

**RESOLUTION PC NO. 2023-\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FONTANA APPROVING DESIGN REVIEW NO. 21-009R1-R1 TO MODIFY THE FAÇADE COLOR SCHEME AND A POP-OUT ON BUILDING 10 (NORTH ELEVATION) FOR A CONDOMINIUM PROJECT LOCATED ON THE SOUTH SIDE OF FOOTHILL BOULEVARD AND WEST OF BANANA AVENUE (APNS: 0230-391-01) PURSUANT TO A CATEGORICAL EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINES SECTION 15332.**

**WHEREAS**, APNs: 0230-031-10, -11, -12, and -13 were a part of the original incorporation from San Bernardino County in 1952; and

**WHEREAS**, on March 15, 2021, the City of Fontana (“City”) received Design Review Application No. 21-009 (“Design Review No. 21-009”) from MCO Development for a site and architectural review on the development of a 71-unit multi-family condominium project and Tentative Tract Map Application No. 21-003 (TTM No. 20382) (“Tentative Tract Map No. 21-003 (TTM No. 20382)”) at the location of 13995 Foothill Boulevard—south side of Foothill Boulevard and west of Banana Avenue (APNs: 0230-031-10, -11, -12 and -13); and

**WHEREAS**, on September 21, 2021, the Planning Commission carefully considered all information, evidence and testimony pertaining to the project presented at its Public Hearing and approved Design Review No. 21-009 and Tentative Tract Map No. 20382; and

**WHEREAS**, on January 6, 2022, the City received Design Review Application No. 21-029R1 (“Design Review No. 21-029R1”) from MCO Development to modify the previous design by replacing the three-story condominium units with two story condominium units, adding a new unit to Building No.16 and three (3) additional parking spaces to the site plan as well as adjusting certain buildings to add a new unit; and

**WHEREAS**, on August 16, 2022 the Planning Commission carefully considered all information, evidence and testimony pertaining to the modifications presented at its Public Hearing and approved Design Review No. 21-009R1; and

**WHEREAS**, on September 20, 2023, the City received Design Review Application No. 21-009R1-R1 (Design Review No. 21-009R1-R1) from Shelly Jordan, on behalf of Brightsky Residential (“Applicant”) requesting approval to revise the façade color scheme from the natural dark tone color scheme to a cooler tone color scheme and to modify the pop-out on building ten (10) to widen it as to align with the roof eave; and

**WHEREAS**, Conditions of Approval have been prepared and are attached hereto as **Exhibit “A”** for Design Review No. (DR) No. 21-009R1-R1; and

**WHEREAS**, the project is under construction and is meeting all development

standards previously approved; and

**WHEREAS**, the City of Fontana wishes to protect and preserve the quality of the life throughout the City, through effective land use and planning; and

**WHEREAS**, based on the review of Staff, the project is Categorical Exempt pursuant to Section No. 15332, Class 32, (Infill Development) of the California Environmental Quality Act (CEQA), and Section No. 3.22 of the 2019 Local Guidelines for Implementing the California Environmental Quality Act; and

**WHEREAS**, all of the notices required by statute and the City Municipal Code have been given as required; and

**WHEREAS**, the owners of property within 660 feet of the proposed project site were notified via public hearing notice mailer prior to the Public Hearing; and a notice of the public hearing was published in the local *Fontana Herald* newspaper on October 27, 2023, posted at City Hall, and onsite at the project site; and

**WHEREAS**, on November 7, 2023, a duly noticed public hearing on Design Review (DR) No. 21-009R1-R1 was held by the Planning Commission to consider testimony and evidence presented at the Public Hearing held with respect hereto; and

**WHEREAS**, the Planning Commission carefully considered all information, evidence and testimony pertaining to the project presented at its Public Hearing on November 7, 2023; and

**WHEREAS**, all other legal prerequisites to the adoption of this resolution have occurred.

**NOW, THEREFORE**, the Planning Commission RESOLVES as follows:

**Section 1. Recitals.** The above recitals are true, correct and incorporated herein by reference.

**Section 2. CEQA.** Based on the foregoing, the City of Fontana Planning Commission hereby determines that the project is Categorical Exempt pursuant to Section No. 15332, Class No. 32 (In-Fill Development), and Section No. 3.22 of the Local 2019 Guidelines for Implementing the California Environmental Quality Act.

