

**DRAFT**  
**09/22/2016**

PLEASE COMPLETE THIS INFORMATION  
RECORDING REQUESTED BY:

City of Cathedral City

AND WHEN RECORDED MAIL TO:

City of Cathedral City  
Attn: City Clerk  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

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GOV. CODE § 27383**

## **First Amendment to Purchase and Performance Agreement**

**FIRST AMENDMENT TO  
PURCHASE AND PERFORMANCE  
AGREEMENT**

by and between

**VERANO RECOVERY, LLC**

and

**CITY OF CATHEDRAL CITY**

Dated \_\_\_\_\_, 2016

## FIRST AMENDMENT TO PURCHASE AND PERFORMANCE AGREEMENT

[VERANO, Rio Vista Village Specific Plan]

This First Amendment to Purchase and Performance Agreement ("**First Amendment**"), which is dated for reference as indicated on the cover page, is hereby entered into by and between Verano Recovery, LLC a California limited liability corporation ("**Developer**") and City of Cathedral City, a California general law city and municipal corporation ("**City**"), on the following terms and conditions. Developer and City are sometimes individually referred to as "Party" or collectively as "Parties".

### RECITALS

A. City and Verano entered into that certain Purchase and Performance Agreement dated June 2, 2015, and recorded in the official records of the County of Riverside as Instrument No. 2015-0422082 ("**Purchase Agreement**"). The Purchase Agreement relates to the development of a residential community commonly known as Verano located within the boundary of Rio Vista Village Specific Plan. All terms in this First Amendment have the meaning ascribed in the Purchase Agreement, unless expressly defined herein.

B. The Parties have agreed that satisfaction of the conditions of the Purchase Agreement will best be facilitated by amending certain of the terms and conditions of the Purchase Agreement as provided in this First Amendment.

### OPERATIVE PROVISIONS

**NOW, THEREFORE**, in consideration of the promises made and recited herein, the parties do hereby enter into this First Amendment which modifies and amends the Agreement as follows:

1. **AMENDMENTS**. The Purchase Agreement is hereby modified and amended as follows:

1.1 **Section 3.1 Phase 1: Actions to be Taken by End of First Year.** Section 3.1 of the Purchase Agreement is hereby amended to read as follows:

"3.1. Phase 1: Actions to be Taken by December 31, 2017. The Developer shall cause all of the following actions to be taken by December 31, 2017, unless the action expressly states a different deadline for the action:"

1.2 **Section 3.1.1. Monuments.** Section 3.1.1. of the Purchase Agreement is hereby amended to read as follows:

"3.1.1. Monuments. Developer shall verify existing monuments, remove and correctly reinstall erroneous monuments, and shall install missing monuments in all areas of completed construction of Tract 28639-1 by

December 31, 2017. Developer shall install monuments in the remaining portion of Tract 28639-1, and for Tentative Map 32559 and Tentative Parcel Map 34148, upon the first Certificate of Occupancy for each construction phase undertaken therein.”

1.3 **Section 3.1.2. Public Streets Improvements.** A new subsection “c.” is hereby added to Section 3.1.2 of the Purchase Agreement as follows:

“3.1.2.c. Developer shall complete Rio Vista Drive and all other street improvements in areas of completed construction of Tract 28639-1 by December 31, 2017. Developer shall complete street improvements in the remaining portion of Tract 28639-1, and for Tentative Map 32559 and Tentative Parcel Map 34148, on a block by block basis corresponding to the construction of residential units for the block. However, Developer shall have up to, but not in excess of, one (1) calendar year to complete street improvements to the standards established in Section 3.1.2 above after issuance of the first Certificate of Occupancy for each block.”

