

**TRANSIENT OCCUPANCY TAX SHARING AGREEMENT**

**[MIRAGE BOB HOPE VARNER, LLC]**

This Transient Occupancy Tax Sharing Agreement ("**Agreement**") is entered into by and between the CITY OF CATHEDRAL CITY, a municipal corporation within the State of California ("**City**") and MIRAGE BOB HOPE VARNER, LLC., a California limited liability company, ( "**Owner**"), and is dated for reference purposes as of April 13, 2016. Each of the foregoing parties may be referred to hereafter as a "**Party**," and jointly as the "**Parties**."

**RECITALS**

A. The City Council, recognizing that the general welfare and material well-being of the residents of the City depends in substantial measure upon the growth and expansion of the tourism and travel industries in the City, added Chapter 3.25 to Title 3 of City's Municipal Code authorizing Economic Incentive Payments, as defined below, to a qualifying hotel in an amount equal to a percentage of the Transient Occupancy Tax Increment, as defined below, received by City and derived from the new, expanded or renovated hotel (the "**Program**"), in order to incentivize the operation, maintenance, renovation and expansion of hotel facilities within the City.

B. By adoption of Resolution No.\_\_\_\_\_, on April 13, 2016, based on substantial evidence in the record before it, the City Council determined that providing Economic Incentive Payments to Owner would: (i) contribute to the growth and expansion of tourism and travel opportunities in the City; (ii) provide employment opportunities for the residents of the City; (iii) provide additional transient occupancy tax revenues to the City; and (iv) promote and enhance the economy of the City.

C. Owner intends to complete construction of and operate a New Hotel, as defined below, and commonly known as the "Best Western Plus " within the City and seeks assistance from City under the Program for that purpose.

D. Owner represents to City that the New Hotel will be Under Construction, as defined in Section 3.25.020 of the Municipal Code, and that upon completion and operation will result in a new source of Transient Occupancy Tax for City and is anticipated to result in Transient Occupancy Tax Increment, as defined below.

E. By adoption of Resolution No. \_\_\_\_\_, the City Council found the provision of assistance in the form of an Economic Incentive Payment meets all of the requirements set forth in Chapter 3.25 of Title 3 of the Municipal Code and the City Council's desire to assist Owner as provided for under the Program and this Agreement.

## OPERATIVE PROVISIONS

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of the Parties set forth herein, and for other good and valuable consideration, the value and receipt of which are hereby acknowledged by the Parties, the Parties agree as set forth hereinafter.

### SECTION 1. Incorporation of Recitals.

The Parties agree that each of the foregoing Recitals is true and correct and incorporate each of the Recitals in this Agreement by reference thereto.

### SECTION 2. Definitions.

The terms used in this Agreement shall be given the meaning expressly defined in this Agreement or where not defined herein then in Chapter 3.25 of Title 3 of City's Municipal Code.

a. **"Economic Incentive Payment"** shall mean payments by City to Owner implementing Transient Occupancy Tax Sharing as provided for in the Program. For this Agreement the Economic Incentive Payment is an amount equal to fifty percent (50%) of the Transient Occupancy Tax Increment derived from the New Hotel over a period of ten (10) years, but not to exceed One Million Four Hundred Thirty-eight Thousand Eight Hundred Dollars (\$1,438,800.00) ("**Maximum Payment**"). In no event shall Owner be entitled to payments from City beyond the ten (10) year term, or in excess of the Maximum Payment consistent with the Program.

b. **"Effective Date"** shall mean the date upon which all of the following have occurred: (i) The City Council has approved the Agreement; (ii) The City Manager has executed the Agreement; and (iii) Owner's authorized representative(s) have executed the Agreement. The Effective Date will be presumed to be April 13, 2016, unless the City Clerk has provided for a different date in the top header on the first page of this Agreement, in which case that date shall govern.

c. **"Completion Date"** shall mean the date upon which Owner receives a certificate of occupancy for the New Hotel from City or, if City issues a temporary certificate of occupancy, then the date upon which Owner lets rooms to guests and is required by law to charge and collect transient occupancy tax from such guests.

d. **"New Hotel"** as defined in Section 3.25.020 of the Municipal Code shall mean the Best Western Plus hotel, or equivalent brand of upper midscale or higher quality hotel located at the southeast corner of Bob Hope Drive and Varner Road (TPM 36619, Parcel 8) in Cathedral City that is owned and operated by Owner. The hotel shall be an upper midscale or higher quality hotel brand, consisting of a four-story tower, ninety (90) guest rooms, designed and intended as transient occupancy

accommodations, together with an outdoor swimming pool and related recreational and hospitality facilities on the Property.

e. **“Property”** shall mean that parcel or parcels of real property comprising approximately 2.34 acres located at the southeast corner of Bob Hope Drive and Varner Road upon which Owner intends to construct and operate the New Hotel. The legal description of the Property is attached hereto as Exhibit “A,” and is incorporated herein by reference.

f. **“Transient Occupancy Tax Increment”** as defined in Section 3.25.020 of the Municipal Code shall mean, on an annual basis, all of the transient occupancy tax actually generated by the New Hotel and received by City after the Completion Date as determined from City’s records.

### **SECTION 3. Prerequisites for Receipt by Owner of Tax Sharing.**

The following are conditions precedent to City’s obligation to provide the Economic Incentive Payment to Owner:

a. **Secure Title Property.** On or before the Completion Date, Owner shall have acquired fee title to the Property as evidence by a recorded deed for fee title in Owner’s name and a policy of title insurance for fee title issued by a reputable title company in Owner’s. In the alternative Owner may satisfy this condition by recordation of a ground lease with a term of at least thirty (30) years, granting Owner exclusive use (necessary utility, drainage and similar necessary easements excepted) of the Property for the purpose of operating the New Hotel.

b. **Secure Franchise Rights.** On or before the Completion Date, Owner shall have entered into a franchise agreement or agreement of similar effect with either Best Western entitling Owner to operate a Best Western Plus on the Property, or the Owner may seek an equivalent upper midscale or higher quality hotel brand entitling Owner to operate that hotel brand on the Property.

c. **Complete New Hotel.** Owner shall timely undertake all work reasonably necessary to timely complete the New Hotel as provided herein:

(i) **Deadline.** Owner agrees to have substantially completed all material improvements for the New Hotel reasonably required for City to issue a Certificate of Completion for the New Hotel not later than twelve (12) months after issuance of building permits for the New Hotel by City unless such deadline is extended by operation of Section “9.n” of this Agreement by reason of a force majeure event, or City, in its absolute and sole discretion, issues Owner a Temporary Certificate of Occupancy for the New Hotel.

