

**PURCHASE AND SALE AGREEMENT
(APN 0228-301-51)**

This PURCHASE AND SALE AGREEMENT (“**Agreement**”) is dated as of the _____ date of _____, 2024 (“**Effective Date**”), and is entered into by and between the SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY, a public agency created under California Health and Safety Codes (“**Seller**”), and CITY OF FONTANA, a municipal corporation (“**Buyer**”). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a “**Recital**”):

RECITALS

A. Seller owns certain real property located in the City of Fontana, California, as further described in Exhibit “A” attached to this Agreement (“**Premises**”), which is adjacent to the Property;

B. The Premises was inadvertently not listed on Seller’s originally prepared Long Range Property Management Plan (“**LRPMP**”), which would have provided that the Premises is to be sold, and the Successor Agency to the Fontana Redevelopment Agency, as the Seller, is now seeking approval by the Countywide Oversight Board and the Department of Finance;

C. Buyer has made an offer to purchase the Premises from Seller for fair market value, and Seller desires to sell the Premises to Buyer pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS OF SELLER AND BUYER SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, SELLER AND BUYER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 **Definitions.** The following words, terms and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Agreement.** This Real Property Purchase and Sale Agreement and Joint Escrow Instructions by and between Seller and Buyer, including all of the attached exhibits.

1.1.2 **Business Day.** Monday through Friday, exclusive of Federal, State or City holidays.

1.1.3 **Buyer.** Defined in the initial paragraph of this Agreement.

1.1.4 **Buyer Title Policy.** A standard CLTA owners’ policy of title insurance

issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Premises vested in Buyer, subject only to Permitted Exceptions.

1.1.5 **City.** The City of Fontana, a California municipal corporation.

1.1.6 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.7 **Close of Escrow.** The first date on which the Escrow Agent files the Deed with the County for recording in the official records of the County.

1.1.8 **County.** The County of San Bernardino, California.

1.1.9 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.10 **Effective Date.** Defined in the initial paragraph of this Agreement.

1.1.11 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Premises from Seller to Buyer pursuant to this Agreement.

1.1.12 **Escrow Agent.** [INSERT ESCROW AGENT], or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.13 **Escrow Closing Date.** The earlier of: (a) on or before the thirtieth (30th) day after the Escrow Agent's receipt of written confirmation from both Seller and Buyer of the satisfaction or waiver of all other conditions precedent to the Close of Escrow; (b) _____; or (c) another date mutually agreed upon in writing between the Parties for the Close of Escrow, in the Parties' respective sole and absolute discretion.

1.1.14 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent's estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.15 **Escrow Default.** The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.16 **Escrow Opening Date.** The first date on which a copy of this Agreement signed by both Seller and Buyer is deposited with the Escrow Agent, as provided in Section 2.1.

1.1.17 **Event of Default.** The occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid or the bond or surety not provided;

(b) *Escrow Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted to the Escrow Agent;

(c) *Non-Monetary Default.* Any Non-Monetary Default that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of Notice of such Default, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.18 **Federal.** The federal government of the United States of America.

1.1.19 **FIRPTA Affidavit.** A certification that Seller is not a “foreign person” within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

1.1.20 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.21 **Government.** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal or otherwise) whether now or later in existence.

1.1.22 **Quitclaim Deed.** A deed conveying Seller’s interest in the Premises from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit “B”** attached to this Agreement.

1.1.23 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical wastes, toxic substance or related material, explosive, petroleum, petroleum product or any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called “superfund” or

“superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.24 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Premises or during transportation of any Hazardous Substance to or from the Premises, or that arises at any time from any construction, installation, use or operation or other activities conducted at, on, under or from the Premises, whether or not caused by a Party.

1.1.25 **Indemnify.** Where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.1.26 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.27 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.28 **Initial Deposit.** The amount listed as the Initial Deposit, if any, which shall be deposited with the Escrow Agent by Buyer on the Escrow Opening Date.

1.1.29 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Premises, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Premises, or relating to any taxes, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.30 **Legal Costs.** In reference to any Person, all reasonable costs and

expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to be reimbursed for its Legal Costs, including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.31 **LRPMP.** In 2013, the long range property management plan was prepared by Seller and subsequently approved by the Oversight Board and the California Department of Finance, in accordance with Health and Safety Code section 34191.5.

