

## **ORDINANCE NO.**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA APPROVING DEVELOPMENT AGREEMENT (DA NO. 21-003) BETWEEN THE CITY OF FONTANA AND SAGE CITRUS FONTANA, LLC WHICH PROVIDES A PUBLIC BENEFIT FEE IN THE AMOUNT OF \$376,180.00 DOLLARS**

**WHEREAS**, the City Council ("City Council") of the City of Fontana ("City") is authorized by California Government Code sections 65864 et seq. and section 30-102 of the City's Development Code ("Development Code") to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

**WHEREAS**, City has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

**WHEREAS**, the City of Fontana, a California Municipal Corporation ("City") and Citrus and Slover, LLC., ("Developer") entered into a Development Agreement ("DA"), dated as of January 25, 2022 for reference purposes only, whereby Developer is to acquire fee title to certain real property (the "Property"); and

**WHEREAS**, Developer's interest in the Property, including that interest to be conveyed pursuant to the DA, constitutes a legal or equitable interest in real property pursuant to California Government Code section 65865; and

**WHEREAS**, Developer proposes the development of the Property for a commercial retail center consisting of an anchor building and various outlying building pads totaling approximately 53,740 square feet on the Property, entailing front end investment in the planning, entitlement and development of the Property to achieve the goals of the City's General Plan ("General Plan"), as further described and conditioned in the Development Agreement (collectively, such development shall be referred to herein as the "Project"); and

**WHEREAS**, City desires the timely, efficient, orderly and proper development of the Project in furtherance of the goals of the General Plan; and

**WHEREAS,** City has found that the development agreement attached hereto as Exhibit A and incorporated herein by reference ("Development Agreement") is consistent with City's General Plan and it has been reviewed and evaluated in accordance with Section 30-102 of the City Development Code; and

**WHEREAS,** City has determined that by entering into the Development Agreement: (i) City will promote orderly growth and quality development on the Property in accordance with the goals and policies set forth in the General Plan and (ii) City will benefit from increased employment, industrial opportunities created by the Project for residents of the City; and

**WHEREAS,** on January 25, 2022, the City Council introduced this Ordinance through a first reading of this Ordinance; and

**WHEREAS,** An Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for this project in accordance with Section 15072 of the California Environmental Quality Act (CEQA) and Section 6.04 of the 2019 City of Fontana Local Guidelines for Implementing the CEQA. Based on the information in the IS/MND, all significant impacts anticipated as a result of project implementation would be less than with mitigation incorporated, and a Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the Planning Commission's consideration; therefore, a Notice of Determination has been prepared.

**WHEREAS,** the terms and conditions of the Development Agreement have undergone review by City at publicly noticed hearings and have been found to be fair, just and reasonable and consistent with the General Plan. Further, City finds that: (i) the economic interests of the City's citizens and the public health, safety and welfare will be best served by entering into the Development Agreement; (ii) the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Property is located; (iii) the Development Agreement is consistent with the General Plan; (iv) the Development Agreement is in conformity with the public convenience, general welfare and good land use practice; (v) the Development Agreement will not be detrimental to the public health, safety and general welfare; and (vi) the Development Agreement will not adversely affect the orderly development or the preservation of property values for the Property or any other property.

**THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:**

**Section 1.** Based on the foregoing, the City of Fontana City Council adopts the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program in accordance with Section 15072 of the California Environmental Quality Act (CEQA) and Section 6.04 of the 2019 City of Fontana Local Guidelines for Implementing the CEQA.

**Section 1.** Pursuant to California Government Code sections 65865 et seq., the City Council hereby approves the development agreement, a copy of which is on file with the City Clerk and incorporated by reference herein attached as “Exhibit A” for entitled "Development Agreement No. 21-003 between Citrus and Slover, LLC, a California limited liability company and the City of Fontana a California municipal corporation.

**Section 2.** Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds this Ordinance promotes the public health, safety and welfare of the community because the Development Agreement will enable needed public improvements at the Property and the economic development of the Property will benefit the citizens of the City.

**Section 3.** The City Council hereby incorporates by reference the Recitals set forth herein and adopts those recitals as its own as though fully set forth in this Ordinance. Pursuant to California Government Code section 65867.5(b), and based on the entire record before the City Council, including all written and oral evidence presented to the City Council, the City Council hereby finds that the Development Agreement is consistent with the General Plan because the Development Agreement will result in the development of the Property at the intensity and density allowed under the General Plan and with the restrictions and standards set forth in the City's Municipal Code, and the Development Agreement.

**Section 4.** The City Clerk shall cause to be recorded with the San Bernardino County Recorder a copy of the executed Development Agreement at the time and in the manner provided for in the DA.

**Section 5.** This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage thereof, the Ordinance or a summary of the Ordinance shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter this Ordinance shall be in full force and effect.