(ii) Improvement Standards. The New Hotel shall have been constructed in accordance with all City zoning and building requirements and Owner shall have procured all necessary permits from City and any other local governmental entity having jurisdiction over the Work of Improvement or material aspect thereof. City shall, in addition to its normal requirements and processes, have discretionary approval of the design of the Work of Improvement, which approval shall not be unreasonably withheld. Owner is solely responsible for undertaking and completing the Work of Improvement and obtaining all necessary permits at its sole cost.

d. Recordation of Operating Covenants. Owner shall have fully executed, and obtained such other signatures as may be necessary for recording, the Operating Covenants attached hereto and incorporated herein as reference as Exhibit "B", and recorded the document against the Property with the Riverside County Recorder's Office.

e. Continued Operation. Owner shall remain in continuous operation during current normal business hours and days for the duration of the ten (10)-year period of Economic Incentive Payments or until receipt of the Maximum Payment, whichever occurs first. Owner will be considered to be in continuous operation, even if closed, on all recognized California and federal holidays, and during times of temporary closure for planned repairs or renovations for which Owner notified City in writing at least thirty (30) days in advance. No closure shall operate to extend the period during which Owner may be entitled to receive the Economic Incentive Payment from City.

f. Good Standing. Owner shall otherwise remain in good standing and not in default of its performance of this Agreement and the Operating Covenants.

g. Transient Occupancy Tax Information and Reports. Owner shall timely provide City with accurate semi-annual reports relating to occupancy and collection of transient occupancy tax at the New Hotel in accordance with Section 4.e of the Agreement, and shall at all times charge, collect and remit to City all transient occupancy tax required to be charged, collected, and remitted to City by law.

#### SECTION 4. City's Obligation to Make the Economic Incentive Payment

a. Obligation of City. City shall be obligated to make Economic Incentive Payments to Owner, at the times and as provided in this Section, provided Owner has satisfied the conditions precedent to payment set forth in Section 3 of this Agreement and otherwise remains in good standing and is not in default under this Agreement. Owner shall provide written notice to City specifying the name of the person or entity to which payment is to be directed and the name of the person or entity to which City's check or warrant for payment is to be payable.

b. Transient Occupancy Tax Sharing Period. Calculation of the Transient Occupancy Tax Increment shall commence the day after the Completion Date. The period during which City shall receive Transient Occupancy Tax Increment which forms the basis of the Economic Incentive Payment shall commence on the first day following the Completion Date and shall continue for a period of not to exceed ten (10) years thereafter or until Owner has received the Maximum Payment, whichever is the first to occur. In the event that Transient Occupancy Tax Increment received by City during the ten (10) year period is insufficient to yield the Maximum Payment to Owner, then Owner shall not be entitled to further payments or assistance from City. The 'yearly' period for measurement of Transient Occupancy Tax Increment shall be in accordance with the normal processes of City. If the Completion Date is on a date other than the first day of the year, then the partial year shall be prorated based upon the number of full months of operation of the New Hotel which occur in the partial year. If necessary to reach the full ten (10) year term of the Transient Occupancy Tax Sharing period, the final month or months shall likewise be prorated.

c. Making Payment. The Economic Incentive Payment is payable to Owner by City in annual installments within 120 days subsequent to the end of the City's fiscal year and in accordance with the City Finance Department's procedures as they may change from time to time.

d. Exclusions from Transient Occupancy Tax Increment. Transient Occupancy Tax Increment not actually received by City, for reasons not within City's control, are not subject to sharing under this Agreement unless and until actually received by City.

e. Transient Occupancy Tax Information and Reports. The Parties acknowledge that the information, from which City Finance calculates the Transient Occupancy Tax Increment and the Economic Incentive Payments, is based upon reports filed by the Owner or Owner's designated operator of the New Hotel. Accordingly, Owner agrees to provide City with accurate occupancy reports, at such frequency as the City's procedures may from time to time require of the Owner and/or operator of the New Hotel. City may adopt such procedures, audits or required reports as are reasonable or necessary to enable City to accurately calculate the Transient Occupancy Tax Increment and Economic Incentive Payment. The Transient Occupancy Tax Increment and payment of Economic Incentive Payment installments shall be based on information which is as accurate as can be obtained by the Parties. The Parties agree that past Economic Incentive Payments are subject to adjustment if further information indicates that any payment was inaccurate.

SECTION 5. Owner's Payment of Cost of Tax Sharing Report.

In accordance with Section 3.25.020 of the Code, Owner has paid to City, as a condition precedent to City's obligations hereunder, the amount of eight thousand five hundred dollars (\$8,500.00) as and for the cost of the preparation of the Tax Sharing Report.

SECTION 6. Operating Covenants.

In accordance with Sections 3.25.030 and 3.25.050 of City's Municipal Code, Owner agrees as a condition precedent to City's obligations under this agreement, to record against the Property the Operating Covenants attached hereto as Exhibit "B." Said Covenants shall be recorded upon approval and recordation of Tentative Parcel Map 36619, but no later than 60 calendar days after the Effective Date. The Operating Covenants shall survive the termination for any reason of this Agreement and shall run with the Property for the periods specified in Exhibit "B."

SECTION 7. Indemnification; Release.

a. Code Requirements Satisfied. Section 3.25.030 of the Code requires that Owner provide City with an indemnification agreement. The Parties agree that this Section 7 shall satisfy the requirement of that section.

b. Survival. The indemnification provided in this section shall survive the termination of, and/or the expiration of the term of, the Agreement for a period of three (3) years from the termination of the Agreement by City pursuant to Section "8" of this Agreement and for a period of six (6) months from the expiration of the term of the Transient Occupancy Tax Sharing Period as provided in Section "4.b" of this Agreement.

c. Indemnity. Owner agrees to indemnify, defend, and hold City, and its elected officials, officers, employees, agents, and attorneys harmless from and against all liabilities, damages, claims, causes of action, judgments, orders, rulings, costs, expenses and fees, including attorneys' fees (collectively, the "Claims") arising from or related to any act or omission of Owner in performing its obligations hereunder or from any claim, writ, or other action at law or equity challenging this Agreement or the Program by a third party.

d. Release. Owner releases City from any Claims arising from any inability of City to legally collect transient occupancy tax, share transient occupancy tax as provided in this Agreement, or any other act or omission, including any state statute or regulation to which City is subject, which is beyond City's sole control.

e. Waiver. Owner waives any right which it might have or accrue at any time during the effective period of any provision of this Agreement, including these indemnification provisions, or any of its various exhibits, to pursue any legal or equitable remedy or Claim against City, other than for non-payment of Owner's share of Transient Occupancy Tax Increment calculated under and otherwise due under the provisions of this Agreement.