1.1.32 **Monetary Default.** Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond or surety required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.33 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement by a Party.

1.1.34 **Notice.** Any consent, demand, designation, election, notice or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

1.1.35 **Parties.** Collectively, Seller and Buyer.

1.1.36 **Party.** Individually, either Seller or Buyer, as applicable.

1.1.37 **Permitted Exception.** All of the following: (a) all items shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Premises; (d) this Agreement; (e) any existing improvements on the Premises, if any; (f) any other document or encumbrance expressly required or allowed to be recorded against the Premises pursuant to the terms of this Agreement.

1.1.38 **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.39 **Preliminary Report.** A preliminary report issued by the Title Company in contemplation of the issuance of the Buyer Title Policy, accompanied by copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.40 **Premises.** That certain real property specifically described in **Exhibit "A"** attached to this Agreement.

1.1.41 **Purchase Price.** The Purchase Price is Six Hundred Twenty Three Thousand Five Hundred Five Even Dollars (\$623,505).

1.1.42 **Real Estate Taxes.** All general and special real estate taxes (including taxes on fixtures and equipment, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed pursuant to a special taxing district, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever regarding the Premises that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises.

1.1.43 **Seller.** The Successor Agency to the Fontana Redevelopment Agency, a public corporation.

1.1.44 **State.** The State of California.

1.1.45 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.46 **Title Company.** [INSERT TITLE COMPANY], or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.47 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. **PURCHASE AND SALE OF PREMISES**

2.1 **Escrow.** Seller shall sell the Premises to Buyer and Buyer shall purchase the Premises from Seller, subject to the Permitted Exceptions, on the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Premises from Seller to Buyer and the purchase of the Premises by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open the Escrow with the Escrow Agent. Buyer shall cause the Escrow to be opened within two business (2) days following the Effective Date. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. The provisions of Section 3 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

2.2 **Payment of Purchase Price.** Buyer shall purchase the Premises from Seller for the Purchase Price, subject to the terms and conditions of this Agreement. Buyer shall pay the Purchase Price to Seller at the Close of Escrow in immediately available funds.

2.3 **Initial Deposit.** Buyer shall deliver the Initial Deposit to Escrow Agent on the Escrow Opening Date.

2.4 **Buyer's Approval of Title to Premises.** Buyer acknowledges and agrees that it

has received the Preliminary Report for the Premises and has approved the status of title to the Premises.

2.5 “AS-IS” Acquisition. Except for the representations and warranties set forth herein that expressly survive the Close of Escrow, the Close of Escrow shall evidence Buyer’s unconditional and irrevocable acceptance of the Premises in the Premises’ AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Premises (active, inactive or abandoned), the suitability of the Premises for Buyer’s intended use or any other use or the existence or absence of Hazardous Substances affecting the Premises and with full knowledge of the physical condition of the Premises, the nature of Seller’s interest in and use of the Premises, all laws applicable to the Premises and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Premises. The Close of Escrow shall further constitute Buyer’s representation and warranty to Seller that: (a) Buyer has had ample opportunity to inspect and evaluate the Premises and the feasibility of the uses and activities Buyer is entitled to conduct on the Premises; (b) Buyer is experienced in real estate development; (c) Buyer is relying entirely on Buyer’s experience, expertise and Buyer’s own inspection of the Premises in the Premises’ current state in proceeding with acquisition of the Premises; (d) Buyer accepts the Premises in the Premises’ condition as of the Close of Escrow; (e) to the extent that Buyer’s own expertise with respect to any matter regarding the Premises is insufficient to enable Buyer to reach an informed conclusion regarding such matter, Buyer has engaged the services of Persons qualified to advise Buyer with respect to such matters; (f) Buyer has received assurances acceptable to Buyer by means independent of Seller or Seller’s agents of the truth of all facts material to Buyer’s acquisition of the Premises; and (g) the Premises is being acquired by Buyer as a result of Buyer’s own knowledge, inspection and investigation of the Premises and not as a result of any representation made by Seller or Seller’s agents relating to the condition of the Premises, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Premises other than those expressly set forth herein.