**APPROVED and ADOPTED** this 25<sup>th</sup> day of January 25, 2022.

**READ AND APPROVED AS TO LEGAL FORM:**

---

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting on the 25<sup>th</sup> day of January, 2021, and was finally passed and adopted not less than five days thereafter on the 8th day of February, 2022 by the following vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

---

City Clerk of the City of Fontana

---

Mayor of the City of Fontana

**ATTEST:**

---

City Clerk

**EXHIBIT "A"**  
**DEVELOPMENT AGREEMENT**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City Clerk  
City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335

Record for the Benefit of  
the City of Fontana  
Exempt from Fees Pursuant to Government  
Code Section 6301

---

Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

By and Between

**THE CITY OF FONTANA**

a California Municipal Corporation

and

**Sage Citrus Fontana, LLC  
("Developer")**

San Bernardino County, California

**Development Agreement**  
**by and between the**  
**City of Fontana and Developer**  
**Relative to**  
**Citrus Crossroads.**

**THIS DEVELOPMENT AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF FONTANA a California municipal corporation (“City”), and Sage Citrus Fontana, LLC, a California limited liability company (“Developer”), pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (Section 65864, et seq. of the California Government Code) (“Development Agreement Law”) relating to Development Agreements.

**R E C I T A L S**

In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement Law (Section 65864, et seq. of the Government Code).

The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law, can assure property developers they may proceed with projects assured that approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc. will be available at the time development projects come online.

This Development Agreement relates to a Zoning and Development Code Amendment, Conditional Use Permits, and Tentative Parcel Map for the Citrus Crossroads commercial retail center, filed on March 24, 2021. The parties have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development of the Subject Property.

The means of attaining the aforementioned objectives and the public benefit to be received as a result of development of the Project (defined below) through this Agreement shall provide for the following:

Project includes construction and operation of the Citrus Crossroads commercial retail center, a new local-serving shopping center consisting of an anchor building and various outlying building pads.

Developer owns in fee, that certain real property located in the City of Fontana located at the northwest corner of Citrus Avenue and S Highland Avenue intersection (north side of South Highland Avenue, south of SR-210, west of Citrus Avenue, and east of Oleander Avenue), tax assessor parcel numbers 0240-011-03, -05, -06, -35, -38, -41, -42, and -44 (the “Subject Property”), and desires to create thereon the Citrus Crossroads commercial retail center, consisting of an anchor building and various outlying building pads (the “Project”).

City, in response to Developer’s applications, after public hearings and extensive environmental analysis, has granted the following entitlements:

By Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, amended the Fontana Zoning and Development Code for the Subject Property—specifically, figure and text amendments. The figure amendment is needed to change the planning area designation of the project site from Planning Area 1 to Planning Area 3 to allow for the mix of commercial retail uses associated with the Project. Specifically, this requires an amendment to Figure 1 (Fontana Auto Center Overlay District Planning Area Boundaries Map) of the Fontana Zoning and Development Code. Figure 1 would be amended to extend the boundary of Planning Area 3 to encompass the project site. Zoning text Amendments are also required to implement the Project, including amendments to the building and parking setback requirements and the pylon sign provisions.

By Resolution No. \_\_\_\_\_, effective \_\_\_\_\_, approved a Conditional Use Permit for the following use/activity: an ABC establishment, as the anchor tenant would be selling alcoholic beverages for offsite consumption.

By Resolution No. \_\_\_\_\_, effective \_\_\_\_\_, approved a Conditional Use Permit for the following use/activity: two drive-through fast food restaurants.

By Resolution No. \_\_\_\_\_, effective \_\_\_\_\_, approved a Tentative Parcel Map (TPM No. 20370) to consolidate the eight parcels that make up the Subject Property (Assessor Parcel Numbers 0240-011-03, -05, -06, -35, -38, -41, -42, and -44) into three legal parcels to ensure common ownership and maintenance of all Project components.

By Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, authorized the City to enter into this Development Agreement with Developer.

In support of the various entitlements described in paragraph 5 above, and in accord with the California Environmental Quality Act (CEQA) and State and City CEQA guidelines, City has certified as adequate and complete a final Mitigated Negative Declaration for the Zoning and Development Code Amendment, Conditional Use Permits, and Tentative Parcel Map and this Development Agreement.



Development of the Subject Property pursuant to the terms and conditions of this Agreement, Zoning and Development Code Amendment, Conditional Use Permits, and Tentative Parcel Map and the Mitigated Negative Declaration will provide for orderly growth and development consistent with the City's General Plan and other development policies and programs of the City.

On \_\_\_\_\_, 2021, the City Planning Commission, designated by City as the Planning Agency for purposes of Development Agreement review pursuant to Government Code Section 65867, considered this Agreement and recommended its approval to the City Council. The Planning Commission specifically found that this Agreement:

- (a) Is consistent with the objectives, policies, general land uses and programs specified in the General Plan;
- (b) Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Subject Property is located;
- (c) Is in conformity with public convenience, general welfare and good land use practice;
- (d) Will be beneficial to the health, safety and general welfare; and
- (e) Will not adversely affect the orderly development of property or the preservation of property values.

City and Developer have taken all actions mandated by and fulfilled all requirements set forth in Development Code Section 17.03.220.

Having duly considered this Agreement and having held duly noticed public hearings, City finds and declares that the provisions of this Development Agreement are consistent with the maps and text of the City's General Plan.