#### SECTION 8. Termination of Agreement by City.

a. City's Right to Terminate. City shall have the right to terminate its obligations under this Agreement if Owner breaches any promise, obligation, covenant or duty under this Agreement or the Operating Covenants, including, without limitation, the failure of Owner to timely construct the New Hotel, the failure of Owner to timely commence operation of the New Hotel within 45 days following the Completion Date, the failure of Owner to accurately and timely charge, collect, remit transient occupancy tax information to City, the failure of Owner to timely and accurately report occupancy and transient occupancy tax information to City, the failure of Owner to operate the New Hotel continuously during the term of the Agreement, and / or the failure of Owner to otherwise satisfy the requirements of Chapter 3.25 of title 3 of the Municipal Code or the terms and conditions of this agreement.

b. Notice of Termination and Cure. In order to terminate this Agreement, City shall first provide notice to Owner, given in accordance with the notice requirements set forth in Section "9.j." hereof, specifying Owner's failure to perform the Agreement in reasonable detail and indicating what steps Owner must take to cure the referenced failure to perform. Owner will be afforded thirty (30) calendar days from the date of the notice to cure the specified failure(s) to perform.

c. Repayment Upon Termination. If, at the end of the thirty (30) calendar day cure period, any correctible breaches have not been corrected, City shall have the right, at its sole option, to deem the Agreement terminated without further notice or action by City. In such case, Owner (or any other person or entity receiving any portion of the Economic Incentive Payments directly from City) shall be obligated to immediately repay all installments of the Economic Incentive Payments made by City, together with interest thereon at the highest rate permitted by law, from the date of the initial payment made by City to Owner. Notwithstanding the foregoing, in the event that termination of the Agreement is due to Owner's failure to continuously operate the New Hotel for the duration of the Transient Occupancy Tax Sharing Period provided in this Agreement and Owner's failure to operate is caused by a Force Majeure event described in Section "9.n" of this Agreement, then Owner shall only be obligated to repay the last Economic Incentive Payment received by Owner.

SECTION 9. Miscellaneous Provisions.

a. Council Action. All findings and decisions of the City Council taken in connection with the application of Owner to participate in the Program shall be deemed to be reasonable and supported by an adequate and appropriate record. No such findings or decisions shall be subject to challenge or be the subject of any Claim by Owner. Any action taken by City, including, but not limited to, the termination of this Agreement under the provisions hereof, shall be at the sole option of City and in its sole and absolute discretion, unless a different standard is otherwise specifically indicated. Owner acknowledges that City would not have entered into this Agreement in the absence of this covenant by Owner.

b. Integration. All exhibits attached to this Agreement are deemed to be incorporated into this Agreement by reference.

c. Further Documents. Owner agrees to execute any additional documents, forms, notices, applications or other documents which City reasonably determines to be necessary to carry out the intent of this Agreement and/or the intent and provisions of applicable portions of the Code.

d. Partial Invalidity; Severance. The Parties agree that, should any provision, section, paragraph, sentence or word of this Agreement be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of legislation, the remaining provisions, sections, paragraphs, sentences and words of this Agreement shall remain in full force and effect and the Parties agree in good faith to immediately amend this Agreement in such a way as to provide alternative provisions, sections, paragraphs, sentences or words as necessary to carry out the intent of this Agreement and/or the Code.

e. Payment of Taxes and Encumbrances. Owner shall keep current and in good standing and pay prior to delinquency all lawful real property taxes, assessments mortgages payments, loan payments, rents, lease payments, liens, and other monetary encumbrances on or against the Property and / or New Hotel the repayment of which is secured by the Property and / or the New Hotel, at all times during the term of the Agreement.

f. Assignments and Transfers. Owner shall not, without prior written approval of City, which approval may be given or withheld at the absolute discretion of City: (i) assign or attempt to assign this Agreement or any right herein; or (ii) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the New Hotel and/or the Property or the improvements thereon; or (iii) transfer control of Owner through whatever mechanism, including, without limitation, sales of stock, a sale of Owner *en toto* to any other person or party, or any agreements

giving voting control to persons not holding an interest in Owner at the date of this Agreement. This prohibition shall not apply to: (1) an assignment or transfer to a new entity comprised entirely of Mirage Bob Hope Varner, LLC., or the principles or shareholders thereof, or an entity in which the foregoing retain at least fifty-one percent (51%) of the ownership or voting shares of the new entity and the right to direct business affairs of new entity; or (2) the reasonable grant of limited easements or permits to facilitate the development of the Property. Notwithstanding the foregoing, City agrees that it will consider an assignment of this Agreement in connection with a sale of the New Hotel to a third party, provided that said third party provides City with such financial or other information as City deems necessary in its sole discretion to enable it to adequately evaluate the experience and ability of the third party to operate the Approved Hotel and said third party unconditionally agrees assume all obligations under, and agrees to the terms and conditions of this Agreement and the Operating Covenants. All decisions made by City in connection with such an assignment shall be made at City's sole discretion and in its sole judgment, and shall not be subject to challenge.

g. Remedies. With respect to any default by the other Party occurring after the Effective Date, whether with regard to any default during the period of Transient Occupancy Tax Sharing, the term of the indemnification provided in this Agreement to City by Owner, or the life of the Operating Covenants, the non-breaching Party may institute legal action to cure, correct or remedy any default, providing that such action is not otherwise prohibited or restricted by the provisions of this Agreement, to recover any damages arising from such breach, to collect repayment of Economic Incentive Payments provided by City, to obtain any other remedy consistent with the purposes of this Agreement, and further provided that notice is given in accordance with this Agreement. Any legal actions brought concerning this Agreement must be instituted in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

h. Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

i. Rights are Cumulative; Wavier. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. A waiver of a requirement shall not constitute an ongoing waiver of that requirement in the future.

j. Notices. Any and all notices, demands or communications submitted by any Party to the other Party pursuant to, or as required by, this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of City and Owner, as applicable, as designated below. Any such notice, demand or communication shall be deemed to be received by the addressee, on the date set forth on such return receipt, or in the event no return receipt is received by sender then three (3) business days after sender's placement of the item in the United States mail, if sender has also faxed or emailed Owner's representative as indicated below; or on the day that a messenger dispatched by sender for immediate personal delivery attests to the item's delivery. Any notices to any Party required to be given under this Agreement, or given by a Party for other reasons, shall be sent to:

Owner:	Mirage Bob Hope Varner, LLC 567 San Nicolas Dr., Suite 130 Newport Beach, CA 92260 Attn: Brent Ogden and Cody Small Fax: 949-718-0067 Email: radiusretail@gmail.com
City:	City of Cathedral City 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 Attn: City Manager Fax: (760) 770-0399 Email: cmclendon@cathedralcity.gov
With a copy to:	Burke, Williams, & Sorensen, LLP 1600 Iowa Avenue, Suite 250 Riverside, CA 92507 Attn: Eric S. Vail Fax: (951) 788-5785 Email: evail@bwslaw.com

k. Conflict of Interest. No elected official, officer, employee or agent of City having any conflict of interest, direct or indirect, related to this Agreement and/or the development of the Work of Improvement or the Improved Business shall participate in any decision relating to this Agreement.

l. No Third Party Consideration. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner. For the purposes of this

paragraph, third parties shall include any officer, employee, agent or elected official of City.

m. No Personal Liability of Officials. No elected official, official or officer, employee, agent or attorney of City shall be personally liable to Owner, its shareholders or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by City or for any amount which may become due to Owner or to its successors, or on any obligations under the terms of this Agreement, except for gross negligence or willful acts of such member, officer, employee or attorney.

n. Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargoes or lack of transportation; weather-caused delays; inability to secure necessary labor, materials or tools; acts of the other Party other than as permitted or required by the terms of this Agreement; acts or failure to act of any public or governmental agency or entity other than as permitted or required by the terms of this Agreement (except that action or failure to act by City shall not extend the time for City to act unless such extension is otherwise expressly authorized herewith) unless such action or failure to act is the result of a lawsuit or injunction, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. Any extension of time for any such cause hereunder shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) calendar days of the commencement of the cause. If notice is not timely given, such extension shall not commence until and if the other Party has actual knowledge of the cause. Times of performance under this Agreement may be extended by mutual agreement in writing by and between City and Owner.

o. Inspection of Records / Audits. City shall have the right, once per year, or upon cause due to Owner's failure to perform this Agreement, at the City's sole cost and expense, to inspect and/or audit the books and records of Owner pertaining to the calculation of Transient Occupancy Tax Increment, and/or a breach or suspected breach of this Agreement. Matters learned by City in the course of such inspections shall not be disclosed to third parties unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights by City hereunder.

p. City Administration. The City Manager of City is authorized to sign on his own authority amendments to this Agreement which are of routine or technical nature.

q. Independent Review. Each Party represents and warrants the following: they have carefully read this Agreement, and in signing this Agreement are agreeing to be bound by the same, they have received independent legal advice from legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly by both Owner and City.

r. Prevailing Party. If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, seeks the resolution of disputes, or is made a party to any action or proceeding brought by a third party with respect to the Agreement, the Program or the participation in either by either Party, then as between Owner (and any successor in interest thereof) and City, the prevailing Party shall be entitled to recover as an element of its costs of suit or resolution of disputes, and not as damages, its reasonable attorneys' fees as fixed by the Court or other forum for resolution of disputes as may be agreed upon by the Parties in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.

s. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

t. Time Frames. Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

u. Duplicate Originals. This Agreement shall be executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties. The Parties may sign this Agreement in counterparts.

v. Integration. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

w. Waivers. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of City and/or Owner. Other than minor or technical amendments which the City Manager may approve on his own authority, any amendment to this Agreement must be approved by the City Council of City.

**WHEREFORE**, the Parties, intending to be bound hereby, have affixed their authorized signatures to this Transient Occupancy Tax Sharing Agreement.

**CITY:**

City of Cathedral City  
a municipal corporation

By: \_\_\_\_\_  
Charles P. McClendon  
City Manager

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Gary Howell  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Eric S. Vail, City Attorney  
Burke, Williams & Sorensen, LLP

**OWNER:**

Mirage Bob Hope Varner, LLC  
a California limited liability company

By: \_\_\_\_\_  
Cody Small  
Title: Managing Member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brent Ogden  
Title: Managing Member

Date: \_\_\_\_\_

# EXHIBIT "A"

To Transient Occupancy Tax Sharing Agreement

Legal Description of Property

[Legal Description and Map Follow This Cover Sheet]

EXHIBIT "A"

# PARCEL 8

## TENTATIVE PARCEL MAP NO. 36619

PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05478 RECORDED ON 05/18/2014 AS DOC. NO. 2014-0184148, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, LOCATED WITHIN A PORTION OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 5 EAST, S.B.M., AND SECTION 18, TOWNSHIP 4 SOUTH, RANGE 6 EAST, S.B.M., IN THE CITY OF CATHEDRAL CITY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

### GENERAL NOTES

- THE BASIS FOR THIS MAP IS POLICY OF TITLE INSURANCE MAKER PNH-2304501-1-011, PREPARED BY FIDELITY NATIONAL TITLE COMPANY, DATED JUNE 19, 2013. NO RESPONSIBILITY AS TO THE ACCURACY OF THIS REPORT IS ASSUMED BY THIS SURVEY.
- GEOSPATIALLY LOCATABLE ITEMS FROM SAID REPORT (SUCH AS EASEMENTS) WHICH AFFECT THE SUBJECT PROPERTY AS DESCRIBED HEREON ARE SHOWN ON THIS MAP AND ARE MEASUREMENTS REFERRED TO SAID REPORT. OTHER ITEMS LISTED IN SCHEDULE "B" OF SAID REPORT WHICH AFFECT THE SUBJECT PROPERTY ARE ALSO MEASUREMENTS REFERRED TO SAID REPORT.
- THE APPROXIMATE AREA OF THE LAND TO BE SUBDIVIDED IS CALCULATED FROM RECORD DATA AS FOLLOWS:  
GROSS AREA: 9.131 AC.
- ALL DIMENSIONS SHOWN HEREON ARE APPROXIMATE.
- APN'S: 670-250-019, 650-080-055 AND 650-090-044
- THE PROJECT SITE IS SUBJECT TO GEOLOGIC HAZARDS.
- THE PROJECT SITE LIES WITHIN FLOOD ZONE "X" WITHIN 1, VELOCITY 5 FPS (FLOOD DEPTHS OF 1 TO 3 FEET USUALLY 1 FEET FLOOD ON SLUICING TERMINUS), AVERAGE DEPTHS DETERMINED, FOR AREAS OF ALLUVIAL FAN FLOODING, VELOCITIES ALSO DETERMINED, AS SHOWN ON FIRM PANEL 06265C 1555C - EFFECTIVE AUGUST 28, 2008