1.4 **Section 3.1.3. Alley Improvements.** Section 3.1.3 of the Purchase Agreement is hereby amended to read as follows:

“3.1.3 Alley Improvement. All constructed and completed alleys on Lots AA through EE, inclusive, Lots LL through PP, inclusive, and Lot GG, and a portion of Lot FF in the Project shall be deeded to and maintained as noted in Section 3.1.2 above. Developer shall complete all alley improvements in areas of completed construction of Tract 28639-1 by December 31, 2017. Developer shall complete alley improvements in the remaining portion of Tract 28639-1, and for Tentative Map 32559 and Tentative Parcel Map 34148, on a block by block basis corresponding to the construction of residential units for the block. However, Developer shall have up to, but not in excess of, one (1) calendar year to complete alley improvements to the standards established in Section 3.1.2 above after issuance of the first Certificate of Occupancy for each block.”

1.5 **Section 3.1.4 Construction Improvements for the Completed Construction Area.** Section 3.1.4 of the Purchase Agreement is hereby amended as follows: The clause “... to be completed within the first anniversary year (Phase A) ...” is hereby deleted and the following clause inserted in its place – “... to be completed by December 31, 2017 ...”.

1.6 **Section 3.1.5. Sand Removal.** Section 3.1.5 of the Purchase Agreement is hereby amended as follows:

3.1.5 Sand Removal Within the first anniversary year (Phase A), the Developer shall cause the blown sand that has accumulated in the public spaces within the Project Area boundaries as of the Effective Date to be removed and properly disposed of in accordance with all applicable laws.

The Developer shall remove and properly dispose of the blown sand that is within the public spaces of the Project Property for the term of the Agreement. In addition, in order to deter the formation of sand dunes, the Developer shall cause all existing chain link green fabrics and wooden snow fences in the Project Area to be removed and replaced with a sand deterrent acceptable to the City.

A new subsection "a" is hereby added to Section 3.1.5 as follows:

"3.1.5.a." The same removal and deterrence actions required in Section 3.1.5 above shall become an ongoing obligation of the HOA after Developer completes and City accepts improvements within each separate Phase of the Project.

1.7 **Section 3.1.7. Club House Improvements.** A new subsection "a" is hereby added to Section 3.1.7 of the Purchase Agreement as follows:

"3.1.7.a. Developer and City agree that the Phase 1 Remodeling has been substantially completed and that the required exterior landscaping and completion of the Phase 1 Pool and Spa (collectively "Remaining Remodel Items") remain to be completed. Developer shall complete the Remaining Remodel Items, and open the Club House, pool and spa for residents by the earlier of the issuance of the 300<sup>th</sup> Certificate of Occupancy (inclusive of the one hundred thirty-seven (137) existing residences) for the Project or March 31, 2018, whichever is the first to occur."

1.8 **3.1.8. Circle Park.** A new Section 3.1.8 is hereby added to the Purchase Agreement as follows:

"3.1.7.b. Developer and City agree that the Circle Park has been substantially completed; however, the level of improvements and landscape refurbishment is subject to a landscape and irrigation plan (Improvement Plan) approved per the City approval process. The Parties will mutually agree on a punch-list of remaining items to be completed ("**Park Punch List Items**") in conjunction with the preparation of the Improvement Plan and approvals. Developer shall complete the Park Punch List Items and implementation of the newly-approved Improvement Plan lands by the earlier of the issuance of the 300<sup>th</sup> Certificate of Occupancy (inclusive of the one hundred thirty-seven (137) existing residences) for the Project or March 31, 2018, whichever is the first to occur."

1.9 **Section 3.2. Phase 2: Actions to be Taken by End of Fifth Year.** Section 3.2 of the Purchase Agreement is hereby amended to read as follows:

“Section 3.2. Phase 2: Action to be Taken by End of Fifth Year. Unless another deadline is expressly provided for below, the Developer shall cause the following actions to be taken prior to June 30, 2020:”

1.10 **Section 3.2.1. Remaining Club House Improvements.** A new subsection “a” is hereby added to Section 3.2.1 of the Purchase Agreement as follows:

“3.2.1.a” Developer shall complete the Phase 2 Remainder Improvements to the Club House parcel by June 20, 2020.