NOW, THEREFORE, the parties hereto agree as follows:

### **General Provision**

**The Project.** The Project includes construction and operation of the Citrus Crossroads commercial retail center, a new local-serving shopping center consisting of an anchor building and various outlying building pads. Total building square footage would be approximately 53,740 square feet. The anchor building would be single story and encompass approximately 40,100 square feet—it would be occupied by an anchor tenant in the grocery market business. The outlying building pads feature two inline single-story building pads that accommodate approximately 6,040 square feet of building space to be occupied by

smaller retail tenants; an approximately 3,000 square foot dental office; an approximately 2,400 square foot drive thru restaurant; and an approximately 2,200 square foot drive thru coffee shop. Other project components include vehicular access and circulation improvements (both on- and offsite); surface parking areas and drive aisles; pedestrian access and circulation improvements; various landscape, hardscape, and lighting improvements; site and tenant signage; and infrastructure and utility improvements.

**Subject Property.** The approximately 6.2-acre project site is situated along the north side of South Highland Avenue, south of State Route 210 (SR-210), east of Citrus Avenue, and west of Oleander Avenue. Regional access to the site is via SR-210 and local access is via South Highland and Citrus Avenues. The Subject Property is more legally described and depicted in **Exhibit “A”**, which is incorporated herein and made part of this Agreement.

**Definitions.** As used in the Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

“ **Adopting Ordinance** means Ordinance Number \_\_\_\_\_ entitled: \_\_\_\_\_” dated \_\_\_\_\_, and effective \_\_\_\_\_, which approves this Development Agreement as required by Government Code Section 65867.5.

**Assumption Agreement** means an agreement substantially conforming to the model assignment and assumption agreement attached as **Exhibit “C,”** or other agreement in a form reasonably approved by the City Attorney, executed by a Landowner with the City, expressly assuming various obligations relating to the development of the Project, or portion thereof.

**Certificate of Occupancy** means either a certificate issued after inspections by City authorizing a person or persons in possession of property to dwell or otherwise use a specific building or dwelling unit, including without limitation a temporary certificate of occupancy, or the final inspection if a formal certificate is not issued.

**CEQA** means the California Environmental Quality Act, Sections 21000, et seq., of the Public Resources Code of the State of California.

**City Manager** means the duly appointed City Manager for the City of Fontana.

**Council** means the duly elected legislative body governing the City of Fontana.

**Developer** means Sage Citrus Fontana, LLC, a California limited liability company, or its respective permitted successors in interest.

**Development Impact Fees** means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include the

following fees specified in Government Code Section 66477, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864 of Chapter 4 of the Government Code), or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code): processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for development approvals or for monitoring compliance with any development approvals granted or issued, including, without limitation, fees for zoning variances, zoning changes, use permits, building inspections, or building permits (“Processing Charges”); filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code; or fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

**Director** means the Planning Director for the City of City of Fontana.

**Effective Date** means the effective date of the Adopting Ordinance.

**Existing Land Use Regulations** mean the ordinances and resolutions adopted by the City Council of the City of Fontana in effect on the Effective Date, including the adopting ordinances and resolutions that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to, the General Plan, and the Zoning Ordinance and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, impact or Development Impact Fees (but only to the extent the Zoning Ordinance and other such regulations are not inconsistent with this Development Agreement and the Specific Plan). Existing Land Use Regulation does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain;

(f) the collection of Processing Charges.

**Mitigated Negative Declaration (MND)** means a detailed statement prepared under CEQA as defined in Section 15369.5 of the State Environmental Guidelines, and specifically the Mitigated Negative Declaration described in Recital 6 above.

**General Plan** means the General Plan of the City of Fontana, including the text and maps, as amended.

**Landowner** is a party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

**Project** means the anticipated development of the Subject Property as specified in paragraph 1.1 and as provided for in the provisions of this Agreement, including all other incorporated exhibits.

**Public Benefit Fee** means the monetary exaction (not a tax or special assessment) on the Developer as established in Section 2.3.

**Subject Property** means the property described in Section 1.2 and in Exhibit “A” hereto, or the remaining portions thereof after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

**Exhibits.** Exhibits to this Agreement are as follows:

Exhibit “A” Map of Subject Property and legal description

Exhibit “B” Terms of Development

Exhibit “C” Assignment and Assumption Agreement

Exhibit “D” Development Code Chapter 17.25, adopted by Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, and effective on \_\_\_\_\_, as amended.

**Incorporation of Recitals.** Recitals 1 through 10 are incorporated herein, including all Exhibits referred to in said Recitals. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 5, the provisions of Articles 1 through 5 shall prevail.

**Parties to Agreement.** The parties to this Agreement are:

**The City of Fontana.** A California municipal corporation and charter city, exercising general governmental functions and power. The principal office of the City is located at 8353 Sierra Avenue, Fontana, California.

**Sage Citrus Fontana, LLC.** Developer is a private enterprise that owns in fee, or has an equitable interest in, the Subject Property.

**Landowner.** From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released in accordance with the terms of this Agreement, shall be subject to the applicable provisions of this Agreement related to such retained portion of the Subject Property.

**Project Is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that City has no interest therein except as authorized in the exercise of its governmental functions.