### GENERAL INFORMATION

- EXISTING LAND USE: VACANT
- PROPOSED LAND USE: COMMERCIAL
- ADJACENT ZONING: I-P (INDUSTRIAL PARK)
- ADJACENT LAND USE: COMMERCIAL
- EXISTING ZONING: I-P (INDUSTRIAL PARK)
- PROPOSED ZONING: MHP - MIXED USE MEDIUM
- ALL UTILITIES SHALL BE UNDERGROUND:  
GAS: SOUTHERN CALIFORNIA GAS COMPANY  
ELECTRIC: SOUTHERN CALIFORNIA Edison  
TELEPHONE: VERIZON  
CABLE TV: TIME WARNER CABLE  
SEWER: COACHELLA VALLEY WATER DISTRICT  
WATER: COACHELLA VALLEY WATER DISTRICT  
STORM DRAINAGE: CITY OF CATHEDRAL CITY  
THOMAS GUIDE - 2005 EDITION, PAGE 788, GRID C1
- THIS TENTATIVE MAP DOES INCLUDE THE ENTIRE CONTIGUOUS OWNERSHIP OF THE SUBDIVIDER INVOLVED.

### OWNERSHIP INFORMATION

TITLE TO SAID ESTATE OF INTEREST AT THE DATE HEREOF IS VESTED IN:

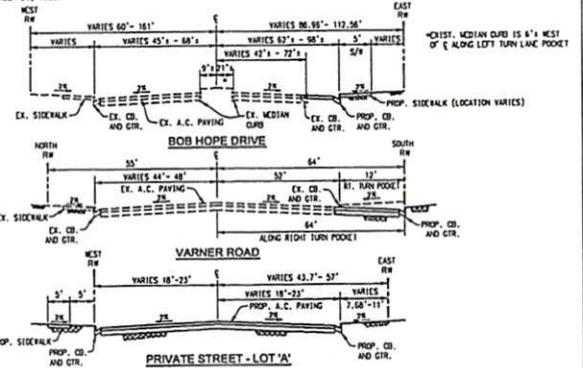
COACHELLA VALLEY BUSINESS PARK, LLC - A CALIFORNIA LIMITED LIABILITY COMPANY

### LEGAL DESCRIPTION

PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05478 RECORDED ON 05/18/2014 AS DOC. NO. 2014-0184148, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, LOCATED WITHIN A PORTION OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 5 EAST, S.B.M., AND SECTION 18, TOWNSHIP 4 SOUTH, RANGE 6 EAST, S.B.M., IN THE CITY OF CATHEDRAL CITY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

### EASEMENT NOTES

- EASEMENT FOR EITHER OR BOTH POLE LINE, CONDUITS OR UNDERGROUND FACILITIES AND INCIDENTAL PURPOSES, IN FAVOR OF COACHELLA VALLEY ICE AND ELECTRIC COMPANY, BY INSTRUMENT RECORDED JUNE 2, 1974, IN BOOK 392, PAGE 847 OF RECORDS.
- SEWER EASEMENT TO THE COACHELLA VALLEY WATER DISTRICT PER INSTRUMENT NO. 34303R, RECORDED ON DECEMBER 29, 1988.



