

## CATHEDRAL CANYON PERFORMANCE AGREEMENT

This CATHEDRAL CANYON PERFORMANCE AGREEMENT (“**Agreement**”) is entered into among (i) the City of Cathedral City, a California charter city and municipal corporation, exercising its responsibilities for affordable housing assumed from the former Redevelopment Agency for the City of Cathedral City (“**City**”); (ii) City Urban Revitalization Corporation, a California nonprofit corporation (“**CURC**”); and (iii) Cathedral Canyon Development LLC, a California limited liability company (“**Developer**”). City and CURC may be collectively referred to in this Agreement as “**Sellers**.” The parties may be collectively referred to as the “**Parties**” and individually as a “**Party**.”

This Agreement is dated as of September 27, 2017 for reference purposes only. This Agreement will not become binding upon the Parties until the Effective Date (defined in Section 1.1(i)). Regardless of cause or fault, if the Effective Date does not occur on or before 5:00 p.m. PST on the “**Outside Closing Date**” (as defined in Section 5.1 of each of the “**Purchase Agreements**” defined in Recital C, below), then this Agreement may not thereafter become effective and any prior signature or approvals of the Parties will be automatically rescinded and void ab initio. As used herein, the term “**Property**” means, collectively, the real property to be acquired by the Developer under the Purchase Agreements.

The Parties acknowledge that the City will act in roles under this Agreement. The City is a signatory and party to this Agreement and, in that role, will enjoy the same rights and obligations as any other public agency contracting party. The City will also exercise its police power authority with respect to the review, approval and enforcement of federal, state, and local laws applicable to the Project and the Project Entitlements. When exercising its police power authority, the City’s rights and obligations will not be controlled by this Agreement or by contract law principles, but rather by that statutory and decisional law applicable to cities acting in a police power capacity. For clarity, this Agreement uses the term “**City of Cathedral City**” when referring to the City acting in its police power capacity.

The City, CURC, and the Developer enter into this Agreement with reference to the following recited facts (each a “**Recital**”).

### RECITALS

A. The City and the Developer are parties to that certain “Purchase and Sale and Escrow Instructions Agreement” dated April 26, 2017 (“**City Purchase Agreement**”) by which the City has agreed to sell, and the Developer has agreed to purchase, an approximately two-acre portion of the Property. Nothing in this Agreement modifies the City Purchase Agreement in any way. If there is an inadvertent conflict or inconsistency between this Agreement and the City Purchase Agreement, the City Purchase Agreement will be controlling.

B. CURC and the Developer are parties to that certain “Purchase and Sale and Escrow Instructions Agreement” dated April 26, 2017 (“**CURC Purchase Agreement**”) by which the CURC has agreed to sell, and the Developer has agreed to purchase, an approximately three-acre portion of the Property. Nothing in this Agreement modifies the CURC Purchase Agreement in

any way. If there is an inadvertent conflict or inconsistency between this Agreement and the CURC Purchase Agreement, the CURC Purchase Agreement will be controlling.

C. The City Purchase Agreement and the CURC Purchase Agreement are collectively referred to in this Agreement as the “**Purchase Agreements**.” This Agreement is the “**Performance Agreement**” described in Section 5.3 of the Purchase Agreements.

D. Following its acquisition of the Property, the Developer will develop the Property as a mixed-use residential and commercial/retail project (“**Project**”). The Project is more particularly described in the scope of development (“**Scope of Development**”) attached as **Exhibit B-1**. The development of the Project will proceed in one or several phases in accord with the schedule of actions and deadlines (“**Schedule of Performance**”) attached as **Exhibit C**. Both the Scope of Development and the Schedule of Performance are subject to mutually-agreed revision in accord with the terms set forth in Section 3.6, below.

## ARTICLE I

### DEFINITIONS AND EXHIBITS LIST

Section 1.1 **Defined Terms.** In addition to the definition of certain initially capitalized words, terms or phrases set out in the initial paragraph or Recitals of this Agreement, the following words, terms and phrases as used in this Agreement have the following meanings:

(a) “**Affiliate**” means any Person, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

(b) “**CEQA**” means the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

(c) “**Certificate of Occupancy**” means the final (not temporary) certificate of occupancy (or similar instrument) issued by the City of Cathedral City to permit the occupancy and use of the Project for its intended purposes.

(d) “**City Manager**” means the City Manager of the City of Cathedral City or his or her designee or successor in function.

(e) “**Claims**” means any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, at law or in equity, or otherwise), charges, awards, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys’ fees of counsel retained by the Seller Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature), and judgments, including, but not limited to, Claims for: (1) injury to any person (including death at any time resulting from that injury); (2) loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction) regardless of where located, including the property of the Seller Parties; (3) any workers’ compensation or prevailing wage determination; and (4) all economic losses and consequential or resulting damage of any kind.

(f) **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract or otherwise.

(g) **“Controlling”** and **“Controlled”** mean and refer to exercising or having Control.

(h) **“Developer Official Action”** means the official action of the Developer in substantially the form attached to this Agreement as **Exhibit E**, executed by all the members of the Developer.

(i) **“Effective Date”** means the first date on which: (1) the City is in receipt of four (4) counterpart originals of this Agreement executed by the authorized representative(s) of the Developer and a copy of the Developer Official Action; and (2) this Agreement has been approved by the City’s and CURC’s governing bodies and executed by their authorized representatives.

(j) **“Event of Default”** shall have the meaning ascribed to the term in Section 6.1.

(k) **“Executive Director”** means the Executive Director of CURC or his or her designee or successor in function.

(l) **“Full Completion Date”** means the date on which all the requirements set forth in Section 3.3(b) have been satisfied.

(m) **“Governmental Agency”** means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise), including the City of Cathedral City, whether now or later in existence with jurisdiction over the Property or the construction or installation of any portion of the Project on the Property.

(n) **“Governmental Requirements”** means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

(o) **“Notice of Agreement”** means the notice in substantially the form of **Exhibit D** to this Agreement to be recorded against the Property at the **“Close of Escrow”** under the Purchase Agreements to provide constructive record notice of the existence and application of this Agreement to the Property.

(p) **“Outside Full Completion Date”** means the applicable Completion of Construction date referenced in Exhibit “C” (Schedule of Performance) of this Agreement.

(q) **“Party”** means and refers, individually, to the City, CURC, or the Developer, as applicable.

(r) **“Parties”** means and refers, collectively, to the City, CURC, and the Developer.

(s) **“Permitted Transfer”** means any of the following types of Transfers by the Developer:

(1) Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Property or the Project, where the Person to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to Sellers;

(2) Any Transfer of any interest in the Developer irrespective of the percentage of ownership (i) to any other owner of any interest in the Developer; or (ii) to any Affiliate, or (iii) to any other Person in which any holder of an interest (including any beneficial interest) in the Developer is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner (including a beneficial owner), where the Person to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to Sellers.

(3) Any Transfer that does not become effective until after the Full Completion Date.

