

**AMENDMENT NO. 6  
TO  
TRANSFER AGREEMENT  
AND  
ESCROW INSTRUCTIONS**

by and between

**CITY OF CATHEDRAL CITY**

and

**GREENSPRING CAPITAL, INC.**

Dated October 26, 2016

**AMENDMENT NO. 6 TO  
PROPERTY TRANSFER AGREEMENT  
AND ESCROW INSTRUCTIONS**

This Amendment No. 6 to Transfer Agreement and Escrow Instructions ("**Amendment No. 6**"), which is dated for reference as indicated on the cover page, is hereby entered into by and between GreenSpring Capital, Inc., a California corporation ("**Developer**"), and Cathedral City, a California municipal corporation, acting solely in its role as the Successor Housing Agency to the Former Redevelopment Agency of the City of Cathedral City ("**City**"). Developer and City are sometimes referred to individually as a "**Party**" or collectively referred to as the "**Parties**."

**RECITALS**

A. City and Thermal Land, LLC, ("**Thermal**") entered into that certain Property Transfer Agreement and Escrow Instructions dated August 28, 2013 ("**Transfer Agreement**"), which provided for the sale of the **Property** (as described in the Transfer Agreement) to Thermal upon timely completion of the **Project**, a mixed use residential / commercial development, as described in the Transfer Agreement.

B. City, Thermal and Saxony Living, LP., ("**Saxony**") entered into that certain Assignment of Property Transfer Agreement dated November 18, 2014, by which City consented to the assignment by Thermal of all of its interests, rights, title, obligations, duties and responsibilities, terms, conditions, and covenants in, to and under the Transfer Agreement ("**Rights and Obligations**") to Saxony, and Saxony assumed all such Rights and Obligations. The Project was not completed and the purchase and sale of the Property was not consummated between City and Thermal before the assignment to Saxony.

C. The Transfer Agreement has been amended by Thermal, with the concurrence of City, and subsequently by Saxony, five (5) times, which amendments include Amendment No. 1 (March 12, 2014), Amendment No. 2 (August 14, 2014), Amendment No. 3 (February 26, 2015), Amendment No. 4 (October 28, 2015) and Amendment No. 5 (March 9, 2016), collectively the "**Amendments**". The Transfer Agreement shall be deemed to be inclusive of all of the Amendments.

D. City, Saxony, and Developer entered into that certain Assignment, Assumption and Consent Agreement for Property Transfer Agreement dated October 26, 2016 ("**AAC Agreement**") by which City consented to the assignment by Saxony all of its Rights and Obligations to Developer, and Developer assumed all such Rights and Obligations. The Project was not completed and the purchase and sale of the Property was not consummated between City and Saxony before the assignment to Developer.

E. City and Developer desire to revise the various times stated to complete performance of certain actions under the Transfer Agreement and Amendments ("**Deadlines**"). The two primary Deadlines, set forth in Section 5.12 (Closing Date) and Section 10 (Deadline to Complete the Project) of the Transfer Agreement, are amended as specified below. There are a number of ancillary Deadlines that are either measured from the opening of escrow, or that must be completed prior to close of escrow, or that must occur prior to the completion of the Project. These Deadlines were provided for in the Transfer Agreement and then depicted in the Exhibits to the Transfer Agreement and Amendments variously as the "Schedule of Obligations," the "Escrow Deadlines," the "Project Schedule," and/or the "Conditions required to be Fulfilled." It is the intent of the Parties that all such ancillary Deadlines be extended commensurate with the extension of the Closing Date and/or Deadline to Complete the Project, as specified below, to which they are subordinate.

F. The Parties acknowledge that escrow has previously been opened, as provided in Section 5.2. The Parties also acknowledge that the Deposit required under Section 5.2.2 was made, but that a portion of the Deposit was withdrawn by the Buyer, and currently the balance of the Deposit in Escrow is Ten Thousand Dollars (\$10,000.00).

### **OPERATIVE PROVISIONS**

**NOW, THEREFORE**, in consideration of the promises made and recited herein, the parties do hereby enter into this Amendment No. 6, which modifies and amends the Transfer Agreement as follows:

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

1.1 **Deadlines Measured from the Opening Of Escrow.** The Parties acknowledge that certain obligations of the Parties, measured from the Opening of Escrow, as provided in Sections 4.1 (Approval of Title to the Property), 5.2.1 (Delivery of Document), 5.4 (Service Contracts), and 5.5 (Preliminary Title Reports), may have previously been fully or partially satisfied, or may need to be redone due to the passage of time and the change of Developer. The Parties agree to cooperate and work in good faith to identify which of these obligations has been satisfied and which remains to be completed or redone and to then create a reasonable schedule for completion of such items. Notwithstanding the foregoing, all such obligations must be completed prior to the Close of Escrow.

1.2 **Section 5.12 (Closing Date).** Section 5.12 of the Transfer Agreement is hereby amended to read as follows:

"5.12. **Closing Date.** Escrow shall close (as evidenced by the recordation of the grant deed in the Official Records of Riverside County, California), as soon as the conditions to Close of Escrow have been met or waived,

but in any event, not later than November 30, 2017 (the “Close of Escrow” or the “Closing Date”).”

