

**Recording Requested By and  
When Recorded Return To:**

HDO4, LLC  
Attn: Richard Munkvold  
2151 E. Convention Center Way, Suite 222  
Ontario, CA 91764

APN

(Space Above This Line For Recorder's Use)

**RELEASE AGREEMENT**

This Release Agreement (“**Agreement**”) is between (i) the City of Fontana, a California municipal corporation and general law city (“**City**”), and (ii) HDO4, LLC, a New Mexico limited liability company (“**Developer**”). In this Agreement, City and Developer are sometimes referred to individually as a “**party**” and collectively as the “**parties**.”

This Agreement is dated October \_\_, 2024, for reference purposes only. It will not become effective until the “**Effective Date**” defined below.

**RECITALS**

A. City and Developer are parties to that certain 2020 Disposition Agreement dated July 2, 2020 (including the Exhibits attached thereto, collectively, “**Disposition Agreement**”).

B. A “**Notice of Agreement**” pertaining to the Disposition Agreement was recorded in San Bernardino County Recorder’s Office on November 5, 2020, as Document No. 2020-0437487.

C. In accord with the Disposition Agreement, City conveyed to Developer certain real property (“**Property**”) located in the City and more specifically described on Exhibit A attached hereto. The Property was conveyed to Developer by that certain grant deed (“**Grant Deed**”) recorded in San Bernardino County Recorder’s Office on November 5, 2020, as Document No. 2020-0437488. The Grant Deed recited that the Property was conveyed subject to the Disposition Agreement.

D. Developer is developing portions of the Property for various residential and commercial uses. This Agreement pertains to that portion of the Property legally described on Exhibit B attached hereto (“**Subject Land**”).

E. The Disposition Agreement and Grant Deed created certain covenants, obligations, restrictions, and servitudes pertaining to the Property, including the Subject Land. The Disposition Agreement also imposed certain obligations and liabilities on Developer and placed restrictions on Developer’s ability to freely transfer the Property, including the Subject

Land, and to finance the Property's development. Those covenants, restrictions, obligations, and liabilities have impeded and delayed Developer's ability to develop the Subject Land.

F. Developer has requested, and City has agreed to, except as set forth below (i) fully and unconditionally release the Subject Land from the encumbrances, restrictions, and servitudes arising under the Disposition Agreement, and (ii) (A) release Developer from any and all covenants, obligations, and liabilities under the Disposition Agreement with respect to the Subject Land, and (B) release the Guarantor (defined below) from all covenants, obligations, and liabilities under the Guaranty (defined below) with respect to the Subject Land.

G. By releasing the Subject Land from the burdens and restrictions of the Disposition Agreement, the development of the Subject Land will occur sooner than if the Subject Land remained subject to the Disposition Agreement. The accelerated development will create additional economic opportunities, sales tax revenues, property tax revenues, and other revenues to support City services more quickly than if the Subject Land remained subject to the Disposition Agreement.

## AGREEMENT

1. Release of Developer and the Subject Land from Disposition Agreement. As of the Effective Date, City, fully and unconditionally releases and discharges Developer and the Subject Land from any covenant, restriction, servitude, obligation, or liability arising under the Disposition Agreement and the Grant Deed, excepting only the Preserved Claims (defined below). For purposes of clarity, from and after the Effective Date, the Subject Land may be freely sold, assigned, transferred, hypothecated, and encumbered without restriction, without notice to or consent from City, and without regard to any requirement or restriction arising under the Disposition Agreement. The parties' intention entering into this Agreement is to fully, finally, unconditionally, and forever release and discharge the Subject Land and Developer from any covenant, restriction, servitude, obligation, or liability arising under the Disposition Agreement with respect to the Subject Land, excepting only the Preserved Claims.

2. Release of Guarantor as to the Subject Land. In connection with the Disposition Agreement, City and FH II, LLC, a California limited liability company ("**Guarantor**"), entered into that certain Guaranty dated July 16, 2020 ("**Guaranty**"). As of the Effective Date, City fully and unconditionally releases and discharges Guarantor from any "**Guaranteed Obligation**" (as defined in the Guaranty) to the extent that the Guaranteed Obligation is attributable to the Subject Land, excepting only the Preserved Claims.

3. Reaffirmation of Guaranty. Concurrently with execution of this Agreement Guarantor shall execute a Reaffirmation of Guaranty in the form set forth on Exhibit C attached hereto and deliver the executed original to the City ("**Reaffirmation of Guaranty**").