**Section 3. Design Review.** The City of Fontana Planning Commission hereby makes the following findings for Design Review No. 21-009R1-R1 in accordance with Section No. 30-140 "Findings for approval" of the Fontana Zoning and Development Code:

Finding No. 1: **That proposal is consistent with the General Plan, Zoning and Development Code, and any applicable Specific Plan.**

Findings of Fact: The application is for the revision of a 72-unit multi-family condominium project that is consistent with the General Plan designation for the project site, which is Walkable Mixed-Use Downtown and Corridors (WMXU-1). The WMXU-1 land use designation category is described by the General Plan as a land use category that is intended “to provide for the creation of areas that allow residents and visitors to walk, bike, and take transit to other uses for work, study, shopping, entertainment, recreation, and civic activities, and to provide compact residential development within walking distance of planned public transit stops and neighborhood shopping areas.” The General Plan sets the framework for the City of Fontana and is a document that provides the overall policies for development within the community and does not specifically regulate development standards.

The project is located in the Route 66 Gateway of the Form Based Code (FBC) zoning designation. The Route 66 Gateway district is an area that seeks to create a lively and walkable land use mix of residential and commercial uses. The modification to the color scheme and one modification to a pop-out for the previously approved 72-unit multi-family condominium development will meet all zoning and development standards set forth in the Zoning and Development Code and is consistent with the General Plan. The project site is not located in a Specific Plan.

Finding No. 2: **The proposal meets or exceeds the criteria contained in this chapter and will result in an appropriate, safe and desirable development promoting the public health, safety, and welfare of the community.**

Findings of Fact: The development complies with the City of Fontana Zoning and Development Code. There will be no changes to the overall on-site circulation from the previous approval (DRP No. 21-009R1). The request is for a modification to the color scheme façade and one pop-out on the elevation building (Building 10, north elevation).

The site improvements have been reviewed by the City’s Fire, Building and Safety, Engineering and Police Departments. The previous approval included a 26-foot-wide drive aisles as required by the Fire Department for buildings that are 2 stories and providing for two points of access. Street lighting and on-site lighting were included in the previous approval to provide ample visibility at night.

Finding No. 3: **The proposal, in its design and appearance is aesthetically and architecturally pleasing resulting in a safe, well-designed facility while enhancing the character of the surrounding neighborhood.**

Findings of Fact: The project has been designed to enhance and compliment the surrounding neighborhood. The architectural theme for the project is described as Modern Contemporary. The modifications to the color scheme will incorporate elements of the Modern Contemporary architectural style and the result is a high-quality architectural design appropriate and desirable for the surrounding neighborhood. The development will enhance the character of the surrounding neighborhood through attention to aesthetics and design.

Architectural relief utilized for the buildings consists of decorative window treatments, decorative lighting, varied roof lines, architectural “pop-outs,” and other features appropriate to the style. The use of a variety of colors and decorative shutters of a contrasting color will further add architectural diversity to each building. The proposed project enhances the surrounding neighborhood by developing four lots and incorporating architectural style that complements the surrounding homes. All buildings are designed with tile roofing material coordinated to match the color scheme of each elevation. Additionally, all garage doors will incorporate windows and the landscaping will utilize plants to complement the architecture of the building and the development as a whole.

Finding No. 4: **The site improvements are appropriate and will result in a safe, well-designed facility.**

Findings of Fact: The development complies with the City of Fontana Zoning and Development Code. Improvements including streets, sidewalks, drainage, and grading, will provide a safe and well-designed neighborhood.

The site improvements have been reviewed by the Fire, Building and Safety, and Engineering Departments. During the project review process, changes were made to the plans to ensure that the project is a well-designed project. There will be no changes to the previously approved street lighting, on-site lighting, and landscaping.

**Section 4. Approval.** Based upon the findings in Section 3, and subject to the Conditions of Approval attached hereto as **Exhibit A** and incorporated herein by reference as through fully set forth herein, the City of Fontana Planning Commission hereby approves Design Review No. 21-009R1-R1.

**Section 5. Resolution Regarding Custodian of Record:** The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at the Planning Department, 8353 Sierra Avenue, Fontana, CA 92335. This information is provided in compliance with Public Resources Code Section No. 21081.6.

**Section 6. Certification.** The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

**Section 7. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**Section 8. Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this Resolution that can be given effect without the invalid provision or application.