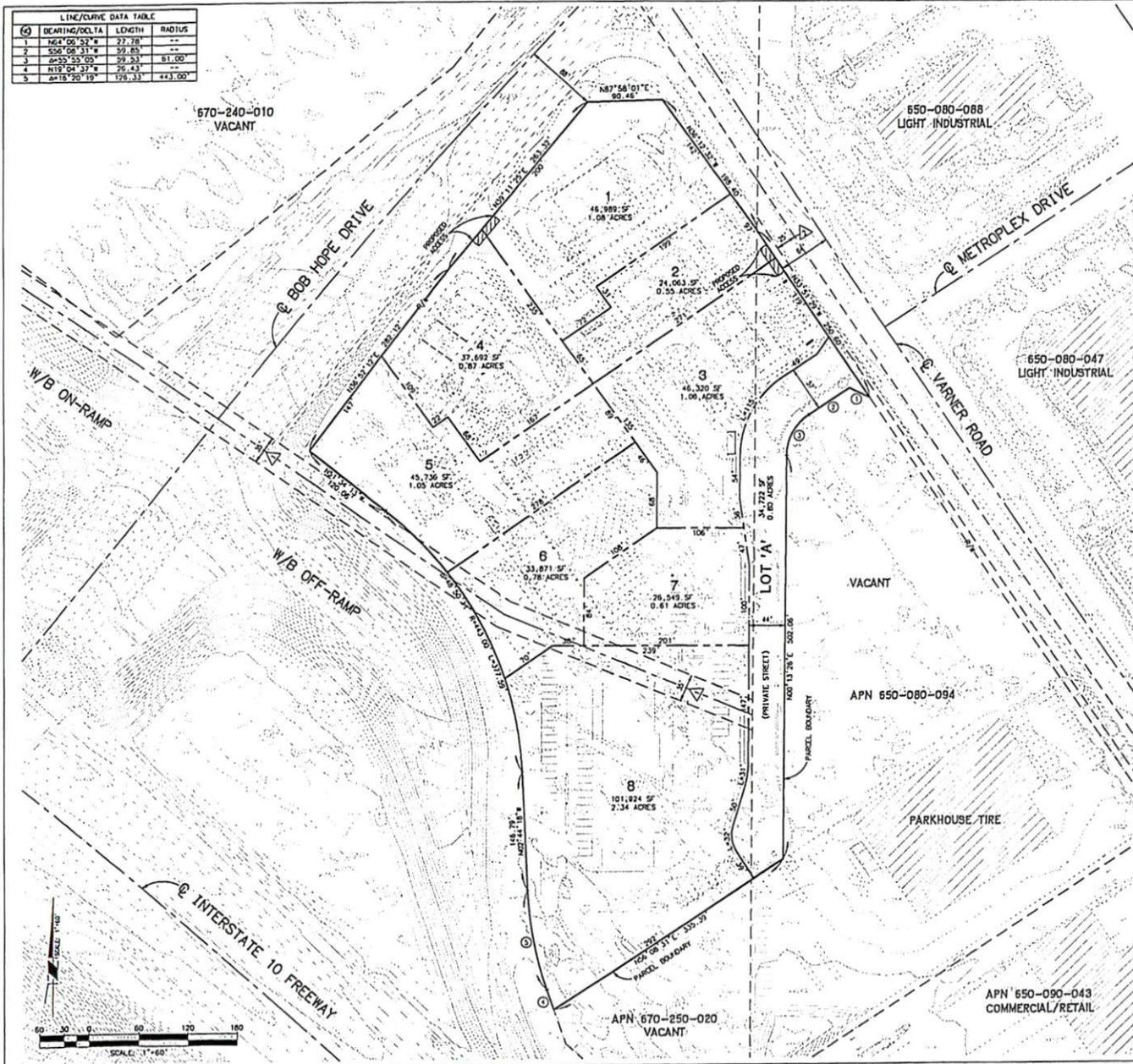
TYPICAL STREET SECTIONS  
NO SCALE

CHANGES	DATE	REVISIONS
MAP	5/7/14	ADDED STREET SECTIONS TO MAP



**Michael Baker International**  
7050 Country Club Drive, Suite 300  
Folsom, CA 95630  
www.mbakergroup.com  
916-946-7481 / 970-346-8215

(6)	BEARING/Delta	LENGTH	RADIUS
1	162° 06' 52" N	27.78'	--
2	55° 08' 31" N	59.85'	--
3	252° 13' 03"	25.23'	61.00'
4	N19° 04' 37" N	26.43'	--
5	S41° 16' 20" W	128.33'	413.00'



## **EXHIBIT “B”**

To Transient Occupancy Tax Sharing Agreement

### Operating Covenants

[Operating Covenants Follow This Cover Sheet]

RECORDING REQUESTED BY: )  
 )  
 CITY OF CATHEDRAL CITY )  
 )  
 AND WHEN RECORDED RETURN TO: )  
 )  
 CITY OF CATHEDRAL CITY )  
 68-700 Avenida Lalo Guerrero )  
 Cathedral City, CA 92234 )  
 Attn: City Clerk )  
 APN: \_\_\_\_\_ )

(Space Above for Recorder's Use)

Exempt from Recording Fees Per Government Code Section 27383

**OPERATING COVENANTS**

This document, entitled Operating Covenants ("**Covenants**"), is made by MIRAGE BOB HOPE VARNER, LLC, a California limited liability company ("**Owner**"), as of April 13, 2016, for the benefit of the CITY OF CATHEDRAL CITY, a municipal corporation within the State of California ("**City**"). Said entities may be individually referred to herein as a "Party" or jointly as the "Parties."

1. Relation to Tax Sharing Agreement. These Covenants are executed by Owner and recorded in connection with that certain Transient Occupancy Tax Sharing Agreement (the "**Agreement**") entered into between the Parties of more or less concurrent date herewith, and is required under the provisions of the Agreement. The Agreement is attached hereto and incorporated herein by reference as Exhibit "A". Defined terms not otherwise defined herein shall have the meaning ascribed in thereto in the Agreement or, if not defined therein, then in Chapter 3.25 of title 3 of City's Municipal Code.

2. Covenants Run with the Land. These Covenants shall run with the land legally described in Exhibit "B" attached hereto, and incorporated herein by reference (the "**Property**"), and shall constitute equitable servitudes thereon, and shall, without regard to technical classification and designation, be binding for the benefit and in favor of City. The Covenants shall be for the duration as specified in the Agreement, and all sales or long-term leases of the Property and New Hotel constructed there upon shall likewise be governed by the Agreement.

3. Intended Use of Property. Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any portion thereof, that upon Completion of the New Hotel (both as defined in the Agreement), Owner shall cause the Property to be used as a manner consistent with the definition of New Hotel in the Agreement, and consistent with the services and amenities required to be provided by Owner pursuant to the Franchise Agreement entered into between Owner and Best Western, or the owner of an equivalent upper midscale or higher

quality hotel brand, with respect to operating of the New Hotel as such hotel brand , together with all necessary or desirable ancillary uses, including, without limitation, parking (together, the "Intended Use"), except for such exceptions to such covenant as may be provided under the terms of the Agreement. Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any portion thereof, or of the New Hotel that upon completion of the New Hotel, Owner shall devote the Property to the Intended Use for a period of ten (10) years commencing the day after the Completion Date. No other use of the Property shall occur, and Owner shall suffer no other use to exist, without the prior written approval of the City, which approval shall be given or withheld at the sole discretion of the City.

4. Maintenance of Property. Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, that Owner, such successors and such assigns, shall maintain in good condition, or such better condition specified in the Franchise Agreement or that is commonly accepted in the hotel industry, the Property and all improvements thereon, shall keep the Property free from any accumulation of debris or waste material, shall remove any and all graffiti, shall maintain the Property in compliance with all applicable local, state, and federal regulations, and shall maintain in a neat, orderly, healthy and good condition any landscaping required by the City during its normal approval processes to be planted on the Property, or placed on the Property by Owner in its own determination.

5. Non-Discrimination. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of domestic partnership status or arrangement, sexual orientation, or gender identify in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property; nor shall Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Properties. Notwithstanding any provision of this paragraph, none of the cited statutes shall apply to the extent that they deal with housing of any kind.

6. Existing and Future Assessment Districts. City may review the creation of a landscape and lighting district in the area where the Property is to be located, or, alternatively, the annexation of the Property into an existing City district. Such a district would assist the City in paying for the lighting and landscaping in the area, thus enabling it to install and maintain such amenities to the general benefit of the area and the specific benefit of the Property. Such a district would equitably apportion the costs among the benefited land owners. Owner covenants and agrees, for itself and its successors and assigns, and on behalf of any and all tenants, that it will participate in

such a district for the life of the district, will vote in favor of its formation, or for annexation into an existing district, as applicable, if a vote is required, will otherwise support and not oppose the formation of the district or the annexation, and will pay when due the assessments apportioned to it. Owner agrees to include a similar provision to every lease of any portion of the Property to another entity such that the entity's obligations are essentially identical to the Owner's. Notwithstanding any provision in the Covenants to the contrary, the Owner shall retain all rights under the district to appeal the amount of the assessment allocated to the Owner's property and/or business.