(t) **“Person”** means any association, corporation, governmental entity, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

(u) **“Project”** means those certain private, commercial improvements that the Developer proposes to construct on the Property, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in the Scope of Development, and all to be developed in accordance with plans and specifications approved by the City of Cathedral City and any conditions imposed by the City of Cathedral City in connection with its police power approval of the Project Entitlements.

(v) **“Project Entitlements”** means all governmental designations, discretionary permits, approvals, and certifications necessary for development of the Project to be issued or approved by the City of Cathedral City and any other Governmental Agency. Project Entitlements may be legislative or adjudicatory. Examples of Project Entitlements include, but are not limited to, general and community plan designations, specific plans, zoning, tentative subdivision maps, tentative parcel maps, final subdivision maps, parcel maps, environmental impact reports, initial studies and/or (mitigated) negative declarations, CEQA exemptions, use permits, variances, or NPDES permits. Project Entitlements do not include the formation or approval of districts, bonds or exactions (including, but not limited to, special assessments and special taxes) necessary to finance, directly or indirectly, the construction of public improvements or the provision of public services necessary for the Project, ministerial permits or approvals, building permits, and permits to occupy or operate after completion of construction of the Project.

(w) **“Property”** means that certain vacant real property specifically described in **Exhibit A** attached to this Agreement and incorporated into this Agreement by this reference. The Property will be conveyed to the Developer in accord with the Purchase Agreements.

(x) **“Property Transfer”** means any “change in ownership,” as defined in Revenue and Taxation Code Sections 60, *et seq.*, of all or any portion of the Property.

(y) **“Record”, “recorded”, “recording” or “recordation”** each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of Riverside, California.

(z) **“Schedule of Performance”** means the schedule for the performance of certain actions by the Developer attached as **Exhibit C**.

(aa) **“Scope of Development”** means the detailed description of the primary elements of the Project attached to this Agreement as **Exhibit B-1**.

(bb) **“Seller Parties”** means and refers, collectively, to the City, CURC, and their governing bodies, elected and appointed officials, employees, agents, contractors, representatives, insurers, and attorneys.

(cc) **“Seller Party”** means and refers, individually, to the City, CURC, and their governing bodies, elected and appointed officials, employees, agents, contractors, representatives, insurers, and attorneys.

(dd) **“Sellers”** means the City and CURC, collectively. Any right, remedy, consent, or approval required of or given to “Sellers” under this Agreement means an action, consent or approval by both the City and CURC, jointly. However, all obligations and liabilities of either CURC or the City under this Agreement are the individual and several obligations and liabilities of the Party (either CURC or the City). The City will not be liable for the breach of any obligation, duty, or representation of CURC, and CURC will not be liable for the breach of any obligation, duty, or representation by the City.

(ee) **“Transfer”** means any of the following:

(1) Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer’s interest in this Agreement, the Property, or the Project or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer’s interest in this Agreement, the Property or the Project; or

(2) Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

(3) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate,

result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

(4) Any Property Transfer; or

(5) The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Property or the Project.

(ff) “**Unavoidable Delay**” means a delay by any Party in performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar persons at that time and do not result from an act or omission of the Party), third party litigation, unusually severe weather, casualty, war, acts of terrorism or riots. Unavoidable Delay shall not include delay caused by a Party’s financial condition, inability to obtain financing, illiquidity, or insolvency.

(gg) “**Un-Permitted Encumbrance**” means any mortgage, lien, deed of trust, easement or other encumbrance recorded or asserted against the Property, other than any lien(s) created or arising by or under this Agreement.

Section 1.2 **List of Exhibits.** The following is a list of the Exhibits attached to this Agreement. Each of the Exhibits is incorporated by this reference into the text of this Agreement.

<u>Exhibit A</u>	Legal Description of the Property
<u>Exhibit B-1</u>	Scope of Development
<u>Exhibit B-2</u>	Conceptual Site Plan
<u>Exhibit C</u>	Schedule of Performance
<u>Exhibit D</u>	Form of Notice of Agreement
<u>Exhibit E</u>	Form of Official Action of Developer

## ARTICLE II

### PROJECT APPROVALS

#### Section 2.1 **Developer to Obtain all Project Approvals.**

(a) The Developer shall obtain all Project Entitlements from each Governmental Agency prior to the applicable date for the “**Close of Escrow**” set forth in the Schedule of Performance, subject to any extensions of time authorized by this Agreement upon the occurrence of an Unavoidable Delay.

(b) The Developer shall prepare and submit a complete application and any other required application, document, fee, charge or other item (including, without limitation, deposit, fund or surety) required for the commencement of construction and completion of the Project within the time period(s) for such actions set forth in the Schedule of Performance. The City of Cathedral City’s zoning, building and land use regulations (whether contained in ordinances, the City of Cathedral City’s municipal code, conditions of approval or elsewhere), shall be applicable to the construction and installation of the Project on the Property. The

Developer acknowledges that all plans and specifications and any changes to plans and specifications for the Project shall be subject to all Governmental Requirements. No action by the Sellers with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any required City of Cathedral City permit, approval or authorization regarding the Property, the Project, the Developer, any successor-in-interest of the Developer or any successor-in-interest to the Property.

(c) The Developer shall, within the time period for such action(s) set forth in the Schedule of Performance, “commence construction” of the Project. For purposes of this Agreement, the term “**commence construction**” means that the Developer must obtain all necessary permits and authorizations and begin the grading of the Property and the excavation of the footings for the buildings comprising the Project. The Developer must thereafter diligently prosecute the Project to completion in accord with Section 3.3.

(d) The approval of this Agreement by the Sellers shall not be binding on the City Council of Cathedral City or the City of Cathedral City Planning Commission regarding any approvals of the Project required by such bodies. The Developer obtains no right or entitlement to construct or install the Project on the Property or any portion of the Property by virtue of this Agreement. If any revisions of the Project are required by a Governmental Agency, the Developer shall promptly make any such revisions that are generally consistent with the Scope of Development.

(e) Notwithstanding any provision to the contrary in this Agreement, the Developer agrees to accept and comply fully with any and all lawful conditions of approval applicable to the Project Entitlements.

(f) The Developer and Sellers agree that Sellers will not provide any financial assistance to the Developer in connection with the construction or installation of the Project. The Developer is solely responsible for paying for the costs of all design work, construction, labor, materials, fees, permit, application, surety bond and other expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by each Governmental Agency and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by each Governmental Agency or utility service provider pertinent to the construction or installation of the Project on the Property, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. The Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during the construction and installation of the Project.

### **ARTICLE III**

#### **PROJECT DEVELOPMENT AND RELATED MATTERS**

**Section 3.1 Developer Covenant to Undertake Project.** The Developer covenants to and for the exclusive benefit of Sellers that the Developer shall commence and complete the actions required for the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself,

its successors and assigns that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, and all Project Entitlements, except for such changes as may be mutually agreed upon in writing by and between the Developer and Sellers, and in conformity with all applicable laws, regulations, orders and conditions of each Governmental Agency.