**Term of Agreement.** This Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement, and shall continue in force for a period of ten (10) years thereafter (the “Initial Term”), unless extended or terminated as provided herein. The term of this Agreement may be extended for an additional five (5) years following expiration of the Initial Term (the “Extended Term” and with the Initial Term, the “Term”), provided the following have occurred:

- (a) Developer provides at least 180 days notice to City prior to expiration of the Initial Term;
- (b) Developer is not then in uncured default of this Agreement.

Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of City, Developer or Landowner.

**No Vested Rights.** During the Term of this Agreement, the development rights, obligations, terms, and conditions, including, without limitation, the Land Use Regulations or Development Impact Fees applicable to the Project, shall be those that may exist from time to time, and as may be amended and supplemented by the City from time to time. Except as otherwise provided herein, this Agreement shall provide no vested right to proceed.

**Consistency with General Plan/Finding of Special Public Benefit.** The City Council finds that the granting of entitlements for the Project and the execution and delivery and the terms and conditions of this Development Agreement are consistent with the text and maps of the General Plan.

**Assignment and Assumption.** Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation at any time during the Term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the Subject Property and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property at least thirty (30) days in advance of such action. Express written assumption by such purchaser, assignee or transferee, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such portion thereof sold, assigned or transferred in accordance with this Agreement (which shall include, without limitation, a requirement that the assignor, assignee and City execute an assignment and assumption agreement in substantially the form set forth in **Exhibit “C”**), shall relieve the Developer selling, assigning or transferring such interest of such obligations so expressly assumed.

**Covenants Running with the Land.** Each and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

**Amendment to Agreement (Developer and City).** Unless otherwise prohibited in this Agreement, this Agreement may be amended by mutual consent of the parties or their applicable successors in interest to the subject property, in writing, in accordance with the provisions of Government Code Section 65868; provided, however, that any amendment that relates to the Term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a public hearing and Council approval before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be approved by the City Manager or by the Council, with or without a public hearing, all at the City Manager’s sole discretion.

**Amendment to Agreement (Landowner and City).** This Agreement may also be amended, subject to the provisions of Government Code Section 65868 and Section 1.14 above, between a Landowner who has acquired a portion of the Subject Property from Developer and City as to the portions of the Subject Property then owned by Landowner. Whether a public hearing and Council approval is required to approve any amendment under this Section 1.15 shall be governed by the same rule as set forth in Section 1.14.

**Releases.** Developer, and any subsequent Landowner, shall be released from further obligations relating to the sold, assigned, or transferred Subject Property (or any portion thereof), provided that the buyer, assignee, or transferee expressly assumes the obligations under this Agreement pursuant to Section 1.12 contained hereinabove.

**Notices.**

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown by facsimile or email receipt after transmission by facsimile or email to the recipient named below. All notices shall be addressed as follows:

If to City:

City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335  
Attn: Shannon Yauchzee, Interim City Manager  
Phone: (909) 350-7654  
Fax: (909) 350-6613  
Email: [syauchzee@fontana.org](mailto:syauchzee@fontana.org)

With a copy to:

City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335  
Attn: Planning Director  
Email: [pnevins@fontana.org](mailto:pnevins@fontana.org)

If to Developer:

Sage Citrus Fontana, LLC  
c/o Sage Investco  
4340 Von Karman Ave, #110  
Newport Beach, CA 92660  
Attn: Ralph Deppisch  
Phone: (949) 705-0426  
Email: [Ralph@sageinvestco.com](mailto:Ralph@sageinvestco.com)

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a

different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

**Attorneys Fees.** If any action or proceeding is brought by any party against another for breach of this Agreement, including actions derivative from the performance of this Agreement, or to compel performance under this Agreement, the prevailing party shall be entitled to an award of its costs, including reasonable attorneys' fees and costs of experts.

**Recordation of Agreement.** The City Clerk of City shall, within ten (10) days after the execution of this Agreement, record this Agreement with the County Recorder, County of San Bernardino. If the parties to the Agreement or their successors in interest amend or cancel this Agreement as provided in Government Code Section 65868, or if the City terminates or modifies this Agreement as provided in Government Code Section 65865.1 for failure of the Developer or an applicable Landowner to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the County Recorder, in a form reasonably acceptable to the City Attorney.

**Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**Invalidity of Agreement/Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the effective date of the adopting ordinance, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement or any provision herein, the parties and any Landowner agree to cooperate with each other in good faith to defend said lawsuit, each party and any Landowners to be liable for its own legal expenses and costs. Notwithstanding the foregoing, City may elect to tender the defense of any lawsuit filed by a third person or entity to Developer and/or Landowner(s) (to the extent applicable thereto), and, in such event, Developer and/or such Landowner(s) shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit on grounds, which include, but are not limited to, non-monetary relief, without the consent of the City. The City shall act in good faith, and shall not unreasonably withhold consent to settle.

## **Project Development**



**Permitted Uses and Development Standards.** The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land for public purposes, shall be the Land Use Regulations contained in the Development Code, as may be amended from time to time. In the event of any conflict between this Agreement and any other Land Use Regulations, the terms and provisions of this Agreement shall prevail. The parties hereto intend hereby that this Agreement, together with all other exhibits attached hereto, serve as the definitive and controlling document for all subsequent actions, discretionary or ministerial, relating to the development of the Project.