7. Existing and Future Business Improvement Districts. City may also review the formation of a business improvement district in the area where the Property is to be located. Such a district would provide assistance to all businesses within the district for a variety of purposes, each of which would be designed to generate patronage for such businesses. Such a district would assess business owners in the district on an equitable basis for its share of the costs expended for the mutual benefit of the business in the area. Owner covenants and agrees, for itself and its successors and assigns, that it will participate in such a district for the life of the district, will vote in favor of its formation if a vote is required, will otherwise support and not oppose the formation of the district and will pay when due the assessments apportioned to it. The Owner agrees to include a similar provision to every lease of any portion of the Property to an entity such that the entity's obligations are essentially identical to the Owner's. Notwithstanding any provision in these Covenants to the contrary, the Owner shall retain all rights under the district to appeal the amount of the assessment allocated to the Owner property and/or business.

8. Continuation of Certain Covenants. The covenants established against discrimination, those regarding maintenance of the Property, and the covenants related to landscape and lighting or business districts shall remain in effect in perpetuity. The covenants related to the Intended Use shall remain in effect for ten (10) years, calculated as indicated above.

9. City is Express Beneficiary of Covenants. The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for an in its own rights and for the purposes of protecting the interests of the community. The City shall have the right, if such covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or such other proper proceedings to enforce the curing of such breaches to which it or any other beneficiary of such covenants may be entitled, including, without limitation, to specific performance, damages and injunctive relief. In addition, at the City's sole discretion, any breach of these covenants shall be deemed a material breach of the Agreement, permitting the City to terminate the Agreement.

10. Repayment upon Termination. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that if City terminates the Agreement due to Owner's uncured breach thereof,

then Owner, its successor, and its assigns immediately repay all installments of the Economic Incentive Payments made by City, together with interest thereon at the highest rate permitted by law, from the date of the initial payment made by City to Owner, its successors, or its assigns. Notwithstanding the foregoing, in the event that termination of the Agreement is due to Owner's failure to continuously operate the New Hotel for the duration of the Transient Occupancy Tax Sharing Period provided in this Agreement and Owner's failure to operate is caused by a Force Majeure event described in Section "9.n" of the Agreement, then Owner shall only be obligated to repay the last Economic Incentive Payment received by Owner.

**WHEREFORE,** Owner, intending to be bound hereby, has executed this document, entitled Operating Covenants, on the date first above-written.

**OWNER:**

MIRAGE BOB HOPE VARNER, LLC  
a California limited liability company

By: \_\_\_\_\_  
Cody Small, Managing Member

By: \_\_\_\_\_  
Brent Ogden, Managing Member

**EXHIBIT "A" TO  
OPERATING COVENANTS**

**TRANSIENT OCCPANCY TAX SHARING AGREEMENT BETWEEN  
THE CITY OF CATHEDRAL CITY AND MIRAGE BOB HOPE VARNER, LLC**

**EXHIBIT "B" TO  
OPERATING COVENANTS**

**LEGAL DESCRIPTION OF PROPERTY  
AFFECTED BY OPERATING COVENANTS**

[Legal Description and Map Follow This Cover Sheet]

# PARCEL 8

## TENTATIVE PARCEL MAP NO. 36619

PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05478 RECORDED ON 05/18/2014 AS DOC. NO. 2014-0194148, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, LOCATED WITHIN A PORTION OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 5 EAST, S.B.M., AND SECTION 18, TOWNSHIP 4 SOUTH, RANGE 6 EAST, S.B.M., IN THE CITY OF CATHEDRAL CITY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

### GENERAL NOTES

- THE BASIS FOR THIS MAP IS POLICY OF TITLE INSURANCE NUMBER 996-2304301-A-DH1, PREPARED BY FIDELITY NATIONAL TITLE COMPANY, DATED JUNE 19, 2015. NO RESPONSIBILITY AS TO THE ACCURACY OF THIS REPORT IS ASSUMED BY THIS SURVEY.
- GEOSPATIALLY LOCATABLE ITEMS FROM SAID REPORT (SUCH AS EASEMENTS) WHICH AFFECT THE SUBJECT PROPERTY AS DESCRIBED HEREON ARE SHOWN ON THIS MAP AND ARE NUMERICALLY KEYS TO SAID REPORT. OTHER ITEMS LISTED IN SCHEDULE "B" OF SAID REPORT WHICH AFFECT THE SUBJECT PROPERTY ARE ALSO NUMERICALLY KEYS TO SAID REPORT.
- THE APPROXIMATE AREA OF THE LAND TO BE SUBDIVIDED IS CALCULATED FROM RECORD DATA AS FOLLOWS:  
GROSS AREA: 9.13 AC.
- ALL DIMENSIONS SHOWN HEREON ARE APPROXIMATE.
- APN'S: 670-250-019, 650-080-095 AND 650-090-044
- THE PROJECT SITE IS SUBJECT TO GEOLOGIC HAZARDS.
- THE PROJECT SITE LIES WITHIN FLOOD ZONE "AO" DEPTH 1', VELOCITY 5 FPS (FLOOD DEPTHS OF 1 TO 3 FEET USUALLY SHEET FLOW ON SLOPING TERRAIN); AVERAGE DEPTHS DETERMINED FOR AREAS OF ALLOWABLE FAN FLOODING, VELOCITIES ALSO DETERMINED, AS SHOWN ON FIRM PANEL 0800C-1005G - EFFECTIVE AUGUST 26, 2008

### GENERAL INFORMATION

- EXISTING LAND USE: VACANT
- PROPOSED LAND USE: COMMERCIAL
- ADJACENT ZONING: I-P (INDUSTRIAL PARK)
- ADJACENT LAND USE: COMMERCIAL
- EXISTING ZONING: I-P (INDUSTRIAL PARK)
- PROPOSED ZONING: M-1 - MIXED USE URBAN
- ALL UTILITIES SHALL BE UNDERGROUND
- GAS: SOUTHERN CALIFORNIA GAS COMPANY
- ELECTRIC: SOUTHERN CALIFORNIA Edison
- TELEPHONE: VERILION
- CABLE TV: TIME WARNER CABLE
- SEWER: COACHELLA VALLEY WATER DISTRICT
- WATER: COACHELLA VALLEY WATER DISTRICT
- STORM DRAIN: CITY OF CATHEDRAL CITY
- TRAVEL GUIDE - 2008 EDITION, PAGE 286, GRID C1
- THIS TENTATIVE MAP DOES INCLUDE THE ENTIRE CONTIGUOUS OWNERSHIP OF THE SUBDIVIDER INVOLVED.