**Section 3.2 Developer Changes to Project Plans and Specifications During Course of Construction.** The Developer shall have the right, during the course of construction of the Project, to make “minor field changes” without seeking Sellers’ approval, if such changes do not affect the type of use to be conducted within all or any portion of a structure. “Minor field changes” shall be defined as those changes from the approved construction drawings, plans and specifications that have no substantial effect on the Project and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this Section 3.2 shall be deemed to constitute a waiver of or change in any Governmental Requirements governing any such “minor field changes” or in any approvals by any Governmental Agency otherwise required for any such “minor field changes.”

**Section 3.3 Construction Start and Full Completion Dates.**

(a) The Developer shall commence and prosecute the construction of the Project in accordance with the Schedule of Performance and shall diligently proceed to fully complete the construction of the Project in a good and workmanlike manner, in accordance with the Project Entitlements. At such time as the Developer determines that the Full Completion Date has occurred, the Developer shall send written notice of its determination to Sellers. Within fifteen (15) days after receipt of the Developer’s notice, Sellers shall satisfy themselves that the Full Completion Date has occurred or, in the alternative, deliver written notice to the Developer that the Full Completion Date has not occurred, specifying the remaining category or categories of items to be completed by the Developer.

(b) On or before the Outside Full Completion Date, the Developer will cause the Full Completion Date to occur through satisfaction of all of the following requirements:

(1) Record one or more notices of completion (in accordance with California Civil Code Section 8182) covering the entirety of the Project;

(2) Cause all of the Project’s final building permit inspections to be completed and approved by the City of Cathedral City’s Building Department; and

(3) Obtain Certificates of Occupancy for all portions, components, and phases of the Project from the City of Cathedral City.

(c) After commencement of the work of improvement of the Project, the Developer shall not permit the work of improvement of the Project to cease or be suspended for a time period in excess of thirty (30) calendar days, either consecutively or in the aggregate, for any reason except an Unavoidable Delay.

**Section 3.4 Compliance with Laws.** All work performed in connection with the construction or installation of the Project shall comply with all Governmental Requirements.



**Section 3.5 Schedule of Performance.** All planning, construction, installation and other development obligations and responsibilities of the Developer related to the Project shall be initiated and completed within the times specified in the Schedule of Performance, subject to those extensions of time provided in Section 3.6, below.

**Section 3.6 Modification of the Scope of Development and Schedule of Performance.** The Parties acknowledge that changes to either the Scope of Development or Schedule of Performance, or both, may become necessary or desirable as the Developer processes the Project Entitlements or as specific details of the various Project elements are developed and refined. The Developer may propose modifications to the Scope of Development or Schedule of Performance to Sellers for their review. Sellers will review any proposal and will notify Developer of their approval or disapproval within ten (10) business days following their receipt of Developer's proposed modifications. Sellers' Executive Director and City Manager (as applicable) may, on behalf of CURC and City (as applicable), approve or disapprove modifications to the Scope of Development and Schedule of Performance on any reasonable basis. Without limiting the generality of the foregoing, Developer agrees that it will not be unreasonable for Sellers to disapprove any proposed modification (or series of modifications) that: (i) increases or reduces the amount of the Project's total enclosed commercial square footage by twenty percent (20%) from the amount set forth in the original Scope of Development, (ii) increases or reduces the number of residential units by twenty percent (20%) from the number set forth in the original Scope of Development, or (iii) extends the Outside Full Completion Date by more than three hundred sixty-five (365) days in the aggregate from that currently set forth in Section 1.1(p).

**Section 3.7 Developer Attendance at Project Meetings.** The Developer agrees to make available to Sellers at no cost one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to Sellers or Sellers' staff questions regarding the progress of the Project, attend meetings with Sellers' staff or meetings of Sellers' governing bodies, when requested to do so.

**Section 3.8 Project Financing.** The Developer will use commercially reasonable good faith efforts to obtain sufficient funds to acquire the Property and prosecute and complete the Project as required by this Agreement. Developer shall retain the right to involve capital partners in order to obtain sufficient funding to acquire the Property and complete the Project, subject to the limitations on unauthorized Transfers set forth in this Agreement. The Developer's inability to obtain the necessary capital and/or borrowed funds will not operate to delay or excuse the timely performance of Developer's obligations under either the Purchase Agreements or this Agreement.

## ARTICLE IV

### SPECIAL COVENANTS OF THE DEVELOPER

Section 4.1 **Developer Covenant to Undertake Project.** The Developer covenants to and for the exclusive benefit of Sellers that the Developer shall commence and complete the actions required for the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors and assigns that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, and all Project Entitlements, except for such changes as may be mutually agreed upon in writing by and between the Developer and Sellers, and in conformity with all applicable laws, regulations, orders and conditions of each Governmental Agency.

The covenants of this Section 4.1 shall run with the land of the Property following the Effective Date until the Full Completion Date.

Section 4.2 **Obligation to Refrain from Discrimination.** Developer acknowledges that the Property is subject to the provisions of California Health and Safety Code Sections 33435 and 33436 (“HSC 33435 and 33436”). The Developer covenants, for itself, its successors and assigns, heirs, executors, administrators, and all persons or entities claiming under or through them, to comply with HSC 33435 and 33436 as a successor in interest to the former owner of the Property, the Redevelopment Agency of the City of Cathedral City, with respect to future deeds, leases, and contracts pertaining to the Property.

The covenants of this Section 4.2 shall run with the land of the Property following the Effective Date in perpetuity.

#### Section 4.3 **Effect and Duration of Covenants.**

(a) The covenants established by Section 4.1 through Section 4.2, inclusive, shall remain in effect for the full term specified in each such covenant. All of the covenants set forth in this ARTICLE IV, inclusive, shall run with the land of 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 Sellers, their successors and assigns.

(b) Sellers are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land for and in their own rights and for the purposes of protecting the interests of the community. Sellers 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. CURC shall have the absolute right to assign all of its rights and benefits of this Agreement to the City of Cathedral City.

(c) The covenants of this ARTICLE IV shall run with the land of the Property and bind successive owners of the Property.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 5.1 **Representations and Warranties of City.** City makes each of the representations and warranties set forth in this Section 5.1 based only on City's actual current knowledge as of the date of this Agreement. As used herein, the phrase "**to City's actual current knowledge**" shall mean to the present, personal, subjective knowledge of the officers, employees, representatives and/or agents of City that carry out the terms of this Agreement, with no investigation or inquiry and no duty or obligation to investigate or inquire, and shall exclude any matters disclosed as a result of Developer's investigations under the Purchase Agreements.

(a) The City is statutorily authorized as the "successor housing agency" to the former Redevelopment Agency of the City of Cathedral City in accordance with Health and Safety Code Section 34176. The City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

(b) The persons executing any instruments for or on behalf of the City have been authorized to act on behalf of the City and this Agreement is valid and enforceable against the City in accordance with its terms and each instrument to be executed by the City pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against the City in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other party is required in connection with the valid execution and delivery of and compliance with this Agreement by the City.