**Development Impact Fees.** Except as provided otherwise in this Agreement, Development Impact Fees shall be paid in the amounts and at the times specified in Municipal Code Chapter 15.68, as amended or supplemented from time to time.

**Public Benefit Fee.** Within twelve (12) months of issuance of the first Certificate of Occupancy (as defined in section 1.2) for a building within the Project, Developer shall pay to the City a one-time public benefit fee equal to \$7.00 per square foot of actual Developer-constructed square footage on the Subject Property.

**Minor Modification.** Minor modifications from the approved exhibits may be approved in accordance with the provisions of the Development Code Section 17.03.250 and shall not require an amendment to this Agreement.

**Further Discretionary Actions.** Developer acknowledges that the Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, implementation of conditions of approval associated with discretionary land use approvals and monitoring and implementation of environmental mitigation measures, and CEQA review of individual phases of the Project as it builds out. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of City and any of its officers or officials in complying with or applying Land Use Regulations.

**Financing of Public Improvements.** As a condition of development approval, the Developer shall connect the Project on the Subject Property to all utilities necessary to provide adequate water, sewer, gas, electric, and other utility service to the Project and that the Developer shall contract with the City for City-owned or operated utilities for this purpose.

**Processing Charges.** Processing Charges that are adopted or revised during the Term of this Agreement shall apply to the Project.

**Public Works.** If Developer is required by this Agreement to construct any improvements that will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Developer shall perform such work in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction. Except in extraordinary circumstances, as reasonably determined by the City Manager, Developer or the applicable Landowner shall not be entitled to impact or other fee credits or reimbursement for supplemental or excess

capacity public improvements and that where such fee credits are granted to the Developer or the applicable Landowner, there shall be no “cross-category” credit of fees; credit shall only be applied to the category of fees in which the excess public improvements are classified.

**School Financing.** City and Developer acknowledge that the Fontana Unified School District has certain facilities needs related to serving the expected student population to be generated by new development. To the extent legally permissible, the Developer shall provide full mitigation for school impacts caused by the Project. The Developer shall comply with any ordinance or other mechanism approved by the City and the Fontana Unified School District. Any building permit that is issued after the adoption of a school impact ordinance for other plans approved by the City of Fontana shall comply with such requirement.

**Timing of Development.** The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of development determined by Developer. Accordingly, the timing, sequencing, and phasing of the development is solely the responsibility of Developer. In particular, and without limitation thereof, the City acknowledges that it will not unreasonably withhold or delay approval of any entitlements for development of the Subject Property or the construction of public improvements required therefore that are consistent with the terms and conditions of this Agreement.

**Dedication of Public Lands.** Except as otherwise provided herein, upon 30 days written notice, the Developer and any applicable Landowner agree(s) to dedicate any and all necessary road rights-of-way without expense to the City.

**Tentative Parcel Map.** Developer shall take all necessary steps to obtain approval and record the Parcel Map for the Project (the “Tentative Parcel Map”) pursuant to Article IV of Chapter 26 of the Fontana Municipal Code within two (2) years of the Effective Date of this Agreement (the “Tentative Parcel Map Approval Deadline”). Notwithstanding anything to the contrary in this Agreement, failure by the Developer to obtain such approval and facilitate recordation of same by the Tentative Parcel Map Approval Deadline shall result in automatic termination of this Agreement. Furthermore, notwithstanding anything to the contrary in this Agreement or in the Fontana Municipal Code, the Tentative Parcel Map Approval Deadline shall not be extended by amendment of this Agreement or otherwise.

**Construction of Anchor Tenant Building.** Developer shall take all necessary steps to obtain approval of plans for the construction of an approximately 40,000 square foot anchor tenant building (the “Anchor Tenant Building”) within nine months of the Effective Date of this Agreement. Upon approval of construction plans and issuance of all required permits, Developer shall diligently pursue construction and completion of the Anchor Tenant Building. Failure by the Developer to substantially complete construction of the Anchor Tenant Building within 15 months of the Effective Date of this Agreement shall result in automatic termination of this Agreement. Notwithstanding anything to the contrary contained herein, by written request of the Developer, City may extend the completion date should delays occur to the development and construction schedule that City deems to be outside of the control of the Developer.

**Section 2.14 Obligation and Rights of Mortgage Lenders.** The holder of any mortgage, deed of trust or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction for completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, and then subject to all of the terms and conditions of this Agreement.

**Section 2.15 Obligation to Develop Property.** Developer and any subsequent Landowner shall construct the Project, if at all, in accordance with the terms of the development set forth in **Exhibit “B”**, attached hereto and incorporated by reference herein.

### **Default**

**General Provisions.** Subject to extensions of time by mutual written consent and the notice requirements in this Section, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner written notice specifying the nature of the alleged default, and such allegedly defaulting party shall have thirty (30) days to cure such default. During any such thirty (30) day period, the party or Landowner charged shall not be considered in default of this Agreement for purpose of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or, in the event such default is not reasonably able to be cured in such thirty (30) day period, such cure is not being diligently pursued, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code Section 65868 and any regulations of the City implementing said Government Code Section. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Sections 65865, 65867, and 65868 and City regulations implementing said sections by the City within thirty (30) calendar days.