3. **JOINT ESCROW INSTRUCTIONS**

3.1 Escrow Instructions. This Section 3 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Premises, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

3.2 Escrow Agent Authority. Seller and Buyer authorize Escrow Agent to:

3.2.1 **Charges.** Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow;

3.2.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

3.2.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

3.2.4 **Counterpart Documents.** Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one original of the same document.

3.3 **Buyer's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Premises from Seller on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions:

3.3.1 **Approval of Purchase and Sale by Oversight Board and DOF.** The purchase and sale of the Premises pursuant to this Agreement shall be submitted for approval by the Countywide Oversight Board (the "**Oversight Board**"), and following such approval and notification of the State Department of Finance, the State Department of Finance either approves the purchase and sale of the Premises or does not object within the timeframes set forth in California Health & Safety Code Section 34181(f).

3.3.2 **Title Policy.** Title Company is committed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

3.3.3 **Seller Escrow Deposits.** Seller deposits all of the items into Escrow required by Section 3.6;

3.3.4 **Settlement/Closing Statement.** Buyer reasonably approves Buyer's Escrow Closing Statement;

3.3.5 **Seller Pre-Closing Obligations.** Seller performs all of the material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

3.4 **Seller's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Premises to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent to such sale on or before the Escrow Closing Date:

3.4.1 **Approval of Purchase and Sale by Oversight Board and DOF.** The purchase and sale of the Premises pursuant to this Agreement shall be approved by the Oversight Board, and following such approval and notification of the State Department of Finance, the State Department of Finance either approves the purchase and sale of the Premises or does not object within the timeframes set forth in California Health & Safety Code Section 34181(f).

3.4.2 **Buyer Escrow Deposits.** Buyer deposits all of the items into Escrow required by Section 3.5;

3.4.3 **Settlement/Closing Statement.** Seller reasonably approves Seller's Escrow Closing Statement; and

3.4.4 **Buyer Pre-Closing Obligations.** Buyer performs all of the material obligations required to be performed by Buyer pursuant to this Agreement prior to Close of Escrow.

3.5 **Buyer's Escrow Deposits.** Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least one (1) Business Day prior to the Escrow Closing Date:

3.5.1 **Closing Funds.** All monetary amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow, all in immediately available funds;

3.5.2 **Escrow Closing Statement.** Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer; and

3.5.3 **Other Reasonable Items.** Any other money or documents required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not previously been delivered by Buyer.

3.6 **Seller's Escrow Deposits.** Seller shall deposit the following items into Escrow and, concurrently, provide a copy of each document (excluding the Deed) deposited into Escrow to Buyer, at least one (1) Business Day prior to the Escrow Closing Date:

3.6.1 **Quitclaim Deed.** The Deed signed by the authorized representative(s) of Seller in recordable form;

3.6.2 **Escrow Closing Statement.** Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

3.6.3 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form used by the Escrow Agent;

3.6.4 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

3.6.5 **Other Reasonable Items.** Any other money or documents required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not been previously delivered by Seller.

3.7 **Closing Procedure.** Upon Escrow Agent's receipt of written confirmation from

both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

3.7.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the following documents to be filed with the Recorder of the County for recording in the official records of the County regarding the Premises in the following order of priority at Close of Escrow: (a) the Deed; and (b) any other documents to be recorded regarding the Premises through the Escrow upon the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed with the Recorder of the County for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each conformed copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 3.7.1 shall establish the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior to junior interests, in the order provided in this Section 3.7.1;

3.7.2 **Funds.** Distribute all funds held by the Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer, respectively;

3.7.3 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

3.7.4 **Form 593.** File the Form 593 with the California Franchise Tax Board;
and

3.7.5 **Title Policy.** Obtain from the Title Company and deliver to Buyer the Buyer Title Policy issued by the Title Company.