(c) The City has taken all requisite action and obtained all requisite consents for agreements or matters to which the City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

(d) The entering into and performance by the City of the transactions contemplated by this Agreement will not violate or breach any agreement, covenant or obligation binding on the City.

(e) There are no suits, administrative proceedings or governmental actions or investigations pending or threatened against or affecting the City or the Property that would prevent the City from meeting any of its obligations under this Agreement.

(f) The City shall notify the Developer within twenty (20) days of becoming aware of any facts or circumstances which are contrary to the representations and warranties contained in this Section 5.1. In the event such facts or circumstances are materially adverse to the Developer's completion of the transaction contemplated by this Agreement, following notice to the City and a reasonable opportunity to cure, in no event less than thirty (30) days, the Developer shall have the right to terminate this Agreement. The City agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the Developer) and hold the Developer and its employees, partners, directors, officers, affiliates, agents and representatives harmless from and against any and all third party losses, claims, demands, damages, costs and expenses of whatever

nature relating to or arising out of a breach of the City's representations and warranties set forth in this Agreement, including, without limitation, reasonable attorneys' fees and costs incurred in connection therewith or to enforce this indemnity agreement.

**Section 5.2 Representations and Warranties of CURC.** CURC makes each of the representations and warranties set forth in this Section 5.2 based only on CURC's actual current knowledge as of the date of this Agreement. As used herein, the phrase "**to CURC's actual current knowledge**" shall mean to the present, personal, subjective knowledge of the officers, employees, representatives and/or agents of CURC that carry out the terms of this Agreement, with no investigation or inquiry and no duty or obligation to investigate or inquire, and shall exclude any matters disclosed as a result of Developer's investigations under the Purchase Agreements.

(a) CURC is a duly formed California non-profit corporation. CURC has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

(b) The persons executing any instruments for or on behalf of CURC have been authorized to act on behalf of CURC and this Agreement is valid and enforceable against CURC in accordance with its terms and each instrument to be executed by CURC pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against CURC in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other party is required in connection with the valid execution and delivery of and compliance with this Agreement by CURC.

(c) CURC has taken all requisite action and obtained all requisite consents for agreements or matters to which CURC is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

(d) The entering into and performance by CURC of the transactions contemplated by this Agreement will not violate or breach any agreement, covenant or obligation binding on CURC.

(e) There are no suits, administrative proceedings or governmental actions or investigations pending or threatened against or affecting CURC or the Property that would prevent CURC from meeting any of its obligations under this Agreement.

CURC shall notify the Developer within twenty (20) days of becoming aware of any facts or circumstances which are contrary to the representations and warranties contained in this Section 5.2. In the event such facts or circumstances are materially adverse to the Developer's completion of the transaction contemplated by this Agreement, following notice to CURC and a reasonable opportunity to cure, in no event less than thirty (30) days, the Developer shall have the right to terminate this Agreement. CURC agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to the Developer) and hold the Developer and its employees, partners, directors, officers, affiliates, agents and representatives harmless from and against any and all third party losses, claims, demands, damages, costs and expenses of whatever nature relating to or

arising out of a breach of CURC's representations and warranties set forth in this Agreement, including without limitation reasonable attorneys' fees and costs incurred in connection therewith or to enforce this indemnity agreement.

**Section 5.3 Representations and Warranties of the Developer.** Developer makes each of the representations and warranties set forth in this Section 5.3 based only on Developer's actual current knowledge as of the date of this Agreement. As used herein, the phrase "**to Developer's actual current knowledge**" shall mean to the present, personal, subjective knowledge of the officers, employees, representatives and/or agents of Developer that carry out the terms of this Agreement, with no investigation or inquiry and no duty or obligation to investigate or inquire.

(a) The Developer is a duly formed California limited liability company, lawfully entitled to do business in the State of California and the City. The Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of the Developer have the power, right and authority to bind the Developer.

(b) The Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby.

(c) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which the Developer is a party or by which the Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order of any court or governmental body applicable to the Developer or to the Property, including, without implied limitation, the contractor licensing requirements of the California Business and Professions Code.

(d) The persons executing any instruments for or on behalf of the Developer have been authorized to act on behalf of the Developer and this Agreement is valid and enforceable against the Developer in accordance with its terms and each instrument to be executed by the Developer pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against the Developer in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other party is required in connection with the valid execution and delivery of and compliance with this Agreement by the Developer.

(e) The Developer possesses sufficient experience and ability to develop and operate the Project.

(f) The Developer shall notify Sellers within twenty (20) days of becoming aware of any facts or circumstances which are contrary to the representations and warranties contained in this Section 5.3. In the event such facts or circumstances are materially adverse to the transaction contemplated by this Agreement, following notice to the Developer and a reasonable opportunity to cure, in no event less than thirty (30) days, Sellers shall have the right

to terminate this Agreement. The Developer agrees to indemnify, protect, defend (with legal counsel reasonably acceptable to Sellers) and hold the Seller Parties harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature relating to or arising out of a breach of the Developer's representations and warranties set forth in this Agreement, including without limitation reasonable attorneys' fees and costs incurred in connection therewith or to enforce this Agreement.

## ARTICLE VI

### DEFAULTS, REMEDIES AND TERMINATION

#### Section 6.1 Defaults - General.

(a) Subject to any extensions of time provided for in this Agreement, including for Unavoidable Delays, failure or delay by any Party to perform any term or provision of this Agreement shall constitute a default under this Agreement ("**Event of Default**"); provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from a non-defaulting Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion, such Party shall not be deemed to be in default under this Agreement; provided, however, that where any other time limit for the completion of such cure, correction or remedy is specifically set forth in this Agreement, then the cure must be completed solely within such specified time limit, which shall be instead of and not in addition to the time period otherwise provided in this Section 6.1.

(b) The non-defaulting Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failure or delays by any Party in asserting any of its rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that Party of its right to institute and maintain any action or proceeding that such Party may deem necessary to protect, assert or enforce any such rights or remedies.

Section 6.2 **Events of Default.** In addition to other acts or omissions of the Developer that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events prior to the Full Completion Date shall constitute an "**Event of Default**" under this Agreement and shall not be subject to the notice and opportunity to cure provisions of Section 6.1:

(a) Any default by the Developer of any of the non-monetary covenants or conditions of this Agreement that is not cured to Sellers' reasonable satisfaction within thirty (30) days following written notice of the default to the Developer from Sellers or the expiration of another applicable shorter cure period specifically set forth in this Agreement.

(b) Any failure of the Developer to satisfy or comply with any of the Developer's covenants or agreements set forth in ARTICLE V.

(c) Any representation, warranty or disclosure made to Sellers by the Developer regarding this Agreement or the Project is materially false or misleading.

(d) The Developer fails to make any payment or deposit of funds or provide any bond or other security required under this Agreement or to pay any other charge set forth in this Agreement following seven (7) days' written notice of such failure to the Developer from Sellers.