Following consideration of the evidence presented in said review before the City and an additional 30-day period to cure, either party alleging the default by the other party or Landowner

may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Landowner may only give such notice with respect to such a portion of the Subject Property in which Landowner holds an interest.

Evidence of default may also arise in the course of annual or special review of this Agreement pursuant to Government Code Section 65865.1 and in section 3.2 below. If either party or Landowner determines that a party or Landowner is in default following the completion of the normally scheduled periodic review, said party or Landowner may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) days or within such longer period specified in the notice, or the defaulting party or Landowner waives its right to cure such alleged default, this Agreement may be terminated by City as to the Developer or Landowner and the portion of the Subject Property in which the Developer or Landowner owns an interest.

Notwithstanding the foregoing or anything to the contrary in this Agreement, in the event City remains in default hereunder after expiration of the initial 30-day notice and cure period, Developer or Landowner, as applicable, shall have the right to immediately terminate this Agreement and/or institute legal proceedings.

#### **Annual and Special Reviews.**

(a) **Annual Reviews.** City shall, once every twelve (12) months during the Term of this Agreement, review the extent of good faith substantial compliance by Developer and/or Landowner with the terms of this Agreement. The City may charge reasonable fees as necessary to cover the costs of conducting the review. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Said review shall be diligently completed. A finding by City of good faith compliance by Developer and/or Landowner with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review.

(b) **Special Reviews.** The time for an annual review may be shortened or a special review called either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Recommendation of the Planning staff;
- (2) Affirmative vote of at least four (4) members of the Planning Commission; or
- (3) Affirmative vote of at least three (3) members of the City Council.

(c) **Review Procedure.** The City Manager shall begin the review proceeding by giving notice that the City intends to undertake a periodic or special review of Developer and/or

Landowner's good faith compliance with this Agreement to the Developer and/or Landowner. The City Manager shall give the notice at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. Notice of any review shall include the statement that any review may result in amendment or termination of this Agreement in the event the City determines, in its good faith discretion after such review, that Developer and/or Landowner is not in good faith compliance with this Agreement.

(d) intentionally deleted

(e) **Notice and Opportunity to be Heard.** The City shall provide, in accordance with the notice provisions in Section 1.17 hereof, Developer and Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least five (5) business days prior to any such review. Developer and Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council and, if the matter is referred to a City Planning Commission, also before said Commission.

(f) **Planning Commission Hearing.** The Planning Commission shall conduct a hearing at which the Developer and/or Landowner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Developer and Landowner.

(g) **Planning Commission Findings.** The Planning Commission shall determine upon the basis of substantial evidence and in its reasonable discretion whether or not the Developer and/or Landowner have, for the period under review, substantially complied in good faith with the terms and conditions of this Agreement.

(h) **Procedure Upon Findings.**

- (1) If the Planning Commission finds and determines on the basis of substantial evidence and in its reasonable discretion that the Developer and Landowner have substantially complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.
- (2) If the Planning Commission finds and determines on the basis of substantial evidence and in its reasonable discretion that the Developer and Landowner have not substantially complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

- (3) The Developer or Landowner may appeal a determination pursuant to subparagraph (h)(2) to the City Council in accordance with the City's rule for consideration of appeals in zoning matters.
- (i) **Proceedings Upon Modification or Termination.** If, upon a finding under subparagraph (h)(3) above, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to the Developer and/or Landowner of its intention so to do. The notice shall contain:
  - (1) The time and place of the hearing;
  - (2) A statement as to whether or not the City proposes to terminate or to modify this Development Agreement, and if modification is proposed, the proposed modifications; and
  - (3) Other information that the City reasonably considers necessary to inform the Developer and Landowner of the nature of the proceeding.
- (j) **Hearing on Modification or Termination.** At the time and place set for the hearing on modification or termination, the Developer and/or Landowner shall be given an opportunity to be heard. The Developer and/or Landowner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Developer and/or Landowner. If the City Council finds, in its reasonable discretion based upon substantial evidence in the administrative record, that the Developer and/or Landowner has not substantially complied in good faith with the terms and conditions of this Agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council is final.

**Default by Developer/Withholding of Building Permit.** City may, at its discretion, refuse to issue a building permit for any structure within the geographical confines of the Subject Property as the same is defined at the time of said application, if Developer or Landowner thereof has failed and refuses to complete any requirement enumerated therefor in substantial accordance with the terms of this Agreement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Subject Property if the permit applicant owns or controls any property subject to this Agreement and such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Agreement as determined pursuant to Section 3.1.

**Joint and Several Obligations.** If at any time during the Term of this Agreement the Subject Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

**Default by City.** Notwithstanding anything to the contrary in this Agreement, in the event City does not accept, review, approve or issue necessary development permits or entitlements for use in a timely fashion as defined by this Agreement, or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, City agrees that Developer or Landowner shall not be obligated to proceed with or complete the Project or any phase thereof, nor shall resulting delays in Developer performance constitute grounds for termination or cancellation of this Agreement.

