining to your matter(s) (the “Materials”). Upon your written request and at the conclusion of each matter for which we are engaged, we will make arrangements to return to you any Materials provided to us that remain in our possession. In the absence of written instructions from you to the contrary, we reserve the right, upon the expiration of five (5) years after the matter concludes, to destroy all Materials without further notice. Accordingly, if there are Materials you wish to have upon the conclusion of a matter, you must promptly request them and pay for the costs of their retrieval, assembly, processing and transfer. All Materials retained by Whiteford after the matter’s conclusion are the sole property of Whiteford.

With respect to electronic Materials, and unless otherwise agreed in writing, Whiteford reserves the right, upon the expiration of three (3) months after the completion of a matter, to transfer hosted data and any ancillary electronic files to a suitable off-line storage medium. Reasonable one-time storage media and IT costs for the transfer will be charged to, and payable by, you. Upon transfer to such suitable storage media, the data and ancillary electronic files will continue to be treated as Materials in accordance with the immediately preceding paragraph.

Whiteford’s files pertaining to the matter will not be delivered to you. Whiteford’s files include, for example, administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records, as well as internal lawyers’ work product (such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports and mental impressions, prepared for our internal use). Whiteford’s files remain our property and may be used, preserved, destroyed or otherwise disposed of any time after the matter’s conclusion.

### **Communication and Data Security**

In addition to written correspondence and telephonic communication, it is customary for Whiteford to exchange documents and to communicate electronically, including by email and via various cloud or third-party services, to carry out the representation. You authorize us to use these various mediums of communication in our representation. Unfortunately, third parties may improperly access, intercept, divert, misappropriate, control, publish, interfere with, corrupt or destroy those communications and related records, whether they are in paper or electronic form, and despite your and our efforts to prevent such unauthorized actions (“Data Security Incidents”). As a result, while we will endeavor to protect any of your communications, records and other information that we possess as we would our own, including from inadvertent Data Security Incidents, we cannot and do not represent or warrant that those efforts will be adequate to thwart all potential wrongdoers or prevent all Data Security Incidents. To assist in this effort, you agree to carefully screen websites and electronic communications (including attachments) for malware or other malicious links or materials before sharing them with us, and not to send any information, communication or document to us that includes personally identifiable or other sensitive or

confidential information, whether by electronic or other means, unless you have first discussed this with us and we have agreed on how best to share such information. You agree to indemnify and hold Whiteford harmless from any claims related to or arising from a Data Security Incident(s), including from the improper accessing, interception, interference, control, publication, misappropriation, diversion, corruption, or destruction of your electronic data by third parties.

### **Artificial Intelligence and Software**

Products and services powered by machine learning, artificial intelligence technologies and other software are increasingly being used across industries to gain efficiency. Whiteford may use such technologies to, for example: proofread documents; maintain and track client trademark and patent portfolios; summarize lengthy documents, such as deposition transcripts and discovery documents; and prepare the first draft of documents, such as correspondence, discovery and pleadings. When doing so, we will observe all legal and ethical standards applicable to the use of such technologies. By signing the Engagement Letter, you consent to this use.

### **Subpoena, Lawful Process or Third-Party Claims**

If Whiteford or any of its personnel are required by subpoena or other lawful process to provide testimony or produce documents or records, including electronic records, relating to Whiteford's representation of you, or if we must defend the confidentiality of your communications with us in any proceeding, you agree to pay us for our expenses incurred and our time spent at the standard hourly rate for the particular individuals involved, even if our representation of you has ended, in addressing and responding to any such matter. Additionally, to the fullest extent permitted by law, if a third party threatens or brings a claim against us for actions taken by us in connection with representing you, you agree to indemnify and hold us harmless from any and all costs and expenses incurred by us, and to pay us for our time spent at the standard hourly rate for the particular individuals involved and expenses incurred, including, without limitation, any outside legal fees we may incur in connection with such claim or threatened claim.

### **Termination of Services and Collection**

You have the right at any time to terminate our services and representation upon written notice to Whiteford, subject to any requirements for withdrawal of counsel imposed by a tribunal. We reserve the right to terminate the representation should you fail to make timely payment of fees, costs and disbursements in accordance with the Engagement Letter or these Standard Terms of Engagement, and for any other reason permitted by the applicable rules of professional conduct. These may include, among other things, any other failure to honor the terms of the Engagement Letter or these Standard Terms of Engagement (as the same may be amended), failure to cooperate or follow our advice on a material matter, or discovery by Whiteford of any fact or circumstance that would, in Whiteford's view, render our continuing representation unlawful or unethical.

In either case, you agree to pay Whiteford for all services rendered and costs and expenses paid or incurred on your behalf up to the date of termination or withdrawal, as well as for services rendered and costs and expenses paid or incurred in connection with acquainting any new counsel with the matter and making copies of documents for the client, any new counsel, and/or Whiteford.

In the unlikely event that collection activities are instituted, Whiteford shall be entitled to recover all unpaid balances, interest accruing on unpaid balances from the date payment is due at a rate of twelve percent (12%) simple interest per annum or the legal maximum interest rate permitted under applicable federal, state, District of Columbia or international law or treaty, whichever is lower, and all costs, including attorneys' fees (whether of Whiteford attorneys, outside counsel retained by Whiteford, or both), expert fees, court costs and any other litigation and/or collection-related expenses, that are incurred in connection with collection of any amounts owed to Whiteford.