(e) Any material deviation in the work of construction or installation of the Project from the approved Scope of Development or Project Entitlements without the prior written approval of Sellers.

(f) The appearance of substantially defective workmanship or defective materials (i.e., below generally-accepted industry standards or constituting a violation of any law or regulation) if such defects are not substantially corrected within thirty (30) days after the Developer's receipt of written notice of such defective workmanship or materials from Sellers.

(g) The construction or installation of the Project is delayed or suspended for a period in excess of that permitted under Section 3.2; or the development of the Project does not proceed with due diligence, pursuant to the Schedule of Performance, subject to the occurrence of an Unavoidable Delay; or the Full Completion Date does not occur on or before the Outside Full Completion Date.

(h) There occurs any event of dissolution, reorganization or termination of the Developer that adversely and materially affects the operation or value of the Property or the Project, and such event is not corrected within five (5) days following written notice of such event to the Developer from Sellers.

(i) The occurrence of a Transfer (other than a Permitted Transfer), whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement.

(j) The Developer becomes insolvent or a receiver is appointed to conduct the affairs of the Developer under state or federal law;

(k) The Developer's legal status as a California limited liability company authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated.

### **Section 6.3 Legal Actions.**

(a) Any Party may institute a legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of Riverside, California, in any other appropriate court within the County of Riverside, California, or in the United States District Court for the Central District of California.

(b) The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to such laws' conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Cathedral City, County of Riverside, California.

**Section 6.4 Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by any 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 another Party.

**Section 6.5 Developer Indemnification of Sellers.**

(a) Indemnity. In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement and to the fullest extent permitted by law, the Developer agrees to indemnify, defend (upon written request by Sellers and with counsel reasonably acceptable to Sellers) and hold harmless each and all of the Seller Parties from and against all Claims that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by:

(1) Any act, omission, fault or negligence, whether active or passive, of the Developer or the Developer's officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement or any work to be performed by any such person related to this Agreement, the Property, or the Project; or

(2) Any authority or obligation exercised or undertaken by the Developer under or pursuant to this Agreement; or

(3) Any breach or default in performance of any obligation of the Developer under this Agreement.

(b) Strict Liability. The indemnification obligation of the Developer shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more of the Seller Parties. The indemnification obligations of the Developer shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against a Seller Party was proximately caused by the negligence or willful misconduct of the Seller Party. In such event, however, the Developer's indemnification obligations to all other Seller Parties shall be unaffected.

(c) Independent of Insurance Obligations. The Developer's indemnification obligations pursuant to this Section 6.5 shall not be construed or interpreted as in any way restricting, limiting, or modifying the Developer's insurance or other obligations under this Agreement and is independent of the Developer's insurance and other obligations under this Agreement. The Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Developer's indemnification obligations under this Agreement.



(d) Attorney Fees. The Seller Parties shall be entitled to recover their reasonable attorney fees and actual costs incurred in enforcing the Developer's indemnification obligations pursuant to this Section 6.5.

(e) Survival of Indemnification and Defense Obligations. The Developer's indemnification and defense obligations pursuant to this Section 6.5 shall survive the expiration or earlier termination of this Agreement, until all Claims against any of the Seller Parties involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statute of limitations.

(f) Independent Duty to Defend. The Developer's duty to defend the Seller Parties is separate and independent of the Developer's duty to indemnify the Seller Parties. The duty to defend includes Claims for which the Seller Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Developer or the Seller Parties have been determined. The duty to defend applies immediately, regardless of whether the Seller Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Developer and Sellers that the Seller Parties be entitled to obtain summary adjudication or summary judgment regarding the Developer's duty to defend the Seller Parties at any stage of any Claim or suit within the scope of this Section 6.5.

**Section 6.6 Developer Covenant to Defend this Agreement.** The Developer acknowledges that the City is a "public entity" and/or a "public agency" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages that may result to the Developer from any third-party legal actions related to Sellers' approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by Sellers is determined to have occurred. If a third-party files a legal action regarding Sellers' approval of this Agreement or the pursuit of the activities contemplated by this Agreement, Sellers may terminate this Agreement on thirty (30) days advance written notice to the Developer of Sellers' intent to terminate this Agreement, referencing this Section 6.6, without any further obligation by Sellers to perform the terms of this Agreement and without any liability to the Developer resulting from such termination, unless the Developer unconditionally agrees to indemnify and defend Sellers, with legal counsel acceptable to Sellers, against such third-party legal action, within thirty (30) calendar days following receipt of Sellers' notice of intent to terminate this Agreement, including without limitation paying all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such agreement between Sellers and the Developer must be in a separate writing and reasonably acceptable to Sellers in both form and substance. Nothing contained in this Section 6.6 shall be deemed or construed to be an express or implied admission that Sellers may be liable to the Developer or any other person for damages or other relief alleged from any alleged or established failure of Sellers to comply with any statute, including, without limitation, CEQA.

Section 6.7 **Insurance.** The Developer, to protect the Seller Parties against any and all claims and liability for death, injury, loss and damage resulting from the Developer's actions in connection with this Agreement, the Property and the Project, shall secure and maintain the insurance coverage required by this Section 6.7, without limiting any insurance coverage required to be obtained or maintained by the Developer pursuant to any other document associated with this Agreement. The Developer's obligations under this Section 6.7 will commence on the Close of Escrow under the Purchase Agreements and continue until the Full Completion Date, subject to the provisions of Section 6.7(d).

(a) Commercial General Liability Insurance. Commercial General Liability Insurance coverage, including, but not limited to, premises-operations, contractual liability (specifically covering all indemnity and defense obligations of the Developer pursuant to this Agreement), products-completed operations hazards, personal injury (including bodily injury and death), and broad form property damage for liability arising out of the construction and installation of the Project and/or the Developer's operation of the Property and/or the Project. The commercial general liability insurance coverage shall have minimum limits for bodily injury and property damage liability of TWO MILLION DOLLARS (\$2,000,000) each occurrence and/or FOUR MILLION DOLLARS (\$4,000,000) aggregate.

(b) Contractors' General Liabilities Insurance. At all times during the construction or the installation of the Project, the Developer shall require that each contractor and sub-contractor performing work on the Project maintain Commercial General Liability Insurance coverage with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate to protect the Developer during the construction and installation of the Project from claims involving bodily injury and/or death and damage to the property of others.

(c) Endorsements. The Commercial General Liability Insurance coverages required in Section 6.7(a) and Section 6.7(b) shall include an endorsement naming the Seller Parties as additional insured for liability arising out of or relating to this Agreement or the construction or installation of the Project.

(d) Extended Reporting Period. If any of the insurance coverages required under this Agreement are written on a claims-made basis, such insurance policy shall provide an extended reporting period continuing through the fifth (5<sup>th</sup>) anniversary of the Full Completion Date. The requirements of this subparagraph (d) shall survive any expiration or termination of this Agreement.