**Cumulative Remedies of Parties/Waiver of Right to Damages.** In addition to any other rights or remedies, City, Developer and any Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement, provided however, that the City and Developer waive any and all rights hereunder to seek consequential or punitive damages as a result of any such breach or alleged breach.

**Enforced Delay, Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party or Landowner hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, global pandemic, government shutdowns, governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation enacted by the state or federal government or litigation. Any extension of time for such cause shall be notified in writing by the affected party to the other party and shall be for the period of the enforced delay or longer, as may be mutually agreed upon, but in no case shall the cumulative extensions add more than five years to the effective period of this Agreement.

## **Termination**

**Termination upon Completion of Development.** This Agreement shall terminate upon the earlier of (i) expiration of the Initial Term or the Term if extended or (ii) when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall promptly record a notice of such termination in a form reasonably satisfactory to the City Attorney that this Agreement has been terminated.

**Effects upon Termination on Developer Obligations.** Termination of this Agreement, or the release of the Subject Property or any portion thereof from this Agreement, shall not affect any of the Developer's obligations to comply with the General Plan and the terms and conditions of any applicable zoning, or other land use entitlements approved with respect to the Subject Property, any other covenants of any other development specified in this Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees, or taxes.

**Effects upon Termination on City.** Upon termination of this Agreement pursuant to Section 3.2 herein, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination

(provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to the then existing planning and zoning law) and the City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

THIS SPACE INTENTIONALLY LEFT BLANK



**IN WITNESS WHEREOF**, this Agreement was executed by the parties thereto on the dates set forth below.

**CITY OF FONTANA**  
**a California municipal corporation**

By: \_\_\_\_\_  
Shannon Yauchzee, Interim City Manager,  
City of Fontana

ATTEST:

\_\_\_\_\_  
Tonia Lewis, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**Sage Citrus Fontana, LLC**  
**a California limited liability company**

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

Its: \_\_\_\_\_

## **LIST OF EXHIBITS**

Exhibit “A” Map of subject property and legal description

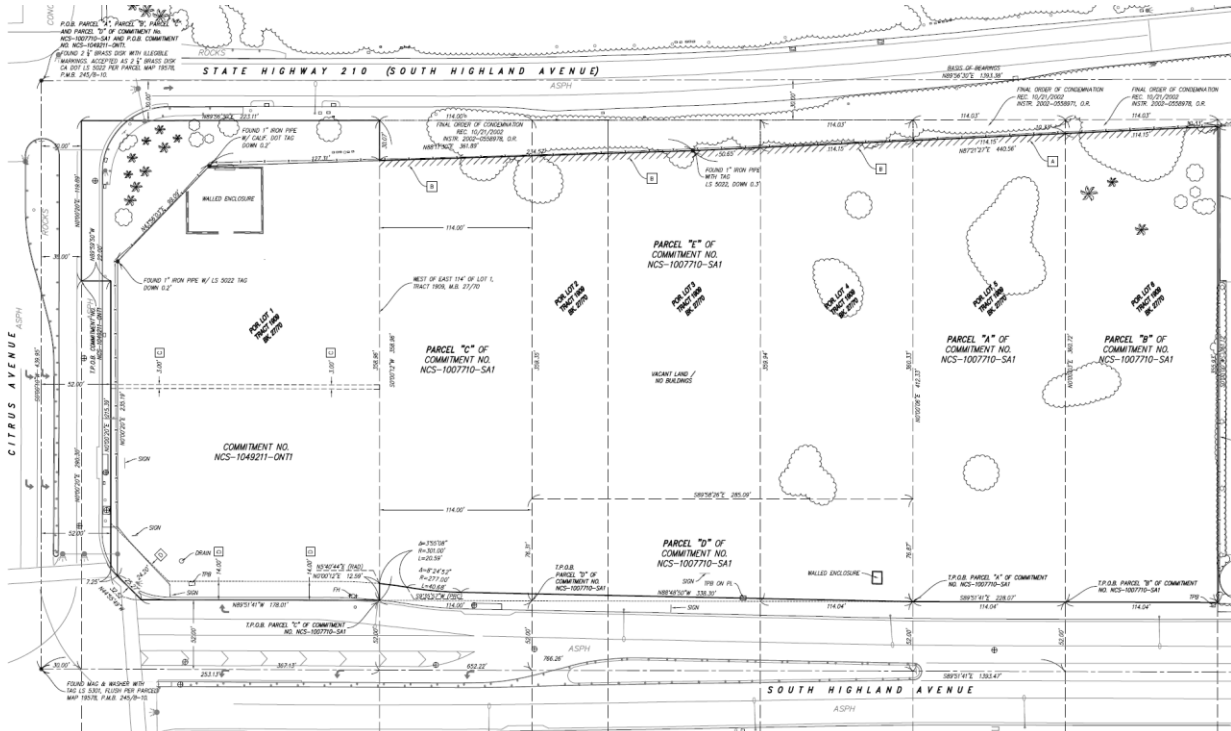
Exhibit “B” Terms of Development

Exhibit “C” Assumption Agreement

Exhibit “D” Development Code Amendment to Chapter 30 adopted by Ordinance No. \_\_\_\_, dated \_\_\_\_, 2022, and effective on \_\_\_\_, 2022, as amended.