4. Preserved Claims.

a. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement (i) releases Developer from any liability arising under the Disposition Agreement with respect to the Subject Land to the extent that the obligation or liability accrued prior to the

recordation of this Agreement, or (ii) releases the Guarantor from any obligation or liability as to a Guaranteed Obligation with respect to the Subject Land to the extent that the obligation or liability accrued prior to the recordation of this Agreement ((i) and (ii), collectively, the “**Preserved Claims**”).

b. The releases and discharges set forth in this Agreement includes all debts, obligations, or liabilities of any type, nature or amount, liquidated or unliquidated, past, present, and prospective, whether or not known or unknown to City or suspected to exist in City’s favor to the extent attributable to the Subject Land, excepting only the Preserved Claims. Excepting only the Preserved Claims, City waives to the greatest legal extent the protections and provisions of Civil Code section 1542, which provides:

“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.”

The foregoing waiver includes Civil Code section 1542 and all other federal or state laws of similar import.

5. No Effect on City’s Police Powers or on Balance of the Property. This Agreement affects the Subject Land only and does not modify or release any covenant, obligation, restriction, liability, or servitude arising under the Disposition Agreement affecting any portion of the Property other than the Subject Land. Other than the Subject Land, all portions of the Property remain subject to the covenants, obligations, restrictions, liabilities, and servitudes arising under the Disposition Agreement. Nothing in this Agreement modifies or limits the City’s lawful exercise of its police powers to regulate development of the Property (including the Subject Land) as provided by applicable federal, state, and local law. Nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of City’s discretion to the extent allowed by applicable law concerning the issuance of development approvals for the Subject Land and City retains full discretion to the extent allowed by applicable law with respect to the Subject Land, including making any legally-required CEQA determination with respect to Subject Land, and any mitigation measures, conditions of approval pursuant to CEQA and all other applicable laws. Nothing in this Agreement modifies or terminates the Guaranty except as specifically set forth in this Agreement, nor does it modify or terminate any other agreement or obligation between City and Developer respecting the balance of the Property or its development.

6. Modification of Disposition Agreement and Related Instruments. For the sake of convenience, City and Developer agree to forego preparing specific amendments to the Disposition Agreement, Grant Deed, and Notice of Agreement that may otherwise be necessitated by the releases and other modifications set forth in this Agreement. City and Developer agree that the Disposition Agreement, Grant Deed, and Notice of Agreement will, as of the Effective Date, be deemed amended to conform to the terms of this Agreement. For purposes of clarity and as an example, all covenants, obligations, restrictions, liabilities, and servitudes relating to, affecting, or encumbering the Subject Land will be deemed to have been

deleted from the Disposition Agreement for purposes of the future interpretation and enforcement of the Disposition Agreement, Grant Deed, Guaranty, and Notice of Agreement. At all times following the Effective Date, whenever the Disposition Agreement, Grant Deed, Guaranty, and Notice of Agreement explicitly or impliedly refer to the “Property” or portions thereof, those terms will be interpreted and enforced to exclude the Subject Land from their meaning.

7. Recordation. City and Developer will execute, notarize, and deliver this Agreement in recordable form. Developer may record this Agreement in the San Bernardino County Recorder’s Office at any time after the Effective Date.

8. Effective Date. This Agreement is dated as of **October \_\_**, 2024, for reference purposes only. This Agreement will not become effective and binding until the date (“**Effective Date**”) on which it has been executed by Developer’s authorized signatories, delivered to City, and executed by City’s authorized signatures after approval of this Agreement by the City Council.

9. Administration of Agreement and Future Assurances. This Agreement will be administered on behalf of City by the City Manager or his or her designee. The City Manager may enter into administrative and/or non-substantive amendments to this Agreement on behalf of City without the need for City Council approval. City and Developer will execute such additional documents and instruments as may be necessary to the administration and implementation of this Agreement; however, neither party is obligated to incur any material expense or liability and City is not obligated to take any legislative action or exercise its discretion in any particular way in connection therewith.

10. Governing Law. This Agreement will be governed by and construed in accordance with the procedural and substantive laws of the state of California, without regard to its conflicts of laws principles.

11. Severability. If any clause or provision of this Agreement is held to be illegal, invalid, or unenforceable, it is the intent of the parties that all other clauses or provisions of this Agreement will not be affected thereby, and will remain legal, valid, and enforceable to the fullest extent permitted by law.

12. Notice. All notices and other communications required or permitted to be given hereunder must be in writing and sent by: (a) certified or registered mail, postage prepaid, return receipt requested, (b) personal delivery, or (c) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

If to City:

City Manager  
City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92334-0518

If to Developer:

HDO4, LLC  
Attn: Richard Munkvold  
2151 E. Convention Center Way, Suite 222  
Ontario, CA 91764

With a copy to:

Rutan & Tucker, LLP  
Attn: Pat Munoz  
18575 Jamboree Road, Suite 900  
Irvine, CA 92612

With a copy to:

HDO4, LLC  
Attn: Steven B. Imhoof  
2151 E. Convention Center Way, Suite 114  
Ontario, CA 91764

Notices will be deemed effective upon receipt or rejection only.

