

ESTOPPEL CERTIFICATE AND AGREEMENT

This Estoppel Certificate and Agreement (the “**Estoppel**”) is made as of September _____, 2022 (the “**Effective Date**”), by THE CITY OF FONTANA, a California municipal corporation (“**City**”), in favor of PNC BANK, NATIONAL ASSOCIATION (“**Administrative Agent**”), as Administrative Agent for itself and for the Lenders (as defined below).

WHEREAS, Administrative Agent on its own behalf and on behalf of certain financial institutions (collectively, the “**Lenders**”) will provide Ventana 257, LLC, a California limited liability company (“**SPE**”), a loan (“**Loan**”) pursuant to that certain Construction and Mini Perm Loan Agreement to be entered into on or about the Effective Date (as the same may be amended, modified, supplemented or replaced from time to time, the “**Loan Agreement**”);

WHEREAS, the Loan Agreement will be made in reference to the real property commonly known as Parcel 1 of Parcel Map No. 20327, and which is more specifically described on Exhibit A attached hereto (the “**Property**”);

WHEREAS, the Property is subject to that certain 2020 Disposition Agreement (Ventana at Duncan Canyon), effective as of July 8, 2020, made by and between City and HDO4, LLC, a New Mexico limited liability company (“**HDO4**”), as severed and assigned, in part, to SPE pursuant to the SPE Assignment referenced below (the “**Disposition Agreement**”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Disposition Agreement; and

WHEREAS, SPE is a single purpose entity formed and Controlled by HDO4 for the purpose of owning and developing the Property. On or about the Effective Date, HDO4 will, pursuant to an assignment and assumption agreement approved by City assign and convey the Property and all of HDO4’s rights, duties, and obligations under the Disposition Agreement related to the Property to SPE (“**SPE Assignment**”).

NOW THEREFORE, City hereby represents, warrants, covenants, agrees and certifies to Administrative Agent, for its benefit and the benefit of Lenders, as follows:

1. Agreement Effective. The Disposition Agreement is in full force and effect without amendment, modification or supplement.
2. Acknowledgment. City acknowledges and agrees that (a) this Estoppel shall constitute notice from HDO4 and SPE of the making of the Loan to SPE (which Loan will be secured, in part, by the Construction Deed of Trust, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated on or about the Effective Date (as the same may be amended, restated or replaced from time to time, the “**Deed of Trust**”), that will encumber the Property); (b) the making of the Loan and the giving and recordation (if applicable) of the Deed of Trust, and the SPE Assignment are Permitted Transfers under the Disposition Agreement; and (c) neither the making of the Loan, the execution of the Deed of Trust or the Collateral Assignment, nor

the SPE Assignment does or will constitute a default under the Disposition Agreement.

3. Existing Defaults. To the best of City's knowledge, there is no existing uncured default by HDO4 or SPE under the Disposition Agreement, nor has any event occurred which, with the passage of time or the giving of notice or both, would constitute such a default. City has neither given nor received any notice of a default under the Disposition Agreement with respect to HDO4, SPE, or the Property.
4. Estoppel.
 - (a) Close of Escrow under the Disposition Agreement occurred on November 5, 2020;
 - (b) The date upon which SPE is required to "Complete Construction within PA6" pursuant to the terms of Section 4.1.1 of the Disposition Agreement is December 8, 2024, subject to extensions due to Unavoidable Delays and other extensions expressly permitted or required under the Disposition Agreement;
 - (c) For purposes of the Disposition Agreement, references to PA6 will be deemed to mean and refer to the Property; and
 - (d) The City and HDO4 have determined the Revised Land Value and have confirmed that no Additional Purchase Consideration is required under the Disposition Agreement with respect to the Property.
5. Notice of SPE Default and Cure Rights. City will give Administrative Agent, at the addresses stated below, concurrent written notice of any SPE default under the Disposition Agreement. Administrative Agent will have right to cure such defaults, provided any cure period provided to SPE under the Disposition Agreement shall not begin to run until such time as Administrative Agent receives written notice of the applicable default from City. Notwithstanding anything to the contrary in the Disposition Agreement, City will nonetheless accept any actions taken by Administrative Agent to cure any SPE default under the Disposition Agreement, and such actions shall cure any SPE default to the same extent had SPE taken such actions.

Address for Notice to Administrative Agent:

PNC Bank, National Association,
as Administrative Agent for itself and certain other Lenders
620 Newport Center Dr., Suite 1100
Newport Beach, CA 92660
Attention: Damon Smith

6. Limitations on Liability of Administrative Agent and Lenders. City acknowledges and agrees that neither Administrative Agent nor Lenders are assuming, nor shall Administrative Agent or Lenders be required to assume, any obligations under the Disposition Agreement, including, without limitation, by virtue of any actions taken by Administrative Agent to cure any default of SPE.
7. Consent to Assignment. As a condition to Administrative Agent's agreement to make the Loan to SPE, Administrative Agent has required that SPE, pursuant to the Deed of Trust and that certain Assignment of Construction and Development Documents, dated on or about the Effective Date (as the same may be amended, restated or replaced, the "**Collateral Assignment**"), assign its rights under the Disposition Agreement to Administrative Agent as additional collateral for the Loan. City hereby consents to the collateral assignment of the Disposition Agreement by SPE to Administrative Agent as additional collateral for the Loan and hereby agrees that if Administrative Agent, its designee or nominee, or any third party should become the successor owner (each and every such person or entity, "**Successor Owner**") of the Property through foreclosure of the Deed of Trust, or acceptance of a deed in lieu thereof, then, notwithstanding anything to the contrary in the Disposition Agreement:
- (a) The Successor Owner may succeed to the rights and obligations of SPE under the Disposition Agreement as to the Property without City's or any other person's or entity's consent (including SPE), so long as the Successor Owner assumes the obligations of SPE under the Disposition Agreement as to the Property;
 - (b) So long as the Successor Owner assumes the obligations of SPE under the Disposition Agreement as to the Property, the Successor Owner will not be subject to any claims, offsets, defenses or penalties arising as a result of SPE's performance, or failure to perform, under the Disposition Agreement prior to the date that Successor Owner succeeds to the interests of SPE under the Disposition Agreement;
 - (c) Nothing herein modifies, limits or abridges the Guarantor's obligations and liabilities under the Guaranty, which will continue in effect in accordance with its terms;
 - (d) The Successor Owner will not be obligated to execute a guaranty pursuant to Section 2.8 of the Disposition Agreement;
 - (e) In no event will the Successor Owner be obligated to construct any improvements on any Planning Area other than PA6, nor will Successor Owner have any obligations under the Disposition Agreement relating to any property other than the Property;
 - (f) If the Successor Owner is Administrative Agent, a Lender, or an affiliate of either, the Successor Owner will be permitted to Transfer the Property

and assign its interest in the Disposition Agreement without City's consent, so long as the assignee assumes the obligations of SPE under the Disposition Agreement as to the Property; and

- (g) The Successor Owner's liability under the Disposition Agreement shall be limited to its period of ownership of the Property and any such liability shall be limited to the Successor Owner's interest in the Property and no other assets of the Successor Owner.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Estoppel has been executed to be effective as of the Effective Date.

“CITY”

CITY OF FONTANA, a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER, LLP

By: _____
City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

The land situated in the City of Fontana, the County of San Bernardino, State of California, and is described as follows:

Parcel 1, in the City of Fontana, County of San Bernardino, State of California, as shown on map filed in Book 258, Page(s) 37-48 of Parcel Maps, in the Office of the County Recorder of said County.

Assessor's Parcel Numbers(s): 0226-075-45