## EXHIBIT "A"

### Map of Subject Property and Legal Description



## LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ASSESSOR PARCEL NUMBERS: 0240-011-35, 0240-011-38, 0240-011-41, 0240-011-42, 0240-011-44, 0240-011-03, 05 & 06

## **EXHIBIT “B”**

### **TERMS OF DEVELOPMENT OF THE PROPERTY LOCATED AT**

\_\_\_\_\_, ASSESSOR’S PARCEL NUMBER \_\_\_\_-\_\_\_\_-\_\_\_\_

1. Any development of the Subject Property shall be the Citrus Crossroads commercial retail center, consisting of an anchor building and various outlying building pads.
2. Total building square footage is approximately 53,740 square feet. The anchor building is to be single story and encompass approximately 40,100 square feet, to be occupied by an anchor tenant in the grocery market business. The outlying building pads shall feature two inline single-story building pads that accommodate approximately 6,040 square feet of building space in total: one 3,000 square foot dental office, one 2,400 square foot drive thru restaurant and one 2,200 square foot drive thru coffee shop.
3. The project shall be developed in compliance with the Development Code (Chapter 30 of the City’s Municipal Code) of the City of Fontana.
4. The development standards, including but not limited to, building height, building setbacks, maximum lot coverage, minimum open space, and minimum parking requirements, shall be those contained in the entitlements that are detailed in Recital 5 of the Agreement and the Mitigated Negative Declaration.

**EXHIBIT “C”**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Above Space for Recorder’s Use

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_, a California \_\_\_\_\_ (“Assignor”) and \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”).

**RECITALS**

A. Assignor is the owner of that certain real property located in the City of Fontana, State of California, more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (the “Property”).

B. Assignor and the City of Fontana (“City”) entered into that certain Development Agreement, dated as of \_\_\_\_\_, 2021 (the “Development Agreement”) with respect to the Property.

C. In connection with its sale or other transfer of the Property to Assignee, Assignor desires to assign all of its rights and obligations with respect to the Property under the Development Agreement to Assignee and Assignee desires to accept such assignment and assume such obligations under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions herein set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment and Delegation. Concurrent with Assignor’s conveyance or transfer of the Property to the Assignee, Assignor hereby assigns to Assignee all of Assignor’s right, title and interest under the Development Agreement with respect to the Property (the “Assigned

Interests”) and delegates to Assignee all of Assignor’s duties and obligations under the Development Agreement with respect to the Property (the “Delegated Obligations”).

2. Acceptance and Assumption. Assignee hereby accepts Assignor’s assignment to Assignee of the Assigned Interests and assumes and shall perform the Delegated Obligations as if named as an original party to the Development Agreement and upon execution of the attached Consent and Release by City the Assignee shall be deemed a party to the Development Agreement and a “Landowner” as defined therein.

3. Assignor’s Warranties. Assignor warrants to Assignee that (a) the Development Agreement is in full force and effect and unmodified, (b) Assignor has full and lawful authority to assign its interest in the Development Agreement with respect to the Property in accordance with the terms of the Development Agreement, and (c) to Assignor’s actual knowledge, as of the date of this Agreement, there is no default by Assignor under the Development Agreement or any circumstances which by lapse of time or after notice would be a default by Assignor under the Development Agreement. These warranties shall survive the execution of this Agreement.

4. Joint and Several Liability. If the term “Assignee” refers to more than one corporation, partnership, trust, association, other entity or individual, their liability under this Agreement shall be joint and several and they assume the Delegated Obligations jointly and severally.

5. Entire Agreement. This Agreement embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Agreement, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Agreement.

6. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

7. Binding Effect. The terms and conditions of this Agreement will inure to the benefit of, and will be binding on, the successors, assigns, personal representatives, heirs, executors, devisees, administrators, trustees and legatees of Assignor and Assignee.

8. Exhibit. Exhibit A, Legal Description of Property, is attached hereto and incorporated herein as though fully set forth herein.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first set forth above.

ASSIGNOR:

\_\_\_\_\_,  
\_\_\_\_\_

By:  
Name:  
Title:

ASSIGNEE:

a \_\_\_\_\_

By:

Its:

## CONSENT AND RELEASE

The City of Fontana ("City") hereby consents to the foregoing Assignment and Assumption Agreement and hereby releases Assignor as provided below on the express condition that City's consent shall not be deemed a consent to any subsequent assignment, but rather any subsequent assignment shall require the consent of City (or approval of the assumption agreement to be signed by the proposed assignee if such assumption agreement is not substantially in the form of the above Assignment and Assumption Agreement) pursuant to and in accordance with the terms and conditions of the Development Agreement.

Subject to the foregoing condition, City hereby releases Assignor from all of the obligations of Developer and/or Landowner under the Development Agreement, including without limitation the Delegated Obligations.

THE CITY OF FONTANA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT “D”**

**DEVELOPMENT CODE AMENDMENT**

**Adopted by Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_**

**(Attached on following page(s))**