13. Time of Essence. Time is of the essence of this Agreement and each and every term and provision hereof.

14. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties, and they may not rely upon any statement, promise, or representation not herein expressed. This Agreement may not be modified or altered in any respect except by a writing executed by both parties. This Agreement is fully integrated and supersedes all other prior oral or written agreements, statements, promises, or other communications between the Parties concerning the subject matter of this Agreement.

15. Survival. All warranties, representations, and covenants herein will survive the execution and delivery of this Agreement.

16. Further Acts. Each party will, whenever and as often as it shall be reasonably requested to do so by the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, any and all such further conveyances, assignments, approvals, consents, and any and all other documents, and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

17. Consent to Jurisdiction, Venue and Service. Any action or proceeding brought respecting this Agreement shall be instituted and maintained in the appropriate court in the County of San Bernardino, California. Developer hereby forgoes and waives any provision of State or Federal law or judicial decision providing for a change of venue from such court on the grounds that the City is or may be a party to any such action or proceeding, including, without limitation, California Code of Civil Procedure section 394. Each party hereby irrevocably consents to the personal jurisdiction of the court. Service of process may be made in any manner provided by law.

18. Waiver. A waiver by either party hereto of a breach of any of the covenants or agreements hereof to be performed by the other party will not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions hereof.

19. Attorneys' Fees. If any legal action (including arbitration) is commenced to enforce or interpret any provision in this Agreement, then the prevailing party will, in addition to any other legally available relief, be entitled to recover its reasonable attorneys' fees and costs of litigation (including expert witness fees) either as an element of the costs of suit or in an independent recovery action.

20. Independence of the Parties. City and Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein, in the Disposition Agreement, or in any document executed in connection herewith is intended or may be construed as making City or Developer joint venturers, partners or employer/employee and each party specifically disavows any intent to create any such relationship.

21. Binding on Successors and Assigns. Subject to the limitations on transfers under this Agreement, this Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

*[remainder of page intentionally left blank;  
signatures on next page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

CITY OF FONTANA,  
a California municipal corporation

HDO4, LLC,  
A New Mexico limited liability company

By: \_\_\_\_\_  
Matthew Ballantyne  
City Manager

By: \_\_\_\_\_  
Richard Munkvold  
Chief Financial Officer

*Attest*

By: \_\_\_\_\_  
Germaine Key  
City Clerk

*Approved as to form:*

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Phillip Burum, Deputy City Manager  
Development Services Organization

By: \_\_\_\_\_  
Gia Lam Kim  
Director of Engineering/City Engineer

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY (including the Subject Land)

That certain real property located in the City of Fontana, County of San Bernardino, State of California, as more particularly described as:



EXHIBIT B

LEGAL DESCRIPTION OF THE SUBJECT LAND

That certain real property located in the City of Fontana, County of San Bernardino, State of California, as more particularly described as:

***[TO BE INSERTED AFTER LOT LINE ADJUSTMENT FOR PA3 RECORDED]***

EXHIBIT C

FORM OF CONSENT AND REAFFIRMATION OF GUARANTY

**[Attached Behind This Page]**

## CONSENT AND REAFFIRMATION OF GUARANTY

The undersigned, FH II, LLC, a California limited liability company ("**Guarantor**"), executed a Guaranty dated July 16, 2020 ("**Guaranty**") in favor of the City of Fontana, a municipal corporation and general law city ("**City**"). Pursuant to the Guaranty, Guarantor unconditionally guaranteed the performance of specified obligations (identified as the "Guaranteed Obligations" in the Guaranty) of HDO4, LLC a New Mexico limited liability company, and its assignee Ventana 257, LLC a California limited liability company (collectively, "**Developer**"), under that certain 2020 Disposition Agreement (Ventana at Duncan Canyon) dated July 8, 2020 (the "**DDA**").

City and Developer are concurrently herewith entering into that certain Release Agreement dated \_\_\_\_\_, 2024 ("**Release Agreement**").

Guarantor has reviewed the Release Agreement and hereby (i) approves and consents to Developer executing the Release Agreement and (ii) unconditionally agrees that Guarantor's obligations under the Guaranty shall not be altered, reduced, or impaired in any manner as a result of the Release Agreement, except as specifically described in the Release Agreement. Guarantor hereby unconditionally acknowledges, ratifies and reaffirms its obligations as Guarantor under the Guaranty in relation to the Release Agreement, as those obligations have been specifically modified by the Release Agreement. Nothing contained in the Release Agreement shall be deemed a waiver of the City's rights under the Guaranty.

Guarantor understands, acknowledges and agrees that City has entered into the Release Agreement in material reliance upon and receipt of this Consent and Reaffirmation of Guaranty.

Dated: \_\_\_\_\_, 2024

FH II, LLC, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_