**PASSED, APPROVED, AND ADOPTED** by the Planning Commission of the City of Fontana, California, at a regular meeting held on this 7<sup>th</sup> day of November 2023.

**City of Fontana**

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Cathline Fort, Chairperson

**ATTEST:**

I, Ralph Thrasher, Secretary of the Planning Commission of the City of Fontana, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 7<sup>th</sup> day of November, by the following vote, to-wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Ralph Thrasher, Secretary

**EXHIBIT "A"**



**CITY OF FONTANA  
CONDITIONS OF APPROVAL**

**PROJECT:** Master Case No. (MCN) 21-029R1-R1                      **DATE:** November 7, 2023  
Design Review Project (DRP) No. 21-009R1-R1

**LOCATION:** Southside of Foothill Boulevard and west of Banana Avenue (APN: 0230-391-01)

**PLANNING DEPARTMENT:**

1. The rights and privileges granted by this project shall not become effective, nor shall the Applicant commence the use for which this project is granted, until both of the following have occurred:
  - A. All of the improvements, construction, alteration and other work set forth in this project have been completed and have been accepted by the City, as evidenced by the City's issuance of a Certificate of Occupancy or other document evidencing the City's final inspection and acceptance of the work; and
  - B. All other Conditions of Approval imposed by this project have been fulfilled.
2. The applicant shall defend, indemnify, protect and hold harmless the City of Fontana or its agents, officers, attorneys and employees from any and all actual or alleged claims, actions or proceedings against the City of Fontana or its agents, officers, attorneys or employees to attack, set aside, void, annul or seek monetary damages arising out of any challenge to the applicant's proposed project or to any approvals of the Planning Commission and/or City Council concerning this project, including but not limited to actions challenging CEQA actions, permits, variances, plot plans, design plans, maps, licenses, and amendments. The City of Fontana shall promptly notify the applicant of any claim, action, or proceeding and the City of Fontana shall cooperate in the defense.

In the event of any such third-party action or proceeding, the City shall have the right to retain legal counsel. The applicant shall be responsible and reimburse the City for such legal fees and costs, in their entirety, including actual attorneys' fees, which may be incurred by the City in defense of such action or proceeding. This

indemnification shall also include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities and expenses incurred in connection with such claim, action, or proceeding whether incurred by applicant, the City and/or any parties bringing such forth.

The City of Fontana and the applicant acknowledge that the City would not have approved this project if the City were to be liable to applicant in damages under or with respect to all or any part of this application or this condition of approval. Accordingly, applicant shall not sue the City for damages or monetary relief for any matter arising from or related to this condition of approval. Applicant's sole and exclusive remedy shall be limited to declaratory/injunctive relief, mandate, and/or specific performance.

3. In the event that one or more of the Conditions of Approval for this project needs to be amended and/or deleted due to health, safety or welfare concerns, the City Manager is authorized to approve or conditionally approve such amendment/deletion, provided that City Manager shall bring such proposed amendment/deletion to the City Council at the next available meeting for City Council ratification, but in no event later than sixty (60) days following the City Manager's decision. The noticing of such City Council meeting for possible ratification shall be pursuant to Sections No. 30-23 of the Municipal Code.
4. Prior to the construction of any modifications, all structural and aesthetic changes to the project design must be requested and approved in writing by the Director of Community Development or his/her designee. Major structural and aesthetic changes exceeding the codified parameters of administrative policy shall be presented to the Planning Commission for approval. Changes made without approval as stated herein, will prevent the occupancy of the structure until corrections are approved in writing by all appropriate staff.
5. The development shall establish an active Homeowner's Association (HOA) prior to the sale of the first condominium unit.
6. The Applicant shall adhere to the conditions of approval for MCN No. 21-029R1 and Design Review No. 21-009R1.
7. All signs shall be reviewed under a separate Design Review Sign application. This includes, but is not limited to, building signs, monument signs, pylon signs, etc.
8. All temporary signs (banners, wind flags, etc.) shall not be placed on the property unless the proper permits are obtained.
9. This Design Review Modification shall become null and void two (2) years from the date of approval, unless the appropriate permits have been obtained and construction, defined as permit obtainment, commencement of construction of the primary building on site, and successful completion of the first Building and Safety Division inspection, has commenced within this period.
10. This project shall comply with all applicable provisions, regulations and development standards of the City of Fontana Municipal Code.