(e) General Requirements. All of the insurance coverage required under this Section 6.7 shall be maintained by the Developer or its contractors and shall not be reduced, modified, or canceled without, at least, thirty (30) calendar days prior written notice to Sellers. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Seller Parties. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy. All insurance to be obtained and maintained by the Developer and other Persons referenced under this

Section 6.7 shall be issued by a company or companies listed in the then current “Best’s Key Rating Guide” publication with a minimum of an “A:VII” rating and be admitted to conduct business in the State of California by the State of California Department of Insurance. The Developer shall cause each of the carriers issuing any insurance policy obtained or maintained in satisfaction of the insurance requirements of this Agreement to waive any right of subrogation that such carrier may have or acquire in the future against any or all of the Seller Parties in a form acceptable to Sellers.

(f) Delivery of Certificate, Policy, and Endorsements. Within five (5) business days following the Close of Escrow under the Purchase Agreements, the Developer shall deliver to Sellers all endorsements required by this Section 6.7 and original certificates of insurance for each insurance policy required to be obtained and maintained by the Developer under this Section 6.7, executed by an authorized agent of the insurer or insurers, evidencing compliance with the liability insurance requirements of this Agreement. All policies of insurance and endorsements required under this Section 6.7 are subject to Sellers’ review and reasonable approval. Additionally, if Developer elects or is required to obtain additional policies of insurance by any lender or other party, Developer will cause those policies to be endorsed to name the Seller Parties as additional insureds in accord with this Section 6.7.

(g) Insurance Independent of Indemnification. The insurance requirements set forth in this Section 6.7 are independent of the Developer’s indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Developer’s indemnification or other obligations or to limit the Developer’s liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude Sellers from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

## ARTICLE VII

### GENERAL PROVISIONS

Section 7.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

Section 7.2 **Parties to the Agreement.** The Parties to this Agreement are the City, CURC, and the Developer. The City of Cathedral City in its general police power capacity is not a Party to this Agreement, although it is an intended third party beneficiary of the covenants set forth in ARTICLE IV and of any other covenant or provision which expressly provides that the City of Cathedral City is benefitted thereby.

**Section 7.3 Restrictions on Change in Management or Control of the Developer and Assignment or Transfer.**

(a) The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to Sellers. The Developer further recognizes and acknowledges that Sellers have relied and are relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement.

(b) The Developer shall promptly notify Sellers in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in Control of the Developer, as well as any and all changes in the interest or the degree of Control of the Developer by any such person, of which information the Developer or any of its partners, members, shareholders or officers are notified or may otherwise have knowledge or information. This Agreement may be terminated by Sellers or Sellers may exercise any other remedy available to Sellers under the terms of this Agreement, if, prior to the Full Completion Date, there is any Transfer, whether voluntary or involuntary (other than such changes occasioned by the death or incapacity of any individual) that has not been approved in writing by Sellers prior to the time of such Transfer; provided, however, that (i) Sellers shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to completely cure such default and submit evidence of the satisfactory completion of such cure to Sellers, in a form and substance reasonably satisfactory to Sellers.

(c) Except as permitted in this Section 7.3, prior to the Full Completion Date, the Developer shall not cause or allow any Transfer other than a Permitted Transfer without the prior written approval of Sellers. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to Sellers and that a Transfer is for all practical purposes a transfer or disposition of the responsibilities of the Developer with respect to this Agreement, the Property and/or the Project and, therefore, Transfers are only allowed in accordance with the provisions of this Section 7.3 or as Permitted Transfers.

(d) Except as expressly permitted in this Agreement, the Developer represents to Sellers that it has not made, and agrees that it will not create or suffer to be made or created, any Transfer other than a Permitted Transfer voluntarily, involuntarily or by operation of law, without the prior written approval of Sellers, until after the Full Completion Date. Any Transfer made in contravention of this Section 7.3 shall be voidable at the election of Sellers and, if voided, shall be deemed to be an Event of Default by the Developer, whether or not the Developer knew of or participated in such Transfer.

(e) Sellers may, in its sole and absolute discretion, approve in writing any other Transfer requested by the Developer, provided the proposed transferee can satisfactorily demonstrate successful experience in the development, ownership, operation, and management of a development of the same type as the Project and expressly assumes in writing all of the obligations of the Developer under this Agreement. All instruments and other legal documents proposed to effect any proposed Transfer (including a Permitted Transfer) shall be submitted to Sellers for review no less than thirty (30) calendar days prior to the Transfer and Sellers' written

approval or disapproval shall be provided to the Developer within thirty (30) calendar days following Sellers' receipt of the Developer's request.

**Section 7.4 Notices, Demands and Communications Between the Parties.**

(a) Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper and effective only if in writing and transmitted to the principal office of the City, CURC, or the Developer (as applicable) as designated in Section 7.4(b) by one or more of the following methods: (i) messenger for immediate personal delivery, (ii) a nationally recognized overnight delivery service or (iii) registered or certified United States Mail, postage prepaid, return receipt requested. Such written notices, demands or communications may be sent in the same manner to such other addresses as any Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 7.4. Rejection, other refusal to accept or the inability to deliver a notice, demand or communication because of a changed address of which no notice was given, shall be deemed receipt of the notice, demand or communication.

(b) The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

To the Developer: Cathedral Canyon Development LLC  
Attn: Eric Keillor  
2429 W. Coast Highway, Suite 210  
Newport Beach, CA 92663

With courtesy copy to: Imhoof Law  
Attn: Steven B. Imhoof  
175 S. Harwood Street  
Orange, CA 92866

To the City: City of Cathedral City  
Attn: City Manager  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

With courtesy copy to: Burke, Williams & Sorensen, LLP  
Attn: Eric S. Vail  
1600 Iowa Avenue, Suite 250  
Riverside, CA 92507-7426

To CURC:

City Urban Revitalization Corporation  
Attn: Executive Director  
68-700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

With courtesy copy to:

Gresham Savage Nolan & Tilden, PC  
Attn: Kevin K. Randolph  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408

**Section 7.5 Conflict of Interest.** No member, official or employee of Sellers having any conflict of interest, direct or indirect, related to this Agreement, the Property or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

**Section 7.6 Warranty Against Payment of Consideration for Agreement.** The Developer 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 7.6, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

**Section 7.7 Non-Liability of Sellers' Officials and Employees.** No Seller Party shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by Sellers under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms or conditions of this Agreement, except as may arise from the gross negligence or willful acts of such Seller Party.

**Section 7.8 Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to business days of the City.

**Section 7.9 Sellers Attorneys' Fees and Costs.** For the purposes of this Agreement, all references to reasonable attorneys' fees and costs in reference to the Seller Parties are intended to include, but not be limited to, the salaries, benefits and costs of those outside attorneys and law firms retained by Sellers as City Attorney or as general or special counsel (as applicable).