3.8 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 3.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 3.8, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 3.8 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

3.9 Escrow Costs. Escrow Agent shall Notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both

Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Each party shall pay its own costs and expenses arising in connection with the Closing (including, without limitation, its own attorneys' and advisors' fees, charges, and disbursements), except the following costs (the "Closing Costs"), which shall be allocated between the parties as follows:

(a) Escrow fees and costs shall be paid one-half by Seller and one-half by Buyer;

(b) The cost of the Title Policy attributable to the standard coverage portion shall be paid by Seller;

(c) The cost of the Title Policy attributable to the extended coverage portion shall be paid by Buyer; and

(d) Buyer shall pay the cost of any documentary transfer taxes in connection with the recording of the Deed;

(e) All other closing fees and costs shall be charged to and paid by Seller and Buyer in accordance with customary practices in the County.

3.10 Allocation of Taxes. Real Estate Taxes relating to the Premises, if any, shall be prorated between Seller and Buyer as of Midnight on the date prior to the Close of Escrow.

3.11 Escrow Cancellation Charges. If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close for any reason other than the Default of either Buyer or Seller, Buyer and Seller shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any.

3.12 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

3.12.1 **Cancellation Instructions.** The Parties shall, within seven (7) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

3.12.2 **Return of Funds and Documents.** Within seven (7) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within seven (7) Business days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Escrow; (c) Escrow Agent shall, unless

otherwise provided in this Agreement, return to Buyer all funds deposited in Escrow by Buyer, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to Seller all funds deposited in Escrow by Seller, less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 3.11.

3.13 **Eminent Domain**. If any portion of the Premises or any interest in any portion of the Premises becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended eminent domain action or proceedings in the nature of eminent domain, Seller shall give Buyer Notice of such occurrence and Buyer shall have the option, exercisable within ten (10) Business Days after receipt of such Notice from Seller, to either: (a) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 3.12; or (b) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer, at the Close of Escrow, any right of Seller to receive any eminent domain award attributable to the Premises acquired by Buyer pursuant to this Agreement.

4. **REMEDIES**

4.1 **BUYER'S RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES.**

4.1.1 **ELECTION OF REMEDIES.** DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY SELLER UNDER THIS AGREEMENT PRIOR TO THE CLOSING, BUYER SHALL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER THE INITIAL DEPOSIT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE AMOUNT SET FORTH IN THIS SECTION 4.1.1, ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY BUYER.

4.1.2 **WAIVER OF RIGHTS.** SELLER AND BUYER EACH ACKNOWLEDGE AND AGREE THAT SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT IF SELLER WERE TO BE LIABLE TO BUYER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE AMOUNT SPECIFIED IN CLAUSE "(2)" OF SECTION 4.1.1. ACCORDINGLY, SELLER AND BUYER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 4.1.1 ARE REASONABLE AND SHALL BE BUYER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER. BUYER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES

AGAINST SELLER ARISING FROM OR RELATING TO THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 4.1.1.

4.1.3 **STATE CIVIL CODE SECTION 1542 WAIVER.** BUYER ACKNOWLEDGES THE PROTECTIONS OF STATE CIVIL CODE SECTION 1542 REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4.1.4 **ACKNOWLEDGMENT.** BY INITIALING BELOW, BUYER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF STATE CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 4.1.

Initials of Authorized
Buyer Representative(s)

4.1.5 **STATEMENT OF INTENT.** STATE CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF BUYER TO BE BOUND BY THE LIMITATIONS ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 4.1, AND BUYER HEREBY RELEASES ANY AND ALL CLAIMS AGAINST SELLER FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT UNDER THIS AGREEMENT BY SELLER, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO BUYER AS OF THE EFFECTIVE DATE.

4.2 **LIQUIDATED DAMAGES TO SELLER.** IF THE CLOSE OF ESCROW DOES NOT OCCUR ON OR BEFORE THE ESCROW CLOSING DATE DUE TO BUYER'S DEFAULT, THEN SELLER SHALL RETAIN THE INITIAL DEPOSIT, AS LIQUIDATED DAMAGES. THE AMOUNT OF THE INITIAL DEPOSIT IS THE REASONABLE ESTIMATE BY THE PARTIES OF THE DAMAGES SELLER WOULD SUFFER FROM SUCH DEFAULT, IT BEING AGREED THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE AND IMPRACTICABLE, TO FIX THE EXACT AMOUNT OF DAMAGE THAT WOULD BE INCURRED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER. UPON SUCH A DEFAULT BY BUYER, ESCROW SHALL BE CANCELED AND THE PARTIES SHALL PROCEED IN ACCORDANCE WITH SECTION **Error! Reference source not found.** IN ADDITION, IF ALL OR ANY PORTION OF THE INITIAL DEPOSIT