Regarding calculation of interest, and solely by way of example, if \$5,000 was the unpaid balance on day 31 following the due date, an additional \$50 would be due and owed to satisfy that invoice, for a total amount due of \$5,050. If the \$5,050 balance remained unpaid on day 61 following the due date, another \$50 would be due and owed to satisfy that invoice, for a total principal and interest amount due of \$5,100, and so on.

Upon termination or withdrawal, we shall have no duty to inform you of any subsequent events, developments, or changes in law that may be relevant to such matter or that could affect your rights and liabilities. Unless you and Whiteford agree in writing to the contrary, we shall have no obligation to monitor renewal or notice duties or similar deadlines that may arise from the matters for which we had been engaged, including renewal or continuation of UCC filings.

### **Survival of Rights and Responsibilities**

The rights and responsibilities set forth in the following sections of these Standard Terms of Engagement, listed by header, shall survive termination of the representation by either or both parties: "Our Client"; "Experts and Consultants"; "Payment of Fees, Costs and Expenses by Insurers or other Third Parties"; "Wire Transfers and Other Electronic Payments"; "Document Retention and Destruction"; "Communication and Data Security"; "Subpoena, Lawful Process or Third-Party Claims"; "Termination of Services and Collection"; "No Guarantee of Outcome"; "Electronic Data Processing and Other Support Services"; "Choice of Law and Forum"; and "Waiver of Jury Trial".

### **No Guarantee of Outcome**

We do not and cannot guarantee the outcome of any matter. Any comments or statements about possible outcomes are expressions of opinion only and shall give rise to no claim against Whiteford or any of its attorneys.

### **Electronic Data Processing and Other Support Services**

If your matter involves electronic data processing, storage, hosting and/or other support services (collectively, "Support Services"), charges for such Support Services will be billed at rates set forth in a pricing schedule available to you upon request at the outset of the matter. You acknowledge that Whiteford may utilize a third-party vendor to complete the Support Services, in which case you may be invoiced separately by the third-party vendor. Whiteford will use its discretion in determining whether a third-party vendor should be used.

**YOU ACKNOWLEDGE AND AGREE THAT ANY DATA AND OTHER MATERIALS YOU PROVIDE MAY BE DAMAGED, CORRUPTED OR LOST PRIOR TO OUR RECEIPT AND THAT THE EFFORTS OF WHITEFORD AND/OR WHITEFORD'S LICENSORS, VENDORS, OR AGENTS TO PROVIDE SUPPORT SERVICES MAY RESULT IN THE CORRUPTION OR DESTRUCTION OF, OR FURTHER DAMAGE TO, SUCH DATA AND OTHER MATERIALS, FOR WHICH NEITHER WHITEFORD, ITS VENDORS, ITS AGENTS, NOR ITS LICENSORS WILL ASSUME ANY LIABILITY.**

**ALL SUPPORT SERVICES ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES WHATSOEVER, AND YOU EXPRESSLY DISCLAIM, AND HEREBY EXPRESSLY WAIVE, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND ACCURACY OF INFORMATIONAL CONTENT WITH RESPECT TO SUPPORT SERVICES.**

### **Choice of Law and Forum**

These Standard Terms of Engagement and any accompanying Engagement Letter and all matters arising out of or relating to them, performance thereunder, and the relationship created thereby or resulting therefrom, are governed by, and construed in accordance with, the laws of the state where the Whiteford office address listed in the letterhead of the Engagement Letter is located (the "Forum State"). The laws of the Forum State, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of such Forum State, shall govern. For example, if the Engagement Letter lists a Maryland office address in the letterhead, Maryland is the Forum State and its laws govern.

The state or federal courts of the Forum State shall be the exclusive forums for litigation concerning these Standard Terms of Engagement and any accompanying Engagement Letter and all matters arising out of or relating to them, performance thereunder, or the relationship created thereby or resulting therefrom. You consent to personal jurisdiction in such courts. In the event of litigation, you also consent to service of process by regular mail, by electronic mail to the client address and email address listed in the Engagement Letter and by any means authorized by the laws of the Forum State and the litigation forum in question, and waive any right to object to service of process made by any of the foregoing methods.

### **Waiver of Jury Trial**

**IN ANY DISPUTE BETWEEN US, WE BOTH AGREE TO WAIVE ANY RIGHT TO A JURY TRIAL.**

### **Entire Agreement & Revisions**

These Standard Terms of Engagement and any accompanying Engagement Letter together comprise the entire agreement between you and Whiteford with respect to our representation and

supersedes all prior and contemporaneous oral and written agreements or understandings between us (the “Agreement”). From time to time, Whiteford may revise these Standard Terms of Engagement.

**THE REVISED TERMS WILL MODIFY THE EXISTING TERMS AND BECOME EFFECTIVE AS BETWEEN US ON THE EARLIER TO OCCUR OF YOUR EXECUTION OF THE REVISED TERMS, OUR PROVIDING SERVICES TO YOU AFTER PROVIDING YOU WITH ACCESS TO A COPY OF THE REVISED TERMS IN WRITING BUT WITHOUT RECEIVING A WRITTEN OBJECTION, OR THE PASSAGE OF THIRTY (30) DAYS AFTER PROVIDING YOU WITH ACCESS TO A COPY OF THE REVISED TERMS IN WRITING WITHOUT RECEIVING A WRITTEN OBJECTION.**

Otherwise, the Agreement may be modified only by subsequent written agreement of the parties executed by the same. Waiver by a party of any breach of the Engagement Letter or these Standard Terms of Engagement shall not waive any subsequent or other breach.

Thank you again for selecting our firm. We look forward to a mutually satisfying and rewarding relationship.

*Whiteford, Taylor & Preston L.L.P./LLC*