### OWNERSHIP INFORMATION

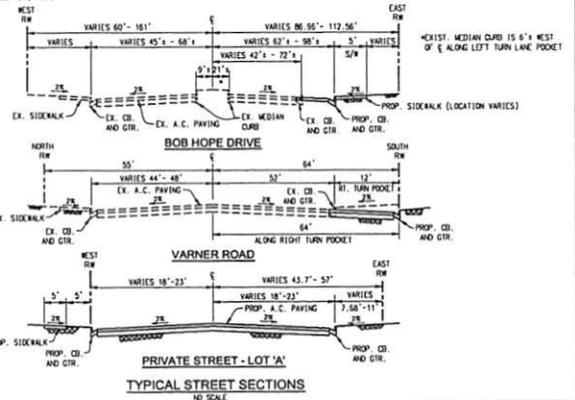
TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
**CATHEDRAL VALLEY BUSINESS PARK, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

### LEGAL DESCRIPTION

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### EASEMENT NOTES

- EASEMENT FOR EITHER OR BOTH POLE LINE, CONDUITS OR UNDERGROUND FACILITIES AND INCIDENTAL PURPOSES, IN FAVOR OF COACHELLA VALLEY ICE AND ELECTRIC COMPANY, IN INSTRUMENT RECORDED JUNE 2, 1914, IN BOOK 397, PAGE 187 OF DEEDS.
- SEWER EASEMENT TO THE COACHELLA VALLEY WATER DISTRICT PER INSTRUMENT NO. 383078, RECORDED ON DECEMBER 29, 1988

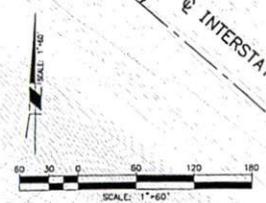
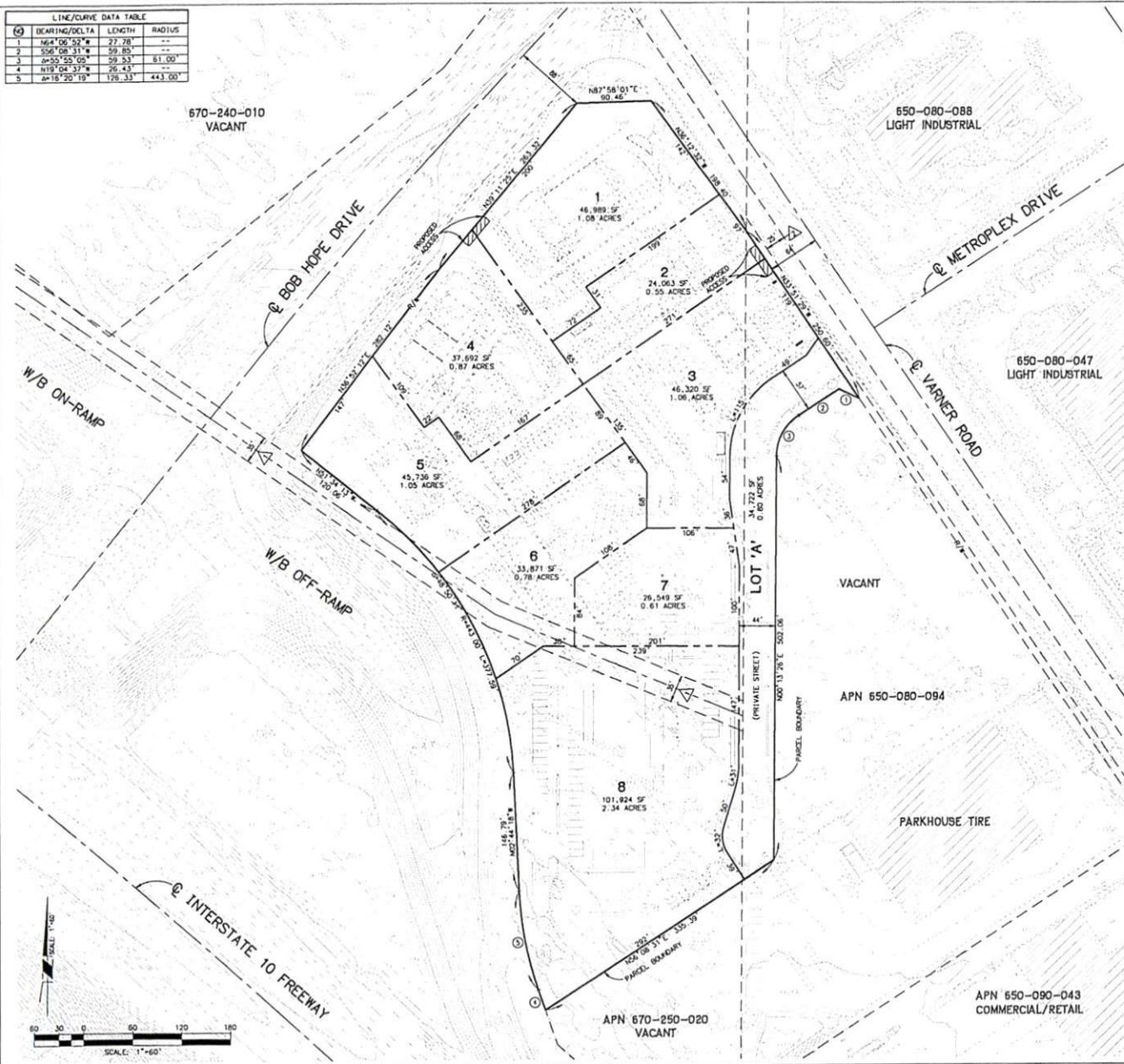


OWNER	DATE	REVISIONS
MAP	3/1/19	ADDED STREET SECTIONS TO MAP



**Michael Baker International**  
INTERNATIONAL  
7420 Country Club Drive, Suite 201  
Folsom, CA 95740  
www.mbakergroup.com  
780-341-7441 1-800-344-8210

LINE/CURVE DATA TABLE	BEARING/Delta	LENGTH	RADIUS
1	N64°06'52" W	27.78'	--
2	S56°08'31" W	59.85'	--
3	S65°55'55" W	59.53'	81.00'
4	N19°04'37" E	76.43'	--
5	S41°16'20" W	126.33'	443.00'



**ALL CAPACITY ACKNOWLEDGMENT**

---

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

---

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Place Notary Seal Above

**ALL CAPACITY ACKNOWLEDGMENT**

---

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_

Date

Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_

Name(s) of Signer(s)

---

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature \_\_\_\_\_

Place Notary Seal Above