11. Color combinations and color schemes for commercial buildings approved under a Design Review Permit application shall not be modified or changed without prior approval from the original approving body by a revision to the original application. Minor hue color changes may be approved by the Director of Community Development. The Director of Community Development shall have the authority to refer minor hue color changes to the Planning Commission for consideration under a revision to the original application if deemed necessary. Appeals shall follow provisions of the Municipal Code.
12. Any foam treatment used for architecture treatments and/or projections located on the first floor (under 14 feet) shall be covered with concrete or similar durable material a minimum of ½ inch thick, or as determined by the Director of Community Development.
13. The applicant shall provide up-lighting on the perimeter and up-light proposed trees to the satisfaction of the Director of Planning and his/her designee.
14. The applicant shall post a publicly visible sign on the project site with the telephone number and 24-hour point of contact for dust, noise, and construction complaints. The 24-hour point of contact shall be available 24 hours a day, 7 days a week and have authority to commit additional assets to control dust, or respond to construction complaints after hours, on weekends and on holidays. Construction shall be limited to 7:00am to 6:00pm on weekdays, 8:00am to 5:00pm on Saturdays, and no construction on Sundays and Holidays.
15. Historic Archaeological Resources
  - A. Upon discovery of any tribal cultural or archaeological resources, cease construction activities in the immediate vicinity of the find until the find can be assessed. All tribal cultural and archaeological resources unearthed by project construction activities shall be evaluated by the qualified archaeologist and tribal monitor/consultant. If the resources are Native American in origin, interested Tribes (as a result of correspondence with area Tribes) shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the Tribe will request preservation in place or recovery for educational purposes. Work may continue on other parts of the project while evaluation takes place.
  - B. Preservation in place shall be the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavation to remove the resource along the subsequent laboratory processing and analysis. All Tribal Cultural Resources shall be returned to the Tribe. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, if such an institution agrees to accept the material. If no institution accepts the archaeological material, they shall be offered to the Tribe or a local school or historical society in the area for educational purposes.

- C. Archaeological and Native American monitoring and excavation during construction projects shall be consistent with current professional standards. All feasible care to avoid any unnecessary disturbance, physical modification, or separation of human remains and associated funerary objects shall be taken. Principal personnel shall meet the Secretary of the Interior standards for archaeology and have a minimum of 10 years' experience as a principal investigator working with Native American archaeological sites in southern California. The Qualified Archaeologist shall ensure that all other personnel are appropriately trained and qualified.
16. The construction contractor will use the following source controls at all times:
- A. Construction shall be limited to 7:00 am to 6:00 pm on weekdays, 8:00 am to 5:00 pm on Saturdays, and no construction on Sundays and Holidays unless it is approved by the building inspector for cases that are considered urgently necessary as defined in Section 18-63(7) of the Municipal Code.
  - B. For all noise-producing equipment, use types and models that have the lowest horsepower and the lowest noise generating potential practical for their intended use.
  - C. The construction contractor will ensure that all construction equipment, fixed or mobile, is properly operating (tuned-up) and lubricated, and that mufflers are working adequately.
  - D. Have only necessary equipment onsite.
  - E. Use manually adjustable or ambient-sensitive backup alarms. When working adjacent to residential use(s), the construction contractor will also use the following path controls, except where not physically feasible, when necessary:
    - 1. Install portable noise barriers, including solid structures and noise blankets, between the active noise sources and the nearest noise receivers.
    - 2. Temporarily enclose localized and stationary noise sources.
    - 3. Store and maintain equipment, building materials, and waste materials as far as practical from as many sensitive receivers as practical.

**PRIOR TO ISSUANCE OF GRADING PERMIT**

17. All Conditions of Approval contained herein shall be incorporated into all applicable final construction plans and a copy of these conditions shall be placed on a sheet in the final building or grading plans prior to issuance of any building or grading permits.

**PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY**

18. Development fees and Planning Division final inspection fee must be paid prior to Certificate of Occupancy.

19. Prior to the issuance of a Certificate of Occupancy, the applicant shall underground all utilities, which for the purpose of this condition shall include all boxes, structures and/or other equipment located in the public rights-of-way, any public utility easement(s), and on any private property, to the satisfaction of the Director of Community Development.

**END OF CONDITIONS**