HAS BEEN DEPOSITED INTO ESCROW BY BUYER, ESCROW AGENT IS HEREBY IRREVOCABLY INSTRUCTED BY BUYER AND SELLER TO DISBURSE THE INITIAL DEPOSIT TO SELLER AS LIQUIDATED DAMAGES FOR BUYER'S DEFAULT UNDER THIS AGREEMENT AND FAILURE TO COMPLETE THE PURCHASE OF THE PREMISES, PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, ET. SEQ.

4.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 4.1 or Section 4.2, as applicable.

4.4 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 either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

5. GENERAL PROVISIONS

5.1 Notices, Demands and Communications Between the Parties. Any and all Notices submitted by one Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 5.1. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 5.1. Notice shall be deemed 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 the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 5.1. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Buyer:

City of Fontana


To Seller:

Successor Agency to the Fontana
Redevelopment Agency
8492 Wheeler Avenue
Fontana, California 92335
Attention: Executive Director

With a copy to:

Best Best & Krieger LLP
2855 E. Guasti Road, Suite 400
Ontario, CA 91761
Attn: Ruben Duran

5.2 Relationship of Parties. The Parties each intend and agree that Seller and Buyer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

5.3 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive 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 consecutive Business Days.

5.4 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. 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 County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County of San Bernardino or in the United States District Court with jurisdiction in the County.

5.5 Unavoidable Delay; Extension of Time of Performance. Performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The extension of time for performance under this Agreement resulting from the occurrence of an Unavoidable Delay shall commence on the date of occurrence of the condition causing the Unavoidable Delay and shall in no event be longer than ninety (90) days after written notice is received by a Party from the other Party of the occurrence of such an Unavoidable Delay; provided, however, that failure to perform by a Party due to the occurrence of an Unavoidable Delay shall not constitute a breach or Default of this Agreement. Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

5.6 Real Estate Commissions. Seller shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. Buyer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

5.7 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

5.8 Effect. 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.

5.9 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

5.10 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Premises.

5.11 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

5.12 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

5.13 Counterparts. This Agreement may be signed in multiple counterpart originals each of which is deemed to be an original and all of which shall constitute one agreement.

5.14 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronically shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures on following page]

**SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT**

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

SELLER:

SUCCESSOR AGENCY TO THE FONTANA REDEVELOPMENT AGENCY, a public corporation

By: _____

Executive Director

Attest:

By: _____

Secretary to the Successor Agency

Approved as to form:

Best Best & Krieger LLP

By: _____

Successor Agency Counsel

BUYER:

CITY OF FONTANA, a municipal corporation

By: _____

Name: _____

Title: _____

Attest:

By: _____

City Clerk

Approved as to form:

Best Best & Krieger LLP

By: _____

City Attorney

**EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT**

Premises Legal Description

EXHIBIT A

EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
Quitclaim Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Exempt from Recording Fees – Government Code section 27383

QUITCLAIM DEED

The undersigned declares:

Documentary Transfer Tax is:

County of San Bernardino; City of Fontana

Assessor's Parcel Nos.: [SEE EXHIBIT "1"]

- computed on full value of interest or property conveyed, or
- computed on full value of liens or encumbrances remaining at time of sale.
- Unincorporated Area X City of Fontana

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Successor Agency to the Fontana Redevelopment Agency, a public corporation
("Grantor"),

hereby remise, release and quitclaim to

City of Fontana, a municipal corporation ("Grantee"),

the following described real property legally described in Exhibit "1" attached to and by this reference incorporated into this Quitclaim Deed.

Dated: _____

SUCCESSOR AGENCY TO THE FONTANA
REDEVELOPMENT AGENCY, a public
corporation

By: _____

Executive Director

**EXHIBIT "1"
TO
QUITCLAIM DEED**

Legal Description