1.11 **Section 3.2.2. Backbone Street Infrastructure.** A new subsection “a’ is hereby added to Section 3.2.2 of the Purchase Agreement as follows:

“3.2.2.a. Developer shall complete all street improvements identified in Section 3.2.2 and Exhibit F for Phase 2 of the Project on a block by block basis corresponding to the construction of residential units for the block. However, Developer shall have up to, but not in excess of, one (1) calendar year to complete these street improvements to the standards established in Section 3.2.2 and Exhibit F after issuance of the first Certificate of Occupancy for each block.”

1.12 **Section 9.15.4 Effect of Assignment.** Section 9.15.4 of the Purchase Agreement is hereby amended to read as follows:

“9.15.4. Effect of Assignment. Upon Assignment and approval of that Assignment, as provided in Section 9.15, such Assignee shall, with the prior consent of City, either (a) be entitled to all of the rights and be subject to all of the obligations as set forth in this Agreement, as such rights and obligations apply specifically, either wholly or pro-rata, to that portion of the Project to which Assignee has acquired an interest as the result of such Assignment; or (b) be entitled to such of the rights and be subject to such of the obligations set forth in this Agreement as are expressly identified in the Assignment and related to that portion of the Project to which Assignee has acquired an interest as a result of such Assignment.

1.13 **New Section 9.15.5 Effect of Default.** A new section 9.15.5 is hereby added to the Purchase Agreement as follows:

“9.15.5 Effect of Default. Any default by the Developer in the terms or conditions of this Agreement or in the Project Approvals, existing at the time of assignment of any of its rights and obligations hereunder, shall remain the obligation of the Developer, unless the Assignee expressly accepts such obligation and the City expressly approves the assignment of such obligation. Any default by the Assignee in the terms or conditions of this Agreement or in the Project Approvals, occurring after the time of assignment of any rights and obligations of the Developer to the Assignee, shall be solely the responsibility of that Assignee, and shall not be deemed

to be a default by either the Developer or any other Assignee and shall not affect the rights occurring to any other portion of the Project Property pursuant to this Agreement or the Project Approvals.

## **2. GENERAL PROVISIONS.**

2.1 **Remainder Unchanged.** Except as specifically modified and amended in this First Amendment, the Agreement remains in full force and effect and binding upon the parties.

2.2 **Integration.** This First Amendment consists of pages 1 through 6 inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this First Amendment.

2.3 **Effective Date / Conditions Precedent.** This First Amendment shall not become effective and binding upon the Parties unless and until the following conditions precedent have occurred:

2.3.1 The Parties have approved and duly executed the First Amendment;

2.3.2 Developer must have paid its outstanding debt to the City by delivery of \$179,831 in immediately available and good and sufficient funds to City. City will prepare and record the necessary reconveyances of the Deeds of Trust securing this debt within five (5) days of receiving payment.

2.3.3 This First Amendment has been recorded in the official records of the Officer of the Riverside County Recorder.

2.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this First Amendment.

2.5 **References.** All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this First Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first written above.

**CITY OF CATHEDRAL CITY**

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

**ATTEST:**

\_\_\_\_\_  
Gary F. Howell, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Eric S. Vail, City Attorney

**DEVELOPER**

Verano Recovery, LLC

By:   
Name: Jamal A. Ahmad  
Title: President, Inland Communities Corp.  
Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

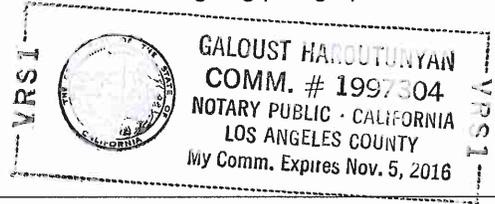
COUNTY OF Los Angeles

On Sept 23<sup>rd</sup>, 2016 before me, Galust Haroutunyan personally appeared Jamal A. Ahmad proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_ Galust Haroutunyan



#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER  
President  
 TITLE(S)
- PARTNER(S)     LIMITED  
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER \_\_\_\_\_

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))  
\_\_\_\_\_  
\_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	NUMBER OF PAGES
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	DATE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	
_____	

**SIGNER IS REPRESENTING:**

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_