**Section 7.10 Unavoidable Delay; Extension of Time of Performance.** Performance by any Party under this Agreement shall not be considered to be in default if the default is due to an Unavoidable Delay. Any Party claiming an Unavoidable Delay must notify the other Parties in writing: (a) within ten (10) days after such Party knows of any such Unavoidable Delay; and (b) within five (5) days after such Unavoidable Delay ceases to exist. To be effective, any notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the

occurrence of the Unavoidable Delay by the Parties not claiming the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an Unavoidable Delay shall exercise its best efforts to cure the condition causing the Unavoidable Delay within a reasonable time. Each Party expressly agrees that adverse changes in any Party's economic conditions or in the general economy, changes in market conditions or demand, a Party's inability to obtain financing, or changes affecting the economic assumptions of any Party that may have provided a basis for entering into this Agreement shall not constitute an Unavoidable Delay or otherwise delay, discharge or excuse a Party's obligations under this Agreement. All Parties expressly assume the risk of adverse financial, economic or market changes, whether or not foreseeable.

**Section 7.11 Real Estate Commissions.** With respect to transactions involving the sale, lease or other disposition of all or any portion of the Project or Property occurring after the Close of Escrow under the Purchase Agreements, Sellers shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to the Property, the Project, or this Agreement and the Developer shall pay (or be responsible for ensuring the payment of) all such fees and commissions.

**Section 7.12 Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

**Section 7.13 Attorneys' Fees.** If any Party hereto files any action or brings any action or proceeding against any other Party arising out of this Agreement, or is made a party to any action or proceeding brought by a third party, then as between the Developer and Sellers, the prevailing Party shall be entitled to recover as an element of its costs of suit, and not as damages, its costs of suit, expert fees, consultant costs, and reasonable attorneys' fees as fixed by the court in such action or proceeding or in a separate action or proceeding brought to recover such fees and costs.

**Section 7.14 Entire Agreement.**

(a) This Agreement shall be executed in four (4) counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement includes twenty-six (26) pages and six (6) exhibits, which constitute the entire understanding and agreement of the Parties regarding the Property, the Project and the other subjects addressed in this Agreement.

(b) This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all oral or written negotiations or previous agreements between the Parties with respect to the Property, the Project and the other subjects addressed in this Agreement.

(c) None of the terms, covenants, restrictions, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property and this Agreement shall continue in full force and effect before and after any such conveyances.

(d) All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

**Section 7.15 Survival of Indemnity Obligations.** All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement and the issuance and recordation of the Certificate of Completion.

**Section 7.16 No Effect on Eminent Domain Authority.** No term or provision of this Agreement or of any agreement described or referenced in this Agreement shall operate to diminish, preclude, condition or otherwise affect in any manner the City of Cathedral City's power of eminent domain.

*[Signatures follow on next pages]*



**SIGNATURE PAGE  
TO  
CATHEDRAL CANYON PERFORMANCE AGREEMENT**

IN WITNESS WHEREOF, the City, CURC, and the Developer have executed this Cathedral Canyon Performance Agreement by and through the signatures of their duly authorized representative(s) set forth below:

**CITY**

CITY OF CATHEDRAL CITY, a California  
charter city and municipal corporation,  
exercising its responsibilities for affordable  
housing assumed from the former  
Redevelopment Agency for the City of  
Cathedral City

By: \_\_\_\_\_  
Name: Charles P. McClendon  
Its: City Manager  
Dated: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Eric S. Vail, City Attorney  
Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Tracey Martinez, City Clerk  
Dated: \_\_\_\_\_

*[Signatures follow on next page]*

**SIGNATURE PAGE  
TO  
CATHEDRAL CANYON PERFORMANCE AGREEMENT (Cont.)**

**CURC**

CITY URBAN REVITALIZATION  
CORPORATION, a California nonprofit  
corporation

By: \_\_\_\_\_  
Charles P. McClendon  
Executive Director  
Dated: \_\_\_\_\_

**DEVELOPER**

CATHEDRAL CANYON DEVELOPMENT  
LLC, a California limited liability company

By: \_\_\_\_\_  
Eric Keillor  
Managing Member  
Dated: \_\_\_\_\_

APPROVED TO AS TO LEGAL FORM:

GRESHAM SAVAGE NOLAN & TILDEN,  
a professional corporation

By: \_\_\_\_\_  
Peter Derbonne  
Managing Member  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin K. Randolph  
Dated: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Property**

All that certain real property located in the City of Cathedral City, County of Riverside, State of California, as more particularly described as follows:

Lot 1: 7 Parcels (approximately 53,459 square feet)  
APNs: 687-212-001 through 005, 019, 026

Lot 2: 2 Parcels (approximately 34,194 square feet)  
APNs: 687-199-001 and 002

Lot 3: 7 Parcels (approximately 47,906 square feet)  
APNs: 687-212-009 through 011 and 021 through 024

Lots 127 through 131, inclusive, together with Lots 142 through 147, inclusive of Cathedral City, as per map filed in Book 13, at Pages 24 through 26, inclusive, of Maps, Records of said Riverside County.

Together with any underlying fee interest in that portion of Grove Street, shown as Lot "II" on said map, abutting said lots.

Containing 1.722 acres gross, or 1.998 acres gross including the abutting portion of Grove Street.

(Assessor Parcels 687-196-001 through 006, and 687-198-001 through 006)

End of Legal Description

**EXHIBIT B-1**  
**Scope of Development**

The Project shall consist of the following minimum elements:

Subject to possible future revisions as described in Section 3.6 of the Performance Agreement, the Project shall consist of a mixed-use development of 7,000 to 11,000 SF of commercial (retail or restaurant) space and 120 to 160 residential units.

**EXHIBIT B-2**  
**Conceptual Site Plan**

*[Attached behind this cover page]*



# CONCEPTUAL SITE PLAN

CATHEDRAL CITY  
CATHEDRAL CITY, CA

IMG CONSTRUCTION  
MANAGEMENT



JZMK  
PARTNERS

17027 2017-07-28

**EXHIBIT C**  
**Schedule of Performance**

<b>COMPLETION DATES</b>	<b>MILESTONE</b>	<b>CROSS-REFERENCE TO PURCHASE &amp; SALE AGREEMENTS</b>
Monday, October 25, 2017	Deadline for Execution of Performance Agreement <i>[PSA Sections 5.3]</i>	Within 90 days following the expiration of the Due Diligence Period.
Tuesday, March 20, 2018	Deadline to extend March 30, 2018 Closing Date if desired by Buyer (with additional required deposit). <i>[PSA Section 5.1]</i>	Extension Notice to be delivered (with additional deposit) no later than 10 days before Closing Date.
*Friday, March 23, 2018	Delivery of Closing Statement. <i>[PSA Section 6.4]</i>	Not less than 5 calendar days prior to Close of Escrow.
*Tuesday, March 27, 2018	Seller delivers Grant Deed & additional documents to Escrow Agent. <i>[PSA Sections 5.5 &amp; 6.5]</i>	Not less than 3 days prior to Close of Escrow.
*Tuesday, March 27, 2018	Buyer delivers balance of Purchase Price, additional funds and documents to Escrow Agent. <i>[PSA Sections 5.6 &amp; 6.5]</i>	Not less than 3 days prior to Close of Escrow.
*Friday, March 30, 2018	Close of Escrow. <i>[PSA Section 5.1]</i>	March 30, 2018 (assuming Developer <b>does not</b> extend Close of Escrow 6 months with increased Deposit).
Monday, October 1, 2018	Close of Escrow <i>[PSA Section 5.1]</i>	October 1, 2018 (assuming Developer <b>does</b> extend Close of Escrow 6 months with increased Deposit).
Wednesday, January 2, 2019	Commencement of Construction	Within nine (9) months following the Close of Escrow, but no later than January 2, 2019 (assuming

