

## **GROUND LEASE TERMINATION AGREEMENT**

**THIS GROUND LEASE TERMINATION AGREEMENT** (this “**Agreement**”) is reference dated as of July \_\_, 2017 and is between (i) **Shottenkirk California Properties, LLC**, a Delaware limited liability company (including its successors and assigns to all or any portion of the Dealership Parcel (defined below), “**Future Landlord**”), and (ii) the **City of Cathedral City**, in its capacity under Health and Safety Code section 34173 as the successor agency (“**Successor Agency**”) to the former Redevelopment Agency of the City of Cathedral City (“**RDA**”). This Agreement will become effective and binding upon the parties on the date (“**Effective Date**”) of the “**Close of Escrow**” (as defined in the “**Purchase Agreement**” described in Recital A, below).

### **RECITALS**

A. Future Landlord and the City Urban Revitalization Corporation, a California non-profit corporation (“**CURC**”) have entered into that certain “Vacant Land Purchase Agreement” dated \_\_\_\_\_, 2017, including that certain Addendum #1 of even date therewith (collectively, including all prior and future amendments thereto, the “**Purchase Agreement**”), by which CURC agreed to sell to Future Landlord certain property (“**Property**”) more particularly described in the Purchase Agreement.

B. Separately, Future Landlord is also purchasing from a third party certain land adjacent to the Property described as APN’s 687-510-043, 044, and 045 (“**Conneaut Lots**”). Following Future Landlord’s acquisition of the Property and the Conneaut Lots, Future Landlord will merge the Property and the Conneaut Lots (collectively, “**Dealership Parcel**”) and promptly commence the development of a Lexus automobile dealership (“**Dealership**”) on the Dealership Parcel.

C. A portion of the Conneaut Lots are currently ground leased to the Successor Agency pursuant to that certain “**Lease**” between Tramview Land Company (“**Tramview**”) and CCC Properties, LLC (“**CCC**”) dated February 15, 2004, as modified by that certain letter agreement between Tramview and CCC dated May 12, 2004, and that certain Assignment and Assumption of Lease between CCC and the RDA dated March 7, 2007 (the Lease, collectively with all subsequent assignments and amendments, the “**Ground Lease**”). Upon the close of escrow for Future Landlord’s purchase of the Conneaut Lots, Future Landlord will become the “**Landlord**” and the Successor Agency will remain the “**Tenant**” under the Ground Lease. The portion of the Conneaut Lots that is subject to the Ground Lease is referred to in this Agreement as the “**Premises**.”

D. Pursuant to Addendum #1 to the Purchase Agreement, one contingency to the Close of Escrow under the Purchase Agreement for CURC’s benefit is that the Successor Agency and Future Landlord enter into an agreement to terminate the Ground Lease prior to its current expiration date. This Agreement is the “**Ground Lease Termination Agreement**” referenced in Addendum #1 to the Purchase Agreement.

## OPERATIVE PROVISIONS

NOW, THEREFORE, Future Landlord and Successor Agency agree as follows:

1. **Quiet Enjoyment.** From and after the Effective Date of this Agreement, Successor Agency releases and waives any right it has to occupy, use, or enjoy the Premises or otherwise to exercise its rights of quiet enjoyment under the provisions of the Ground Lease. Future Landlord shall have the right to occupy the Premises exclusively and none of the benefits of leasehold or use shall accrue to Successor Agency.

2. **Permission to Construct.** Notwithstanding the continued effectiveness of the Ground Lease after the acquisition of the Property by Future Landlord, Successor Agency agrees that, following the Effective Date of this Agreement, Future Landlord may use the Premises for the purposes of proceeding with construction of the Dealership on the Dealership Parcel, to the exclusion of Successor Agency, and undertaking any changes to the Premises as may be necessary or desirable in connection with said construction. In its capacity as the Tenant under the Ground Lease, Successor Agency agrees to cooperate with Future Landlord in the construction of the Dealership, including the execution and delivery of all such writings, documents, applications, permits and instruments as may be reasonably required to obtain governmental approval for construction of the Dealership or otherwise to commence and continue construction thereof, so long as the Successor Agency is not required to incur any material liability or waive any material right or remedy beyond the extent expressly provided for in this Agreement. The foregoing sentence does not restrict the Successor Agency's police powers when acting in its land use and regulatory capacity.

3. **Termination of Ground Lease.** Notwithstanding the date set forth in Section 2 of the Ground Lease for the expiration of the term thereof, the parties agree that, unless sooner terminated in accord with an applicable provision of the Ground Lease, the Ground Lease will automatically expire and terminate on the date (the "**Termination Date**") which is the earlier of: (i) the seventeenth (17<sup>th</sup>) month anniversary of the Close of Escrow under the Purchase Agreement and (ii) the date that Future Landlord completes the development of the Dealership and opens for business to the general public.

4. **Notices.** Any and all notices, demands, or other communications made under this Agreement will be in writing and delivered by receipted overnight courier to the intended recipient at the addresses set forth below, or at such other address as any party hereto may hereafter designate by notice to the other. All notices will be deemed given one business day after being delivered to said overnight courier.

If to Successor Agency:

City of Cathedral City  
Attn: City Clerk  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

If to Future Landlord:

Shottenkirk California Properties, LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a Copy to:

Burke, Williams & Sorensen, LLP  
Attn: Eric Vail  
1600 Iowa Avenue, Suite 250  
Riverside, CA 92507-7426

With a Copy to:

Burr & Forman LLP  
Attn: George M. Taylor, III  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, AL 35203

5. **Limitation of Liability.** This Agreement does not relieve either Successor Agency or Future Landlord from the performance of any obligation under the Ground Lease accruing prior to the Termination Date, nor does this Agreement limit or otherwise affect either party's right to exercise any right or remedy under the Ground Lease accruing prior to the Termination Date.

6. **Future Cooperation.** The parties will execute any additional documents or affidavits or take such further reasonable actions as may be reasonable, necessary, or convenient to evidence the termination of the Ground Lease as provided in this Agreement.

7. **Miscellaneous.** Except as expressly modified by this Agreement, the Ground Lease and all of the terms and provisions thereof will remain unmodified and in full force and effect as originally written until the Termination Date. In the event of any conflict or inconsistency between the provisions of the Ground Lease and the provisions of this Agreement, the provisions of this Agreement will control. This Agreement is binding upon and inures to the benefit of the parties and their respective representatives, heirs, beneficiaries, and voluntary and involuntary successors and assigns.

8. **Counterparts.** This Agreement will be construed and enforced without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. This Agreement may be executed in counterparts and will constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart, provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

9. **Attorneys' Fees.** If any legal action (including arbitration) is commenced to enforce or interpret any provision in this Agreement, then the prevailing party shall, in addition to any other legally available relief, be entitled to recover its reasonable attorneys' fees and costs of litigation (including expert witness fees).

*[Signatures on next page]*

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the day and year first above written.

**SUCCESSOR AGENCY:**

CITY OF CATHEDRAL CITY, in its capacity as the successor agency to the former Redevelopment Agency of the City of Cathedral City

By: \_\_\_\_\_

Charles P. McClendon  
City Manager

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

Attest:

\_\_\_\_\_  
City Clerk

Approved as to legal form

Burke Williams & Sorensen, LLP

By: \_\_\_\_\_

Eric Vail

**FUTURE LANDLORD:**

SHOTTENKIRK CALIFORNIA PROPERTIES, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

This Notary Acknowledgement is attached to a document entitled **GROUND LEASE  
TERMINATION AGREEMENT**

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.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)