**1.3 Section 9. Prohibition against Transfers.** Section 9 of the Purchase Agreement is hereby amended to read as follows:

**“9. Prohibition Against Transfers.**

**9.1. Transfer of Property prior to Notice of Completion.** Except as is expressly provided in Section 9.2 and 9.3 of this Agreement, the Parties agree that no Party shall sell, transfer, convey, leave, leaseback, or assign the whole or any part of the Property or any partial or whole interest therein which is the subject of this Agreement, or any improvements thereon, until after the issuance by Seller of the Notice of Completion, as described in Section 17 below. In the event of an unauthorized transfer or conveyance, the transferee in connection therewith shall become fully liable for each and every obligation of the transferor, and the transferor shall not be relieved of any obligation or liability under this Agreement.

**9.2. Necessary Easements.** The prohibition on transfers shall not apply to the reasonable grant of limited easements or permits to facilitate the development of the Project on the Property.

**9.3. Transfer of Rights and Obligations in the Agreement / Permitted Assignment.** Except for a “Permitted Assignment” as expressly provided herein, Developer shall not assign, convey, or otherwise transfer any of its rights, title, interest and obligations to any third party without the prior written consent of the City, which consent may be withheld at the City’s discretion, but in the event of the City’s consent, then such transfer shall not be deemed to be effective unless all parties have executed and approved an assignment and assumption agreement satisfactory to City. Notwithstanding the foregoing, Developer shall have the right, upon reasonable written notice to City, to transfer its rights, title, interest and obligations to another business entity in which Developer, or its principle Eric Keillor, retain a controlling interest of at least fifty-one percent (51%) of the stock, shares or other ownership interests of the business entity. In the event of a Permitted Assignment, then assignee shall assume all of Developer’s obligations and be fully liable for all debts and defaults of Developer under the Agreement.”

**1.4 Section 10. Deadline for Project Completion; Liquidated Damages.** The first sentence of Section 10 is here by amended to read as follows:

“Developer shall complete all Project construction and Property Development, as approved and accepted by the City, by November 30, 2018 (“Deadline”).”

The remainder of Section 10 shall remain unchanged.

1.5 **Section 13.1 Notice of Defaults.** The dates referenced in Section 13.1 for Close of Escrow and completion of the Project shall hereby be changed to November 30, 2017 and November 30, 2018 respectively. The remainder of Section 13.1 shall remain unchanged.

1.6 **Section 14.2 Where to Give Notice.** For the purpose of providing notice in accordance with Section 14.2, all notices, demands or communications to a Party shall be sent to:

(to Developer) GreenSpring Capital, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(to City) City of Cathedral City  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234  
Attn: City Manager

(with a copy to) Burke, Williams & Sorensen, LLP  
1600 Iowa Avenue – Suite 250  
Riverside, CA 92507  
Attn: Eric S. Vail

1.7 **Deadlines Set Forth in Exhibit “A” (Escrow Deadlines) and Exhibit “B” (Project Schedule) of Amendment No. 5.** The dates identified in Exhibits “A” and “B” of Amendment No. 5, unless covered under Section 1.1 of this Amendment No. 6, are hereby deemed continued to a date commensurate with the extension of the Closing Date or Deadline for Project Completion set forth above, as the case may be.

## **2. GENERAL PROVISIONS.**

2.1 **Remainder Unchanged.** Except as specifically modified and amended in this Amendment No. 6, the Transfer Agreement remains in full force and effect and binding upon the parties.

2.2 **Integration.** This Amendment No. 6 consists of pages 1 through 5 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 Amendment No. 6.

2.3 **Effective Date / Conditions Precedent.** This Amendment No. 6 shall not become effective and binding upon the Parties unless and until the Parties and Saxony have approved and duly executed the Assignment, Assumption and Consent Agreement for the Transfer Agreement.

2.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Amendment No. 6.

2.5 **References.** All references to the Transfer Agreement include all their respective terms and provisions. All defined terms utilized in this Amendment No. 6 have the same meaning as provided in the Transfer Agreement, unless expressly stated to the contrary in this Amendment No. 6.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 6 to the Transfer 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

***[Signatures continued on next page]***

**DEVELOPER**

GREENSPRING CAPITAL, INC.,  
a California Corporation

By: \_\_\_\_\_  
Eric Keillor, President

By: \_\_\_\_\_  
Eric Keillor, Secretary

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

☐ INDIVIDUAL

☐ CORPORATE OFFICER

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

\_\_\_\_\_  
TITLE(S)

☐ PARTNER(S) ☐ LIMITED

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

☐ GENERAL

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

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

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

☐ GUARDIAN/CONSERVATOR

☐ OTHER \_\_\_\_\_

#### 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.

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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: \_\_\_\_\_

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☐ GENERAL

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

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

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

☐ GUARDIAN/CONSERVATOR

☐ OTHER \_\_\_\_\_

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_