	<i>[Performance Agreement Section 2.1(d)]</i>	Developer <b>does not</b> extend Close of Escrow 6 months with increased Deposit).
Monday, July 1, 2019	Commencement of Construction <i>[Performance Agreement Section 2.1(d)]</i>	Within nine (9) months following the Close of Escrow, but no later than July 1, 2019 (assuming Developer <b>does</b> extend Close of Escrow 6 months with increased Deposit).
*Monday, March 30, 2020	Completion of Construction. <i>[Performance Agreement Section 3.3]</i>	Within 24 months of Close of Escrow (assuming Developer <b>does not</b> extend Close of Escrow 6 months with increased Deposit).
*Wednesday, September 30, 2020	Completion of Construction. <i>[Performance Agreement Section 3.3]</i>	Within 24 months of Close of Escrow (assuming (Developer <b>does</b> extend Close of Escrow 6 months with increased Deposit).

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\* Subject to six-month extension if Developer exercises its extension rights under Section 5.1 of the Purchase Agreement.



**EXHIBIT D**  
**Form of Notice of Agreement**

*[Attached behind this cover page]*

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

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(Space Above Line For Use By Recorder)

[Recordation of this Document Is Exempt From Fees Payable to the Recorder Under Government Code Section 27383]

**NOTICE OF AGREEMENT**

**CATHEDRAL CANYON PERFORMANCE AGREEMENT**

**TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE** that as of [REDACTED], 2017, (i) the City of Cathedral City, a California charter city and municipal corporation, exercising its responsibilities for affordable housing assumed from the former Redevelopment Agency for the City of Cathedral City (“**City**”); (ii) City Urban Revitalization Corporation, a California nonprofit corporation (“**CURC**”); and (iii) Cathedral Canyon Development LLC, a California limited liability company (“**Developer**”), entered into an agreement entitled “Cathedral Canyon Performance Agreement” (“**Agreement**”). City and CURC may be collectively referred to in this Agreement as “**Sellers**.” A copy of the Agreement is on file with the City Clerk and is available for inspection and copying by interested persons as a public record of at the City of Cathedral City’s offices located at 68-700 Avenida Lalo Guerrero, Cathedral City, CA 92234, during the City of Cathedral City’s regular business hours.

The Agreement affects the real property described in **Exhibit A** attached to this Notice of Agreement (“**Property**”). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain covenants running with the land of the Property and other agreements between the Developer and Sellers affecting the Property.

THIS NOTICE OF AGREEMENT is dated as of [REDACTED], 2018, and has been executed on behalf of the Developer and Sellers by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

**SIGNATURE PAGE  
TO  
NOTICE OF AGREEMENT**

IN WITNESS WHEREOF, the City, CURC, and the Developer have executed this Cathedral Canyon Performance Agreement by and through the signatures of their duly authorized representative(s) set forth below:

**CITY**

CITY OF CATHEDRAL CITY, a California  
charter city and municipal corporation,  
exercising its responsibilities for affordable  
housing assumed from the former  
Redevelopment Agency for the City of  
Cathedral City

By: \_\_\_\_\_  
Name: Charles P. McClendon  
Its: City Manager  
Dated: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Eric S. Vail, City Attorney  
Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Tracey Martinez, City Clerk  
Dated: \_\_\_\_\_

*[Signatures follow on next page]*

**SIGNATURE PAGE  
TO  
NOTICE OF AGREEMENT (Cont.)**

**CURC**

CITY URBAN REVITALIZATION  
CORPORATION, a California nonprofit  
corporation

By: \_\_\_\_\_  
Charles P. McClendon  
Executive Director  
Dated: \_\_\_\_\_

**DEVELOPER**

CATHEDRAL CANYON DEVELOPMENT  
LLC, a California limited liability company

By: \_\_\_\_\_  
Eric Keillor  
Managing Member  
Dated: \_\_\_\_\_

APPROVED TO AS TO LEGAL FORM:

GRESHAM SAVAGE NOLAN & TILDEN,  
a professional corporation

By: \_\_\_\_\_  
Peter Derbonne  
Managing Member  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin K. Randolph  
Dated: \_\_\_\_\_

**[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

This Notary Acknowledgement is attached to a document entitled **NOTICE OF 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)

This Notary Acknowledgement is attached to a document entitled **NOTICE OF 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)

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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)

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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)



EXHIBIT "A"  
TO  
NOTICE OF AGREEMENT

Legal Description of the Property

All that certain real property located in the City of Cathedral City, County of Riverside,  
State of California, as more particularly described as follows:

*[To come]*

End of Legal Description

**EXHIBIT E**  
**Form of Official Action of Developer**

[To be attached behind this cover page]

## CERTIFICATION OF AUTHORITY

The undersigned members of **Cathedral Canyon Development LLC**, a California limited liability company ("**Cathedral Canyon**"), do certify that we are all of the members of Cathedral Canyon and that there are no other members.

We further certify that the following named person, individually:

[REDACTED]

is the sole managing member of Cathedral Canyon and is authorized and empowered for and on behalf of and in the name of Cathedral Canyon to execute and deliver that certain "**Cathedral Canyon Performance Agreement**" ("**Agreement**"), reference dated as of [REDACTED], 2017, and entered into between (i) the City of Cathedral City, a California charter city and municipal corporation, exercising its responsibilities for affordable housing assumed from the former Redevelopment Agency for the City of Cathedral City ("**City**"); (ii) City Urban Revitalization Corporation, a California nonprofit corporation ("**CURC**"); and (iii) Cathedral Canyon, and all other documents to be executed by Cathedral Canyon in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of Cathedral Canyon pursuant to the Agreement. City and CURC may be collectively referred to in this Agreement as "**Sellers**."

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until Sellers shall have received notice in writing from Cathedral Canyon of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of Cathedral Canyon; that these certifications are now in full force and effect; and that there is no provision in any document under which Cathedral Canyon is organized and/or that governs Cathedral Canyon's continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

Cathedral Canyon LLC, Members:

Date: \_\_\_\_\_, 2017  
\_\_\_\_\_  
[Name]

Date: \_\_\_\_\_, 2017  
\_\_\_\_\_  
[Name]

Date: \_\_\_\_\_, 2017  
\_\_\_\_\_  
[Name]

Date: \_\_\_\_\_, 2017  
\_\_\_\_\_  
[Name]

EXHIBIT E